



THE DUTCH NOTION OF INSTITUTION FOR THE GENERAL BENEFIT (ANBI)

We herewith provide you with some general information about the Dutch notion of "Institution for the general benefit." In Dutch: *Algemeen Nut Beogende Instelling* (hereafter: *the ANBI*).

1. History of the ANBI

Dutch foundations (Dutch: *stichting*) have had prominent positions in the Dutch society for decades. According to article 2: 285, paragraph 1, of the Dutch Civil Code (Dutch: *BW*): *a foundation is a legal person created by a legal act which has no members and whose purpose is to realize an object stated in its articles using capital allocated to such purpose*. In the Dutch inheritance and gift tax (Dutch: *Successiewet 1956*, hereafter: *SW*) act is determined that acquisitions from and by a foundation (Dutch: *Stichting*) are exempt if the acquisition is made with the general benefit (Dutch: *het algemeen belang*). If the foundation doesn't serve the general benefit, the acquisition will be taxed.¹ Since 2006 it has been necessary to be registered as an ANBI to receive a bequest (Dutch: *legaat*) and/or a gift (Dutch: *schenking*) free of Dutch gift / inheritance tax (Dutch: *erf- en schenkbelasting*). Moreover, donators can only deduct gifts to a registered ANBI from their income. Therefore, it became necessary for foundations to apply for the ANBI status.

2. Definition and legal form of the ANBI

According to article 5b, paragraph 1, sub a, of the Dutch General Act concerning Taxes of the Realm (Dutch: *Algemene Wet inzake Rijksbelastingen*, hereafter: *AWR*) the ANBI is defined as an institution - not being a company (Dutch: *vennootschap*) with a capital divided into shares, a cooperative association (Dutch: *cooperatie*), a mutual insurance association (Dutch: *onderlinge waarborgmaatschappij*) or another entity that may issue participation certificates (Dutch: *bewijzen van deelgerechtigdheid*) – which:

1. aims for 90% or more to serve the general benefit;
2. publishes its data through an electronic way on the internet;
3. complies with the specific conditions;
4. is resident in the Kingdom of The Netherlands, in an EU-member state, or a state designated by a Dutch government regulation;
5. has been designated as such by the Inspector of the Dutch Tax Authorities.

Article 5b, paragraph 3, of the AWR defines what *general benefit* is:

- a. well being;
- b. culture;
- c. education, science and research;
- d. protection of nature and environment, including stimulation of sustainability;
- e. health care;

¹ Articles 32 en 33 SW

- f. youth and elderly care;
- g. development cooperation;
- h. animal well being;
- i. religion, world view (Dutch: *levensbeschouwing*), spiritualism;
- j. furthering of a democratic legal order;
- k. public housing;
- l. a combination of the aforementioned goals, as well as
- m. financially or otherwise supporting an ANBI.

3. Cultural ANBI

A cultural ANBI is an ANBI which for 90% or more aims at culture.²

Cultural institutions active in the field of (inter alia) heritage (musea, archives, archeology, monument care), dance, film, linguistic arts, (pop)music, (music)theater or design (for example theater groups, theaters, libraries, movie houses, (pop)podia, linguistic arts-, pop- and film festivals, architectural centers) may apply to become a cultural ANBI. The advantage is that donators have more possibilities to deduct their gifts to the ANBI. The cultural ANBI must separately register the gifts received in the administration and gifts shall only be spent in accordance with its chosen purpose, in order to serve the general benefit.

4. Tax advantages of the ANBI

The ANBI has a number of tax advantages:

1. the ANBI does not have to pay Dutch gift or inheritance tax concerning inheritances and gifts which are used by the ANBI to serve the general benefit;
2. if the ANBI performs gifts in the interest of the general benefit, the receiver does not have to pay gift tax (Dutch: *Schenkbelasting*);
3. the ANBI may apply for a tax refund concerning Dutch energy tax (Dutch: *Energiebelasting*);
4. the volunteers who perform services for an ANBI thereby perform a gift to the ANBI, if specific conditions are met.
5. the donators to the ANBI may deduct their gifts from their personal / corporate income tax. Please note that this is only possible if the gifts are stipulated in an agreement.
6. the donators to the cultural ANBI have extra means to deduct from 1 January 2012.

5. Requirements for being qualified as an ANBI

To be appointed as an ANBI by the Dutch Tax Authorities, certain demands have to be met (cumulatively):³

1. the ANBI's activities shall for at least 90% serve the general benefit (Dutch: *het algemeen nut*) which must appear from the regulations of the ANBI and from its factual activities. This is called the 90% requirement;
2. the ANBI shall not have any intention to make profit (Dutch: *winstoogmerk*) with its activities to serve the general benefit, which must appear from the regulations of the ANBI and its factual activities;
3. the ANBI and the natural persons connected thereto must meet certain demands of integrity;

² www.belastingdienst.nl and Article 5b, paragraph 6.

