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1. Introduction

The global economic and financial crisis which started in 2008 forced governments into austerity measures. We have seen job losses, increased tax bills and enormous State support for financial institutions. The coverage of economic news in the media has been negative, leading to a spiral of pessimism in societies around the world.¹ As a result of these developments, public trust in the international tax system has been affected. Law and policy makers have responded to this by amending the corporate income tax rules which apply to multinational companies. They have done so not only on a multilateral level – by engaging in the project on Base Erosion and Profit Shifting (BEPS), supported by the G20 and carried out at the level of the OECD – but also by taking additional tax measures unilaterally.² The international tax system, however, does not only consist of domestic and international tax rules, but also of the actors in the system: the natural and legal persons which actually apply those measures. The way in which those persons have been interacting both with each other within the system and with others outside the system has given rise to frustration and distrust, played out in the media.³ Within the system, one can discern the tax authorities, ministries of Finance, multinational companies and tax advisors. Can they still understand and trust each other, under pressure as they are from public opinion? Outside of the system, one may recognize non-governmental organizations and citizens. Do they still trust the international tax system and its actors? The distrust between all of those stakeholders in the international tax debate negatively affects the trust which public opinion has in the international tax system, as fundamentally amended in the last years. Politicians may feel pressed to respond with more legislative and policy changes, but this will remain without effect if the trust which public opinion places in the actors of the international tax system does not improve. The question, therefore, arises what needs to be done. Should these actors and stakeholders communicate differently? Should there be more transpar-

1 Damstra & Boukes 2018, p. 19-20; Jallai 2017, p. 175.

2 See for a summary of the Dutch past and future actions the 'Policy Letter on tackling tax avoidance and tax evasion' of the State Secretary for Finance to Parliament of 23 February 2018, available on <https://www.government.nl/documents/policy-notes/2018/02/27/policy-letter-on-tackling-tax-avoidance-and-tax-evasion>.

3 Compare Acca 2017.

ency by everyone involved in the debate? Should politicians institutionalize trust through legislative change?

This inaugural lecture evolves around these and similar questions. Its purpose is threefold. Firstly, it aims at systemizing and analyzing the interaction in the international tax debate (section 2). Secondly, this contribution aims at understanding and explaining this development, in particular by applying insights from communication science (section 3). Thirdly, the present contribution will attempt to present a way forward for the international tax debate, leading to more trust and better communication (section 4). This contribution will be concluded with a summary and outlook (section 5).

2. **The international tax debate: state of play**

2.1. **Introduction**

Both as an academic and tax practitioner I have encountered frustration in many conversations with actors in the international tax arena. It seems as people don't understand each other anymore, expect different things from one another, have a different perception of reality. Basically, I have experienced a lack of a basic level of trust. The present section makes an attempt to systemize and analyze the way in which various actors have been communicating in the last couple of years and to what extent trust between them exists. This attempt will be made with regard to the Netherlands (because I 'know' the discussion), the United Kingdom (because a number of academic studies have been published there) and on a more general, global level (because associations of professional accountants have published an insightful survey). I will stay away from a technical discussion of 'aggressive tax planning' – what it may or may not mean and how it should be dealt with – , because the issue which I am discussing in the present contribution is about perception rather than about the technicalities of international tax law.

2.2. **Dutch perspective**

2.2.1. **Introduction**

In the Dutch debate on the taxation of multinational companies, a number of actors can be distinguished: the tax advisory community, businesses, the ministry of Finance, the tax authorities, Dutch politicians, the European Commission, non-governmental organizations and academia. The present section will provide examples of communication by these actors. These examples necessarily have an anecdotal character because no fundamental research in this area has been carried out to date. Based on my own experience, however, the examples provided should give a fair view of opinions generally held with the group of the actors described.

2.2.2. The tax advisory community

The Dutch Association of Tax Advisers (NOB) has been quite active in the debate. On 12 April 2018, the State Secretary for Finance organized a 'dialogue' with stakeholders in the international tax debate. The NOB, being one of the invitees to the meeting, summarized its input in a short paper, signed by the chair of the 'NOB Kerngroep Nederland Investeringsland' ('NOB Committee Netherlands: a country for Investments'). This paper very well illustrates what the NOB's input has been in the last years.

