

## **Van beroep in bezwaar**

**Werkwijze en verdienmodel**

**'no cure no pay' bedrijven WOZ en BPM**

## Colofon

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## SUMMARY

**R**esearch and advice bureau Breuer&Intraval and legal and business advice and research bureau Pro Facto, jointly researched the revenue models and working methods of 'no cure no pay' companies. This research is commissioned by the Research and Documentation Centre (WODC) of the Dutch Ministry of Security and Justice. The research focuses on two legal areas: Real Estate Valuation (Waardering Onroerende Zaken; WOZ) and Vehicle Registration Tax (Belasting van Personenauto's en Motorrijtuigen; BPM).

In both areas there is a clear increase in the number of appeals and objections submitted, the percentage of appeals and objections made by 'no cure no pay' companies, and reimbursement of legal expenses and execution costs for the government bodies that handle these objections and appeals. Minister Dekker for Legal Protection agreed to commission a research, also on behalf of the State Secretary for Finance, into the working methods and revenue models of 'no cure no pay' companies.<sup>1</sup>

### Problem Definition

To research this, the following problem definition has been formulated:

*What is the working method and revenue model of companies that start objection and appeal procedures on a 'no cure no pay' basis for taxpayers for WOZ decisions and BPM returns? What is the nature and scope of these types of proceedings and how does the financial interest of taxpayers and the revenues for these companies relate to the costs incurred by the government? What solutions do municipalities and the tax authorities choose to organise the handling of objection and appeal procedures as efficiently as possible?*

### Research Approach

For the WOZ part of the research, a selection of twelve municipalities and implementing organisations was made for carrying out a case study. For each case, interviews were held with municipality and implementing organisation employees and information was requested about the scope of the objections and appeals, the reimbursements that have been paid, and the administrative burden associated with this. In addition, discussions were held with eight 'no cure no pay' companies and five judges. A survey was also conducted among citizens and companies who themselves objected to the WOZ value of their residential property or business premises, or had this done by a 'no cure no pay' company.

For the BPM part of the research, interviews were held with employees of the tax authorities, six 'no cure no pay' company owners, and five judges. In addition, discussions were held with garage owners who used the services of 'no cure no pay'

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<sup>1</sup> Appendix Acts II 2018/19, no. 298, p. 2 & Letter from the Minister for Legal Protection dated 2 July 2019, 2019Z07794.



companies for the BPM. The tax authorities provided figures on, among other things, the scope of the objections and appeals, and the reimbursements that have been paid. Information about who (entrepreneur, authorised representative, individuals) the objector was and whether it was a 'no cure no pay' company cannot be obtained automatically from the tax authorities' systems. This is the reason why, in collaboration with the tax authorities, a sample from settled objections was taken in order to determine the share of 'no cure no pay' companies in the appeal and objection procedures.

## WOZ Results

### *Nature and Scope*

Our quantitative analysis based on data from the Property Assessment Board and the twelve case study municipalities (or partnerships in the area of municipal taxes) endorses the increase in the total number of objections, and the share of 'no cure no pay' companies in this. In the case of residential properties, the number of objections (nationally) grew in the period 2015-2019 from approximately 160,000 to 204,000. The share of 'no cure no pay' companies in this group rose from 17% to 43%. For non-residential properties, we see a decrease in the total number of objections (from 60,000 in 2015 to 53,000 in 2018), but the share of 'no cure no pay' companies in this area rose from 20% to 55%. The percentage of objections brought to an appeal is small, 2.7% in 2019 (for residential properties). The annual 'State of Affairs Concerning the WOZ', drafted by the Property Assessment Board, shows that in 2019 municipalities jointly paid approximately € 12 million in reimbursement of expenses for the services of 'no cure no pay' companies. The "profits" resulting from a possible reduction in the WOZ value accrues entirely to the client of the 'no cure no pay' company (the stakeholder).

### *Working Method and Revenue Model*

The revenue model of 'no cure no pay' companies that focus on WOZ decisions, is mainly based in the objection phase and consists of the reimbursement of legal expenses that the 'no cure no pay' company receives for submitting the objection. By submitting a large number of objections at the same time, a standardised method can be used. 'No cure no pay' companies request a hearing in almost every appeal procedure. A point system applies here in which the companies receive a "process points" for this action. These process points determine, among other things, the height of the reimbursement of legal expenses in the event of an objection granted. Municipalities indicate that the hearings with 'no cure no pay' companies generally add little substance to the procedure, the companies provide little explanation during the hearing. According to municipalities, this indicates that 'no cure no pay' companies are mainly looking for reimbursement. 'No cure no pay' companies, as well as judges, note in this context that municipalities generally ask for little explanation.

In the appeal stage, there is less of a revenue model, since the reimbursement of legal expenses does not (always) outweigh the time investment, also because the appeal



stage must be carried out by a higher educated, more experienced and therefore more expensive employee. Travelling time is also considered in this context.

### *Execution Costs*

An analysis of the execution costs of municipalities and municipal partnerships shows major differences between these authorities. Data from twelve case study municipalities, shows that the average costs per objection (the entire process from receipt to decision on objection) vary from € 37 to € 268. If we include the costs of the appeal stage, the estimates vary from € 210 to € 673.

The scale of the implementing body seems to influence the height of these amounts: in smaller municipalities, where fewer objections and appeals are processed per year, the costs per objection are often higher. It should be noted that we have only calculated the cost per objection, and not the per capita cost of the case study municipalities. A conclusion on scale effects is therefore not immediately to be drawn.

