

Report

Research & Lecture Visit Japan, 4 November 2017-25 November 2017

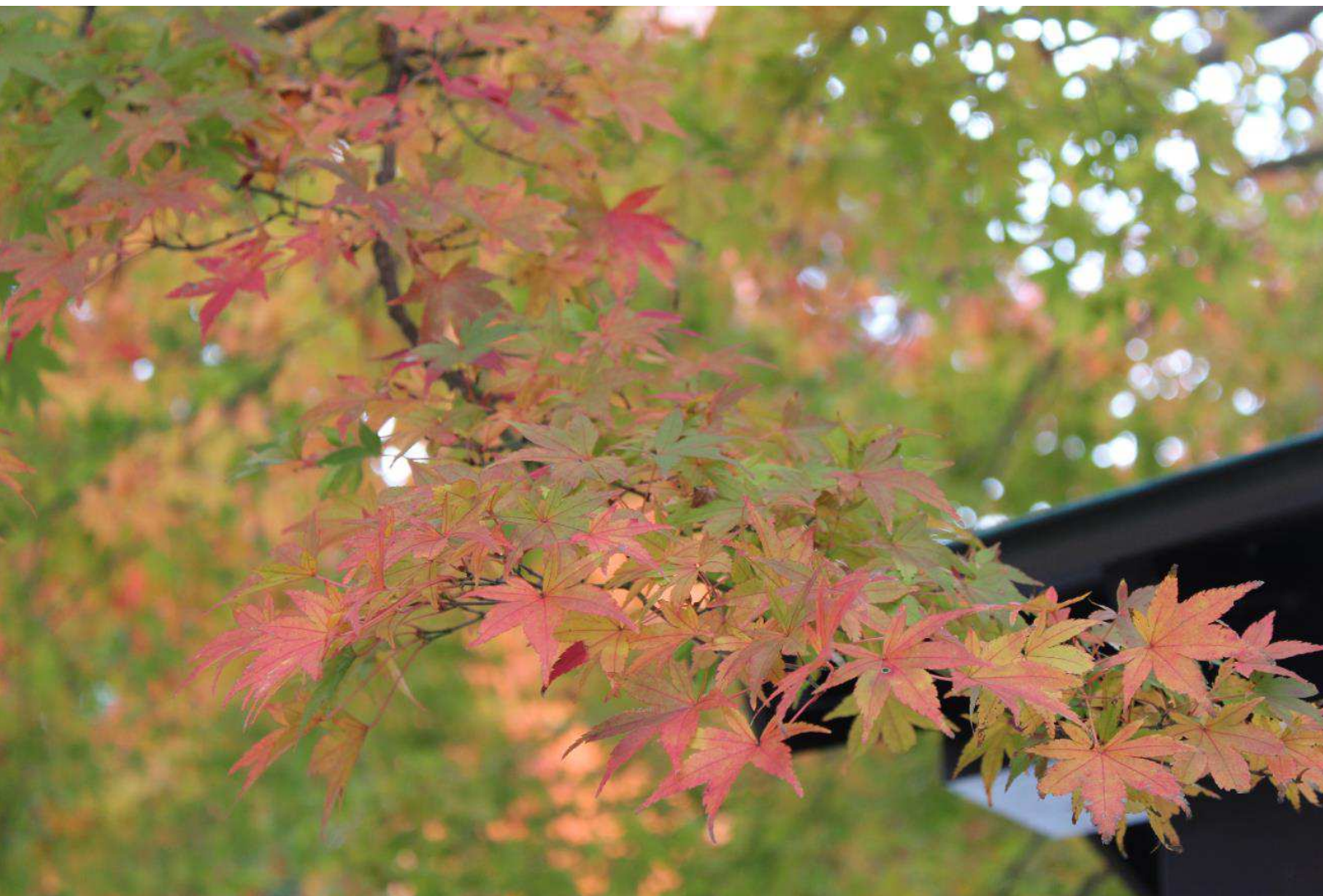


Photo by prof. Yuka Shiba, Hakone autumn colors

prof. dr. S.J.C. Hemels
Erasmus University Rotterdam, the Netherlands



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1 Thank you

First of all: many thanks, primarily to Tokoha University that provided a very generous budget for this research trip, but also to Ritsumeikan University, Kansai University, Kyoto University, Setsunan University, Meiji Gakuin University and Osaka Keizai University for providing the funding for my 2017 lecture and research stay in Japan. It was a very



rewarding experience through which I have met many Japanese researchers, I have learned a lot about research in Japan and about the history and culture of Japan, made new contacts and renewed old acquaintances and was able to make plans for future research with Japanese colleagues. I am also very grateful to (in alphabetical order) prof. Goto for organizing the Kyoto/Osaka part and the Ministry of Culture and for taking me on a two day intense but fantastic holiday to the Hiroshima prefecture, prof. Miyamoto for

organizing the tax law lectures on BEPS and prof. Yuka Shiba who organized the major part of the funding for this trip and made me think about the relation of new family forms and the impact on inheritance tax and personal income tax and who organized many interesting cultural activities, including a nice trip to Hakone and my first lecture without shoes!

All these colleagues, who have become friends over the years, brought together my research interests and gave me the opportunity to talk about tax in an interdisciplinary way. They planned the trip in an excellent way, minimizing travel time. Because of efficient planning I did not feel tired even though I never had so many lectures during a Japan research trip as this time. But because of the efficient planning and limited traveling because of clever hotel reservations it did not feel as a full program.

I am also grateful to all academics who invited me to their universities and in their classrooms and everybody who took the time to exchange views with me. It really was an invaluable experience. My only complaint is that time went so fast! I do hope to come back to Japan for another research visit. Until then, I hope to welcome of my Japanese learned friends in the Netherlands: the discourse will definitely continue, no matter the distance in time and space!



2 Outline of academic activities

2.1 Lectures

2.2.1 7 Nov: Setsunan University, Faculty of Economics: lecture for academic staff

Prof Goto had made it possible to deliver the lecture 'Economic aspects of the BEPS Project' (no. 1 in the annex) at the Faculty of Economics at Setsunan University in Osaka (in English without translations). Furthermore, in the morning she arranged for me to meet her first year students and to talk a bit with them. The students were a bit shy, but there was one boy asking questions about whether people in the Netherlands liked soccer.



Between this class and the lecture I gave, I worked in the huge office of prof. Goto. The offices in Japanese universities are very big compared to what we are used to at ESL. Every professor has his or her own room with a lot of bookshelves and a big table to discuss with students or even give small seminars or tutorials. We also went to the university library. It is a beautiful building with a large collection of books. These books are not hidden in storage, but all on bookshelves which is very nice. Also there was a large

collection of foreign journals. Interestingly, for all fields these journals were dominantly in English, but for law almost all foreign journals were in German. Germany still seems to be very important for Japanese scholars of the law.

I truly enjoyed delivering the lecture on 'Economic aspects of the BEPS Project'. I was honored that not only the dean of the faculty of economics, but also the dean of the faculty of law and the dean of the faculty of management attended this lecture. Furthermore, prof. Kojima of the faculty of law who is specialized in tax law also attended the lecture which really added to the discussion after the lecture. We had a very interesting discussion on the fact that in Japan there is not a general anti avoidance rule (GAAR) and that it has been discussed a lot: the government might want to introduce a GAAR, but there is strong opposition from influential academic circles.



Furthermore, Japanese courts do not want to apply substance over form. This is different in the Netherlands where since the 1920s we both have a statutory GAAR and a substance over form doctrine (*fraus legis*) adopted by our supreme court. Prof Kojima also send me some interesting comments after the lecture by email. It was really nice to exchange thoughts with a fellow tax professor and to establish this new contact! Also the dean of the



faculty of economics, prof. Kubo, had some very thought provoking questions.

After the lecture prof Kubo invited me and prof. Goto for a very nice sushi dinner. We had a very interesting discussion on increasing income inequality, a topic prof Kubo is currently working on. He shared a presentation on this topic with me. This was very interesting as he shared some figures with me on which I was not aware of, for example

that income equality has become bigger in Scandinavian countries such as Finland and Sweden. It is thought that this is caused by globalization and technological developments. I could share with him that income equality has remained more or less the same in the Netherlands, which was endorsed by prof. Kubo's figures. However, it is intriguing that income equality has increased in Sweden. This might be a topic for further research for me when I start my guest professorship at Lund University School of Economics and Management in February 2018.

2.2.2 8 Nov: Ritsumeikan University: workshop with PhD student

Prof. Miyamoto had organized a workshop on our book *Tax Incentives for the Creative Industries* with her PhD student Mikiko Nakashima in the main building of Ritsumeikan University. I was impressed by the beauty of the building. Also this building had a beautiful library. The workshop was a quite intense for the PhD student who was in the room with three professors: prof Goto, prof. Miyamoto and myself. She had prepared extremely well. She



combines writing her PhD with working as a certified public tax accountant and being a mum to two young children, which is quite challenging. First prof Goto gave a short introduction on the book after which I gave a presentation (no. 2 in the annex). In between both the PhD student and we the professors asked each other questions. It was very interesting. Afterwards the four of us had a very nice dinner in a very traditional,



beautiful restaurant in Kyoto. The food was delicious and served on beautiful dishes, some of them were Mishima, which pattern looked like Mishima Calender from Shizuoka.

2.2.3 9 Nov: Osaka Keizai University: seminar for master students

Prof. Shiba had invited me to give a lecture on Fiscal partnership and inheritance tax in the Netherlands (no. 3 in the annex) to her master students of Osaka Keizai University (Osaka University of Economics). I explained the topic using examples from my own family. Prof. Shiba had expected a maximum of 10 students, but because prof. Koga and prof. Murai had also taken their students to my lecture, we were 30 people. Prof Koga kindly provided me with a reprint of the translation he made of the paper I wrote in relation to my 2014 visit to Japan "Fairness and taxation in a globalized world". This translation was published in two parts in *Osaka Keidai Ronshu*, a journal edited by Osaka University of economics Institute, Vol. 66, no. 4 of November 2015 and in Vol. 67, no. 1 of May 2016



The master students are mostly older students who already have a career and now do a master in order to further their career. As opposed to the situation in the Netherlands, it is not so common in Japan to follow a master, especially not directly after finishing a bachelor. It is also quite expensive in Japan to do a master. I gave the lecture in a branch of the University which is conveniently located in the Osaka Stock Exchange. As most students came directly from their work, prof. Shiba had kindly provided for pizza for the students, which meant we started the seminar in a very friendly atmosphere. Furthermore, one student had translated my slides in Japanese, thus enabling the other students to follow my lecture more easily. Prof. Shiba provided for short summaries in Japanese during my lecture. Two students had prepared very interesting questions on my lecture, which enabled me to explore the subject further in relation to our general anti avoidance rule. Also, prof. Murai who has studied in Germany several times, speaks fluent German and is very knowledgeable on the German civil law, asked very interesting questions on the (im)possibility of harmonization in the European Union in this field, comparisons with, for example Germany and the flexibility of the Dutch system. After the lecture I was given a very nice collage of my lecture. I felt very welcome at this university and I am very grateful to the three professors who enabled their master students to attend my lecture and I want to thank the professors and the students for attending and contributing to the seminar!



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2.2.4 10 Nov: Ritsumeikan University: lecture

Prof. Miyamoto, vice dean of the division of academic affairs of Ritsumeikan University and professor of law at that university invited me for a lecture on the EU implementation of the BEPS project (no. 4 in the annex) at the College of economics of Ritsumeikan University. The seminar marking the 70th Anniversary of Ritsumeikan University Department of Economics was coordinated and chaired by prof. Kawane.