First and foremost, the NOB emphasizes the importance of the Dutch climate for investment and establishment: the international competitive position of the Netherlands. The NOB observes that negative publicity time and again adversely impacts the reputation of the Netherlands. Of the course, the NOB states, reputation with regard to international taxation is important, but it should be recognized that many of the criticism is unfounded and biased by other motives than to achieve of a technically sound international tax system. Other States would be 'afraid' for effective international tax competition, which will always continue to exist. However, the NOB notes, international tax competition has brought many international companies and prosperity to the Netherlands. The attempts by 'Brussels' to limit the freedom of EU Member States to design an effective tax policy would be aimed at cornering the Netherlands from a tax perspective. A voluntary choice by the Dutch government and legislature to take anti-tax avoidance measures which go beyond what international consensus minimally requires would seriously undermine the Dutch investment climate. Especially in the context of Brexit and US tax reform, the Netherlands must preserve its reputation as the 'Gateway to Europe' and protect its traditional 'crown jewels': a good participation exemption, a sophisticated network of tax treaties, no withholding taxes on interest and royalty payments and a ruling practice for legal certainty in advance.⁴

In the second place, the NOB recognizes the necessity to counter abuse of the crown jewels by flow-through entities which harm the fiscal reputation of the Netherlands. However, the measures currently agreed internationally – anti-avoidance measures in EU directives, rules on substance and exchange of information – should be sufficient to counter such abusive conduct. If the government and parliament would not agree and decide that additional measures should be imposed, those measures should in any case foster substance and employment in the Netherlands. The NOB would be happy to work with the government to achieve this.⁵

4 NOB 2018, p. 1-2.

5 NOB 2018, p. 2-3.

The above described input by the NOB reflects a consistent line communication.⁶

2.2.3. ***The business community***

The Confederation of Netherlands Industry and Employers (VNO-NCW) has also presented its views at the above-mentioned dialogue on 12 April 2018. Its approach can be described as follows. Firstly, the internationally agreed measures against tax avoidance should be implemented with appropriate speed. At the same time, the tax system may not constitute an barrier for companies to establish themselves in the Netherlands. The tax system should be designed to attract genuine investment, economic activities and jobs. Secondly, the fight against tax avoidance should go hand-in-hand with maintaining an attractive investment climate: tax rates should go down already in 2019. Thirdly, Dutch and European tax policy should stimulate innovation and the competitive position of the continent. The current European Commission proposals on a common corporate tax base and a common consolidated corporate tax base fall short of that ambition in a very serious manner. Fourthly, the Netherlands should not implement measures against tax avoidance than what international agreement in the EU and the G20 minimally requires: the Dutch tax system should not encourage companies to relocate investments, new economic activities and research and development to other countries.⁷ This line of communication is consistent with earlier comments.⁸

In addition to VNO-NCW, the American Chamber of Commerce (AmCham) made comments, delivered by its president Wouter Paardekooper, who is also a tax partner at BakerMcKenzie. AmCham points out that many US multinationals have chosen the Netherlands as their European headquarters with activities such as sales, marketing, logistics, production and planning. The tax system plays and has played an important role in this choice. AmCham warns lawmakers to make no mistake: other European capitals – Berlin, Paris – and the United States stand ready to warmly welcome multinationals from the US and the UK (Brexit) to their countries. In such a scenario, which would unfold in slow-motion, the Netherlands will unavoidably lose the European headquarters of such multinationals. AmCham's advice to the Dutch government is, therefore, threefold. Firstly, the above-mentioned 'crown jewels' should be preserved. Secondly, the legislature should not go beyond than what is required by EU Directives and agreement within the OECD in the fight against tax avoidance (labelled as "Goldplating"), because this would be very damaging for the

6 See for instance *Het Financieel Dagblad* (Dutch financial newspaper) of 28 January 2016: 'Aanpak belastingontwijking schaadt vestigingsklimaat' (approach to counter tax avoidance harmful for investment climate').

7 VNO-NCW 2018.

8 For example the letter by VNO-NCW to the Ministry of Finance of 21 August 2017 regarding the implementation of the Anti-Tax Avoidance Directive (www.vno-ncw.nl).