### *Survey Among Objectors*

Based on a digital survey among 490 respondents who filed an objection or had one submitted in 2019, we can state that stakeholders are generally satisfied with the services of the ‘no cure no pay’ companies (even when an objection was dismissed). Of the respondents who had an objection submitted by a ‘no cure no pay’ company, almost three quarters (73%) indicated that they did so because they think the WOZ value is too high.

The "success rate" (percentage of objections granted) of individuals who submit objections independently differs little from that of objections submitted by ‘no cure no pay’ companies; 52% and 49% respectively. In cases where the WOZ value has been reduced by more than € 50,000, it appears that objections made by home-owners who have authorized a ‘no cure no pay’ company are granted more often (21%) than objections made by home-owners who objected independently (11%).

## **BPM Results**

### *Nature and Scope*

The figures provided by the tax authorities on settled BPM objections and appeals in the period 2016-2020 show an increase. Since 2017, the tax authorities receive and process approximately 3,500 to 4,500 objections per year. In 2017, settlement agreements were concluded with several ‘no cure no pay’ companies, in which at least 3,295 objections were granted for a total amount of € 8.5 million. Since the objections in the settlement agreements have not been fully incorporated in the figures on settled objections, it cannot be concluded that there is a growth in settled objections.

In the four years researched, the tax authorities settled 11,993 objections. In slightly less than half (46%) of the cases, the objector (partially) won the case. The tax authorities dismissed 5,450 objections in the research period.



During the same period we see that 5,891 decisions on objections (49%) were appealed. This does pay off: 48% of the objectors (partially) won the case on appeal. The share of 'no cure no pay' companies in the objection and appeal procedures is at least 95%. Judges mention three 'no cure no pay' companies that dominate the proceedings. Other parties do not play a significant role. Within these three 'no cure no pay' companies, there is one company that consistently appeals and in doing so dominates the appeals and cassation proceedings. Almost all of the reimbursements of expenses therefore end up with these 'no cure no pay' companies.

### *Revenue Model*

With regard to BPM, 'no cure no pay' companies make clever use of the second-hand vehicle valuation, which, even more so than with residential properties, is always open to discussion. Since it concerns import vehicles, an additional factor is that EU legislation determines that the prohibition of tax discrimination applies: the basic principle is that Member States may not levy higher internal taxes on products from other Member States than the tax on similar national products. This is often used as an argument in legal proceedings and is difficult to assess because comparable domestic vehicles cannot always be found. This problem is recognised by almost all discussion partners - 'no cure no pay' companies, lawyers, garage owners, judges and the tax authorities. 'No cure no pay' companies almost routinely invoke the prohibition of tax discrimination as one of the grounds for objection (and appeal).

This research shows that 'no cure no pay' companies that are active in the BPM market, mainly act as agents for entrepreneurs, especially garage owners, who import second-hand vehicles. The 'no cure no pay' companies' clients are mainly entrepreneurs (90%). Only 10% are individual buyers. It also appears that 'no cure no pay' companies submit objections against their own tax returns more often than authorised representatives that do not work on a 'no cure no pay' basis.

'No cure no pay' companies base their revenue model not only on reimbursement of legal expenses, but also on damages. Each year, the tax authorities pay out an average of € 0.9 million in reimbursements of expenses, mainly as reimbursements of legal expenses (77.9%). In addition, a fifth (20.6%) was disbursed for immaterial damage suffered, because the tax authorities and or court exceeded the deadlines.

Furthermore, it appears that the legal system plays an important role in objection and appeal procedures. Judges are of the opinion that as long as there is a BPM Act, there will be room for discussion about the value of an imported second-hand vehicle and that the objection and appeal procedures will continue.<sup>2</sup>

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<sup>2</sup> The State Secretary also acknowledges that the legal system has flaws in the 'Vehicle Letters' that have been sent to the Dutch House of Representatives.



### *Execution Costs of Tax Authorities*

The tax authorities have several teams spread across the country that carry out all primary BPM processes. They have a capacity of 140 FTEs in the organisational unit Central Administrative Processes. In addition, the units Small and Medium-sized Enterprises, Large Companies and Fiscal and Legal Affairs have an additional capacity of 10 to 15 FTEs available to handle objections, appeals and cassation.

### *Court Execution Costs*

According to the Council for the Judiciary, 2,540 BPM cases were received at the courts and 1,379 at the higher courts in 2019. Due to the large number of cases, the judges experience a high workload at the BPM. Courts also struggle to settle the large number of cases. For example: in 2019, one of the courts settled 600 cases, while there are still 700 pending cases. Another, smaller court, settled 160 cases in 2019 and still has a workload of 680 cases. If the number of cases settled does not increase, this court would need four years to catch up. However, new cases do continue to arrive.

### **Conclusion**

Different observations have been made from various perspectives about the way ‘no cure no pay’ companies practice. With regard to the WOZ area, the research shows that it is not possible to determine "one specific practice" of ‘no cure no pay’ companies (nor of municipalities), but that there are strong differences between the companies. Anecdotal evidence has been found for practices that appear to focus on "benefiting" from existing laws and regulations, but the general impression is that this is not characteristic of the majority of ‘no cure no pay’ companies in the WOZ area. This is, however, the case in the BPM area. ‘No cure no pay’ companies often submit objections and appeals and relatively often (partly) win the case. Moreover, the Tax authorities have little control over the influx of objections.

The fundamental issue for both WOZ and BPM is valuation. It will always be possible to discuss the valuation of imported second-hand vehicles. For residential properties, the value is determined by means of a model-based valuation, which involves a systematic comparison between residential properties in which the characteristics of large numbers of residential properties are compared with each other. It is then not surprising that problems arise when there is a massive valuation, and subsequently the individual residential property is examined during objection and appeal.