Both master students, international students and faculty staff, including the vice dean of the faculty attended the lecture. Also prof. Tsuji and prof. Murai attended the lecture. After an introduction of prof. Kawane and prof. Miyamoto I gave my



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lecture for which prof Goto kindly provided translations in Japanese. Prof Miyamoto and prof. Tsuji gave further technical tax explanations in Japanese and also added information on Japan. After the lecture prof. Murai gave a discussion statement and asked how the Netherlands feels about the BEPS project. Then a student asked about the difference between ATAD1 and ATAD2 and prof. Miyamoto asked whether there is a priority order problem between the parent subsidiary directive and ATAD. A master student then asked whether we have problems in the Netherlands with enforcing the GAAR. An international student asked whether there was a central system for the automatic exchange of information and how it was possible for developing countries to meet the automatic exchange of information requirements and how it could be safeguarded that the



information was safe. It was a very nice discussion with excellent input from the students. Afterwards we made a group picture and had a very nice dinner with Prof. Murai, prof. Miyamoto, prof. Goto, prof Kawane, dr. Shinoda and Mikiko Nakashima in a French restaurant not far from the university where we could talk a bit more. Prof.

Murai showed me a conference book of a conference on the CCCTB which he already organized in 2007. 10 years later the discussion on CCCTB is still going on in Europe... We also discussed the difference between legal research in Germany and the USA based on a paper prof. Schön of the Max Planck Institute in Munich wrote for the New York Law Review. We concluded that Japan and the Netherlands are somewhat in the middle between Germany and the USA. It was, again a very nice and interesting experience!



2.2.5 11 Nov: Kyoto University: joined lecture with Ritsumeikan University

Prof. Miyamoto and prof. Morotomi of the Kyoto University Graduate school of economics invited me for a joined lecture of Kyoto University and Ritsumeikan University on EU



implementation of the BEPS project with a focus on controlled foreign companies (no. 5 in the annex). For this group a translation of my presentation in Japanese was not necessary, so there was much time for discussion after my lecture. First, prof. Miyamoto explained the way Japan implemented the BEPS CFC rules, which meant a change from the already existing Japanese CFC rules.

Japan applies a hybrid system. A student asked whether this would be allowed under the EU ATAD or whether countries are obliged to apply either model A (categorical approach) or B (substantial approach) and cannot have a mixture. This was a very good question as this is currently debated in European tax literature and there are different opinions on this. In reply to a question of prof. Morotomi I discussed the European infringement procedure that the European Commission can start when it does not agree with the way a Member State implemented a directive. A student asked why the



Netherlands did not have a CFC rule. I explained that we have a different rule which includes the revaluation of the shares in a low taxed passive subsidiary. Also, the student asked which EU countries did not have a CFC rule before. To answer this question I referred to a website of the European Commission. Prof. Tsuji explained that in Japan CFC rules do not include rules to avoid double taxation as the taxation at the level of both subsidiary and parent is not regarded to be double taxation. I added that in the EU not only legal double taxation but also economic double taxation is taken into account also to comply with the four fundamental freedoms. A student raised the excellent question what



is fair (and unfair) taxation. This is of course very subjective and really in the eye of the beholder. That is the big problem of the current discourse. Finally a question was raised about the relation between CFC rules and transfer pricing rules and new problems of double taxation that might result from this. I gave as my opinion that mandatory arbitration is really a necessary part of the BEPS project and that it is a pity that most countries who participate in the BEPS project did not want to include this in their tax treaties.

After the lecture we had a very nice lunch at the 15th floor of the Granvia hotel with a beautiful view of Kyoto and the mountains surrounding the city. Prof. Morotomi explained during lunch that the situation in Japan is very different from that in Europe. As the bubble economy already burst in the 1990s in Japan and thus there had already been a restructuring in the banking sector in Japan, the financial crisis did not hit Japan so heavily as in Europe and there was not that much angeriness of citizens as in Europe. For that reason, for Japan the BEPS project is more seen as being top down, coming from international organizations than as something to relate to the wish of citizens. It was very interesting to hear about this different perspective on the BEPS project and it shows how important it is to talk about these international subjects with academics from different jurisdictions. It was a very interesting morning!

2.2.6 11 Nov: Kansai University: lecture for graduate students and members of Kansai University Tax Law Society



Prof. Urahigashi, professor of tax law of the faculty of law and prof. Tsuji, professor of tax law at the faculty of faculty of business and commerce of Kansai University organized for their master and PhD students and members of Kansai University Tax Law Society the lecture EU implementation of the BEPS project with a focus on financial transactions at Kansai University in Osaka (no. 6 in the annex). Also professor Miyamoto, prof. Murai and prof. Hayashi of Hiroshima University joined the lecture. Prof. Goto kindly provided Japanese translations of my presentation. After the presentation there was time for discussion.

Prof. Murai mentioned that many countries also have thin cap rules and now have to introduce the EBITDA interest deduction limitation as well. He asked how many EU countries abolished their thin cap rules. I talked about the national reasons why the Netherlands abolished the thin cap rule (it mainly hit small and medium size companies and not multinationals) and about the ECJ cases on the UK and German former thin cap rules. It struck me that in Japan much legal research is done on the details of the tax systems in other countries. This might explain for quite detailed questions on tax systems in other countries. This kind of research is not so common in the Netherlands. A student asked why there are so many Japanese companies in the Netherlands. I explained the Dutch participation exemption, the tax treaty network and the proposals to change or even abolish the dividend withholding tax. According to prof. Murai much aggressive tax



planning takes place in Japan using the Netherlands: there are many interesting court cases which involve the Netherlands. Prof. Murai also asked about mandatory disclosure and gave a short closing remark pointing out that in Japan the EBITDA percentage is 50% instead of the 10-30% recommended by BEPs Action 4. Japan already introduced this limitation in 2013. It might be that the percentage will change in the future. Again, it was a very interesting discussion from which I could

also learn a lot about Japan. After the lecture prof. Urahigashi, prof. Tsuji, prof. Miyamoto, prof. Murai, prof. Goto and I had a very nice dinner in an Italian restaurant. The food was very nice and we had a really good time, during which we discussed much more.

2.2.7 16 Nov: Meikai University, Faculty of real estate science: lecture for academic staff and graduate students



Before, prof. Shiba was an associate professor at Meikai University, Faculty of Real Estate Science. Prof. Suto of the Faculty of real estate science had kindly organized a lecture for me: 'Housing taxation in the Netherlands' (no. 7 in the annex). It was a very interesting experience as many researchers joined with different backgrounds: amongst others economics, engineering and law. After the lecture there were some questions on the housing situation in the Netherlands. The lecture and the question

time were in English.

2.2.8 17 Nov: Ministry of Culture, seminar for civil servants

Prof Goto, Mr. Kosuke Norimoto, a civil servant of the Ministry of Culture (who could not attend because he had to go to Parliament) and Mr. Yoshide Miwa, deputy director of the policy planning and coordination division of the Agency for Cultural Affairs (part of the Ministry of Education, Culture and Sports) had organized a seminar for civil servants where I gave a lecture on Tax incentives for the creative industries with a focus on copyright industries (no. 8 in the annex). Through a video connection civil servants of the Kyoto branch could



also attend the lecture. Prof Goto provided for Japanese translations. After the lecture we had a very interesting discussion on several topics such as examples of good practices in other countries, reduced consumption tax for cultural products and services and a real estate tax incentive for barrier free museums.

2.2.9 19 Nov: Lecture at a conference organized in Kakegawa by Tokoha University

As part of a conference prof. Shiba organized for Tokoha University in Kakegawa, I gave a lecture on tax incentives for the creative industries (no. 9 in the annex). The audience was very diverse both in age and in background: university professors from various universities and faculties (including architecture and the faculty of design) and students. She organized the conference in a beautiful



building from the Meiji period which was a mixture of Japanese and western style. It was the first time in my life I gave a lecture in such a building and without shoes! Mrs. Tanaka kindly provided for Japanese translations of my lecture (she translated everything for me that day, which was fantastic!) at which she did a very good job. After the lecture we had an interesting discussion on what kind of incentives (tax or subsidies) work for which kind of purposes as a result as some interesting questions from the audience.



The evening of the conference, we had a very nice and informal party during which it was possible to discuss further and to get to know more people. It was a very well organized conference.

2.2.10 20 Nov: Tokoha University, Faculty of Law: two lectures for third year bachelor students



Prof. Shiba invited me to give two guest lectures to her third year bachelor students. The first lecture was Tax incentives for the creative industries (no. 9 in the annex). The second lecture was Work-Life Balance and Income Taxation in the Netherlands (no. 10 in the annex). Prof. Shiba provided for



short translations in Japanese. The students paid very good attention and had excellent questions after both lectures, they really showed that they were third year students. Different than in the Netherlands, however, in Japan the bachelor is four years instead of three in the Netherlands. The master in Japan is two years as opposed to only one year in the Netherlands.

2.2.11 21 Nov: Tokoha University, Faculty of Law: lecture for undergraduate administrative law students



Prof. Shiba asked me to give a guest lecture in the administrative law course to the second year bachelor students. The title of the lecture was "Tax Law as a Special Kind of Administrative Law and Protection of Tax Payer's Rights in the Netherlands" (no. 11 in the annex). It was a very big group of students, about 120. Prof. Shiba provided for Japanese translations and also added information



on Japan, which was very interesting for me. The students paid very good attention to the lecture and had very nice questions. After the lecture one student even came to me and asked an interesting question on tax compliance attitude in the Netherlands in very good English.

2.2.12 24 Nov: Meiji Gakuin University, Faculty of Economics, Department of Business Administration: lecture for master students

Prof. Nishiyama of Meiji Gakuin University, Faculty of Economics, Department of Business Administration had very kindly organized a lecture for master students, 'Fairness & taxation' (no. 12 in the annex), in English. First we had lunch with five master students (two second year and three first year master students), who all introduced themselves. Then one student had to leave for another lecture and I gave my lecture. After the lecture each student had a question for me. They had prepared the lecture for two weeks, they were very well prepared. The questions were very interesting, on the balance between government powers and rights of the individual, tax competition, the Irish



tax exemption for artists and free riding and whether or not an innovation box is leading to tax avoidance (showing the subjectiveness of 'aggressive' tax planning and the effects of tax competition). It was a perfect seminar to conclude my lecture tour in Japan. After the lecture prof. Nishiyama and I discussed our research projects.

2.2 Formal meetings

2.2.1 16 Nov: Meeting at the Tokyo Foundation with prof. Morinobu and prof Kawabata

Prof. Morinobu of the Law School of Chuo University had invited us to the Tokyo Foundation to discuss the Dutch income tax system. Prof. Morinobu is a senior fellow of the Tokyo Foundation, an independent Japanese think tank. He has been engaged in several policy research projects of the Tokyo Foundation on income tax reforms. Prof Kawabata is a professor of tax law of Yokohama National University and a frequent attendant of tax conferences all over the world, including the European Association of Tax Law Professors (EATLP) conference. It was very nice to meet him in Japan this time and that he could take the time to attend the meeting at the Tokyo foundation. Prof Shiba joined us later as she had to lecture in Shizuoka in the morning. We had a very interesting discussion on several topics: the move from tax deductions to tax credits, the box 3 deemed income taxation on savings and investments in the Netherlands



and particularly taxation of the digital economy. Prof Morinobu has written an article on this topic in Japanese which he kindly provided to me. He had some questions about the equalization tax proposal France did for taxing the digital economy in Europe and we discussed this. After our meeting we had lunch during which we continued our discussion. During lunch we also discussed tax incentives for films and video games which we all thought not to be a good idea. Also we discussed differentiation of consumption tax rates. In the Netherlands the new government proposed to increase the reduced rate from 6% to 9%. This might be a first step towards a single VAT

rate, which most economists and tax specialists in the Netherlands think would be a good idea. Japan currently has a consumption tax with only one rate of 8%. However, in two years this will be increased to 8% except for food and newspapers. This will probably lead to a lot of discussions on the definition of food and newspapers. Monthly and weekly journals are explicitly excluded because this might also



include pornographic magazines. This, together with taxes on google also lead us to the discussion on taxation of free speech: in the 18th and 19th century this was the argument used to lobby for the abolishment of stamp taxes on newspapers in Europe, in the 1990s and the early 2000 this was an argument against taxes on text messages, now it is an argument against tax on the use of megabytes. It was a very interesting discussion in which I learned a lot and which gave me much for thought!