Dutch competitive position. Thirdly, political choices on fiscal policy must be supported by fundamental economic analysis that chart long-term effects on the economy and economic growth.⁹ Such an analysis is currently lacking.

2.2.4. ***Non-governmental organizations (NGOs)***

Just as the NOB and the business community, Tax Justice NL has also contributed to the 'dialogue' organized by the State Secretary for Finance on 12 April 2018. It has made a number of points, illustrative for its contributions over the past few years. In the first place, Tax Justice NL emphasizes that the policy plans on the table must be put into concrete action, because the Netherlands is still widely regarded as a tax haven. The Netherlands should stop leading the 'race to the bottom' and start changing its course radically. The announced abolition of the dividend withholding tax and the lowering of the corporate income tax rate must be cancelled immediately. In the second place, anti-avoidance measures must have real 'teeth' and be fit for purpose. In this respect, Tax Justice NL expresses grave concerns on the announced conditional withholding tax on outbound payments of dividends, interest and royalties, because it sees a clear risk that the way in which the measures will be put down in the law will render these measures meaningless. In the third place, Tax Justice NL demands an immediate end to the 'secret Dutch ruling practice' for multinationals. On a more detailed level, Tax Justice NL criticizes the use of the Dutch IP box ('innovatiebox') and the envisaged implementation of rules on controlled foreign companies (CFC legislation) which would benefit large multinationals. Finally, Tax Justice NL repeats its plea for a speedy adoption of EU rules on public country-by-country reporting.¹⁰

Another important NGO in the Dutch debate on international taxation is Oxfam Novib. It has devoted an important part of its website to this topic, with explanations, statements, videos, possibilities to sign petitions, etcetera.¹¹ Oxfam Novib's 2016 report 'Nederland Belastingparadijs', has received particularly broad attention. In this report, Oxfam Novib argues that the Netherlands is a tax haven under EU and OECD standards, to the detriment of developing countries.¹² Also, and importantly, the report contains a chapter on conflicts of interest present in participants in the international tax debate.¹³ According to the report, there are alarming and suspicious ties between the ministry of Finance, academia, businesses, the Big four accountancy firms, large law firms and even the judiciary. Many participants wear

9 AmCham 2018.

10 Tax Justice NL 2018.

11 See <https://www.oxfamnovib.nl/armoede-verslaan/eerlijke-verdeling-welvaart-en-macht/belastingontwikking-en-belastingparadijzen>.

12 Oxfam Novib 2016, chapters 2 and 3.

13 Oxfam Novib 2016, chapter 5.

'double hats', e.g. a combination of university professor and tax advisor or persons who change jobs from the administration to the tax advisory community very easily.

SOMO, another NGO active in the debate, also points at this issue in an article commenting on a parliamentary hearing (14 December 2017) on the envisaged abolition of the Dutch dividend withholding tax. According to the article, the large majority of the persons heard by parliament represent the interests of the multinationals benefitting from the measure. In addition, three out of the five professors of tax law heard by parliament combine their academic role with a tax advisory practice (two of them with a Big four accountancy firm). How credible are the views presented, SOMO rhetorically asks, especially where some of the arguments brought to the table are clearly tendentious or even untrue?¹⁴

2.2.5. ***The Ministry of Finance***

Civil servants working in the Ministry of Finance have the difficult task of balancing the wish to counter international tax avoidance with the need to keep the Netherlands attractive for both foreign investment and for traditional Dutch multinational enterprises. I wonder whether they always feel enough appreciation for this difficult task. Sometimes, we obtain a peek inside this difficult dilemma, for instance in the recently published policy documents on international group financing of Dutch multinationals.¹⁵ Civil servants were confronted with the difficult question of how to solve the situation which arose after the decision in 2009 not to implement the group interest box in the Dutch corporate income tax, which would have resulted in an effective tax rate of 5% on income from group financing. This decision could have the effect of reallocation of important treasury functions of Dutch multinationals to other countries. If this effect were to be avoided, those multinationals would need to receive certainty in advance that they could maintain their treasury functions in the Netherlands, while at the same time moving cash into a tax haven, resulting in an overall tax burden of around 5%. In a memorandum of 10 March 2011, civil servants wrote to their superiors that this approach – notwithstanding its desirability from a policy perspective – raised clear tensions which the approach taken in other files, for instance in cases where IP rights were being allocated in foreign group companies without substance. Civil servants advised their superiors to terminate the policy, but to respect rulings already in place until their expiry. In the end, the ruling practice has lasted until the end of 2016: the result of a balancing act.¹⁶

14 Berkhout 2017.

15 See <https://www.rijksoverheid.nl/documenten/wob-verzoeken/2018/03/14/besluit-na-wob-verzoek-om-informatie-over-de-coördinatiegroep-taxhavens-en-concernfinanciering>.

