

# Combatting financial crime in the Netherlands



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# Financial crime environment

*PwC  
economic  
crime survey  
2009*

- Dutch companies vulnerable to financial crime
  - 40 percent experienced an increase of fraud
  - Same number has no anti-fraud policy
  
- Majority of cases:
  - came to light by coincidence
  - and were committed by own staff

# Financial crime environment

*PwC  
economic  
crime survey  
2009*

- Internal fraud rate is high compared to other countries
  - but, only 30 percent is reported to the police
  - even less is reported to the Regulators
- Fraud risk increased during crisis
- However most Dutch companies have not adapted
- 2011 survey is expected

# Financial crime environment

*2011 FATF  
Report*

- The Netherlands has relevant Money Laundering risk:
  - world's 7th largest financial centre
  - very open market
  - criminal proceeds 1.8 percent of GDP
  - ML turnover around 18 billion USD
- Limited risk of terrorism finance
- Although there are active cells
  - Two murders (Politician and a public figure)

# Financial crime environment

*2011 FATF  
Report*

- Effective prosecution of financial crime
  
- However, room for improvement:
  - ineffective Financial Intelligence Unit
  - slow ML reporting regime (14 days)
  - limited AML expertise at Regulators

# Financial crime environment

*2011 FATF  
Report*

- Up to standard AML laws
- Some off-standard exceptions:
  - per sé categories of low risk clients
  - large list of low risk countries (e.g Russia)
  - no UBO identification for low risk clients
- Limited guidance from Regulators
- New laws developed as a result of report

# The Dutch Tax Route

- Tax Haven?*
- 80% of 'Forbes top 100' have a fiscal holding in NL:
    - participation exemption financial holdings
    - more than 100 tax treaties around the world
    - fairly easy to obtain tax rulings
  
  - The money streams:
    - 10.000 billion Euro flows through the country (yearly)
    - 13.000 *Special Financial Institutions*

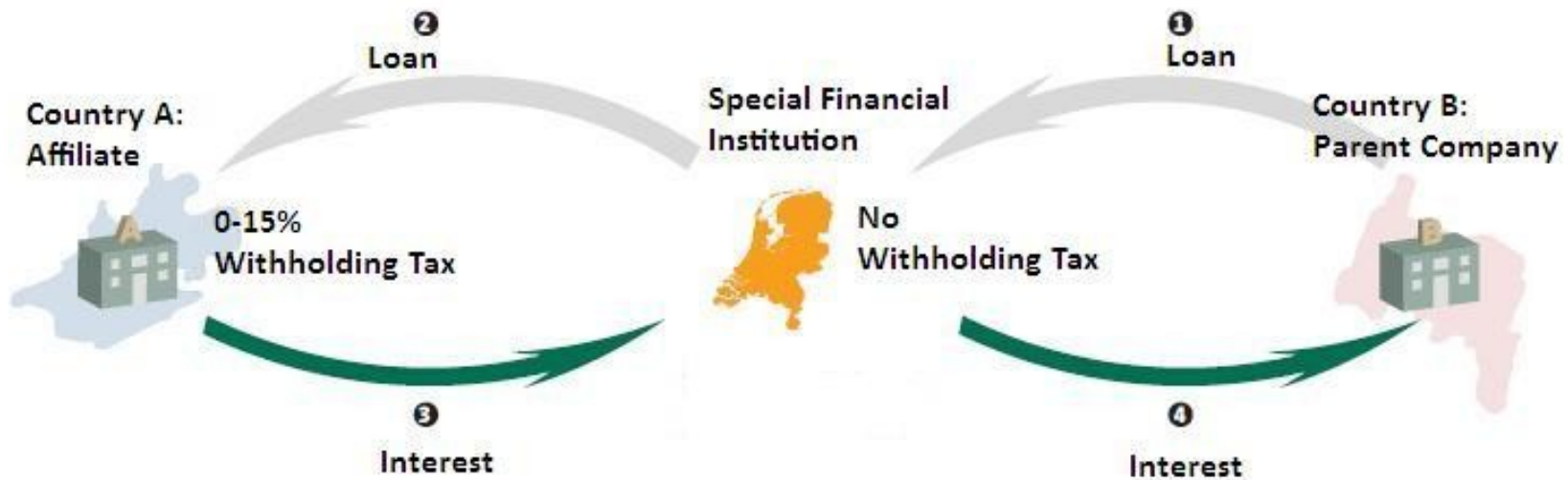
# The Dutch Tax Route (1)