2.2.3 17 Nov: Meeting with Ms Kawakami of Springer



On 17 November prof. Goto and I had a meeting with Mrs. Juno Kawakami at the Springer offices in Roppongi. She was the editor of our book 'Tax incentives for the creative industries' at Springer. We talked with Mrs. Kawakami about Springer activities and the sales of our book. Also she wanted to make twitter message of the photo we took together with the book. After our meeting we had a very nice

lunch in the Restaurant Voie Lactee in the beautiful [Musee Tomo](#) nearby. Even though we were in the middle of Tokyo, there was a beautiful garden we could look at from the restaurant.



2.3 Informal meetings not linked to a lecture or seminar

2.3.1 5 Nov: Dinner with the organizing professors

On my first evening in Japan, prof Goto, prof. Shiba and prof Miyamoto had organised a very nice dinner in Kyoto in the Iyemon salon, where the menu is focused around Japanese tea. We arranged for the last practicalities of my stay, did some necessary paperwork and had a very nice evening together. We were with two professors from a law school (prof. Shiba and myself) and two professors from a school of economics/business school (prof Goto and prof Miyamoto). We discussed amongst other things that even though during my research visits to Japan female professors play a major role, in general there are not that many female professors in Japan, especially not at economic faculties.



2.3.2 14 Nov: Dinner with pro. Yagi

Prof. Yagi of Doshisha University is one of the series editors of the Creative Economy series



of Springer. He kindly provided funding for the language check for the chapters of the book 'Tax incentives for the creative industries' which were written by Dutch authors. Prof. Goto had organized a dinner with him to thank him for his help. The dinner was in a typical Kyoto restaurant with refined Kyoto style dishes. It was delicious! During this dinner we had very interesting discussions. We talked about equality of pay between part time workers and full time workers. Prof. Yagi is currently studying this topic. In Japan part-time workers have

to be paid a pro rata parte of the full time wage. However, this is not the case in Japan. This is also caused because Japan always had many flexible workers without a fixed contract thus reducing the bargaining position of people with a part-time contract to increase their payment. This might also happen to the Netherlands given the increase of so called 'independent workers' since the economic crisis. They do not have a contract and have to pay for their own insurance. As a result they are often uninsured. The Netherlands now has over 1 million of those independent workers which is a large amount given the fact that the total workforce is between 8-9 million people. The substantial tax benefits for entrepreneurs have accelerated this trend. Changes in these incentives are fiercely opposed by lobby groups of these independent workers. The new government has announced changed, but it remains to be seen whether the government will be successful. We also discussed world politics and the difference between economic research and legal research.

2.3.3 15 Nov: lunch with prof. Shiba

Prof Shiba and I met in Shizuoka for lunch. We discussed the schedule of the coming days in Tokyo and she explained me where to go and which trains to take. We also discussed the field work students have to do for her seminar: a community bus project in Kambara. It was very interesting to learn about this. She has a seminar group of about 15 students in the 1st, 2nd, 3rd and 4th year. The seminar students for the 3rd and 4th year she can select herself. With these students she works on a project. The Kambara project is also funded by the local community. This is a very interesting



way of active academic learning for students!

2.3.4 17 Nov: Coffee with Olivier Valk, associate on secondment at Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho

I had a meeting with Olivier Valk, a colleague of the Allen & Overy office Amsterdam who is now on a secondment in the Tokyo office which is located in the Ropongi Hills Mori Tower. He showed me the office and introduced me to the partners and his roommate in the office. I also met Nick Wall again, the partner with whom I had a meeting when I was in Japan in 2014. It was very interesting to hear about the work Olivier is doing in the Tokyo office and about his life in Japan. He was obviously enjoying both!



2.3.5 18 Nov: Dinner with prof Shiba in Shizuoka



After I arrived in Shizuoka again, prof. Shiba and I had a very nice dinner in a small restaurant, Roku, in the center of Shizuoka. It was run by a young couple, whose children, as prof. Shiba informed me, were sleeping in the back room. A typical Japanese small family run business, with hard working owners and delicious food!

2.4 Cultural experiences

2.4.1 6 Nov Nov: attend children's Karate exam in Yamashina



My friend Ikuko took me to the karate exam of her children. Their teacher is an older man who also works for the Japanese Olympic karate team and who made a big effort to have karate as an Olympic sport. The other teacher is a lady, which might explain for the fact that there were quite a lot of girls in the class. It was really nice to see these little girls being very concentrated and confident when doing karate. I think it will help them in

their future lives to become strong women, maybe not even so much physically, but in any case mentally.

2.4.2 9 Nov: Osaka Doshomachi district and Osaka Central Public Hall

Yuka Shiba arranged for some special Osaka sightseeing before my lecture at Osaka Keizai University: we went to the Doshomachi district where since the Edo period Japanese pharmaceutical businesses were located. We first went to the Sukunahikona Shrine, where the Shinto deity of medicine is enshrined. As we were visiting very close to the Shinno Festival which is held every year on November 22nd and 23rd, we saw the activity of distribution of papier-maché tigers and bamboo leaves at the shrine. This tradition dates back to 1822 when an epidemic of cholera struck Osaka. It is said that pills named Kotosakkiuo-en were made, prayed over to cure the disease, and distributed along with papier-maché tiger amulets free of charge, and that this cured the disease. After visting the shrine, we went to the Doshomachi Pharmaceutical and Historical Museum which is located on the grounds of Sukunahikona Shrine. It tells the story of Doshomachi's rise as a medicine quarter. This



started in 1722 when 124 brokers of medicinal ingredients in the area were authorized by the shogunate Yoshimune as the kabunakama, a trade association that obtained the privilege of monopolizing trade in a specific field by paying a tax to the shogunate. As we were explained in the Mitsubishi Tanabe Pharma Historical Museum, the association of herbal medicine brokers had three functions: (1) a monoploly on importing herbal

medicine and ingredients from China (through Nagasaki); (2) a monopoly on the distribution of these medicines in Japan; and (3) inspections to ensure quality control and proper use of medicinal ingredients. When Western medicine was introduced in the Meiji period (1868-1912) Doshomachi merchants began studying Western medicine at the Osaka Pharmaceutical School (the predecessor of the present Osaka University School of Pharmaceutical Sciences), established in Doshomachi. Unfortunately, this building was closed when we passed it. Still the Doshomachi district is home to many pharmaceutical wholesalers and manufacturers. We went to the headquarters of Mitsubishi Tanabe Pharma which houses a historical museum. We were given a very interesting tour in English in the museum by a staff member. As one of the founding companies, Tanabe, started in 1678, the company has a very rich history. The museum houses a replica of the storefront in the Meiji area and a scale model of the whole shop, private living area and storage. The storefront was rather small, but the buildings were very deep. The reason? Tax! The wider the front of a building, the higher the tax. This explains for narrow fronts of Japanese old buildings. We learned a lot about the company. Still, Tanabe family members are working in the company. It was a really interesting journey in a very specific and interesting part of Japan's history.

We also visited the nearby Osaka Central Public Hall (also: Nakanoshima Central Hall) and its small museum. This is a western style building made of red brick that was built between 1916 and 1918 with funds donated by the stockbroker Einosuke Iwamoto. He was motivated by this donation by his experiences in the USA and the importance of charity for public causes there. The sad part of this story is that he came in financial distress afterwards and committed suicide, so he never saw the completed building. His four year old daughter presented the keys of the building to the mayor of Osaka at the opening ceremony of the building. The building features two concert halls and a restaurant. It has been restored and reopened in 2002 and has been designated an important building that should be kept for future generations. Interestingly, the building was designed by the same architect who designed the Museum of Kyoto annex, the former Bank of Japan Kyoto branch that I visited earlier that morning. The museum had a very nice special exhibition on "The Pleasure of Japanese Modern Paintings; Wood-one Museum of Art Collection", which also featured paintings on Foujita.



2.4.3 12-13 Nov Hiroshima, Miyajima, Osakikamijima Island and Takehara

On 12 and 13 November, prof Goto had organized a trip to Hiroshima, Miyajima, Takehara and Osakikamijima Island. We first went to Hiroshima, where we went of the A-bomb dome, the peace memorial park and the museum. It was very impressive. After this serious and solemn start of the day, we went on a boat to Miyajima Island. It was very nice as we went on one of the Hiroshima rivers and then out onto the sea. We walked around on the island. It was very crowded as it was a Sunday, but when we walked a bit further it became a bit more quiet and we had a wonderful view on the O-torii Gate. It was beautiful, with the sun going slowly down on it. It was a very nice experience.





We went back by Ferry and after a short, but very nice boat trip we took the train and the Shinkansen to a station where a hotel car waited for us. We stayed in a very nice Japanese style hotel. We first went to the onsen in the hotel and after that had a very nice Japanese dinner there.



On Monday Morning we first went to the onsen. After that we had a walk in the hotel garden, where they had an open air noh theatre. We had a nice Japanese breakfast in a room overlooking the garden. The hotel taxi brought us to Takehara from where we took a ferry to Osakikamijima Island. There we rented a bicycle and cycled next to the see and passed may orange groves. It is not a touristic



island yet, but they would like to welcome more tourists. It seems that before there were many shipyards, but also that many had to close down. We had lunch in a very small restaurant where we had



the typical okonomiyaki for this region (which is different from, for example, the Osaka one). It was very nice. There were two other customers in the restaurant and everybody liked to chat. I was the third tourist they had ever had in the shop aft people from Hong Kong and a carpenter from France who now lives in Japan. It was really nice. We cycled back to the ferry and the ferry brought us back to the city of Takehara where we



visited the historic district. It was very beautiful and quiet. Where we visited sites which attract many tourist the day before, this day we visited places which are not so frequently visited by tourists. Then we took the train back to Kyoto.

2.4.4 14 Nov: Miho Museum



My friend Ikuko took me in her car to the Miho Museum. This private museum opened in 1997. It is funded by a private foundation, the initiative from the museum was by a lady and her daughter who also provided the collection of the museum. It has a spectacular location in a natural mountain reserve. Furthermore it has an intriguing design. The architect of the museum was I.M. Pie. He also designed the large bell tower

which can be seen in the distance from the museum. The collection is also interesting: from ancient Egypt, the Roman and Greek era to Buddihst art, ceramic ware to the Japanese tea ceremony. The building was specially designed for this collection. It really is an intriguing combination of nature, architecture and the collection. Also it is a good example of what the private initiative can establish, having dreams instead of bureaucracy as the major diver.



2.4.5 17 Nov: National Art Centre, Tokyo

Prof. Goto and I went to the National Art Centre, Tokyo a beautifully designed building, made by the architect, Kisho Kurokawa, who also designed the Van Gogh Museum annex in Amsterdam. We went to see an exhibition on the architect Tadao Ando, which was very interesting. He has a very specific building style. The museum had even made a real life replica of one of his buildings, the church of light, which was quite impressive.



2.4.6 18 Nov: Yasukuni-jinja, Yushu-kan, Showa-kan

After having been in Hiroshima, I wanted to know more about how Japanese people had experienced the Second World War. That was why I decided to go to the Yasukuni-jinja, Yushu-kan and Showa-kan, even though the former is controversial. I really had a good thought about it. I also decided to visit the museum Yushu-kan to get a Japanese perspective. It was thought provoking. Then I visited the small National Showa Memorial Museum (Showa-kan) which shows how ordinary Japanese people and especially children lived in and just after the war.



19 Nov: Kakegawa Shunrinin temple, Matsugaoka house, Kakegawa castle, Shiseido Art House and Shiseido Corporate Museum

Prof. Shiba took me, prof. Tanaka and Mrs. Tanaka to a Japanese temple near Hosoya station in Kakegawa. A lady donated 500,000,000 yen to Kakegawa city for building Kakegawa castle. She passed away but her adopted son lives in the temple. In the temple Shunrinin we were informed by the adopted son of Mrs. Shiraki who was a priest of the temple on the life of Mrs. Shiraki. She was sent to a very good school before the war where she learnt English. In the war she was in the then Japanese part of China where she was a trade woman. She learnt to speak Chinese and got very rich. After the war she managed to take her wealth with her, hidden for example as diamonds in candy cans to Japan. She invested money in Tokyo and became even richer. Then she decided to sell her land in Tokyo when she was older and came to live in Kakegawa. She gave a lot of money to rebuild the castle. She adopted the priest and after she passed away her money went to the temple. In Japan temples are exempt from inheritance tax. We were also shown the palanquins from the Edo period and the beautiful 500 year old ceiling in one of the temple buildings.



