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## Selected chapters from the tax history of the Netherlands

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### I Introduction

There is much to say about the tax history of the Netherlands.<sup>4</sup> As we had to make choices for this chapter, we start in the 16<sup>th</sup> century when the imposition of a sales tax by the Spanish led to a war of independence and eventually the naissance of the Dutch Republic of the Seven United Provinces. We then focus on the 19<sup>th</sup> century when the first Dutch income and wealth taxes were introduced. Next is the first half of the 20<sup>th</sup> century when modern wage tax, corporation tax and dividend withholding tax were introduced during World War II. We end with the developments in the 20<sup>th</sup> century when income tax law was used to discriminate between man and women and married and unmarried persons. This discrimination was only redressed by the end of the last century.

### II The 10<sup>th</sup> penny of the Grand Duke of Alba

In the Netherlands, the iconic tax event *par excellence* is the 10% sales tax introduced in 1569 by the Spanish governor of the Netherlands Provinces, Ferdinand Alvarez de Toledo (1507-1582), the Grand Duke of Alba. The Netherlands Provinces – a cluster of more or less independent states. The *de facto* sovereign was Philip II (1527-1598), also king of Spain, and living in Spain.

A principal characteristic of the governmental structure of the early 16<sup>th</sup> century Provinces was each's far reaching financial autonomy, based on a number of privileges obtained since the 15<sup>th</sup> century. If the sovereign needed financial contributions for his governmental tasks, he needed to negotiate *aides* (Dutch *beden*) with the representatives of each individual Province. This privilege safeguarded a certain political balance of power; each Province, separately or together with other Provinces meeting in the States-General, could demand concessions, in respect to international politics such as military defense issues and international trade relations or special privileges related to local interests and could even put the historically determined distributive code on the agenda – the relative share of each Province in the repartition of the financial burden. In practice there was little room for refusing a subsidy, but at least the sovereign had an interest in the goodwill of his subject possessions, and this goodwill came at a cost.<sup>5</sup> The structure provided some political balance also on lower levels. Once the contribution to the Sovereign was agreed upon and the share of each Province was established, the States of each Province would distribute the relative share of each taxable city or region in the Province. The repartition at this level was historically also predetermined but shifts in economic wealth or political power could result in amendment of the code by consent of the individual fractions in the States – eventually even the nobility and the clergy, in principle exempt from taxation in

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<sup>4</sup> J. Lamens, *Fiscaal-historische documentatie*, Leiden 1987, more specifically P.H. Engels, *De geschiedenis der belastingen in Nederland ...*, Rotterdam 1848; F.N. Sickenga, *Geschiedenis der Nederlandsche belastingen*, Amsterdam resp. Utrecht 1865 en 1883; A.C.J. de Vrankrijker, *Belastingen in Nederland 1848-1893*, Haarlem 1967, F.H.M. Grapperhaus, e.g. *Tax Tales for the Second Millennium*, Amsterdam 2009; Onno Ydema, *Hoofdstukken uit de geschiedenis van het belastingrecht*, Groningen 1997; Peter Essers, *Belast verleden. Het Nederlands belastingrecht onder nationaalsocialistisch regime*, Deventer 2012; *Tweehonderd jaar Rijksbelastingen* (H. Vording, ed.), The Hague 2015.

<sup>5</sup> R. Slachmuylders, *Alva's Bloedraad en Voorne (1567-1572)*, Brielle 2015, p. 9.

respect of their other social functions, would find themselves taxed at occasion.<sup>6</sup> At local level the structure also guaranteed a level of fiscal autonomy; historical privileges often allowed the local administrators to determine how the funds for the contribution would be collected from the citizens when the share of an individual city or a specific region was agreed upon in the States. In the customs of the cities a wide range of taxes can be found, many of these quite standard, such as the scot, a levy on property and wealth, and excises on principal consumables such as grain and beer. Consecutive sovereign princes since the 1480s tried to diminish these privileges, as their policies to create a centralized state implied a unification of the tax systems in every corner of the state as anticipated, and also to raise permanent taxes; the need to periodically negotiate each and every contribution is irreconcilable with a strong personal government of the sovereign. Economic circumstances made reforms difficult, however; crop failures, plague epidemics and military conflicts had exhausted the wealth of the Provinces. The increase in population led to a net decrease in wages which meant serious poverty for a major part of the work force. The price of basic commodities rose by 400% in the 16<sup>th</sup> century, while the price of wages increased only by 115% between 1500 and 1580 for unskilled labor or 200% for skilled labor. The purchasing power therefore declined sharply, and most people lived on the edge of the subsistence level. At the same time the social relations were unfavorable for a healthy economy: the society was divided in strict classes or groups, the sovereign looked down on his subjects, the nobility on all commoners, the wealthy merchants on less well-to-do, the skilled laborers on the lower classes, and everyone looked down on the many wanderers, beggars *etc.* that made the cities and the countryside unsafe.<sup>7</sup> Philip II had inherited the Provinces in a near-bankrupt state<sup>8</sup> with a population of which many lived under desperate conditions. At the same time these possessions were under constant threat of neighboring France. It was a money pit; Philip had to subsidize the territories in the Low Countries with millions of tax money from his other possessions.

