Ex-post evaluation of tax legislation in the Netherlands
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1 Introduction

Since the end of the 20th century, ex-post evaluation of tax legislation has consistently been part of the agenda of the Dutch government. In 2005, the 2001 Income tax Act was evaluated.[2] In addition, several tax expenditures are evaluated each year. Tax expenditures can be a controversial aspect of tax legislation. In general, tax expenditures have the drawback that, compared with direct subsidies, there is less information and less democratic control on these expenditures than on direct subsidies which are accounted for in the annual budget. In the past 20 years, the Netherlands has taken several measures to improve the accountability of tax expenditures. One of the measures in the 2001 Budget was the introduction of a framework consisting of several questions which have to be answered before a tax expenditure can be introduced. This framework has been amended several times. The current framework consists of the following questions: (1) Is the problem clear?; (2) Is the object stated clearly and unambiguously?; (3) Can it be proven why financial intervention is necessary?; (4) Can it be proven why a subsidy is preferred over a levy?; (5) Can it be proven why a tax incentive is preferred over a direct subsidy?; and (6) Is the evaluation of the provision sufficiently safeguarded?[3] An evaluation of a proposed tax expenditure, therefore, has to be guaranteed before the tax expenditure is introduced. Below, the Dutch techniques for ex-post evaluation are discussed briefly. These include accounting for tax expenditures and similar provisions in a tax expenditure report and a tax expenditure overview, evaluation reports and, possibly, sunset legislation.

2 Accounting for tax expenditures and similar provisions

Since the end of the 1960s, various countries have tried to get a better grip on tax expenditures by accounting for these expenditures in tax expenditure reports. At first, the Netherlands was not a front runner in this respect, but over the years more and more information has become available on tax expenditures. The most important source of information is the annual tax expenditure report and overview. It should be noted, however, that the inclusion of this information in the annual general budget means it is often overshadowed by other economic issues and not very often discussed in Parliament.

2.1 History of the Dutch tax expenditure report

In 1976, the Dutch Ministry of Finance decided to appoint a committee to study tax expenditures. This committee published its report in 1987. Eleven years later, in 1998, the Netherlands published a tax expenditure report as an annex to the annual budget (*Miljoenennota*). Since this 1999 Budget, a tax expenditure report has been published each year. As of 2004, the report provides less information than previously in an effort to

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[2] Ministry of Finance, *Breder, lager, eenvoudiger? Een evaluatie van de belastingherziening 2001* Kamerstukken II, 30.375, 2005-2006, no. 2, http://www.eerstekamer.nl/nota/evaluatie_belastingherziening_2001.
[3] This is published on http://rbv.minfin.nl/model/502.

economise on paper. The overview of tax expenditures which was previously included in the paper version of the budget is, however, published on the Internet each year.[4]

Originally, only provisions which met the definition of tax expenditures were included in the tax expenditure report. The Dutch definition of tax expenditure is “a government expenditure in the form of a loss of tax income or postponement of tax income caused by a provision in the legislation insofar as this provision is not in accordance with the primary structure of that legislation”.[5] Other provisions which reduce the government income, but are deemed to be in accordance with the primary structure of the tax legislation, were not included in the report. Examples of such provisions are the deduction of interest on loans relating to residential property (estimated revenue loss in 2011: 9.2 billion Euro) and the deductibility of pension premiums (estimated revenue loss in 2011: 12.1 billion Euro). This was criticised, not only by academics[6] but also by an advisory committee of high-level civil servants.[7] The latter group advised the government to include provisions which are similar to tax expenditures or result in a substantial loss of government income (hereinafter referred to as “similar provisions”) in the tax expenditure report. As of 2008, the budgetary loss of these provisions is included in the tax expenditure report. This is an important improvement to the tax expenditure report as the total costs of these measures (residential property, pensions and the general tax credit, the tax credit for workers and the tax credit for tax payers combining work with raising a family; estimated revenue loss of the latter three in 2011: 35.1 billion Euro) amount to 9.17% of the Dutch GDP. In comparison: the costs of “regular” tax expenditures only amount to 2.59% of the Dutch GDP in 2011.[8]

In 2010, the advisory committee of high level civil servants recommended including not only the revenue loss of tax expenditures and similar measures, but also the differences between the revenue loss expected at the start of a government term.[9] This would allow for more transparent decisions on tax expenditures. If the revenue loss is much more than expected at the beginning of the government term, this might lead to changes. This recommendation has already been implemented in the 2011 tax expenditure report which was published only five months later. The benchmark for this government term is the budget 2011.