After that we went to a former house, Matsugaoka, of a rich merchant family, the Yamazaki



family where we were given a very special tour by a gentleman who also joined the conference and who owns an antique shop in Kakegawa. The house was built towards the end of the Edo period. As emperor Meiji stayed there for a while in 1878 and as at that time the emperor was still seen as a god, they could no longer stay in the house and they built a new part to the house



where they could live. We were shown around in the whole house, including in the big safe, which size showed how rich they must have been. It also has a very nice garden. In

2016 the house was designated as a tangible cultural property of Kakegawa.

After that prof. Tanaka, Mrs. Tanaka and I went for a tour of the rebuilt Kakegawa castle. The tour was given by a volunteer guide and was really interesting. Because of the beautiful weather we could even see Mount Fuji from the top of the tower! The volunteer guide also led us through the Samurai place and then went with us to the place where the conference was held and where we had lunch.



After my lecture Mrs. Tanaka and I went to the Shiseido Art House and the adjacent Shiseido Corporate Museum, another kind of private patronage. Some years ago I already visited the Shiseido Gallery in Ginza (Tokyo), but this museum was much bigger. It consists



actually of two museums. The Shiseido Art House has a very nice collection of Japanese paintings, crafts and international sculptures. The Shiseido Corporate Museum tells the story of Shiseido, a company founded in 1872 and also shows the history of Shiseido design and advertisements. It was a very nice museum and a very nice of the company to the people as the entrance is free!

2.4.6 20 Nov: Dutch embassy Cleveringa Lecture

Prof. Shiba forwarded me an invitation to attend the Cleveringa Lecture “Getting the picture: Holland as a symbolic language in early modern Japan” of Ivo Smits, Professor of Arts & Cultures of Japan at Leiden University, in the Deshima Lounge in the Embassy of the Kingdom of the Netherlands. It was a very interesting lecture. Histories of early modern Japan (1600-1868) that deal with Japan’s contact with the rest of the world always mention that China and the Netherlands were the two exclusive trade partners of Japan in this period. They will also mention the creation of a Japanese discipline of “Hollandology” (rangaku), dedicated to the study of European knowledge. The story of this field of knowledge transfer has always been one of empirical knowledge. Yet around 1800, European symbolic images confronted Japanese scholars with a wholly different category of knowledge from the West. These images were not ‘realistic’ and had instead to be understood as symbolic messages. This lecture addressed the symbolic image (or emblem) as a major representative of Renaissance and later European worldviews, and its reception in early modern Japan. Specifically it will ask how early modern Japanese tried to make sense of Holland as a place that produced both realism and symbolism.

Next to the lecture, there was also a lot of time for speaking to people and meeting people. It was a big surprise when suddenly the president of Leiden University, Carel Stolker, was standing in front of me. For him it was not a surprise as he had seen the guest list because the lecture was organized by Leiden University and knew I would be there, so he told me. Even though I feel an alumna of Erasmus University as that is the university where I graduated, he told me that as I defended my PhD thesis in Leiden, I am officially also a Leiden University alumna. We know each other from the time I was working at the Faculty of Law of Leiden University and he was the dean of the faculty. It was really nice to meet him in Japan! I also met Olivier Valk again to whom I had forwarded the invitation to the lecture. I also spoke to people I had not met before, such



as a retired civil servant of the Japanese Ministry of foreign affairs who worked at the Japanese embassy in the Netherlands for 6,5 years to prepare for the celebrations of 400 years of relations between the Netherlands and Japan, a Dutch third year bachelor student from Wageningen University who studies for one year in Tokyo (it was very interesting to hear her experiences with the Japanese educational system), a lady who had just returned from seven years in the Netherlands with her husband who had come to the lecture together with her colleague of the TBS broadcasting company and said that her bond with the Netherlands is “that she just likes it very much” and another lady who had worked in the Netherlands and who now works for an Indian pharmaceutical company in Japan. It was a very interesting and well spent evening and definitely worthwhile the return trip from Shizuoka to Tokyo!

2.3.7 21 Nov: interactive lecture on Noh and study tour Kambara

Prof. Shiba took me to the main campus of Tokoha University where we had a lecture on



noh by a noh actor of a very old noh family, who learned from his father. When he was three he had his first role, as a monkey. It was all in Japanese, but very interactive, we even had to do some noh basics



ourselves. We practice the hands, standing and walking and we did the sound of the monkey (ká, ká, ká, ká) and the sound of the dog (bjoej bjoej bjoej, bjoej). During the discussion I was asked to make the sound of the Dutch dog (waf, waf, waf), which even differs from the German dog (wau, wau wau). So even our animals are deemed to make different sounds!

Subsequently, prof. Shiba took me to Kambara where her fourth year bachelor students did field research on the community bus. We had a ride with the community bus which was very well used by the citizens. Then we had a dinner with the fourth year students which was very nice.



2.3.8 22 Nov: Hakone



Prof Shiba, Mrs. Nagata (a friend of hers) and I went by Shinkansen to Odawara where a volunteer guide, mr. Asai, waited to take us to Hakone. He told us a lot about the history of Hakone. He had worked for Fuji Film company for 40 years, including 10 years in the USA. His English was very good. First we went by train to Hakone to leave our bags in the hotel. The hotel was located at the riverside, very nice. Then we went by bus to the lake Ashi, where we walked to the Hakone



Torii and Hakone Shrine. Then we walked on the old Tokaido road which all daimio and also the Dutch had to take once every two years to pay respect to the shogun in Edo. It took so



much time and money that the daimio could not plan revolutions. We went to the checkpoint where it was checked whether no unallowed goods or people were transported to or from Edo. Then we had lunch in a nice, cosy restaurant. After that we took a boat trip on the lake. From the other side of the lake we took the bus back to our hotel, also passing the volcanic area where we saw steam coming out of the ground (and where the typical black eggs were sold). In the hotel we first went to the onsen and then had dinner in the Chinese restaurant of the hotel. It was a very nice day.

2.3.9 23 Nov: Meiji shrine and Omote-sando

My friend Yuko took me to the Meiji shrine as during the Hakone trip I was recommended by our volunteer guide to go there. After that, we admired modern Japanese architecture (including a building of Ando Tadao, Omotesando Hills) in Omote-sando.



2.3.10 24 Nov: Tokyo Metropolitan Teien Art Museum and Irish harp concert in Meiji Gakuin University



I visited the Tokyo Metropolitan Teien Art Museum which is housed in a very well preserved art deco house, completed in 1933 as the residence of Prince Asaka. Designers who contributed to the house are Renée Lalique and Henri Rapin. Also the gardens are very beautiful.



Prof Nishiyama invited me to an Irish harp concert in the chapel in the Memorial Hall (built in 1890) of her university. The musician had made the harp himself and his wife had added beautiful traditional Japanese paintings on the harp. The music was from Ireland and Scotland and dated from the 17th century. It was a very special experience.

3 Resulting research projects

The contacts I have made, the lectures I gave and the discussions I have had during my lecture and research visit will at least lead to the following new research projects:

- ✧ Paper on implementation of BEPS in the EU (based on presentation 4) for a journal of Ritsumeikan University (request of prof. Miyamoto).
- ✧ Paper on Housing taxation in the Netherlands (based on presentation 7) for a book edited by prof. Shiba.
- ✧ Paper on culture and tax incentives (based on presentation 9) for a book edited by prof. Shiba.
- ✧ Paper on work life balance and taxation in the Netherlands (based on presentation 10) for a book edited by prof. Shiba (deadline 30 March 2018).



Annexes

Annex 1 Day-to-day programme

November	Day	Traveling	Activity
		Leave from Schiphol 14:25 KL867	
4	sat		
5	sun	09:15 Kansai Airport; MK shuttle taxi Kansai airport -> Mitsui Garden hotel Kyoto Sanjo	18:30 Dinner with Prof. Goto and Shiba and Miyamoto in Kyoto
6	mon		15.00 Ikuko Kyoto University
7	tues		16:40~Seminar at Setsunan university Economic aspects of the BEPS Project prof Kazuko Goto
8	wed		18:00-17:30 Ritsumeikan Uni. Nijo, Kyoto, prof. Toshiko Miyamoto Title: Tax Incentives for the Creative Industries Lecture , 10 minutes each After lecture, Question and discussion time. + Dinner (Japanese restaurant, Kyoto)
9	thu	12:45 Kyoto 13:00 Shinosaka	15:00 The Tekijuku School in Kitahama, Osaka http://www.geocities.jp/general_sasaki/tekijuku_school.html ; http://www.hetgallery.com/OSE_building_restaurant.html ;
			18:30- Osaka Keizai Univ Prof Shiba/Koga Seminar Fiscal partnership and Inheritance tax in the Netherlands lecture Presentation Lecture for 30 master students Tax Law (60 min + discussion 30 min) pizza in class; leave before 21.00
10	fri		15:00- Ritsumeikan Uni. BKC, Shiga, prof. Toshiko Miyamoto Title: EU Implementation of the BEPS Project (60 min presentation, 60 min discussion) + welcome dinner(French restaurant in Shiga)
11	sat		10:00- Kyoto Uni., Campus Plaza Kyoto, Kyoto, prof. Toshiko Miyamoto Title: EU Implementation of the BEPS Project: focus on controlled foreign companies ; (60 min presentation, 60 min discussion) + Lunch in Kyoto 16:00~ Seminar at Kansai university Implementation of BEPS in the EU: a focus on financial transactions (60 min presentation, 60 min discussion) prof Mie Tsuji + welcome dinner
12	sun	Kyoto--> Hiroshima	Visit to Hiroshima, Takehara and Kamiohsaki island.
13	mon	Hiroshima --> Kyoto	Visit to Hiroshima, Takehara and Kamiohsaki island.
14	tues		Ikuko: Miho Museum
15	wed	Kyoto --> Tokyo	10.58 Hikari from Kyoto --> 12.32 Shizuoka, lunch with prof. Yuka Siba, onwards to Tokyo
16	thu		10.45 prof Kawabata 11.15 meeting with prof. Morinobu and prof. Kawabata at Tokyo Foundation (discuss digital economy and taxation (vat specialist)) 12.00 with prof. Yuka Shiba arrives, lunch 16:00- Meikai Univ.Prof.Osugi Seminar Dutch Housing tax Presentation Lecture for 10 Professors of Meikai University (60 min + discussion 30 min)
17	fri		11:30 a.m. Springer meeting and lunch with Juno Kawakami and prof Kazuko Goto; 13.30 meeting with Olivier Valk Allen & Overy Tokyo (Roppongi Hills) 18:30 seminar at ministry of culture
18	sat	15.03Tokyo⇒Shizuoka	Museums Tokyo, 17.00 Tokoha University, dinner with prof. Yuka Shiba
19	sun	8.45 Shizuoka station; 8.56 shinkansen ⇒ 9:10 Kakegawa; Kakegawa⇒Shizuoka	Temple visit, visit to former merchants house (late edo period); 12.00 meet volunteer guide for Kakegawa castle visit; 13.00 lunch 14:00-15:00 Kakegawa; Tax incentives for the creative industries Presentation Extension lecture in Kakegawa (45 min + discussion 15 min) http://www.tokoha-u.ac.jp/info/170925/index.html , 15-17 Sisheido Museum in Kakegawa with Ms Tanaka, 17.30 dinner
20	mon		9:00-10:30 Tokoha Univ. Prof. Shiba Tax incentives for the creative industries. Lecture for 20 third year undergraduate students Tokoha Tax Law + discussion 10:40-12:10 Tokoha Univ. Prof. Shiba Work life balance and income taxation in The Netherlands ~ especially the difference between taxation of families with one income earner and families with two income earners. Lecture for 20 third year undergraduate students Tokoha Tax Law + discussion
		Hikari 4.38-->5.40 Tokyo Kodama 21.13 to Shizuoka	18.30-20.30 Dutch Embassy Tokyo, attend Cleveringa lecture Leiden University
21	tues		10.30 present; 10:40— 12:10 Tokoha Univ. Prof. Shiba Tax law as a special kind of administrative law and protection of tax payer's rights in the Netherlands Lecture for 140 students Tokoha Administrative law; (45 min + discussion 15 min) 13 : 00-17:00 Study tour in Kambara with students https://ja.japantravel.com/shizuoka/shizuoka-s-kanbara-post-town/17759 ;
22	wed	9.20 Hikari Shizuoka --> Hakone	Hakone
23	thu		National holiday. 15.00 Yuko Murata
24	fri		12.00 prof. Nishiyama will pick me up at the hotel
		15:58 Takanawadai → 16:40 Keisei takasago 16:53 Keisei takasago17:38 Keisei Narita (001-00004385-01 HOTEL Reservation No.) leave Narita 11:25 KL862; arrive Schiphol	13:25-15:00 Meijigakuin University Prof. Nishiyama Fairness & Taxation Lecture for 4 master students Tax Law Meiji Gakuin
25	sat	15:30	

Annex 2 Presentation slides

1. 7 Nov: Setsunan University, Faculty of Economics

Economic aspects of the BEPS project

Prof. dr. Sigrid Hemels
Erasmus University
Rotterdam
hemels@law.eur.nl

1

10 years ago: the start of the financial crisis

2

Result: increased budget deficits

- Bail out of banks and some European Union (EU) countries;
- Less corporate and personal income tax income for governments; and
- Increased expenditures for unemployment benefits

→ Many countries cut back on expenses and increased VAT
→ Additional burden on consumers

3

Do they pay their fair share?