To make things worse, the Low Countries had to face a serious challenge in religious troubles. In August 1566 iconoclastic riots started, the so called *Beeldenstorm* (statue storm), orchestrated by insurgents,<sup>9</sup> discontent and incited hooligans<sup>10</sup> destroying Catholic images in churches and public places, looting and pillaging priest's houses and even destroying libraries under the moral excuse of a newly invented religion. Philip saw no alternative but to send the Grand Duke of Alba with an army to restore order. Initially the rebels were no match for the Spanish general, who successfully restored order in the Low Countries. To prevent future uprisings, Alba established the Council of Troubles, nicknamed the Court of Blood, to prosecute the insurgents. About 10,000 suspects were convicted, many of which found their properties confiscated and about 1,100 were executed. The resentment of the population against the Spanish administrators quickly turned into pure hatred. One of the principal complaints would be the tax policy of the new Spanish governor, aimed at concentrating political power. This policy was perceived as strongly repressive. It already started off on the wrong foot when Alba wanted to present his new taxes as a decision rather than as a proposal.<sup>11</sup>

Philip explicitly instructed Alba to unite the individual Provinces under one law and equal customs.<sup>12</sup> The governor found the Spanish alcabala an eminent model for a permanent tax to be equally imposed in all Provinces; a sales tax that would agree with the 16<sup>th</sup> century faculty principle – the early concept of ability to pay – and that would be universal (no privileges). It would end the need of Philip's government to subsidize the Low Countries with funds from Spain.<sup>13</sup> It would strengthen the central authority as it would be

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<sup>6</sup> Grapperhaus, *Alva en de Tiende Penning*, Zutphen 1984, p. 44.

<sup>7</sup> R. Slachmuylders, o.c., p. 7-9; Grapperhaus, o.c., p. 206; H. Kamen, *Alva, Een biografie*, Antwerpen/Amsterdam 2005, p. 7-9.

<sup>8</sup> In Spain his financial conditions were also very concerning; in 1557 Philip could not meet his obligations under the existing loans; he owed about 14 million guilders, about seven times the yearly income from taxes in Spain, therefore only just enough to pay the interest on the loans. Grapperhaus, o.c., p. 64.

<sup>9</sup> G. Kuijer, *Draaikonten & haatblaffers*, Amsterdam 2011, p. 34.

<sup>10</sup> Id., p. 35.

<sup>11</sup> G. Janssens, *The Duke of Alba: Governor of the Netherlands in Times of War*, in: *Alba, General and Servant to the Crown*, M. Ebben a.o. (eds), Rotterdam 2013, p. 104.

<sup>12</sup> Grapperhaus, p. 98.

<sup>13</sup> Grapperhaus, p. 108; P. Stabel and F. Vermeylen, *Het fiscale vermogen in Brabant, Vlaanderen en in de heerlijkheid Mechelen: de Honderdste Penning van de hertog van Alva (1569-1572)*, Brussel 1997, p. p. 17ff.

permanent and it would thereby end the *de facto* clamp on the government's budget. The core of the plan was to raise in all regions a permanent 10% sales tax on movables and a 5% transfer tax on immovable properties.<sup>14</sup> Perceptive of the disdain inherent of the class system for other social groups and the distribution of power within each Province, Alba followed a Machiavellian path of *divide et impera*, explaining that the tax would not hurt the nobility, the clergy, or the agriculture as it would burden only the trade and industry. Excises on consumables – a constant source of complaint of the population - could be abolished. The arguments seemed convincing to the new Spanish governor, but the plan was not received favorably. The Provinces, especially the Provinces in the Northern Netherlands where the cities had a strong voice in the respective States, anticipated ruinous consequences for industry, trade, shipping and fishing.<sup>15</sup>

The following months Alba followed his Machiavellian path, forbidding the Provinces to discuss their positions among each other, putting high pressure on individual influential cities by the billeting of soldiers and even threatening to burn cities if they would not accept after all.<sup>16</sup> Eventually he reached agreement on the 10<sup>th</sup> penny on paper but postponed the introduction of the tax when the Provinces alternatively offered serious sums funded with revenues from existing taxes and additional high-interest loans. The duke thereby accomplished a quick stream of income and probably he was also susceptible for the economic objections raised by the Provinces. It must be repeated that Alba had to find funds urgently to cover the extreme defense expenditures, not only to maintain order in each Province but also to defend these against foreign powers such as France and aggressive private armies of rebel nobles such as William of Orange and various pirate groups such as the Sea Beggars (Dutch: *watergeuzen*) terrorizing cities and villages from the sea. Philip's Northern territories were effectively still sponsored with vast amounts from Spain. In that respect the tax proposed regime can hardly be called repressive; these were financially harsh times not only for the Provinces<sup>17</sup> but also for their sovereign.

The factions in the States of the Provinces found themselves in a squeeze between the threats of the duke and the rage of the impoverished people, stoked by William of Orange's agitators. Passive resistance in the cities led to open revolt, probably not so much caused by the 10<sup>th</sup> penny tax as by food shortages and unemployment of the fishermen and the sailors who were prevented to work due to the dangers caused by William's pirates at sea.<sup>18</sup> With his attempts to break any opposition with brutal force Alba alienated almost everyone from their sovereign and his actions caused a now open rebellion. The 10<sup>th</sup> penny became the wig in the powder keg. The rebellion marked the start of the so-called 80 Years' War, and thereby also the naissance of the Dutch Republic of the Seven United Provinces under the guidance of William of Orange. In the propaganda pamphlets distributed (much later) during the war the specter of the 10<sup>th</sup> penny tax became symbolic for dictatorial injustice, and Alba became the personalization of the atrocities of the Spanish troops remembered in that propaganda – the atrocities committed by the troops and gangs supporting warlord William of Orange were apparently forgotten<sup>19</sup> – and likewise Alba became the personalization of all horrors and injustices inherent of 16<sup>th</sup> and 17<sup>th</sup> century warfare. The same applies to history books until the present day in the Netherlands, where William of Orange is presented as *Pater Patriae*, where the head of state, who is not William's direct descendant, assumes the title "of Orange" to substantiate his hereditary position, and where a permanent sales tax *mutatis mutandis* has been introduced long ago at a much higher rate than Alba could ever dream of (today the VAT rate in the Netherlands is 21%, more than double the rate of the 10<sup>th</sup> penny<sup>20</sup>). Alba's tax reforms were unsuccessful in his days, but in modern eyes they were not unjust, at least not after the moderations accepted by the Duke who had no intention to ruin the economy of the Provinces, the tax observed general principles of ability to pay and when collected by state-appointed officers it would