*Popular with  
multinationals*



# The Dutch Tax Route (2)

*Used for intra concern finance*



# The Dutch Tax Route (3)

*E.g. used by  
the car industry*



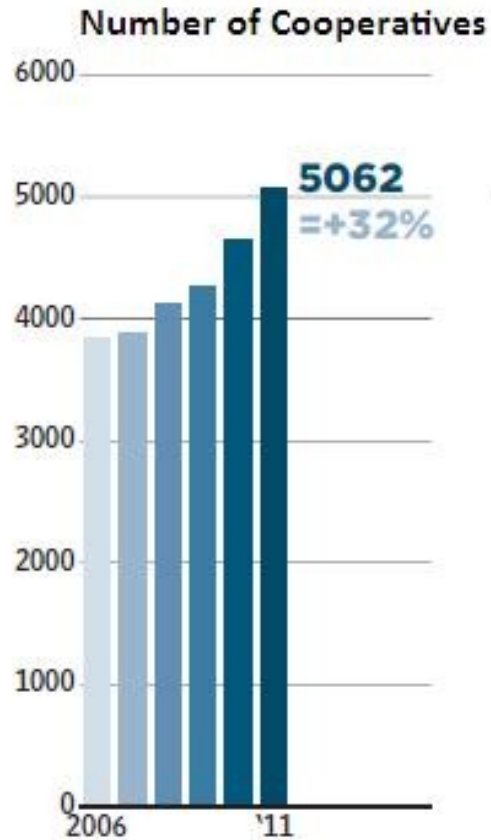
# The Dutch Tax Route (4)

*A.o. used by  
Nike*



# The Dutch Tax Route (4)

*Cooperative is growing in popularity*



# The Dutch Tax Route

- Politicians are split whether economical benefits (estimated at EUR 1.5 billion) outweigh the reputational risks
- In 2009 the Obama Administration declared The Netherlands to be a Tax Haven (withdrawn after 1 day because of political pressure)

# Hot topics in The Netherlands

*2011 so far*

- Criticism on external accountants
- Criticism on notaries and real estate brokers
- Lower government corruption
- Skimming of Housing Corporations
- Ponzi schemes
- Skimming of Pension Fund & Real Estate Bank

# Hot topics in the Netherlands

*What they  
have in  
common*

- Often related to Real Estate
- Involvement of inside men ('racketeering')
- Complicated ABC structures
- Use of:
  - offshore companies
  - with hidden UBOs
  - and fake invoices or manipulated calculations

# Hot topics in the Netherlands

*High profile  
investigation  
s*

- Lot of media attention
  - regular topic on evening news
  - weekly episodes in Dutch Financial Paper
  - naming and shaming of suspects
- Use of extensive police force

# Hot topics in the Netherlands

## *Complicated court cases*

- Preliminary examinations may take years
- Criminal convictions are rare
- But some recent successes
  
- Biggest problem is finding evidence
- Suspects avoid written agreements
- Mostly based on telephone taping, circumstantial evidence and disreputable witnesses

# Criticism on external accountants

*2010 review  
accountancy  
firms*

- Serious failures in auditing RE firms
- Insufficient countervailing power
  
- Deloitte announced to be fined by Regulator
- The other Big Four firms might also face fines

# Criticism on notaries and brokers

## *Notaries*

- Several convictions of notaries
- Mostly by Disciplinary Board for notaries
- Involved in ABC transactions

## *Brokers*

- RE brokers suspected of inflating/deflating estimates
- Brokerage since some years a liberal profession
- Independency brokers being questioned

# Corrupt local politicians

- Lower government often involved in RE projects
  - as a selling party
  - power to changes development plans
  - decisions on soil decontamination
- May be vulnerable to corruption
- Criminal convictions are rare