Google, Amazon, Starbucks: The rise of 'tax shaming'

NEWS MAGAZINE

WANT FAIR

4

Principle of Fairness: legal and political philosophy

- H.L.A. Hart: principle of mutual restrictions: "when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission."
- John Rawls: principle of fair play the tax-dodger violates the duty of fair play as he accepts the benefits of government but will not do his part in releasing resources to it.

5

Fairness in relation to taxation

- Government provides for certain goods and services
- Financed by taxes
- Taxes: involuntary and compulsory contributions of citizens and companies to government without an individual return based on legislation.

6

Fairness: defined in relation to other tax payers

- George Klosko: fairness thesis
- Individuals are more willing to pay their taxes if they believe that others are paying their taxes: important reason for tax compliance.
- Explains emphasis on fairness in the economic crisis with heavier tax burdens to be shared.

7

Does fairness require consent to tax system?

- Multinationals, non-residents cannot vote on the tax system. Not bound?
- Locke (1764) tacit consent
- Rawls/Klosko: no specific consent needed
- Residing or operating in a certain jurisdiction implies benefitting from it and thus obliges to contribute no matter whether one has consented to the tax system or not.

8

Free riding

Making use of provisions of government without contributing

The Public Goods Game

cooperators free-riders

contribution benefits

Public Goods

9

Free riding violates fairness

- Rawls: Acting unfairly is not so much the breaking of a particular rule, but taking advantage of loop-holes or ambiguities in rules, availing oneself of unexpected or special circumstances which make it impossible to enforce them, insisting that rules be enforced to one's advantage when they should be suspended, and more generally, acting contrary to the intention of a practice.
- Happle: the idea of fair share implies that there is a limit to the tax adage that everyone is free to opt for the cheapest solution: one should not only adhere to the letter of the law but also feel bound to its spirit, "everyone's tax contribution is an expression of respect for society and fellow citizens"

10

European Commission

- 27-6-2012: "the fight against tax fraud and evasion is not only an issue of revenue, but also of fairness (...) Particularly in these difficult economic times, (...) honest taxpayers should not suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders."
- 22-5-2013: "The burden of taxation should be spread more evenly by ensuring that everyone, whether blue-collar employees, multi-national companies that benefit from the single market or wealthy individuals with offshore savings, contribute to public finances by paying their fair share..."
- Fairness: protecting compliant tax payers from non-compliant tax payers

11

How can government protect compliant tax payers

- Combat free riders
- Combat free riding
- → more complex in a globalised world
- Countries have to work together
- Willingness to reduce tax competition?

12

Combat free riding

- Impossible for one country on its own
- in a globalised world capital, patent rights etc can be moved easily to another country.
- Countries have to work together
- OECD: Base Erosion and Profit Shifting (BEPS) project.
- EU: Action plan to strengthen the fight against tax fraud and tax evasion




13

OECD/G20 Base Erosion & Profit Shifting (BEPS) Action Plan

OECD 2013: globalization boosts trade and investments, but provides tax planning opportunities for multinational enterprises (MNEs)

BEPS: tax planning strategies exploiting gaps and mismatches to artificially shift profits to low/no-tax locations with little or no economic activity

BEPS undermines the integrity of the tax system, increases burden on other tax payers, negative effect on compliance, harms fair tax competition.



14

BEPS project

All members of G20, OECD (incl. all EU Member States and Japan), BRICs and some developing countries participated in project.

15 actions to address BEPS


Aimed at preventing double/no/low taxation, tackling harmful tax practices and aggressive tax planning and a realignment of taxation and relevant substance (incl. improvement of transfer pricing rules) and increasing transparency.

Comprehensive package of measures ranging from new minimum standards to a revision of existing standards



15

October 2015: BEPS Package



16

Combat free riders

- In case of (illegal) tax evasion:
 - Trace and punish tax evaders and their advisers (vertical supervision)
 - disclosure obligations and heavier punishments also for advisers
 - Media coverage to deter potential tax evaders and enforce voluntary compliance
 - Focus on persons with high exposure



17

Football Stars Set For Prison?



18

Combat free riders

- In case of (legal) tax avoidance:
 - Government: moral appeal
 - Non-governmental organisations: media exposure
 - Consumers: boycott
- Reputational risk an important factor for businesses in deciding on proposed tax schemes



19

Combat free riding

Combine information already available

Oblige third parties to provide information to the tax authority

- Employers
- Banks, pension funds and insurance companies

Netherlands:

- one citizen service number (CSN) for all contacts with government (tax, social security, passport, pension, health insurance, bank account etc etc)
- Pre-filled tax return



20

Tax transparency changes in the EU as a result of BEPS

- EU: automatic exchange of information important instrument to fight BEPS
- BEPS-amendments to Directive on Administrative Cooperation 2011/16/EU (DAC)




21

Common Reporting Standard CRS

- Pre-BEPS, but direct result of crisis
- 2010: US FATCA reporting obligations on foreign financial institutions on accounts of US tax payers
- Bilateral InterGovernmental Agreements (IGA) with US: government sends information
- 2014: OECD single global standard (CRS) for automatic exchange of financial account information in tax matters
- Art 8 DAC, to be applied as of 2016: financial institutions must report information on non-resident account holders and their accounts
- Information is automatically exchanged in EU

22

Information on rulings (Action 5 / 8a DAC)

Automatic exchange in EU of information on cross-border tax rulings and transfer pricing arrangements

ruling: any advice, information or undertaking provided by a tax authority to a specific tax payer(s) concerning their tax situation and on which they are entitled to rely

- Broader definition than in BEPS Action 5
- Exchange of rulings only on request
- Applies as of 2017




23

Country-by-Country Reporting (Action 13 / 8aa DAC)

Action 13 standardised approach to transfer pricing documentation which obliges multinational enterprises (MNEs) to provide for:

- master file with high-level information on global business operations and transfer pricing policies which has to be available to all relevant tax administrations;
- local file with detailed transactional transfer pricing documentation specific to a country;
- for large MNEs a CbC Report that provides annually and for each tax jurisdiction in which they do business certain information on structure, transfer-pricing policy and internal transactions



24

Mandatory Disclosure (Action 12 / proposed DAC change)

- Mandatory disclosure of aggressive tax planning arrangements
- Already in the US, UK, Ireland, Portugal
- 21 June 2017: EC proposal 8aaa DAC
- As of 2019 reporting obligation for intermediaries who design and promote potentially aggressive cross-border tax planning arrangements.
- Exchanged automatically in the EU by submitting information on the disclosed arrangements through a standard form.
- Controversial: heavy administrative burden

25

Critique on increase of automatic exchange

- Lack of tax payer and data protection
- Automatic exchange may lead to less control over the accuracy and use of the information → more attention for tax payers' rights needed
- Giusy De Flora: states are more interested in obtaining the required information rather than ensuring the procedural rights of tax payers in the phase of exchange of information.
- Administrative burden for tax administrations
 - insufficient capabilities and resources
 - information overload

26

International shift: from the individual to the collective

- Until recently: emphasis on rights of individual tax payer:
 - (Bank) secrecy
 - Safeguards for tax payer in exchange procedures
 - Prevent double taxation
- Because of the economic crisis more focus on the collective
 - Prevent tax evasion
 - Exchange of information
 - Prevent double non-taxation
- Not black letter law but fair share

27

Difficult issue: tax competition

UK takes on Ireland with lower corporation tax regime

THE IRISH TIMES

Hybrid loans tax loophole worth billions of euros closed

- Countries compete for businesses and private capital with their tax system
- Companies choose countries with low tax rates, make use of disparities between tax systems
- How far will the willingness of countries to cooperate instead to compete go?

28

どうもありがとう
With warm regards from Holland!

29

2. 8 Nov: Ritsumeikan University

Tax incentives for the creative industries

FOUJITA

1

Starting point: the market

- Price and quantity are set by supply and demand → market equilibrium
- Reason for government to interfere: market failure:
 - Insufficient demand
 - Insufficient supply at the market equilibrium
- After interference not (only) price mechanism decides price and quantity, but (also) budget mechanism: democratic/bureaucratic process

2

Government reasons to financially support creative industries

Cultural policy reasons

- Furtiveness of excellence, innovation and access;
- Recognition and celebration of national, regional or local identity;
- Promotes of continuity;
- Furtiveness of diversity.

Economic policy reasons

- Contribution to the economy;
- Positive externalities;
- Reduce the trade balance;
- Rebound's cost disease;
- Reduce negative effects of the cost structure (high sunk and fixed costs and low marginal costs).

3

Arguments against government interference

- Government has limited information: market can do better
- Price too low because of government interference: too much consumption/production.
- Undesirable side effects
- Inefficiencies
- Competition between states leads to prisoners dilemma: less welfare for all.

4

How the government can interfere (instruments)

- Legislation
- Information campaigns, nudging
- Direct subsidies
- Taxation and tax incentives

→ Tax incentives only one of several possible instruments!

5

Drawbacks of tax incentives (OECD 2010)

Fairness:

- small group with strong lobbying power benefits
- Infringement upon ability to pay principle ("upside down effect")

Complexity

- Difficult to calculate costs
- Difficult to target at certain groups (VAT)
- Inviability undermines budgetary principles and functions: "no such thing as a free lunch!"

6

Important questions

- Why is government interference necessary?
- What is the policy objective?
- What is the most effective and efficient instrument to reach this policy objective?
- The answers to these questions should decide the instrument
- Prerequisite: tax incentives must be accounted for and controlled in the same way as direct subsidies to ensure an efficient and effective use

7

Reality

- Often not the questions, but decisive winners are easy money is
- Influence of strong lobby groups: great benefit of a small group, relatively small costs for large unanimous group of tax payers
- Ministries prefer a tax incentive (does not reduce their budget) over a direct subsidy (which reduces their budget)
- May lead to use of inefficient and ineffective instrument of tax incentives and not reaching the policy goal

8

Some examples of tax incentives for creative industries

- Tax incentives for film industry
- Tax incentives for videogames

9

Strong lobbies and tax competition

SCREEN DAILY

French film tax incentives have attracted more than 60 cinematographers

Hungary's Film Crew Tax Rebate System Extended through 2019

10

Problems

- Many changes in the incentives because of abuse and higher costs than estimated
- Film incentives do not create a film industry: too many countries compete with tax incentives
- Tax incentives stimulate commercial films, not artistic films. Because the tax incentives take away the risk: less market orientation.
- Conclusion: tax incentives for films are often not an efficient or effective way to reach targets of cultural policy.