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<sup>14</sup> O.I.M. Ydema, *Alva's erfenis, vierhonderd jaar overdrachtsbelasting*, Deventer 1998.

<sup>15</sup> Grapperhaus, p. 191-193.

<sup>16</sup> Grapperhaus, p. 110; G. Janssens, *Brabant in het verweer 1567-1578*, Kortrijk-Heule 1989, p. 147ff.

<sup>17</sup> Stabel/Vermeulen, l.c.

<sup>18</sup> Grapperhaus, p. 206, 255.

<sup>19</sup> E.g. the tragic history of the Martyrs of Gorkum hanged by Calvinist militants in 1572. For other incidents R. van Stipriaan, *Lof der botheid*, Amsterdam/Antwerpen 2016, p. 44-45.

<sup>20</sup> Not counting with the effect that the 10th penny could be applicable on repeated sales of the same good, an effect already largely mitigated by Alba for basic consumables.

also provide legal certainty.<sup>21</sup> Perhaps Alba was way ahead of his time, albeit that he underestimated the opposition against his underlying policy to strengthen the authority of the sovereign to the detriment of the limited autonomy of the Provinces.<sup>22</sup> He also did not recognize that by alienating the king's subjects from his financial and political policies he opened the road for religious reformers who opposed the king's objective to safeguard the Catholic religion everywhere in his realm. His hard-line policy and his disdain for the local population – in itself not consistent with the atmosphere of the era as we have seen – only evoked resistance, strengthened by the icy temperature experienced from his personal rigidity. At any event, today we can establish that political propaganda in the Netherlands, particularly popular in Protestant circles, throughout the 17<sup>th</sup>, 18<sup>th</sup> and especially the 19<sup>th</sup> century<sup>23</sup> and even up to today, presents Alba and the 10<sup>th</sup> penny as symbol for the events underlying the birth of the Netherlands as a modern nation, and presents the revolt against this tax as symbol for freedom and local autonomy as a basic concept.

### III Taxes supporting Democracy, the introduction of income taxes: the 1892/1893 Dutch Tax Reform of Nicolas Pierson

When the Duke of Alba proved unsuccessful in introducing a uniform tax legislation in the Low Countries, the various traditional and local fiscal regulations based on property taxes, excises, transfer taxes etc. survived until in 1795 the Republic of the Seven United Netherlands was replaced by the Batavian Republic, a satellite state of France. Its relative independency allowed it to choose its own tax system. In 1810 the Netherlands became part of the French empire and French tax laws were introduced. These meant relatively minor changes. It did not lead to predatory levies. In fact, the total tax burden became a bit less heavy.

The economic landscape of the 19<sup>th</sup> century Netherlands was still characterized by a wide distance between the wealthy and the have-nots. One painful issue identified at the time were the untaxed incomes from movable property such as interest and pensions. In the course of the century legislation aimed at a relief of the lower income earners, e.g. by abolishing some burdensome excises on prime consumables, but rentiers and pensioners were spared as they were assumed to contribute already through the tax system, a system that hit wealth from different angles with different taxes on real property and expenditure. There was an increasing awareness of social imbalances however, and a substantial contribution to the modernization of the Dutch tax system provided the 1887 abolishment of census suffrage, doubling the number of constituents. It would however take until the elections of 1891 for a more liberal government to implement new ideas, ideas for simplified and, as assumed, more equal tax laws.<sup>24</sup> One of the issues was the taxation of personal wealth, especially interest income. In parliament there were proposals for an income tax (also) on wealth in the revolutionary year 1848, in 1849 and in 1850/1852.<sup>25</sup> It was again proposed in 1879, in 1880 as a tax on income from interest, and in 1888 when the former Finance minister Gleichman proposed a 1,5% tax on 3,5% presumed wealth income. Consecutive proposals reflected opposing opinions about taxing income and further to that, taxing income from personal wealth – should real income be taxed or presumed income, should there be progressivity in the rate?<sup>26</sup> The acceptance in parliament of a permanent income tax was unimaginable as long as census suffrage still existed,<sup>27</sup> but aside the issue of lack of support from (mostly rich) taxpayers the “income-tax” *à la Anglaise*<sup>28</sup> was a heavily disputed subject in many academic and other publications.

In 1871 Nicolas Pierson published an article in which he established that the “income-tax” was embraced in many publications, and even in newspapers, with particular references to John Stuart Mill. He remarked that Mill was rather an adversary to the income tax, and analyzed the tax weighing arguments from e.g. Adam

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<sup>21</sup> G. Janssens, *Don Fernando Alvarez de Toledo, Tercer duque de Alba, y los Países Bajos*, Brussel 1993, p. 19. Id. 1989, p. 158. Cf. Stabel/Vermeylen, p. 19-20.