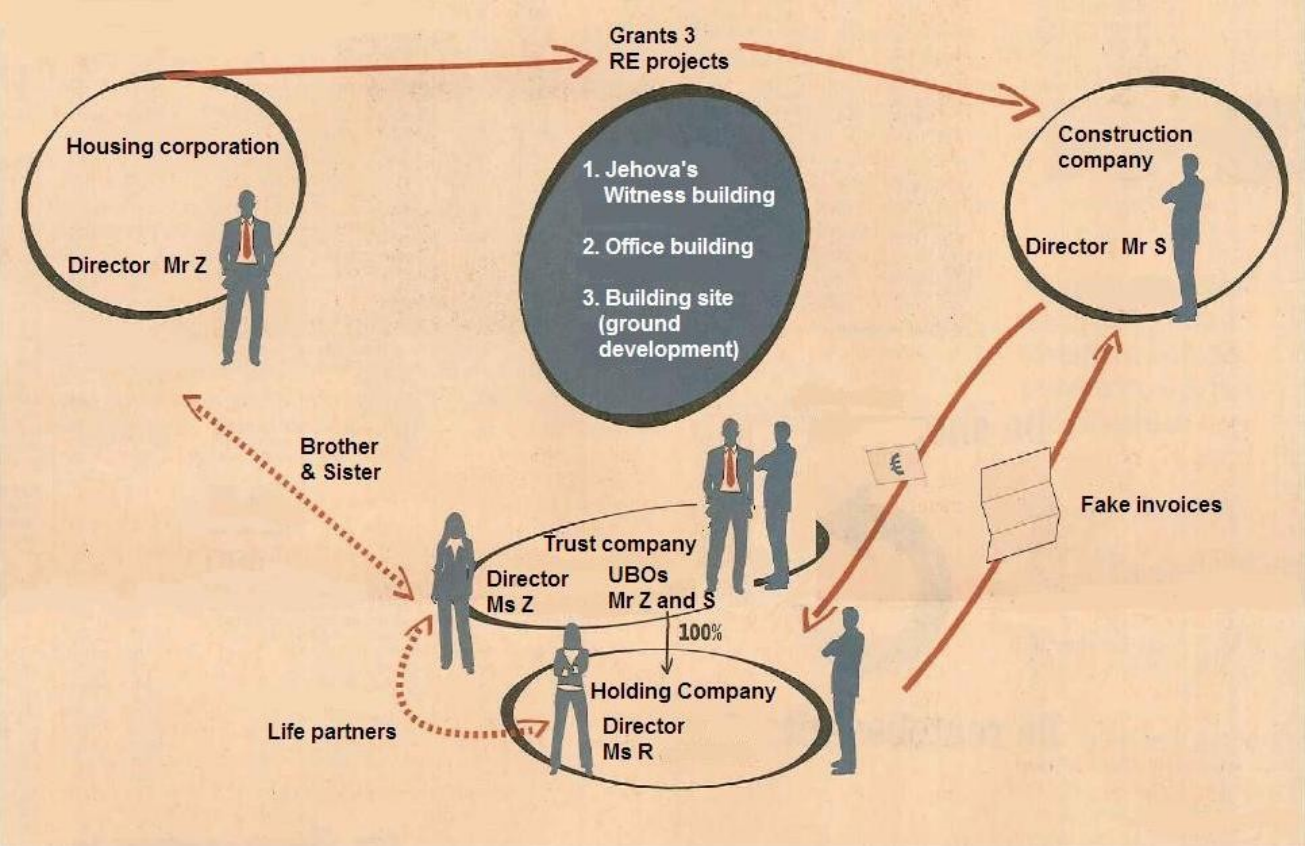
# Corrupt local politicians

*Recent court case*

- Local Governer
- Chairman Residential building committee
- EUR 32K bribe by Project developer
- Extended development plan in return
- Convicted to 2 years imprisonment
- Lives as a fugitive

# Skimming of Housing Corporations

*Recent example (June 2011)*



# Skimming of Housing Corporations

## *Recent successes*

- Forensic investigations are booming
- Twelve CEOs forced to step back
- Sometimes together with SB Members
- Civil damage claims have been awarded

## *Evidence is the problem*

- Several criminal cases are pending
- Only one conviction until now

# Ponzi scheme

- Opening item on last Wednesday's evening news
- Ponzi scheme with expected damage of EUR 150 mio
  
- Investment firms exempted from regulation (will change under the AIFMD)
- Basically pyramid games
- Money spent by managers on luxury goods and trips