Video games: Canada

Canada will not implement a 20% credit for development expenses

France and UK video games tax incentives

European Commission allowed these incentives for video games to compete with Canada, Australia, New Zealand and the USA

France: tax credit of 20% of qualifying expenses related to activities carried out in France, EU or EEA (max. credit EUR 3 min)

Staff costs, depreciation costs for fixed assets (not buildings) for video games

Development costs at least EUR 100,000

Mainly made with French/EU/EEA authors and creative collaborators

Fair competition with e.g. Japan?

Concluding remarks

- Tax incentives give benefits to certain industries → strong lobbies for introduction
- Make tax system less fair
- Can costs more than was anticipated → costs are born by all tax payers, benefits for a small group.
- Can lead to tax competition and all countries being worse off afterwards
- What are the benefits for a country as a whole? UK: employment, tourism
- also without the tax incentives?

どうもありがとう
With warm regards from Holland!

3. 9 Nov: Osaka Keizai University

Partner definition in the GSTA

- Separated married couples deemed unmarried.
- Married couples not partners if:
 - a request for divorce has been filed
 - not registered at the same address (exception: medical reasons or old age)
- A person can have only one partner.
- Married (under foreign law) to more persons: partner is the person of the oldest marriage.
- More than one cohabitation agreement: only oldest agreement taken into account.
- Cohabitation agreement with more than one person: not taken into account

13

But what about inheritance tax?

- Gift and inheritance and tax rate 2017:

group	value gift/inheritance	tax rate
1	Partners and children	
	€ 0,- to € 122.269,-	10%
	over € 122.269,-	20%
1a	grandchildren	
	€ 0,- to € 122.269,-	18%
	over € 122.269,-	26%
2	others	
	€ 0,- to € 122.269,-	30%
	over € 122.269,-	40%

14

Exemptions inheritance tax

Relation to deceased	exemption
Partner	€ 638.036,-
children	€ 20.209,-
grand children	€ 20.209,-
certain ill and disabled children	€ 60.621,-
parents	€ 47.859,-
others	€ 2.129,-
charities	full exemption

15

Who is partner for inheritance tax?

- Important question because of lower rate and high exemption!
- GSTA definition, but deviation:
- Not married or registered partnership: only partner if 6 months before death:
 - both are adult
 - both registered at the same address (exception: medical reasons or old age)
 - have a duty of care for another based on a notarial cohabitation agreement (exception: registered at the same address for at least 5 years)
 - Are not (grand)father/mother nor (grand)son/daughter
 - do not meet the requirements above with someone else

16

Last minute marriage

- Marriage or registered partnership to have a high inheritance tax exemption and low rate
- Unlike cohabitation agreement no minimum period
- However, new legislation proposed as of 2018:
 - if through marriage or notarial cohabitation agreement one partner gets the rights to more than half of the total assets: deemed a gift
 - if a marriage or notarial cohabitation agreement is concluded with the primary objective to avoid gift or inheritance tax, any change in equity between the partners qualifies as a gift.
 - The burden of proof of an avoidance motive is on the tax inspector.

17

Modernization in relationships reflected in inheritance tax

- Married couples and registered partners are treated the same
- Different treatment of couples who are not married/are not registered partners
- Reflects differences in rights and obligations included in the law (duty of care)

18

4. 10 Nov: Ritsumeikan University

EU Implementation of the BEPS Project

Prof. dr. Sigrid Hemels
Erasmus University Rotterdam
hemels@law.eur.nl

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10 years ago: the start of the financial crisis

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Result: increased budget deficits

- Bail out of banks and other European Union (EU) countries;
- Less corporate and personal income tax; and
- Increased expenditures for unemployment benefits

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Economic and Monetary Union (EMU)

- 19 EU Member States one currency: the euro
- Single monetary policy
- Strict rules: deficit may not exceed 3% of GDP
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- Curbing of tax evasion & tax avoidance, also by increased transparency in tax matters.
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- Fairness: protecting compliant tax payers from non-compliant tax payers

7

Free riding

Making use of provisions of government without contributing

The Public Goods Game

The diagram shows a balance scale. On the left side, labeled 'cooperators', two figures are shown contributing to a 'Public Goods' basket. On the right side, labeled 'free-riders', two figures are shown not contributing. The basket is tilted towards the cooperators, indicating that their contributions outweigh the free-riders' lack of contribution.

8

Combat free riding

- Impossible for one country on its own
- in a globalised world capital, patent rights etc can be moved easily to another country.
- Countries have to work together
- OECD: Base Erosion and Profit Shifting (BEPS) project.
- EU: Action plan to strengthen the fight against tax fraud and tax evasion

9

OECD/G20 Base Erosion & Profit Shifting (BEPS) Action Plan

- OECD 2013: globalization boosts trade and investments, but provides tax planning opportunities for multinational enterprises (MNEs)
- BEPS: tax planning strategies exploiting gaps and mismatches to artificially shift profits to low/no-tax locations with little or no economic activity
- BEPS undermines the integrity of the tax system, increases burden on other tax payers, negative effect on compliance, harms fair tax competition.

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- All members of G20, OECD (incl. all EU Member States and Japan), BRICs and some developing countries participated in project.
- 15 actions to address BEPS
- Aimed at preventing double/no/low taxation, tackling harmful tax practices and aggressive tax planning and a realignment of taxation and relevant substance (incl. improvement of transfer pricing rules) and increasing transparency.
- Comprehensive package of measures ranging from new minimum standards to a revision of existing standards

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October 2015: BEPS Package

A grid of 15 colored boxes representing the BEPS actions:

- Action 1: DIGITAL ECONOMY
- Action 2: HYBRIDS
- Action 3: CFC RULES
- Action 4: INTEREST DEDUCTIONS
- Action 5: HARMFUL TAX PRACTICES
- Action 6: TREATY ABUSE
- Action 7: PERMANENT ESTABLISHMENT
- Actions 8-10: TRANSFER PRICING
- Action 11: MORE DATA ANALYSIS
- Action 12: HORIZONTAL TAX PLANNING
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- Action 14: DISPUTE RESOLUTION
- Action 15: MULTINATIONAL INSTRUMENT
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Action 2, 3, 4, 5, 12 and 13 transposed in EU Directives

- Measures to establish international coherence of corporate income taxation (Action 2, 3, 4 and 5) → Anti Tax Avoidance Directive (ATAD)
- Measures to enhance tax transparency (Action 5, 12 and 13) → amendments to the Directive on Administrative Cooperation (DAC)

14

Anti Tax Avoidance Directive

- ATAD, Directive 2016/1164/EU
- Applicable to all corporate tax payers in a Member State.
- Not only BEPS measures (exit taxation and GAAR)
- Minimum standards
- Implements measures from the Proposal for a Common Corporate Consolidated Tax Base (CCCTB)
- Apply as of 1 January 2019 (hybrids: 2020)

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Hybrid Mismatches (Action 2)

- Hybrid mismatches exploit differences in the tax treatment of an entity or an instrument under the laws of two or more jurisdictions
- Lead to multiple deductions of single expense (DD) or deduction in one country, not taxed in another (D/NI), example: hybrid loan
- Neutralize by denying deduction (primary rule) or by taxing the income (defensive rule)
- EU Parent subsidiary directive (1-1-2015): distributed profits deductible for subsidiary; taxed at the level of the parent. (defensive rule)

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ATAD1 and ATAD2 (art 9)

- Mismatches between associated enterprises
- DD: investor jurisdiction must deny deduction and if this is not the case, the payer jurisdiction must deny deduction.
- D/NI: payer jurisdiction must deny the deduction and if this does not happen, the payee jurisdiction must include the payment
- Consistent with Action 2

17


Controlled foreign company (CFC) rules (Action 3 & art 7, 8 ATAD)

- taxpayers with controlling interest (>50%) in a foreign low taxed subsidiary can strip domestic high taxed base by shifting income into a CFC in a low tax jurisdiction.
- CFC rules re-attribute the income of the low-taxed controlled subsidiary to its parent company and tax it there.
- ATAD gives choice between:
 - categorical approach: inclusion of non-distributed specific types of (passive) income
 - substantive approach: arm's length approach, inclusion of non-distributed income from non-genuine arrangements

18

Limitations to the deductibility of interest (Action 4 and art 4 ATAD)

- limits the deduction of net interest expenses to 30% of taxable earnings before interest, taxes, depreciation and amortisation EBITDA
- interest received > interest paid: interest limitation rule does not apply
- Members states are allowed (not obliged):
 - net interest always deductible up to EUR 3 million
 - exclude standalone entities
 - apply at group level
 - group ratio as escape
 - carry forward/back exceeding borrowing costs
 - exclude long-term public infrastructure projects and financial undertakings



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Tax transparency changes in the EU as a result of BEPS

- EU: automatic exchange of information important instrument to fight BEPS
- BEPS-amendments to Directive on Administrative Cooperation 2011/16/EU (DAC)



20

Common Reporting Standard CRS


- Pre-BEPS, but direct result of crisis
- 2010: US FATCA reporting obligations on foreign financial institutions on accounts of US tax payers
- Bilateral InterGovernmental Agreements (IGA) with US: government sends information
- 2014: OECD single global standard (CRS) for automatic exchange of financial account information in tax matters
- Art 8 DAC, to be applied as of 2016: financial institutions must report information on non-resident account holders and their accounts
- Information is automatically exchanged in EU

21

Information on rulings (Action 5 / 8a DAC)

Automatic exchange in EU of information on cross-border tax rulings and transfer pricing arrangements

- ruling: any advice, information or undertaking provided by a tax authority to a specific tax payer(s) concerning their tax situation and on which they are entitled to rely
- Broader definition than in Action 5
- Exchange of rulings only on request
- Applies as of 2017




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Country-by-Country Reporting (Action 13 / 8aa DAC)

Action 13 standardised approach to transfer pricing documentation which obliges multinational enterprises (MNE's) to provide for:


- master file with high-level information on global business operations and transfer pricing policies which has to be available to all relevant tax administrations;
- local file with detailed transactional transfer pricing documentation specific to a country;
- for large MNEs a CbC Report that provides annually and for each tax jurisdiction in which they do business certain information on structure, transfer-pricing policy and internal transactions



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Implementation in EU

- 2006 Code of Conduct on transfer pricing documentation in the EU (EU TPD) includes the master file and the local file
- Soft law: no obligation for Member States
- Directive 2016/881/EU introduced the CbC-report and the mandatory automatic exchange thereof as hard law in art 8aa & Annex III DAC.
- Consolidated group revenue < EUR 750 million: exempt from the CbC reporting obligation
- Had to be applied as of 5 June 2017, first CbC report over 2016 (allowed to postpone to 2017)



24

Mandatory Disclosure (Action 12 / proposed DAC change)

- Mandatory disclosure of aggressive tax planning arrangements
- Already in the US, UK, Ireland, Portugal
- 21 June 2017: EC proposal 8aaa DAC
- As of 2019 reporting obligation for intermediaries who design and promote potentially aggressive cross-border tax planning arrangements.
- Exchanged automatically in the EU by submitting information on the disclosed arrangements through a standard form.
- Controversial: heavy administrative burden




25

Critique on increase of automatic exchange

- Lack of tax payer and data protection
- Automatic exchange may lead to less control over the accuracy and use of the information → more attention for tax payers' rights needed
- Giusy De Flora: states are more interested in obtaining the required information rather than ensuring the procedural rights of tax payers in the phase of exchange of information.

- Administrative burden for tax administrations
- insufficient capabilities and resources
- information overload



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Other BEPS Actions




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Action 1 (tax & digital economy)

- Still very much in discussion in the EU
- Current EU president Estonia: online advertisement tax, levy on video-streaming, withholding tax or an equalization levy on digital services, virtual permanent establishment (pe): significant digital presence → liable to profit tax.
- France (backed by 9 other Member States): "equalisation tax" between 2% and 5% on turnover → advantageous for big Member States.
- European Commission: spring 2018 International agreement on taxing digital economy preferred.