<sup>22</sup> Stabel/Vermeylen, p. 18-19.

<sup>23</sup> G. Janssens 2013, p. 91.

<sup>24</sup> Smit 2002, p. 253.

<sup>25</sup> A.L.J. Grotenhuis, Hoe inspirerend is Pierson? In: *Liberale Gifte* (J. Verburg, N.H. de Vries and O.I.M. Ydema, eds), Deventer 1999, p. 150; J. Viersen, *Minister P.P. van Bosse en de fiscale wetgeving rond het midden van de 19<sup>de</sup> eeuw*, Epe 1996, p. 237ff.

<sup>26</sup> Cf. Grotenhuis, l.c.

<sup>27</sup> Smit, o.c. p. 137; Vording, l.c., p. 48-49. The indicated quote from Thorbecke not found.

<sup>28</sup> The English term is used in many contemporaneous Dutch academic publications and newspaper articles; at the time the UK 1842 Income Tax Act was regularly referred to as an option (or a chimera) for the Netherlands.

Smith, McCulloch and Mill in England, Baumstark, Murhard en Rau in Germany, Faucher, du Puynode and Passy in France. He concluded that income is an abstraction of the mind, and any interpretation of it will not result in a clear view on the individual ability to pay of the tax subject.<sup>29</sup> At the same time he understood that the support for the income tax was growing in the general opinion, even for the progressive income tax<sup>30</sup> notwithstanding the acknowledged risk that the rates would be arbitrary and even confiscatory – the social movements in England and Germany at the time were perceived with much suspicion. In his large 1886 publication on public economy Pierson discussed the option of a dual income tax, a tax on professional income and a tax on income from personal wealth,<sup>31</sup> and in the addendum to his large contribution on tax reforms in 1881, Pierson imagined that a presumptive, proportional income on wealth could be an option.<sup>32</sup> The prime advantage would be simplicity of the levy and its equity; it would answer to demands of ability to pay, thereby also follow changes in personal wealth; the investment choices of the contributor would be his responsibility, and not a concern of the state; and the yield of the tax would be relatively stable. Even though Pierson still had strong objections against the income tax, he was pragmatic enough to realize<sup>33</sup> that it had received such support in the public opinion that its acceptance had become unavoidable. It could become a tool to lift part of the tax burden from the shoulders of the low-income earners. The elections of 1891 offered a window for a serious revision of the taxes levied in the Netherlands, when the progressive liberal party won a majority in the Dutch parliament. Pierson became minister at the Finance department in the new cabinet. The basis of Pierson's proposal for a tax on income from movable property was the presumption of a sustainable 4% capital income from loans, bonds, pensions etc. The rate would have a double progression: in its rate of 2 ½ to 3 ¾ %, effectively resulting in an annual wealth tax of 1 to 1,5 0/00, depending on the size of the assets, and in its material burden, as in general citizens with smaller assets would accept more risk to reach higher yields, while the true wealthy usually accepted lower yields from low-renting but relatively risk-free investments in land etc.;<sup>34</sup> the presumptions would so far be detrimental to larger properties. The acceptance of progressive rates was a problem both academically and politically, but Pierson elegantly avoided accepting progressivity as a principle.<sup>35</sup> The second proposal regarded a tax on professions and industry, to replace the French patent tax. The dual income tax was accepted and became positive legislation in 1892/1893. For Pierson this was the materialization of the "pressing demand for equity".<sup>36</sup> The dual income proved short-lived when the synthetic income tax became fashionable in tax literature, albeit in the tax reform of 1914 a shadow of Pierson's wealth tax remained, to correspond with the equally fashionable idea that income from wealth should be taxed heavier than income from labor.<sup>37</sup> The wealth tax as introduced by Pierson was however miraculously revived in the drastic income tax reform of 2001, with the presumption that a sustainable yield could be assumed at 4%, a yield that can be realized without accepting undue risks or exceptional efforts. Pierson would however have been surprised about the rate applied in 2001: a flat rate of 30%. He would even have been more surprised about the recent amendments, in which the presumptive income is deemed to be higher when the wealth increases; the presumed income for personal wealth rises by operation of law from 0,09% to 5,33% (year 2020<sup>38</sup>), which results in an effective confiscatory rate of 1,566%, to be raised to 1,76% in 2021 in the highest category – which already applies to fortunes of over € 50,000. Clearly the balance of power in Dutch politics has drifted away from the entrepreneurial factions in the electorate. Pierson would have frowned his eyebrows if he would have followed this development. He would not have understood the confiscatory rate. Alba from his part would

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<sup>29</sup> N.G. Pierson, *De Inkomstenbelasting*, *De Gids* January 1871, p. 1-32. Cf. id., *Grondbeginselen der Staathuishoudkunde*, Haarlem 1886, p. 319-322.

<sup>30</sup> Id., *Belasting naar den welstand*, in: *De Gids* April 1879, p. 1-24.

<sup>31</sup> Cf. id., *Grondbeginselen der Staathuishoudkunde*, Haarlem 1886, p. 327.

<sup>32</sup> Id., *Belastinghervorming*, in: *De Gids* October 1881, p. 1-62.

<sup>33</sup> *Vording*, p. 51.

<sup>34</sup> *Handelingen II*, 125, 3, par. 3 sub ii. Cf. A.H.J. Heynsius, *De voorgestelde belasting op de inkomsten uit vermogen*, Amsterdam 1892, p. 13.

<sup>35</sup> *Handelingen I* (1892-1893), p. 17: progressivity merely to respond to ability to pay, therefore only with mild rate differences, can never be confiscatory as Pierson explained in parliament.