# Skimming of Pension Fund & Bank

*Court case  
pending  
since early  
2011*

- Biggest Real Estate Fraud case in The Netherlands
- Committed by:
  - (ex) 2nd tier managers of Real Estate Bank
  - and the director of Philips Pension Fund
- Collaboration with a network of connected buyers
  - Use of ABC transactions
  - Use of offshore companies

Director Philips Pension Fund

Director Philips Pension Fund

Real Estate company buys Projects

Main suspect: Director RE Bank uses own companies

Philips Pension Fund seller of RE Projects in Amsterdam and Utrecht

Other RE company buys Projects minutes later

RE company buys less Projects for higher amount

Last round

Within 15 mins after first transaction Fortis Bank buys

€ 399 mln

€ 401 mln

Removes 1 Project from package

15 mins later to RE company

€ 63 mln

Cayman Island company buys the remaining Projects

€ 31 mln

RE company buys the removed Project

€ 79 mln

Sold to another RE Company

€ 79 mln

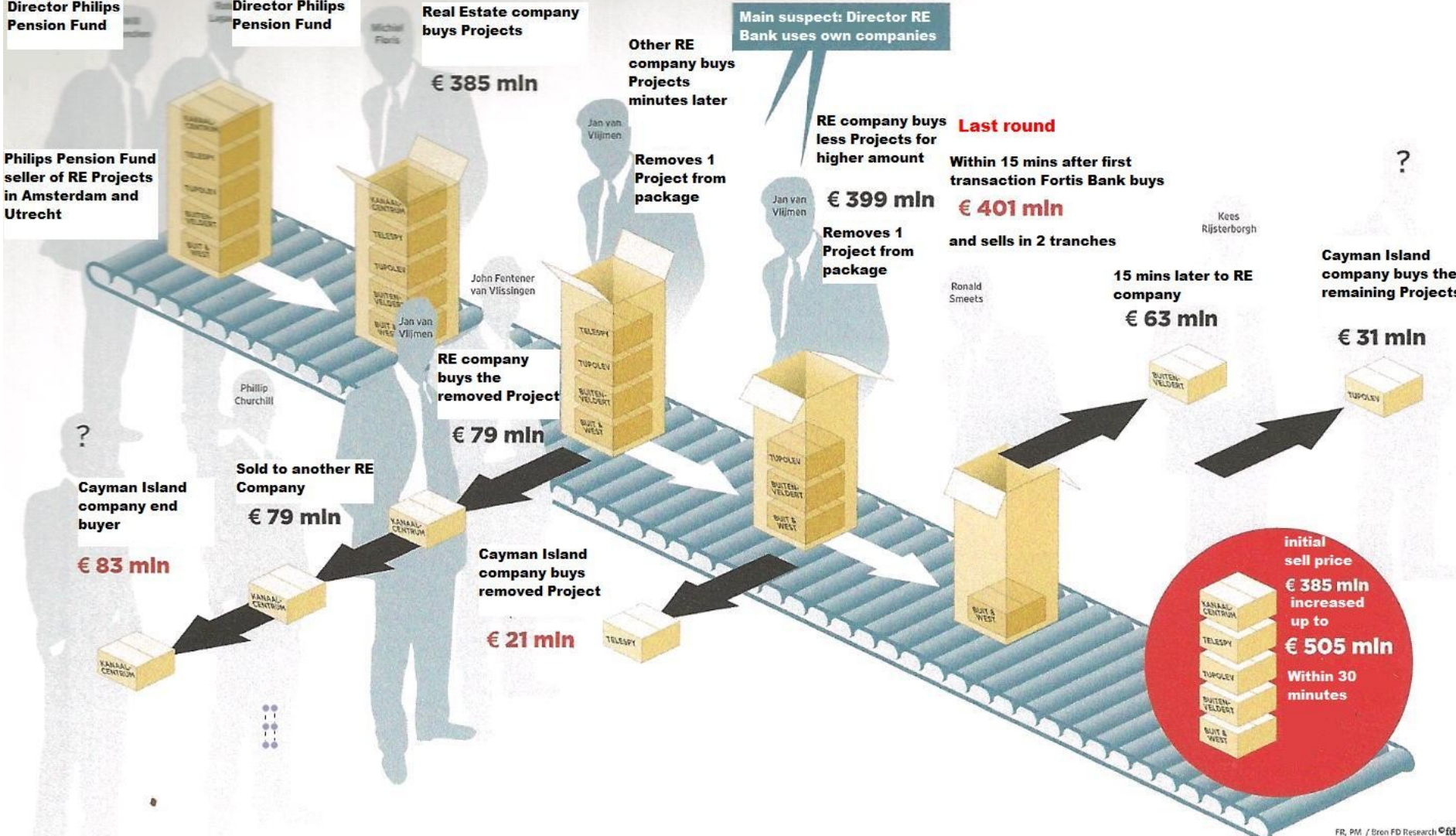
Cayman Island company buys removed Project