2.2 Information in the Dutch tax expenditure report

The Dutch tax expenditure report gives the following information:

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[4] For example the tax expenditure report which was an annex to the 2011 Budget (hereinafter referred to as the “2011 tax expenditure report”), Kamerstukken II, 2010–2011, 32 500, no. 2, annex 5, p. 25-33, http://miljoenennota.prinsjesdag2010.nl/miljoenennota-2011/Publicatie.Bijlagen/Bijlagen.beluitg/aDU1063_5-Inkomstenbeperkende-regelingen-en-belastinguitgaven.aspx. The overview of tax expenditures which is part of the 2011 budget (hereinafter referred to as the “2011 tax expenditure overview”) is published on http://www.rijksbegroting.nl/2011/kamerstukken,2010/9/14/kst147870_4.html.

[5] 2011 Tax expenditure report, p. 25.

[6] For example: S.J.C. Hemels and A.P. Ros, ‘Belastinguitgaven: verantwoorden betekent niet per se afschaffen’ in: C.L.J. Caminada (red) *Belasting met beleid* Den Haag 2007, p. 153-171.

[7] Studiegroep Begrotingsruimte, 12e rapport *Vergrijzing en Houdbaarheid* Den Haag 2006, http://parlis.nl/pdf/bijlagen/BLG9011.pdf.

[8] 2011 tax expenditure report.

[9] Studiegroep Begrotingsruimte, Dertiende rapport *Risico’s en zekerheden* Den Haag 2010, http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2010/04/01/dertiende-rapport-risico-s-en-zekerheden-voorzitter-r-gerritse.html, p. 68.

- Overview of tax expenditures and similar measures which are introduced or amended in the budget, together with the estimated loss of revenue for the year of the budget (2011 in the 2011 report) .
- Overview of existing similar provisions, together with the estimated loss of revenue (until the 2010 report, only for the current year, but as of the 2011 report for a number of years, i.e. the years 2009-2015 are included in the 2011 report). As of the 2011 report, the employee social insurance premium expenditures are also accounted for.
- Overview of existing tax expenditures in taxes on (i) income, profits and assets and (ii) indirect taxes, together with the estimated loss of revenue for several years (the years 2009-2015 are included in the 2011 report).
- Short overview of evaluations of tax expenditures in the previous year and the current year.

2.3 Information in the Dutch Tax expenditure overview

The Dutch tax expenditure overview, which is published on the Internet each year, provides for a clarification of all tax expenditures. Similar provisions are not accounted for; only provisions which meet the definition of tax exemption are included in the overview. In the 2011 overview, nearly 90 tax expenditures are discussed. The following information is provided for each of these tax expenditures:

(1) short description of the provision;
(2) object of the provision;
(3) responsible ministry; and
(4) evaluation: where available, either a reference to the most recent evaluation or the year in which the next evaluation is planned.

It should be noted that no information is provided in respect of a previous or planned evaluation for nearly one-third of the tax expenditures.

3 Evaluation reports

There are two separate types of evaluation reports in the Netherlands. First, there are evaluations of an entire tax act or even the entire tax system. These are fairly uncommon. Second, there are evaluations of specific tax expenditures. Such evaluations are performed on a regular basis in the Netherlands. Both types are discussed below.

3.1 Evaluation of entire tax acts/tax system

Evaluations of entire tax acts are not very common in the Netherlands. However, as previously mentioned, in 2005 the Dutch Ministry of Finance evaluated the 2001 Income tax Act, which entered into force on 1 January 2001. The object of this evaluation was to establish whether the revision of the Income tax Act contributed to the objects of the revision and to reveal bottlenecks. The evaluation was carried out by the Ministry of Finance. The evaluation report was discussed in Dutch Parliament and some amendments were made as a result of this report.