<sup>36</sup> Cf. *Handelingen I* (1892-1893), p. 5; Smit, p. 248ff.

<sup>37</sup> *Grotenhuis*, p. 156.

<sup>38</sup> The average income from capital over a longer period of time must be assumed at 5,33% plus the rate of inflation. In the Netherlands the rate of inflation was on average 1.72% per year between 2010 and 2019. If this rate will apply for the future the average yearly income from capital must be at least 7.05%, which is not realistic in any scenario.

probably not have understood under these circumstances that in Dutch propaganda his 10<sup>th</sup> penny is still viewed as symbol of fiscal suppression.

#### **IV Repressive taxes: Dutch tax law under national socialist regime (1940-1945)<sup>39</sup>**

The legacy of World War II shows a complicated, often painful, and sometimes shameful period in Dutch history. This intertwinement is also reflected in the developments in the field of taxation during this period. That story not only demonstrates the dialectical relationship between taxation and the political balance of power, it also shows the thin line between collaboration and involvement.

##### **IV.1 Previously**

On the eve of World War II, the Dutch tax system was outdated. The income tax, for example was based on the source fiction system, in which the income was only approximated.<sup>40</sup> At that time various reforms to the Dutch tax system were considered by the Bodenhausen Committee, an advisory committee established by the government in 1938. However, its pleas for the introduction of a wage tax and an income tax based on real income did not have sufficient political support.

After the German invasion in May 1940, the Netherlands initially came under the control of the *Wehrmacht*. However, on May 29, 1940 this military administration was replaced by a civil administration.<sup>41</sup> The change took place on ideological grounds as Hitler wanted to win the Dutch to his National Socialism.

In the early years of the German occupation radical changes to Dutch tax laws were required to meet with the ambitious budgetary objectives and needs of the national-socialist occupier. The tax sources in the Netherlands at that time had not yet been exhausted, as the tax burden in the Netherlands was exceptionally low compared to other Western European countries.<sup>42</sup> The maximum income tax rate was no more than 16% and assets were taxed at a rate of just a few percent. Especially the low taxation of capital and capital income were an eyesore to the Germans. In addition, the taxation of public limited companies (NVs) was seen as completely insufficient. The Dutch banking secrecy legislation in the 1930s and the lack of exchange of information with the German authorities on investments belonging to German residents also contributed to the occupiers view of the Netherlands as a tax haven.

##### **IV.2 The beginning**

Shortly after the German occupation, preparations were made for a comprehensive overhaul of the Dutch tax system. The German tax specialist Rudolf Rinkefeil (1884-1961) served as a mediator between the Nazi leadership in the Netherlands and senior Dutch tax officials such as Henrik Postma (1894-1962), Director General and interim Secretary General of the Finance Department.

During an important consultation in October 1940, the Germans persuaded the Dutch tax officials to agree to the German tax proposals. With this license the way was open to adapt the Dutch tax system at breakneck speed. The indispensable cooperation of Dutch tax officials for this drastic reform was granted without any struggle. Their willingness to cooperate probably lies in opportunistic pragmatism as many senior officials of the Ministry of Finance sat on the Bodenhausen Committee. They thus eagerly seized the opportunity to realize the tax adjustments that they had long hoped for before the war. However, these changes involved much more than just a technical revision of Dutch tax law. Along with the moral aspects of collaboration with the enemy, these Dutch officials ignored the major budgetary importance of this tax reform for the Nazi war plans.

##### **IV.3 Some reforms exposed**

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<sup>39</sup> Mainly based on P.H.J. Essers, *Belast Verleden. Het Nederlandse belastingrecht onder nationaalsocialistisch regime* ch. 3 (Kluwer 2012).

<sup>40</sup> Personal income tax Act 1914.

<sup>41</sup> C.H.J. Neuman, *Arthur Seyss-Inquart. Het leven van een Duits onderkoning in Nederland*. (Ambo 1967).

<sup>42</sup> J.P.C. Sentel, *Ons belastingstelsel gezien van Duitsch standpunt*, De belastingconsulent (March 1941, ed. 3).

During the first two years of the German occupation, many radical and fundamental changes to the Dutch tax system took place in a relatively short period of time. Virtually all measures taken concerned completely new tax rules.

The introduction of wage tax as from 1 January 1941 was one of the most important reforms during the occupation period.<sup>43</sup> Tax-wise this measure was an improvement of the Dutch tax system as collecting wage tax aligns better with the time salaries are paid than the annual collection of an income tax. Moreover, a wage tax can act as a final levy to most taxpayers. A dividend tax of 15% was also introduced.<sup>44</sup> The introduction of both wage tax and dividend tax as advance personal income taxes introduced a completely new technique of tax collection in the Netherlands.

On top of that, a brand-new personal income tax was introduced replacing the complicated and structure-sensitive source estimation-based tax system.<sup>45</sup> The new system reflected the actual income earned in a year. In addition, rates were increased significantly, particularly for middle incomes. Henceforth, a steeper rate progressivity was applied. Just before the war, a family with two children would pay NLG 21 at a net income of NLG 2,000 under the Personal Income Tax Act 1914, while that same family paid NLG 96 under the Personal Income Tax Decree 1941 by the end of the war.

In addition to these reforms, companies were also confronted with a steep increase in the tax burden. The tax burden on the business community between 1938 and 1942 thus increased nominally from NLG 42 million to NLG 317 million, well over 650%.<sup>46</sup> This expansion was largely the result of the introduction of the profit tax combined with the wealth tax for corporations and the super dividend tax.

