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## Not a public benefit organization after all: revocation of the “ANBI” status with retroactive effect

Most non-profit organizations in the Netherlands are keen to be officially designated as a public benefit organization (in Dutch: *Algemeen Nut Beogende Instelling* or “ANBI”) by the Dutch Tax Authorities, to take advantage of the various tax benefits such a status affords. For example, ANBIs are not obliged to pay gift tax or inheritance tax on donations or inheritances that they receive, and persons or companies donating to ANBIs may deduct the donations from their income tax. Moreover, ANBIs themselves can make donations for which the receiver is not required to pay any gift tax.

In the last few years, the Dutch legislature has tightened the regulations applicable to ANBIs. For example, previously, at least 50% of such an organization’s activities had to be aimed at the public interest. Nowadays, the minimum percentage is 90%. The Tax Authorities closely monitor whether an organization has been rightfully designated as an ANBI and do not hesitate to revoke the ANBI status if an organization subsequently fails to meet all requirements. The Tax Authorities may even revoke an ANBI status with retroactive effect, as illustrated by a [Supreme Court judgment](#) on March 4, 2016.

In the case at hand, a foundation filed a request to the Tax Authorities to be designated as an ANBI. According to the foundation’s articles of association, its primary object was the operation of a museum and exhibition space to be used mainly for publicly accessible exhibits of classic cars. The foundation declared to the Tax Authorities that at least 50% of its activities were in the public interest, which, at that time, was the minimum percentage. Thereupon, the Tax Authorities granted the ANBI status to the foundation as of January 1, 2008. However, during an audit in 2011, the Tax Authorities came to the conclusion that less than 50% of the foundation’s activities served the public interest. The Tax Authorities therefore revoked the ANBI status with retroactive effect as of January 1, 2008. The foundation took the matter to court and argued that revocation with retroactive effect should not be possible.

The Supreme Court, however, has confirmed that the law permits revocation of an ANBI status with retroactive effect, provided this is not contrary to the general principles of good governance. The foundation argued that the retroactive effect of the revocation was contrary to the principle of legitimate expectations, since by granting the ANBI status, the tax inspector must have made a well-informed and well-considered decision. However, the Tax Authorities had granted the ANBI status based on a standard application form on which the foundation itself reported that at least 50% of its activities served the public interest. Furthermore, the tax inspector had not received any other information from the foundation from which he could have deduced that this percentage was in fact not met. Therefore, the Supreme Court found that the foundation was not justified in believing that the tax inspector had granted the ANBI status with careful deliberation and with due observance of all the relevant facts regarding the foundation’s actual activities. As a result, nothing stood in the way of applying the revocation with retroactive effect.

The revocation of the ANBI status with retroactive effect may have major consequences. Should an organization be subject to such a revocation, it will simultaneously lose its tax exemptions with retroactive effect. This may not only impact the organization itself but also the parties that donated to the organization. It is therefore of utmost importance that all of the ANBI requirements are continuously met. We are of course happy to assist with checking your organization's compliance in this respect.

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