16 Kamerstukken 2017/18, 25 087, nr. 187, appendix III.

2.2.6. **The Dutch tax authorities**

It is exactly this tension which the Dutch tax authorities also experience: it is difficult to do the 'right' thing. For instance, the head of the 'contact point for potential foreign investors' (*aanspreekpunt potentiële buitenlandse investeerders*, or *APBI*)¹⁷ has written a short piece in the magazine of the Dutch Association of Tax Advisors (NOB).¹⁸ He has experienced that uncertainty about the impact of the EU Anti-Tax Avoidance Directives, the BEPS project and discussions about State aid and tax avoidance, has led multinational companies to delay investment in the Netherlands. The head of the contact point expresses the hope that this situation is temporary and that we can return to a stable situation quickly, stressing the importance of certainty and the competitive position of the Netherlands relative to other countries. The position and task of other persons in the Dutch tax authorities, however, may be very different. This is so in particular when these persons do not have to deal with convincing companies to keep economic activity in the Netherlands or to bring functions to the Netherlands, but rather to fight erosion of the tax base by companies already present in the country. Here, for instance, the tax authorities welcome uncertainty in the law because it deters companies from certain behavior, a position taken in parliamentary hearings in June 2017.¹⁹ Another example of a different position is provided by evidence in the same hearings where tax inspectors commented on the use of foreign legal forms by wealthy individuals to shift income from the Netherlands to other jurisdictions. These situations are targeted by the Dutch tax authorities with great intensity.²⁰ This anecdotal evidence seems to suggest that the Dutch tax authorities may, in certain circumstances, apply a carrot-and-stick approach when giving effect to the law. The question may be asked whether outsiders to the debate on international tax law understand the phenomenon of a two-faced tax authority and, indeed, whether the issue fosters distrust, possibly even within the tax authority.

2.2.7. **The European Commission**

On 7 March 2018, the EU Commissioner for taxation labeled the Netherlands as a 'black tax hole'.²¹ In his view, clearly more needs to be done before the Netherlands may consider itself a country which does not facilitate aggressive tax planning.²² This is in line with consistent lines of communication from 'Brussels', for instance from the EU Commissioner for Competition who initiated high profile Fiscal State Aid cases against the Netherlands and from the European Parliament which almost

17 See Decree of 3 June 2014, DGB 2014/296M, para. 4.

18 De Graaf 2016.

19 Kamerstukken 2016/17, 34 566, nr. 4, p. 17.

20 Kamerstukken 2016/17, 34 566, nr. 4, p. 70 et seq.

21 'EU's Moscovici slams Ireland, Netherlands as tax 'black holes'; see https://www.expatica.com/nl/news/country-news/EU-taxation-Moscovici_1651422.html.

22 European Commission, press release of 7 March 2018, SPEECH/18/1683.

– there was a tie – adopted a resolution calling the Netherlands a tax haven.²³ The Dutch government has stated to be not amused by the Commissioner's comments, which would wholly disregard all that has been done by the Netherlands, especially in its role as president of the Council of EU Ministers which adopted the EU Anti-Tax Avoidance Directive with unprecedented speed.²⁴