#### IV.4 Aims of reform

The Germans had multiple objectives with their drastic reform of the Dutch tax system. Besides instrumental objectives and their pursuit of economic intertwinement of the Netherlands and Germany, the main ambitions were a substantial increase of tax proceeds and the integration of ideological national-socialist principles into the Dutch tax system.<sup>47</sup>

##### *Substantial increase of tax proceeds*

The quality of many of the tax laws implemented in the occupation period was generally considered to be fair. In the 1950s it was even noted in Parliament that the introduction of the Income Tax Decree 1941 and the Corporate Income Tax Decree 1942 could not be seen "as a reprehensible breach of national legal development."<sup>48</sup> Nonetheless, the primary goal of these reforms was to increase the revenue from taxes for funding the war. In that the occupier succeeded very well. The Dutch tax revenue showed an increase from 659 million guilders in 1939 to 1884 million in 1944. Almost the entirety of these higher Dutch tax proceeds was diverted directly by the occupier to Nazi Germany to finance both its war efforts and the costs of occupation. The Dutch financing deficit thus increased from 1.7% to 40.3% between 1939 and 1945.<sup>49</sup>

This burden is quite remarkable considering the national-socialist racial ideology in which the population of the Netherlands, Denmark and Norway - the so called 'Germanic countries' - should have a privileged status within the European hierarchy. Seen in that light it is rather unusual that in practice both Norway and the Netherlands, measured in terms of the average monthly burden per capita, were among the most heavily stressed economies in the entire German sphere of power. This contradicts the political objectives of the imperial leadership, according to which all Germanic people should be included in a future great empire.<sup>50</sup>

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<sup>43</sup> Wage tax decree 1940.

<sup>44</sup> Dividend tax decree 1941.

<sup>45</sup> Personal income tax decree 1941].

<sup>46</sup> H.A.M. Klemann, *Nederland 1938-1948. Economie en samenleving in jaren van oorlog en bezetting* p. 168 (Boom 2002). The amounts and percentages mentioned have not been adjusted for inflation.

<sup>47</sup> P.H.J. Essers, *The radical changes made to Dutch tax regulations during the Second World War in Taxing German-Dutch Cross-Border Business Activities* (F.J. Elswieier (ed.), Institut für Finanz- und Steuerrecht 2015).

<sup>48</sup> Handelingen II 1958/59 5380, nr. 3, p. 12.

<sup>49</sup> H.A.M. Klemann, *Nederland 1938-1948. Economie en samenleving in jaren van oorlog en bezetting* p. 153 (Boom 2002).

<sup>50</sup> J. Kilian, *Krieg auf Kosten anderer*, pp. 204-220 (De Gruyter, Oldenbourg, 2017).

### *Integration of ideology*

Another important aspiration of the reform was to make the Dutch tax system subservient to the national-socialist ideologies, like the population policy aimed at stimulating population growth and promoting marriage. Like in Nazi Germany, a rate system was introduced which substantially favoured married people with children over singles, see the reference to this bachelor's tax in V.2. Additionally, large families were favoured as a child benefit was offered from the third child as from 1 January 1941.

The purpose of gradually including ideological national-socialist principles into the Dutch tax system especially applied to the higher taxation of smaller public limited companies (NVs), which were considered to be a cover for Jewish capital.<sup>51</sup> The Nazis originally intended to use the tax system in the Netherlands for discriminating and particularly robbing Jewish citizens.<sup>52</sup> However, the plan to disqualify Jewish children from a tax relief in the new wage and personal income tax was resisted by the aforementioned Postma at the Ministry of Finance. Nonetheless, his resistance was merely symbolical against the background of the far-reaching plans of the Nazis for the extermination of all the Jews. For that reason, implementing anti-Jewish tax measures in the Netherlands was no longer of high priority. Thus no specific anti-Semitic provisions were included in the Dutch tax regulations.

Nonetheless, the implementation of these tax laws played an far-reaching role in the persecution of the Jews in the Netherlands as the tax authorities without substantive resistance accepted a serious breach of the fiscal confidentiality obligation.<sup>53</sup> In that respect the subdepartment of the tax authorities at the *Zentralstelle für jüdische Auswanderung* can be seen as a dark stain in Dutch history. From this institute the Holocaust was carried out in the Netherlands under the false pretence of voluntary emigration. The subdepartment of the tax administration checked whether the prospective 'emigrants' had met their tax obligations. The *Zentralstelle* was also used to deprive Jews of their assets using the information willingly provided by the tax authorities and leading to the compulsory transfer of Jewish assets to the bank Lippmann, Rosenthal & Co. Needless to say, the recovery of Jewish tax debts was difficult because these taxpayers lacked access to their assets they were forced to park at this robbery bank. With the so-called Pausch Regelung the Jewish tax liabilities were subsequently bought off - without consent of the account holders - for 8 million guilders by Lippmann, Rosenthal & Co.

### **IV.5 Concluding**

The use of taxation to merely benefit an occupying state contradicts the doctrine 'no taxation without representation'. However, this clear point of view becomes blurred once tax officials of the occupied country willingly consent with these reforms, thus supplementing the lack of legitimacy of the occupier. The collaboration of the Dutch tax officials with the Nazi regime in their drastic tax reforms thus paved the way for financial exploitation by this occupier. Although some acts of resistance did take place by employees of the tax administration who sometimes even channelled tax money to the resistance, most senior officials cooperated loyally with the German occupier. While the introduction of wage tax, personal income tax and corporation tax had been justifiable before the war, during the occupation the introduction of these new taxes mostly served as funding for the plans of the Nazi regime.