€ 21 mln

Cayman Island company end buyer

€ 83 mln

initial sell price  
 € 385 mln  
 increased up to  
 € 505 mln  
 Within 30 minutes



# Skimming of Pension Fund & Bank

- Similar case with regard to RE Bank (Bouwfonds)
- Same network of prime suspects (50 in total)
- More than EUR 200 mio damage for the Bank alone
- Already EUR 160 mio settlements with prime suspects
- Prime suspect could face 7 years imprisonment
- Verdicts expected end December 2011

*Pending  
court case:  
first results*

# Closing the net?

*In response  
to 2011  
FATF  
report  
and Fraud  
cases*

- Changing laws
- Regulatory sanctions
- Regulatory guidance
- Independent auditing?

# Changing laws

*In response  
to 2011  
FATF  
report*

- The Dutch AML law will be changed
  - Identification of UBO also for low risk
  - Intransparent UBO AML indicator
  - Focus on straw men structures
  
- Immediate reporting unusual transactions
  - 14 days notice period abandoned

# Changing laws

## *Decree on Real Estate activities*

- Issued by DNB in February 2011
- Direct result of the biggest Dutch fraud case in history
- Specifically designed for Pension Funds
- Adopted by other financials as well

# Changing laws

*Real Estate  
focal point of  
Regulatory  
reviews*

- Real Estate (RE) is per sé high risk product:
  - high net worth objects
  - non-transparent pricing
  - complexe structures
- Changed insight of Regulator direct result of recent fraud cases

# Changing laws

## *Decree on Real Estate*

- Extensive integrity screening in all cases
  - Bad news check
  - Screening of key persons
  - Screening of notary
  - Screening of RE Broker
  - Screening of auditor
  - Screening of appraiser
  - Verification sources of funds
  - Analysis chain of parties involved
  - Preferably executed by Compliance

# Changing laws

*AIFMD*

- Regulation of Real Estate Funds, Private Equity Funds etc.
- Could be helpful to decrease the risk of fraud
- Supervision of the Fund manager
- Regulatory screening directors
- Managers must have compliance and internal audit functions

# Regulatory sanctions

*In response  
to 2011  
FATF  
report*

- Expanded sanction regime for:
  - notaries
  - accountants
  - attorneys at law
  
- Fines in case AML reporting requirements are not adhered to

# Regulatory guidance

## *Regulatory guide on AML*

- First solid AML guidance from Dutch Regulator
- Issued in April 2011
- A clear move forward
- Based on international standards:
  - FATF
  - Basel Committee
  - Wolfsberg

## *Red Flags Report Real Estate*

- Issued by the Financial Intelligence Unit
- Is now the industry standard
- Raises the bar for all financial firms

# Regulatory guidance

- AML Guidance focuses on 3 risk indicators:
  - geographical (sanction regimes & FATF list)
  - client (cash intensive, PEPs & intransparency)
  - product (international private banking & cash)

# Independent auditors?

- Professional Accountants Association:
  - consultation paper
  - proposal to disconnect auditing from commercial incentives
  - applicable to members of auditing teams
  - goes beyond international standards
- Could become law (Dutch or European):
  - disconnecting auditing from advice services
  - circulation after several years

# To summarize

- NL shaken awake
  - Numerous fraud cases
  - FATF advice implemented in law
  - Improved Regulatory guidance
  - AML standards taken to the next level
  - But we are not there yet
- 
- Maybe it is time for MLROs in the Netherlands as well!

# Questions?

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