In the Autumn of 2009, the Dutch government appointed a commission which had to research the possibility of a reviewing the entire Dutch tax system. The commission was chaired by a tax professor who is also tax partner at PwC, but most members were civil servants of the Ministry of Finance. The commission published its report in April 2010.[10] The report addresses questions such as stability, solidarity, efficiency, simplicity and the environmental-friendliness of the tax system. It evaluates existing provisions against these criteria. Even though this report is not presented as an evaluation report, it can be regarded as such.

3.2 Evaluations of tax expenditures

Every year, several Dutch tax expenditures are evaluated. Sometimes these evaluations are carried out by external researchers, but often the evaluations are performed by civil servants. For example, in the 2011 tax expenditure report, three evaluations are mentioned:

(1) Evaluation of the gift deduction in the personal income tax. This evaluation was carried out by the Ministry of Finance in 2009. It concluded that within the used research method, the effect of the gift deduction was insignificant. However, this research method has been criticized.[11] Based on the evaluation, the April 2010 report (mentioned in the previous paragraph) recommended abolishing the gift deduction. However, there was no political support to abolish the gift deduction and in June 2011 the government made it clear that the gift deduction will not be abolished.[12]

(2) Evaluation of the tax expenditures for monuments. This evaluation was carried out by PwC in 2009 and involved an exemption in the real estate transfer tax and the deduction for monuments in the personal income tax. Two months before the publication of the report, a Court of Appeal decided that the real estate transfer tax provision applied not only to legal persons, but also to natural persons.[13] This would lead to a large loss in government revenue. The evaluation report concluded that the tax expenditure was ineffective and the tax expenditure was abolished as of 1 January 2010. The report concluded that the tax expenditure for monuments in the personal income tax was effective and efficient. The 2011 tax expenditure report concluded that, because of this evaluation, there was no reason to change this tax incentive. Nevertheless, in June 2010, the Government suddenly announced it would limit this deduction.[14] No reference was made to the evaluation; the limitation appears to have been made for budgetary reasons.

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[10] Studiecommissie belastingstelsel, *Continuïteit en vernieuwing. Een visie op het belastingstelsel.* Den Haag 2010.

[11] R.H.F.P. Bekkers, ‘Giftenaftrek in Nederland: evaluatiemethoden en hun interpretatie’ in WFR, 2010, nr. 6873, pp. 1140-1148 and S.J.C. Hemels , ‘Giftenaftrek in de vuurlinie?’ NTFR, 2011, no. 295, pp. 1-5.

[12] Letter of 21 June 2011 on the Act on giving (*Geefwet*), http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/06/21/brief-geefwet.html.

[13] Gerechtshof 's-Gravenhage 1 May 2009, BK-07/00421, LJN: BI3637, http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BI3637&u_ljn=BI3637.

[14] Letter of 21 June 2011 on the Act on giving (*Geefwet*), http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/06/21/brief-geefwet.html.

(3) Evaluation of tax incentives for terminations or transfers of businesses. This evaluation was announced in the 2010 tax expenditure report. However, these tax incentives were (without there being an evaluation) extended in 2010. According to the government, it was not possible to perform an objective evaluation given the current data. The evaluation will, therefore, take place in a few years.

These examples show that evaluating tax expenditures does not always lead to decisions which are in line with these evaluations. Even though the Netherlands uses evaluations extensively, decisions on tax expenditures are still highly political.

3.2.1 Evaluation of the evaluation procedure: less evaluations

In 2010, an evaluation of the Dutch evaluation procedure for tax expenditures was published.[15] The evaluation was carried out by the Ministry of Finance and reviewed by an independent, external individual. He concluded that most tax expenditures were evaluated and that this had been carried out in a proper manner. However, he also noted that conclusions from evaluations are not always followed when a new policy is developed. The government replied that other considerations are also taken into account when developing a policy on tax expenditures. My personal opinion is that evaluations only seem to play a part if these fit the political objectives of the government and that evaluations are otherwise disregarded.