### **V Personal income taxes and emancipation of citizens**

In Dutch history, the personal income tax Act (PITA) was more often used to discriminate between certain groups than to emancipate disadvantaged groups. We will focus on two groups that were discriminated in Dutch personal income tax law: married women and unmarried men and women. The latter group includes same sex couples who could not marry until 2001. Almost until the end of the 20<sup>th</sup> century, married men

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<sup>51</sup> Essers 2012, p. 164-167, referring to F.H.M. Grapperhaus, *Fiscale maatregelen van de Duitse bezetters (1940-1945)* (Fisikaal 1994/1) and Klemann 2002. In addition, Essers refers to the introduction of the *Mindestbesteuerung* which was partly intended to prevent the creation of small private family NVs. See E.E. Harmsen, *Belastingheffing van de Naamloze Vennootschap* (P.J.A. Adriani (ed.), *Fiscale ervaringen in bezettingstijd 1940-1945*, L.J. Veen's Uitgeversmaatschappij 1946).

<sup>52</sup> Essers 2015, p. 10-11.

<sup>53</sup> This paints the historical background of the phrase *Dutch Paradox*: 75% of all Jewish Dutch people have been murdered, yet the Dutch had the reputation of not being anti-Semitic.



had an advantageous position in Dutch tax law. Tax legislation lagged societal developments in this respect. For a long time, it was not supporting emancipation of married women and unmarried citizens.

### V.1 Married women

Since the Netherlands introduced direct taxes on income and assets in 1893 (see section III), the family, defined as a married couple, was the taxable unit. Unmarried couples were not regarded a family and taxed as individuals. For these couples, the Dutch tax system was an individual system. Within married couples, the man was supposed to earn the family income and was accordingly taxed over all family income. This reflected the Dutch civil law code that designated the man as the head of the matrimonial union and entailed that when a woman married, she lost her full legal capacity and had the legal status of a minor. A married woman was not a taxable subject for the PITA. Her husband was taxed over her income even if she was the sole income earner. She could not file an objection against the tax levied over her income nor could she go to court as she did not exist for tax purposes. Married women remained disregarded as a tax subject after tax reforms in 1914 and 1941 (see for the latter section IV). In 1957, civil law changed, and married women could perform legal acts and manage the joint possessions. However, the PITA did not change accordingly.

As of 1962, the married man was given a deduction of 1/3 of his wife's income. This meant that where before 100% of the wife's income was included in the tax assessment of the man and added to his income, now only 67% was taxed. The remainder was left untaxed, as the wife was not a taxable person. The reason for this deduction was that a married couple of which the woman had a paid job, was deemed to have a lower ability to pay than a married couple of which the woman stayed at home. The idea was that the former couple would have to bear additional costs for domestic helpers and childcare. Because of the progressive tax rate, it was still expensive if the married woman had a job as 67% of her income was taxed at the highest marginal rate of her husband. Nevertheless, some Members of Parliament complained that this reduction would infringe the neutrality of the tax system as it would encourage paid labour of married women.<sup>54</sup> They suspected that economical motives, the tight labour market, were the driver for this reduction. Even though the government denied this,<sup>55</sup> it was probably true. In any case, the government explicitly mentioned that it was not deemed to be appropriate to give a married woman an incentive to work.<sup>56</sup>

The discussion on this reduction probably paved the way for married woman starting to exist in the PITA 1964<sup>57</sup> that entered into force on 1 January 1965. The effect of married women becoming taxable persons under the PITA 1964 must not be exaggerated. All income of a married woman was allocated to her husband, even if he had no income himself. A married woman was, therefore, still not taxed herself. Because of the progressive tax rates, it remained expensive if husband and wife both worked, and marriage still lead to higher taxation in such case. Nevertheless, by becoming a taxable person, she was at least able to file an objection and go to court.

In 1973, married women were given some fiscal autonomy. They became liable to tax over their labour and business income. Thus, this income could also benefit from the lower tax rate in the first tax brackets. All other income, including, for example, pension income, was taken into account in the husband's tax assessment.

Even though the tax rate for married men and women was the same, there was still gender inequality in the PITA. The tax-free allowance of a married woman was only 20% of the tax-free allowance of a married man as the he was still deemed to earn the family income. This was even the case if the woman earned more than her husband. In that case, husband and wife could request 'a change of roles' after which the woman was given the higher tax-free allowance. All income which was not deemed to be individual income,

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<sup>54</sup> Handelingen I, 1961-1962, 6534, no. 42a, p. 2.

<sup>55</sup> Handelingen II, 1961-1962, 6534, no 6, p. 1 and Handelingen I, 1961-1962, 6534, no. 42a, p. 3 and 4.

<sup>56</sup> Handelingen II, 1961-1962, 6534, no 6, p. 1.

<sup>57</sup> Personal income tax Act 1964.

for example, dividends and interest on bank accounts, were still deemed to be income of the husband after such change of roles, even if this was income of the wife. The same applied to deductions such as the deduction of mortgage interest and the deduction of gifts. Even if the wife paid these and she had the highest income, the allowances were nevertheless deducted from the husband's income.