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Soft law solution: IP regimes (Action 5)


- Not a Directive, but assessment by the EU Code of Conduct Group (Business Taxation) on harmful tax competition.
- 2014: All EU patent box regimes must be put in line with Action 5 modified nexus approach: present sufficient economic substance.
- Code is not legally binding but has political force
- 2014: none of the EU patent box regimes were compatible with the modified nexus approach.
- Regimes closed to new entrants from July 2016 and benefits for existing claimants end by June 2021.
- Many Member States (incl. NL) have made changes.



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Action 6,7,14,15: tax treaties

- No EU wide measures to eliminate double taxation → Member States have kept sovereignty to conclude tax treaties. Only soft law on EU level
- January 2016 EC recommendation on the implementation of measures against tax treaty abuse encourages EU Member States to:
 - include a principal purpose test (PPT) based general anti-avoidance rule in tax treaties (Action 6)
 - implement and make use of the proposed new provisions to Article 5 of the OECD Model Tax Convention to address artificial avoidance of permanent establishment status (Action 7)



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Action 8-10: transfer pricing

- Not harmonized in the EU
- European Council endorsed the Actions 8-9-10 reports in November 2016
- EU Joint Transfer Pricing Forum (JTPF) assists and advises the European Commission on transfer pricing tax matters
- JTPF investigates whether EU TP guidelines need revision to be consistent with OECD BEPS minimum standards.



31

Conclusion

- Financial and economic crisis hit Europe, especially EMU countries, hard.
- Consumers felt that they had to bear the burden of the crisis which was caused by banks.
- Call for more transparency in tax matters and closing of loopholes leading to tax evasion and tax avoidance.
- BEPS project coincided with EU developments
- BEPS project huge impact on EU hard law:
 - substantive provisions in EU corporate income tax laws
 - increased automatic exchange of information obligations.
- Worries about tax payer's protection and information overload tax administrations

32

どうもありがとう
With warm regards from
Holland!



33

Erasmus

EU Implementation of the BEPS Project: focus on controlled foreign companies

Prof. dr. Signé Hemels
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Controlled Foreign Companies


- Taxpayers with a controlling interest in a foreign low taxed subsidiary (CFC) can strip their high taxed base by shifting income into a CFC in a low/no tax jurisdiction.
- CFC rules re-attribute the income of the low-taxed CFC to its parent company.
- The parent company becomes taxable on this attributed income



14

CFC rules before BEPS


- Many countries (including Japan) already had CFC rules
- Scope and application varied.
- Half of the EU Member States (including the Netherlands) did not have CFC rules



15

BEPS Action 3

- Aim: help countries to design CFC rules that effectively prevent taxpayers from shifting income into foreign subsidiaries
- No minimum standards, but 6 building blocks:
 - definition of CFC;
 - exemptions and threshold requirements;
 - definition, computation and attribution of income;
 - prevention and elimination of double taxation.
- design options in line with EU law



16

Anti Tax Avoidance Directive

- ATAD, Directive 2016/1164/EU
- Rules applicable to all taxpayers subject to corporate tax in a Member State.
- Minimum standards
- Also CFC rules: art 7 and 8 ATAD
- Must be implemented by Member States as of 1 January 2019



17

ATAD CFC-rule – The basics

- CFC or tax-exempt PE**: Parent company/head office holds directly or through an affiliate more than 50% by vote, value or profits in foreign company or permanent establishment.
- Passive income**:
 - Method A: categorical approach: interest, dividends, capital gains shares, income from banking, insurance, financial leasing, similar activities and invoicing companies without substantive economic activity within EU/EEA.
 - Method B: substantive approach: undistributed income from non-genuine arrangements if relevant significant people functions are performed by parent/affiliates in parent's jurisdiction.
- Low tax test**: Income (calculated under parent jurisdiction's principles) incurs less than 50% of taxes that would be payable in parent jurisdiction.
- Income inclusion**: Parent must pay tax on passive income in home country with a credit for the foreign tax paid and set-off against tax upon distribution.

18

Member States may apply stricter CFC rules

- Reduce the control threshold;
- Employ a higher threshold in comparing the actual corporate tax paid with the corporate tax that would have been charged in the Member State of the taxpayer;
- Apply domestic or agreement based provisions which grant a higher level of protection



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CFC-rule – Method A v. Method B

- Method A: categorical**
 - Includes specific types of passive income in taxable base of tax subject.
 - Income included, unless:
 - One of three possible exceptions apply
- Method B: substantialist**
 - Includes income derived from non-genuine arrangements in taxable base of tax subject.
 - Income not included, unless:
 - One of two possible exceptions apply

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CFC Rule – Model A

Model A includes the following taxed income:

- interest or any other income generated by financial assets;
- royalties or any other income generated from immovable property;
- dividends and income from the disposal of shares;
- income from financial leasing;
- income from insurance, banking and other financial activities;
- income from invoicing companies that earn fees and exclude income from and exist to associated enterprises, and act or in the economic value.

21

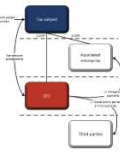
CFC Rule – Model B

Model B includes the following taxed income:

- derived from an arrangement, or a series thereof that are regarded as non-genuine to the extent that the entity or permanent establishment controlled on the basis of, or would not have undertaken the rules which generate all, or part of its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

Member states may exclude the following situations:

- The CFC realises no more than EUR 750,000 in accounting profits, and no more than EUR 10,000 in non-trading income.
- or
- The CFC realises accounting profits that amount to no more than 10% of its operating costs, excluding cost of goods sold outside the CFC-jurisdiction and payments to associated enterprises, for the tax period.



22


Method A v. Method B

- Method A**: Substantive economic activity, a term that has not been defined in the ATAD.
- Method B**: Significant people functions, developed in relation to the allocation of profits to permanent establishments.
 - Term is used in OECD 2010 report on the Attribution of Profits to Permanent Establishments.
 - Generally speaking, 'Relates to the place where the people are that assume and manage risks on a daily basis. Where are the key-decisions taken in respect of certain assets?'

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Calculation of income parent

- Calculated in proportion to the taxpayer's participation in the CFC in the tax period of the taxpayer in which the tax year of CFC ends



24

Additional measures to avoid double taxation



If the CFC entity distributes profits that were included in the taxable income of the taxpayer, these are deducted from the tax base when calculating the amount of tax due on the distributed profits.

If the taxpayer disposes of its participation in the CFC entity or of the business carried out by the CFC permanent establishment, any part of the proceeds from the disposal that was previously included in the tax base is deducted from the tax base when calculating the amount of tax due on those proceeds.

- The Member State of the parent must allow a deduction of the tax paid by the CFC entity or permanent establishment

25

Relation with transfer pricing rules



Implementation of ATAD does not affect the obligation of taxpayers to comply with the arm's length principle or the Member State's right to adjust a tax liability upwards in accordance with the arm's length principle

First: transfer pricing adjustments

If the subsidiary is not sufficiently taxed after such adjustments, the CFC rules can be applied

26

Many options, many CFC-rules?

- Member States can choose between many options
- Risk: still different CFC rules in different EU Member States



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6. 11 Nov: Kansai University



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- Neutralize by denying deduction (primary rule) or by taxing the income (defensive rule)

1. Amendment EU Parent subsidiary directive (PSD)

- Original aim (1990): prevent economic double taxation of profits distributed within an EU group of companies:
 - No withholding taxes on dividends
 - No taxation on distributed profits at level of parent (cf Dutch participation exemption)
- As a result of BEPS second aim (2015): counter undesired tax planning within the EU by tackling hybrid loan mismatches and introducing a general anti-abuse rule.


Hybrid mismatches and PSD

- Distributed profits deductible for subsidiary → taxed at the level of the parent.
- Not in line with BEPS: instead of primary rule (no deduction at level sub), defensive rule.
- Limited scope: only hybrid profit distributions from subsidiaries to parents

2. ATAD1 and ATAD2 (art 9)

- All mismatches between associated enterprises (25%)
- Also with third countries
- DD: investor jurisdiction must deny deduction and if this is not the case, the payer jurisdiction must deny deduction.
- D/NI: payer jurisdiction must deny the deduction and if this does not happen, the payee jurisdiction must include the payment
- Consistent with Action 2
- Rules apply as of 1 January 2020

Deduction of interest




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Intra group financing BEPS risks (Action 4):

1. Groups placing higher levels of third party debt in high tax countries;
2. Groups using intragroup loans to generate interest deductions in excess of the group's actual third party interest expense;
3. Groups using third party or intragroup financing to fund the generation of tax exempt income




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Action 4 recommendation

- Total interest paid > total interest received
- Limit net deductions for interest and equivalent payments to a percentage of earnings before interest, taxes, depreciation and amortisation ("EBITDA").
- Fixed ratio rule between 10% and 30%
- No distinction group or third party interest
- As a minimum this should apply to entities in multinational groups.




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Action 4 possible deviations

- Fixed ratio can be supplemented by a worldwide group ratio rule
- EBITDA rule can be replaced by different group ratio rules, such as an equity escape rule.
- Equity escape rule compares level of equity and assets to those held by its group.
- No group ratio rule: apply fixed ratio rule to entities in multinational and domestic groups without improper discrimination.




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Art 4 ATAD

- Limits the deduction of net interest expenses to 30% of taxable earnings before interest, taxes, depreciation and amortisation (EBITDA)
- interest received > interest paid: interest limitation rule does not apply
- Must be implemented before 1 January 2019
- If equally effective national targeted rules for preventing BEPS risks exist on 8 August 2016: may be applied until 1 January 2024 instead.
- Member States may provide for a grandfathering clause covering loans existing on 17 June 2016 if terms are not subsequently modified



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Members states are allowed (not obliged) deviations

- Net interest < 3 mln always deductible
- Exclude standalone entities
- Apply at group level
- Alternative: taxpayer's earnings before interest and tax (EBIT)
- Use targeted rules against intra-group debt financing (e.g thin capitalisation rules), in addition to the EBITDA rule.
- Exclude long-term public infrastructure projects
- Exclude financial and insurance undertakings




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Group ratio escape

- Up to Member States (no obligation)
- For taxpayers part of a consolidated group for financial accounting purposes
- Calculated in two steps:
 1. group ratio determined by dividing exceeding borrowing costs of the group vis-à-vis third-parties over the EBITDA of the group.
 2. group ratio multiplied by EBITDA of the taxpayer




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Equity escape

- Up to Member States (no obligation)
- Interest limitation rule does not apply if the company can demonstrate that its equity over total assets ratio is broadly equal to or higher than the equivalent group ratio
- Tax payer ratio may be lower to group ratio by up to two percentage points.
- Assets and liabilities valued using the method from the consolidated financial statements




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Carry forward/ carry back exceeding borrowing costs

- Member States may provide for rules:
 - a) to carry forward, without time limitation, exceeding borrowing costs;
 - b) to carry forward (no time limitation), and back (max 3 years), exceeding borrowing costs; or
 - c) to carry forward (no time limitation), exceeding borrowing costs and, for a max. 5 years, unused interest capacity.
- Member States may place time limits or restrict the amount of unrelieved borrowing costs that can be carried forward or back.



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ALLEN & OVERY

• Non-compliant with ATAD
• Compliant with ATAD
• Same conditions as ATAD + no group escape

Country	Similar existing treaty	Country	Similar existing treaty	Country	Similar existing treaty
Austria	2019	Germany	2019	Netherlands	2019
Belgium	2024	Greece	2019	Poland	2019
Croatia	2024	Hungary	2024	Portugal	2024
Cyprus	2019	Ireland	2019	Romania	2024
Czech Republic	2024	Italy	2024	Slovak Republic	2024
Denmark	2024	Latvia	2024	Slovenia	2019
Estonia	2019	Lithuania	2024	Spain	2019
Finland	2019	Luxembourg	2019	Sweden	2019
France	2019	Malta	2019	UK	2019

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Conclusion EU interest deduction limitation rules

- Follows best practice included in Action 4
- Member States are allowed many choices → rule may be implemented differently in different Member States.