Furthermore, the government developed a new evaluation policy. Until 2010, the policy was that every tax incentive should be evaluated, preferably every five years. This goal was not met. As of 2010, the timing and frequency of evaluations will be linked to evaluations of the responsible ministries. It remains to be seen whether this will result in evaluations not being carried out as systematically as before (or, possibly, not at all). For tax incentives which cannot be linked to a specific ministry, the Ministry of Finance will use a framework to decide if and when evaluations will be done. This framework consists of the following questions:

(1) Is the policy regarding government funds being assessed or is a policy change intended?
(2) Has sufficient time passed in order for the tax expenditure to have had possible effects?
(3) Has sufficient time passed such that there is data available regarding the use of the tax expenditure?
(4) Is the revenue loss sufficiently substantial?

If all of these questions are answered in the affirmative, an evaluation is desirable. If the change in circumstances since the last evaluation is such that the conclusions of the old evaluation are no longer applicable, a case-by-case assessment will be made to determine whether a new evaluation is necessary. Tax incentives which only result in a minor revenue loss will, in principle, not be evaluated because of the costs of such evaluation.

[15] Beleidsdoorlichting evaluaties belastinguitgaven, www.rijksbegroting.nl/binaries/pdfs/beleidsdoorlichtingen/beleidsdoorlichtingen-06-2010/fin-belastinguitgaven.pdf.

It may, therefore, be expected that in the coming years, less evaluations will be carried out than before. From a transparency point of view, this is regrettable. On a practical level, however, it is doubtful whether this will have a big impact on the Dutch tax expenditures policy. Even under the policy which obliged evaluation of all tax expenditures, political motives were more important than the conclusions from evaluations for policy decisions on tax expenditures.

4 Sunset legislation

In the previous paragraphs, it was concluded that the tax expenditure budget and the evaluations of tax expenditures do not seem to have had a substantial effect on Dutch policy decisions regarding tax expenditures. Inclusion of tax expenditures and similar provisions in the tax expenditure report and evaluation reports do not seem to have a big impact on the decision to maintain or abolish tax expenditures. This might have the effect that existing tax expenditures remain in place and might even result in increasing revenue losses. Even though this increase is accounted for in the tax expenditure report, this might not have an effect on the tax expenditure.

Currently, an alternative is being debated in the Netherlands: sunset legislation. Sunset legislation is legislation which automatically expires after a certain period (for example five years) unless it is explicitly prolonged. This is the reverse of the current practise in which tax expenditures are prolonged unless these are explicitly abolished.

4.1 Historical background

The idea that legislation should expire after a certain period of time can be traced back to Thomas Jefferson who wrote a letter on this subject to James Madison on 6 September 1789.[16] From the principle that the earth belongs to the living and not to the dead, he derived that no society can make a perpetual law. In his opinion, every generation should make its own legislation, and thus every law should expire after 19 years (obviously, the life expectancy was much less in those days). He noted that exercising the power to repeal legislation might seem the same as an automatic repeal after 19 years. However, he remarked: “It would be the same if every form of government were so perfectly contrived that the will of the majority could always be obtained fairly and without impediment. But this is true of no form. The people cannot assemble themselves; their representation is unequal and vicious. Various checks are opposed to every legislative proposition. Factions get possession of the public councils. Bribery corrupts them. Personal interests lead them astray from the general interests of their constituents; and other impediments arise so as to prove to every practical man that a law of limited duration is much more manageable than one which needs a repeal.”

Similarly, its seems very difficult to abolish existing tax expenditures, due to the lobbying forces of interested parties and the fact that the silent majority of tax payers do not quickly raise their voices. Automatic repeal of tax expenditures, for example after the term of a certain government has expired, forces parliament to periodically discuss the desirability of certain tax expenditures. Lowi was even of the opinion that a limit of between five to ten years might be the only effective way to get substantive evaluations.[17]

[16] This letter has been published on many websites, for example, on http://www.let.rug.nl/usa/P/tj3/writings/brf/jefl81.htm.
[17] Th. J. Lowi *The end of liberalism* New York 1969, p, 309.