It was only in 1984, over 100 years after the first tax on income was introduced in the Netherlands and almost 10 years after national legislation on equal pay for men and women was introduced in 1975, that the tax discrimination of married women ended in the Netherlands. The aim of this change was to increase the independence of married women and to treat men and women equally.<sup>58</sup> The difference in tax free allowance was abolished and income which was not deemed to be individual income was no longer taxed in the hands of the man, but in the hands of the spouse with the highest income. The same applied for deductions. If both spouses earned the same income, it was included in the tax assessment of the oldest spouse. Furthermore, for more categories of income and deductions an individual taxation was introduced. All taxpayers, no matter their gender, were granted the same tax-free allowance. However, a married person who earned all family income was granted a higher tax-free allowance, eventually double that of an individual. This made it very unattractive for the other spouse to take a small job that would not pay enough to effectively use the full individual tax-free allowance. For that reason, the other spouse could transfer the unused part of her tax-free allowance to the high-income earning spouse.

In 2001, the income tax was reformed drastically, which resulted in a new PITA: the Personal Income Tax Act 2001.<sup>59</sup> Aims of this tax reform were the emancipation of women, to encourage economic independence of all citizens and to increase the participation in the labour market. The latter was not only the case for emancipatory reasons, but also for economic reasons. Because of the aging population it was deemed important that more people would take a job. For this reason, next to the general tax credit, an additional tax credit was introduced for everybody who worked. This included both employees and self-employed persons, but not, for example, retired people with pension income. Furthermore, the general tax credit, which replaced the tax-free allowance, was no longer granted to the working partner. Instead, the partner without a job or with a small job was granted her own general tax credit. Insofar as the tax due was not sufficient to use this tax credit, the remainder of the tax credit could be transferred to the other partner. A drawback of this transfer was that it did not give an incentive to the partner with no or a low income to earn a higher income. For that reason, as of 2009, the transferability of the general tax credit is gradually – over a period of 15 years - reduced and will be 0 as of 2023 (in 2021, 13,33% of the tax credit can be transferred). Initially, the reduction did not apply if the partner with no or a low income was born before 1972 or had a child which was not older than 5 years. As of 2012, this exception was gradually reduced and as of 2014 it only applies to partners with low or no income who were born before 1963. The Dutch Supreme Court ruled that this legislation does not infringe the ECHR.<sup>60</sup> It does not infringe article 8 ECHR (right to private and family life) as the purposes of a budgetary and social-economic character serve the economic wellbeing of the country and this falls within the wide margin of appreciation of a government. Furthermore, it does not infringe article 14 ECHR (non-discrimination), because the budgetary, social-economic and emancipatory reasons for this legislation are not manifestly without reasonable foundation and it falls within the wide margin of appreciation to take measures such as this one. Here we see that, even though it was slowly and lagging behind societal changes such as emancipation and individualisation, tax legislation and its interpretation in respect of married women did change in the past century, thus shifting the balance of power to a more equal and inclusive income tax.

## V.2 Unmarried citizens

Already in ancient Rome, a bachelor tax was levied. In 1841 it was - in vain - suggested to introduce such tax in the Netherlands. In fascist Italy and Nazi Germany, taxes were explicitly used as an incentive to have large families and a disincentive to remain a bachelor. A bachelor tax was also suggested various times in the Netherlands in the 1930's. For example, in 1933, the *Nieuwe Leidsche Courant* stated that the general

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<sup>58</sup> *Handelingen II*, 1983-1984, 18121, nr. 3, p. 1–3.

<sup>59</sup> Personal income tax Act 2001.

<sup>60</sup> NL: HR, 13 April 2018, 17/02574, ECLI:NL:HR:2018:429.

opinion was that the tax credit for unmarried people should be replaced by a bachelor tax.<sup>61</sup> It was seen as a fair way of taking into account ability to pay. Bachelors could economize on expenses for clothes and leisure. In 1935 the Dutch Roman Catholic association for large families asked to relieve the tax burden on families with many children. To compensate for this, the association suggested a bachelor tax. The newspaper *Peel en Maas* supported this proposal for an indirect tax.<sup>62</sup> The newspaper believed it was a matter of justice given the important societal role of the large family in which bachelors failed short according to this newspaper. As part of the 1936 budget, presented in 1935, the Minister of Finance proposed to introduce a bachelor tax, but this was not supported by Parliament.

In 1941, the German occupiers introduced a differentiation in the tax rate to disadvantage bachelors. The tax rate for married men was lower than for unmarried men and women. This was considered a 'bachelor tax'. As married women did not exist for PITA purposes, no tax rate was needed for them. The lower tax rate for married men was, in fact, a lower tax rate for married couples. The reason for this reduced rate was to stimulate marriage. Even if the man was the sole income earner, he would pay less tax than an unmarried person.

The reduced rate for married men was kept by the Dutch government after WW II ended. This resulted in a significantly higher burden for unmarried men and women that was somewhat relieved in 1948, 1960 and 1967. As of 1973, the PITA no longer included different tax rates for married and unmarried persons. However, the tax-free allowances differed for married man, married women, and singles. As of 1984, marriage was no longer the distinctive factor for the height of the allowance. The 'double income earner' legislation was introduced with different tax credits for singles, single-income earners, single parents and double income earners. As of 1990, unmarried couples could also transfer the allowance. As of 2001, the PITA treats unmarried couples that meet certain requirements, the same way as married couples.

## **VI Conclusions**

In the Netherlands, taxes have been an accelerator of societal changes (the example of the 10<sup>th</sup> penny), going along with societal changes, both for the good (Pierson) and the bad (WW II) and have lagged behind societal changes (emancipation of women and unmarried persons).

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<sup>61</sup> *Nieuwe Leidsche Courant* 20 October 1933, p. 1.

<sup>62</sup> *Peel en Maas* 29 June 1935, p. 1.