³ Article 1a and 1b Uitvoeringsregeling Algemene wet inzake rijksbelastingen 1994.

4. the board or another person who may determine the ANBI's policy, shall not have access to its assets as if they were their own assets. The assets must be separated. In case of a support foundation (Dutch: *steunstichting*) that supports the ANBI, exemptions exist, if certain conditions are met.
5. the ANBI shall not hold more assets than is reasonably necessary for performing its job. Therefore, the ANBI's equity must be limited;
6. the remuneration for the members of the board shall be limited to an expenses compensation or minimal vacation fees;
7. the ANBI shall have an up-to-date policy plan that meets certain demands (Dutch: *een actueel beleidsplan*);
8. the ANBI's costs shall reasonably be in proportion to its expenses;
9. the ANBI shall spend the money left after discontinuation in another ANBI with the same purpose;
10. the ANBI's administration shall meet specific administrative demands.

6. Obligations of an ANBI

The ANBI has the following obligations: ⁴

1. the ANBI shall continuously meet the conditions as described above;
2. the ANBI shall disclose its administration at the request of the Dutch Tax Authorities;
3. the ANBI shall report changes in its mail address to the competent office of the Dutch Tax Authorities involved;
4. the ANBI shall report changes that may influence the ANBI-status to the office of the Dutch Tax Authorities involved. This may be (for example):
 - the objectives of the ANBI cannot be met anymore;
 - a change in the objectives of the ANBI;
 - another composition of the board which results in no longer complying with the condition that the board or another person who may determine the ANBI's policy, shall not have access to its assets as if they were their own assets. The assets must be always be separated;
 - changes in the remunerations and vacation fees;
 - dissolution, discontinuation and disappearance of the ANBI via a merger;
 - alternative spending in case a positive amount is left over after discontinuation.

7. Recent alterations

Since 2013, the Dutch Government announced alterations with regard to the financial legislation concerning ANBI's, introducing (inter alia) a publication duty for the ANBI. This boils down to the obligation to publish the financial data on the website of the ANBI. This means that all new and the existing ANBI's are additionally obliged to publish the following data, at least: ⁵

- the official name of the ANBI;
- the so called RSIN number of the trade-register of the Dutch Chamber of Commerce;
- the (mail)address or phone number or email address of the ANBI;
- the (statutory) objectives;
- a brief policy plan that complies with specific demands;

⁴ www.belastingdienst.nl and Article 1a, paragraph 1 Uitvoeringsregeling Algemene wet inzake rijksbelastingen 1994.

⁵ Article 1a, paragraphs 7 & 8, Uitvoeringsregeling Algemene wet inzake rijksbelastingen 1994.

- structure, powers and names of the statutory managing directors and remuneration policy of all the persons involved with the ANBI (except for inter alia denominations and other ANBI's declared exempt by the Dutch Tax inspector);
- an up-to-date (yearly) journal of the activities performed;
- the financial data: the balance sheet and the statement of income and expenditure with explanations which all have to comply with specific demands, including the costs of the management and the fundraising and also a list of the total donations / inheritances received. For certain ANBI's (including denominations and their independent divisions and entities in which they are associated), only the statement of income and expenditure and a list of future spending both with an explanations, shall be published. Please note that the financial data must be published latest within six months after the end of the financial year.

8. Religious bodies

However, denominations or religious bodies will have to comply with the conditions with regard to publishing via internet latest before 1 January 2016.⁶ Due to the special position of denominations in Dutch Law, certain agreements should be made with the Dutch Tax Authorities.

9. Withdrawal of ANBI status

If an ANBI does not comply with the abovementioned obligations, its ANBI status will be withdrawn or refused, also with retro-active effect (Dutch: *met terugwerkende kracht*). This can have major consequences for the taxable amount to be paid by the (former) ANBI.

The present legislation also has a number of grounds on which the ANBI-status can be withdrawn if the ANBI or one of its directors (Dutch: *bestuurder*), and/or managers (Dutch: *feitelijk leidinggevende*) and/or image determining persons, are guilty of a violation of Dutch Law and have been convicted for this according to criminal law, if specific conditions are met.⁷

The Dutch Secretary of State has stated to expand these grounds even further.

If you have any question, please contact us.

With kind regards,

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⁶ Article III Wijziging van de Uitvoeringsregeling Algemene wet inzake rijksbelastingen 1994 12 juli 2013, Nr. DB 2013/366 M.

⁷ Article 5b, paragraph 8, AWR.

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