4.2 Sunrise for sunset legislation in the Netherlands?

Sunset legislation is often applied in the US. In the Netherlands, sunset legislation is applied in incidental cases. For example, in 2010 it was used for an incentive regarding employee social insurance premiums. In order to combat youth unemployment during the financial crisis and to stimulate employers to hire young employees, employers did not have to pay social insurance premiums for young employees with a minor job. Because of a sunset clause, the tax expenditure would end after a year. However, it was prolonged because the first evaluation report did not provide sufficient quantitative information. A second evaluation in Spring 2011 revealed that not many employers knew about the incentive and that hardly any youngsters were hired because of the incentive. Furthermore, in 90% of the cases, the incentive was applied to students and not to young unemployed individuals. The effect on employment of young people was minimal. Because the tax expenditure did not meet its objects, the government will not send a bill to Parliament to prolong the tax expenditure. If Parliament does not provide for such a bill itself, the tax expenditure will automatically expire in 2012.[18]

Several examples can be provided detailing the use of a sunset clause for tax expenditures, but it is currently not used as a structural device to evaluate tax expenditures. However, this might change in the future.

On 14 April 2011, the Dutch Ministry of Finance presented its Fiscal Agenda. This is a policy document translating the long-term policy objectives of the current Dutch government containing proposals for changing and improving the current Dutch tax system. In this document, the Ministry of Finance remarks that introducing sunset clauses for tax expenditures seems obvious. Using Jefferson's line of reasoning, the ministry argues that it is a political decision to provide for a tax credit and that such considerations are not for eternity. According to the ministry, a sunset clause could be added to the tax expenditure framework which was discussed in paragraph 1. This would mean that for every tax expenditure, a time limit would have to be set in advance. In the view of the ministry, tax expenditures may be prolonged for a new period only where a positive evaluation is made available before the tax expenditure expires. If no positive evaluation is available, the tax expenditure would automatically expire. This causal relationship between the availability of an evaluation report and the possibility to prolong a tax expenditure is, in my view, not so obvious, especially given the new Dutch evaluation policy. Because of this new policy, not all tax expenditures will be evaluated on a regular basis. By delaying an evaluation, civil servants could make it impossible to prolong a tax expenditure. In my view, Parliament should decide whether or not to prolong a tax expenditure. Preferably, such a decision should be made based on an evaluation report, but the absence of such report should not automatically make it impossible for Parliament to make such a decision. In any case, this would not even be feasible under Dutch constitutional law: Parliament may submit legislation if it so wishes, with or without permission of the government.

Members of Parliament were enthusiastic about the suggestion to introduce sunset clauses for tax expenditures. Also, the initial reactions in the fiscal literature were

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[18] Letter of the Minister of Social Affairs and Employment of 26 May 2011, http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2011/06/16/kamerbrief-evaluatie-regeling-kleine-banen.html.

positive.[19] The labour party, which is currently the opposition party, even asked to introduce such clauses not only for tax expenditures, but for similar provisions as well. However, the government does not want sunset clauses for similar provisions. One reason for this refusal may be that the government is inclined to preserve the deduction of interest for loans regarding residential property. This limitation of sunset clauses to tax expenditures was criticised in the literature: the fact that similar provisions are in line with the primary structure of the tax legislation is not a sound reason for failing to evaluate such provisions.[20]

5 Conclusion

The Netherlands has acquired substantial experience in ex-post evaluations of tax expenditures. However, the Dutch experience shows that accounting for tax expenditures in a tax expenditure report and evaluating tax expenditures on a periodical basis might not be enough to ensure the effectiveness and efficiency of these tax provisions. Currently, the Netherlands is debating whether sunset clauses should be applied when introducing a new tax expenditure. This might be an interesting addition to the existing framework for introducing and evaluating tax expenditures.

[19] For example the editors of *Vakstudie Nieuws* in their comment on this paragraph of the fiscal agenda (V-N 2011/22.3, p. 26).

[20] The editors of *Vakstudie Nieuws* in V-N 2011/30.1, p. 26.