2.2.8. *Academia*

Turning the discussion to actors in academia, it seems to me that the above-described distrust in the international tax debate plays a role on three levels: i) there may be academics who distrust other actors, ii) there may be academics who are distrusted themselves and iii) there may be academics who stay silent out of fear for becoming 'tainted' in the debate or who operate very carefully in the debate precisely for that reason. Within the first category there are academics who do not trust the true motives of other States, international institutions and NGOs who would continue their attempts to harm the Dutch investment climate on disingenuous grounds.²⁵ There are also academics who do not trust the true motives of the Ministry of Finance and the Dutch tax authorities who would continue their 'hidden agenda' to pay lip service to fight against tax avoidance but in reality continue their 'secret' ruling practice and tax advantages for multinational companies.²⁶ The perceived lack of honesty of the other actors in the debate frustrates these academics. This frustration must, in my view, be the reason for the increasing number of requests for release of internal government documents, based on the Dutch law on administrative transparency. Academics are even prepared to litigate against the government when documents are not being released, as is apparent from the well-known debate on the abolition of the dividend withholding tax.²⁷ Examples of the second category are, as discussed above, professors of tax law who combine their role with another role in the tax practice. One of these professors is R.M. Freudenthal, professor of tax law at the University of Groningen and tax partner at Mazars. Asked about his two roles in the parliamentary hearing of June 2017, he

23 Commission Decisions of 21.10.2015 (Starbucks – Netherlands) and 18.12.2017, No. SA.46470 (IKEA – Netherlands). See on Mr Tang MEP's resolution <https://nos.nl/artikel/2207373-europees-parlement-nederland-geen-belastingparadijs.html>.

24 Letter by the State Secretary for Finance of 15 February 2018 to parliament in response to parliamentary questions, nr. 1180.

25 E.g. Van den Hurk 2018.

26 See for instance the contribution by J. Vleggeert in the parliamentary hearings in June 2017, who questions the motives of the Dutch Ministry of Finance to maintain tax ruling practice which is not as transparent as it could or should be; Kamerstukken 2016/17, 34 566, nr. 4, p. 255.

27 See for instance the denied request ('WOB-verzoek') for release of documents relating to the envisaged abolition of the Dutch dividend withholding tax by J.L. van de Streek and the litigation announced in the press (<https://www.trouw.nl/democratie/toch-memo-s-over-omstreden-afschaffing-van-dividendbelasting-a62b1b82/>).

pointed out that there are professors of tax law with other roles in the Dutch tax authorities, the Ministry of Finance and tax advisory firms. There are a number of professors without another role, but the 'problem' with them is that they are regularly asked by the Ministry of Finance for assistance in all kinds of processes. The real independence which one might wish to have in an ideal world does not exist. All we can do is expect all professors of tax law to adhere to the level of professionalism which may be expected of them. In practice, tax professors are living up to this standard, Freudenthal said.²⁸ Examples of the third category – 'professors of tax law who are silent' in the public debate – is clearly the largest category.

2.2.9. **Politicians**

The above-discussed debate has given rise to mounting pressure on politicians to act, to 'do something'. Here, they have tried to reach some middle ground. The parliamentary inquiry of June 2017, for instance, was limited to a) the use of letterbox companies (flow-through entities) in the Netherlands and b) the transfer of wealth by individuals to foreign entities in order to hide that wealth from the view of the tax authorities.²⁹ The parliamentary inquiry committee invited – and sometimes summoned – experts and witnesses to parliament to inform the committee about these two issues. It should be noted that the inquiry did not concern tax planning practices more broadly. As a result, parliament could be seen 'to do something', but at the same time stay away from the most sensitive issues. This changed with the letter sent to parliament by the State Secretary for Finance of 23 February 2018.³⁰ In this letter, the State Secretary expresses that he is "keen to overturn the Netherlands' image as a country that makes it easy for multinationals to avoid taxation. This stubborn image undermines the investment climate." The legislative action announced in the letter should contribute to overturn this image.

2.2.10. **Take away**

Looking back on all of the views summarized above, a number of 'frustrations' can be distinguished:

From the business community and tax advisory practice:

- The international tax reputation of the Netherlands is being destroyed by unfounded criticism, fueled by other motives than achieving a technically sound international tax system.

28 Kamerstukken 2016/17, 34 566, nr. 4, p. 768-769.

29 Kamerstukken 2016/17, 2016/17, 34 566, nr. 3, p. 6.

30 Policy Letter of 23 February 2018 on tackling tax avoidance and tax evasion' of the State Secretary for Finance to Parliament, available on <https://www.government.nl/documents/policy-notes/2018/02/27/policy-letter-on-tackling-tax-avoidance-and-tax-evasion>.