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Differences in implementation/speed

- Equivalent with the German interest barrier rule of 2008:
 - 30% EBITDA, 3 million threshold, group escape
 - Pending case before the German Constitutional Court (breach of ability to pay principle?)
- Netherlands: not yet compliant with ATAD
 - Based on Coalition Agreement as of 2019: 30% EBITDA with threshold €1 million, no group escape.
- Spanish CIT Law as from 1 January 2015 includes an interest deductibility limitation rule in line with ATAD:
 - General limitation of net financial expenses = 30% EBITDA with minimum threshold €1 million
- United Kingdom as of 1 April 2017 compliant with ATAD:
 - 30% EBITDA with threshold €2 million with group escape
- Wide range of additional restrictions in various countries

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Tax transparency changes in the EU as a result of BEPS

- EU: automatic exchange of information important instrument to fight BEPS
- BEPS-amendments to Directive on Administrative Cooperation 2011/16/EU (DAC)




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Common Reporting Standard CRS

- Pre-BEPS, but direct result of crisis
- 2010: US FATCA reporting obligations on foreign financial institutions on accounts of US tax payers
- Bilateral InterGovernmental Agreements (IGA) with US: government sends information
- 2014: OECD single global standard (CRS) for automatic exchange of financial account information in tax matters
- Art 8 DAC, to be applied as of 2016: financial institutions must report information on non-resident account holders and their accounts
- Information is automatically exchanged in EU



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Information on rulings (Action 5 / 8a DAC)

Automatic exchange in EU of information on cross-border tax rulings and transfer pricing arrangements

ruling: any advice, information or undertaking provided by a tax authority to a specific tax payer(s) concerning their tax situation and on which they are entitled to rely

- Broader definition than in Action 5
- Exchange of rulings only on request
- Applies as of 2017




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Country-by-Country Reporting (Action 13 / 8aa DAC)

Action 13 standardised approach to transfer pricing documentation which obliges multinational enterprises (MNE's) to provide for:

- master file with high-level information on global business operations and transfer pricing policies which has to be available to all relevant tax administrations;
- local file with detailed transactional transfer pricing documentation specific to a country;
- for large MNEs a CbC Report that provides annually and for each tax jurisdiction in which they do business certain information on structure, transfer-pricing policy and internal transactions



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Implementation in EU

- 2006 Code of Conduct on transfer pricing documentation in the EU (EU TPD) includes the master file and the local file
- Soft law: no obligation for Member States
- Directive 2016/881/EU introduced the CbC-report and the mandatory automatic exchange thereof as hard law in art 8aa & Annex III DAC.
- Consolidated group revenue < EUR 750 million: exempt from the CbC reporting obligation
- Had to be applied as of 5 June 2017, first CbC report over 2016 (allowed to postpone to 2017)



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Mandatory Disclosure (Action 12 / proposed DAC change)

- Mandatory disclosure of aggressive tax planning arrangements
- Already in the US, UK, Ireland, Portugal
- 21 June 2017: EC proposal 8aaa DAC
- As of 2019 reporting obligation for intermediaries who design and promote potentially aggressive cross-border tax planning arrangements.
- Exchanged automatically in the EU by submitting information on the disclosed arrangements through a standard form.
- Controversial: heavy administrative burden




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Critique on increase of automatic exchange

- Lack of tax payer and data protection
- Automatic exchange may lead to less control over the accuracy and use of the information → more attention for tax payers' rights needed
- Giusy De Flora: states are more interested in obtaining the required information rather than ensuring the procedural rights of tax payers in the phase of exchange of information.
- Administrative burden for tax administrations
- insufficient capabilities and resources
- information overload



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Conclusion

Financial and economic crisis hit Europe, especially EMU countries, hard.

Consumers felt that they had to bear the burden of the crisis which was caused by banks.

Call for more transparency in tax matters and closing of loopholes leading to tax evasion and tax avoidance.

BEPS project coincided with EU developments

BEPS project huge impact on EU hard law:

- substantive provisions in EU corporate income tax laws
- increased automatic exchange of information obligations.

Worries about tax payer's protection and information overload tax administrations

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どうもありがとう
With warm regards from Holland!



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39

7. Meikai University, Faculty of real estate science

Housing taxation in the Netherlands



Prof. dr. Sigrid Hemels
Erasmus University Rotterdam
hemels@law.eur.nl

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1

Facts and figures: private ownership 2005

Private dwellings in the Netherlands and % of privately owned houses, depending on urbanization

	Total		Owned		Social housing (rent)		Private sector (rent)	
	amount*	%	amount*	%	amount*	%	amount*	%
Very strongly urbanized	1,386	499	35.8	632	45.6	208	18.6	
Strongly urbanized	1,871	980	52.7	706	37.7	179	9.0	
Moderately urbanized	1,435	884	61.6	433	30.2	118	8.2	
little urbanized	1,351	910	67.3	348	25.7	89	6.5	
not urbanized	815	588	71.8	188	22.7	46	5.5	
Total NL	6,859	3,868	56.4	2,304	33.6	688	10.0	

* amount x 1000 houses
Source: VROM/SDI Witten - DVS/NOV

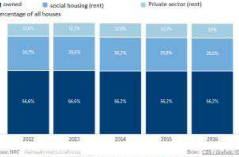


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Most recent figures 2012-2016

Less social housing, more private rent



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3

Housing associations property 2017



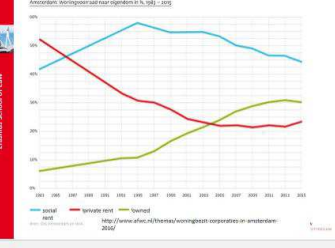
<https://maps.amsterdam.nl/afwc/>

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FIGURE 2

Percentage of private dwellings in the Netherlands, 1975-2016



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Private dwellings: ownership versus renting

- Compared with other European countries relatively few people own their house (2016: 56.2% in the whole of the Netherlands, only 28% in Amsterdam)
- Reason: many cheap rental houses, subsidized by the government (NL 34% social housing, in Amsterdam 42%). No need to buy, cheaper to rent
- Over the past few years, ownership has increased (1975 only 37.1% in NL, 14.8% in big cities)
- Big differences in the Netherlands: prices in big cities (Amsterdam) are increasing, in country side at the borders decreasing




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6

Tax incentive for private ownership : (1) low deemed income taxed


- Private dwellings are taxed differently
- Relatively low income taken into account regarding private dwelling: in general 0.75% of the woz value of the house.
- For example: for a house with a value of EUR 1.06 million (approximately 140 million JPY), income is deemed to be only EUR 7950 (app 1.05 million JPY)
- Income is taxed at the progressive rate (52% from an income of EUR 67,072 (8.8 million JPY))
- Individuals without debts regarding their house, are deemed to have **no income** from their house (incentive to pay debts)
- income from house never more than 0!
- New government want to change this in the coming 30 years
- Uproar of (mostly) elderly house owners



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Tax incentive for private ownership of houses: (2) deductibility of interest

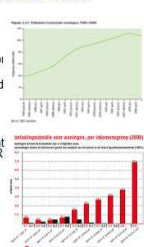
- The interest paid on the loan for a private dwelling is deductible from taxable income during 30 years
- Since 2013 obligation of annuity repayments.
- Therefore, owners of houses in general have negative income from their house (interest on debt exceeds by far low deemed income)
- Negative income can be deducted from labor and business income
- Low deemed income plus deductibility of interest therefore more attractive than box 3 taxation of other assets.



20

Incentives under discussion

- Interest deduction very expensive for the government: negative income resulting from the tax incentives for housing in 2010 EUR 9.2 billion (1241 Billion JPY)
- Prices of houses have increased because of the shortage of houses → increasing costs of incentives.
- Increase of interest rate → high increase of costs for government (increase of 1% point costs EUR 2 billion (270 billion JPY))
- High income groups profit most: more expensive houses, more debt, more interest deduction and at the highest rate of 52%



21

Pressure to limit/abolish tax incentives



- OECD and European Commission have advised the Netherlands to change the system to keep the Dutch budget in balance and to make the Dutch economy less sensitive to changes in prices of houses.
- Left wing parties in favor of abolishment/limitation.
- Several advisory committees of the Dutch government / parliament have advised to change the system.
- The chairman of the Dutch Central Bank and even the society of banks advised to change the system.




22

Only some minor changes over the years

- 2001: only interest for the house individuals are living in is deductible (second house is taxed on general box 3 rules)
- 2001: interest deduction limited to 30 years
- 2004: proceeds from the sale of a house are deemed to be used to finance the new house: no interest deduction for debt which equals the profit made on the old house
- 2009: also deemed income for the value of a house over EUR 1.06 million (before: deemed income maximized).

23



2013-2014 changes

2013: obligation of annuity repayment for new buyers. Extremely complicated

$$B_t = B_0 \left[1 - \frac{(1 + i)^t - 1}{i} \right]$$

2014 and later years: gradual reduction (0.5% per year) of maximum rate of deduction: 2014 51.5%, 2015 51%, 2016 50.5%, 2017 50%, 2018 49.5%, 2019 49%, 2020 48.5% etc → 38% in 2042



Government: end of discussion....

24

However: new government October 2017



- The maximum percentage against which interest for the private dwelling can be deducted will be reduced at a quicker pace: instead of steps of 0.5, steps of 3: 46% in 2020 (instead of 48.5%), 43% in 2021 (instead of 48%), 40% in 2022 (instead of 47.5%), 37% in 2023 (instead of 47%).

25

However: new government October 2017 (2)



- Over the coming 30 years also tax payers who do not pay mortgage interest will be deemed to have income from their private dwelling
- Income taken into account regarding private dwelling will be reduced to 0.6% (currently: 0.75%) of the woz value of the house.

26

Generation problem


- Older generation bought house against a lower price, can still fully deduct interest
- Younger generation is confronted with higher prices for houses and has to repay annually, get a lower mortgage

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To conclude

- Discussion about interest deduction is not yet finished
- Netherlands still very vulnerable for increases in interests rates
- Inequality between older and younger generation
- Will the new government be able to make the changes?
- To be continued!



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With warm regards from
Holland!



29

8. 17 Nov: Ministry of Culture

Tax incentives for the creative industries: a focus on copyright industries

Prof. dr. Signe Hemels
Erasmus University Rotterdam
hemels@law.eur.nl

1

First: back to basics

2

Starting point: the market

- Price and quantity are set by supply and demand → market equilibrium
- Reason for government to interfere: market failure:
 - Insufficient demand
 - Insufficient supply at the market equilibrium.

→ After interference not (only) price mechanism decides price and quantity, but (also) budget mechanism: democratic/bureaucratic process

3

Government reasons to financially support creative industries

Cultural policy reasons	Economic policy reasons
<ul style="list-style-type: none"> Furtherance of excellence, innovation and access; Recognition and celebration of national, regional or local identity; Promotion of continuity; Furtherance of diversity. 	<ul style="list-style-type: none"> Contribution to the economy; Positive externalities; Redress free rider behavior; Baumol's cost disease; Reduce negative effects of the cost structure (high sunk and fixed costs and low marginal costs).

4

Cool Japan Initiative July 2014

Severe economic environment, (i.e. Decrease in domestic demand)

Change the appeal of Japanese culture, lifestyle and clothing food and housing and contents (anime, drama and music) into additional value (Commercialization of the Japanese appeal) in addition to the traditional industry such as cars, home electronics and others.

Achieve Japanese economic growth (utilization of the Japanese enterprises / job creation) by capturing vibrant overseas demand.

The role of MEI: Linking 'Cool Japan Initiative' to private business and spreading them out to the world.

5

Arguments against government interference

- Government has limited information: market can do better
- Price too low because of government interference: too much consumption/production.
- Undesirable side effects
- Inefficiencies
- Competition between states leads to prisoners dilemma: less welfare for all.

6

How the government can interfere (instruments)

- Legislation
- Information campaigns, nudging
- Direct subsidies
- Taxation and tax incentives

→ Tax incentives only one of several possible instruments!

7

Drawbacks of tax incentives (OECD 2010)

- Fairness:
 - small group with strong lobbying power benefits
 - Infringement upon ability to pay principle ("upside down effect")
- Complexity
- Difficult to calculate costs
- Difficult to target at certain groups (VAT)
- Invisibility undermines budgetary principles and functions: "no such thing as a free lunch!"

8

Important questions

- Why is government interference necessary?
- What is the policy objective?
- What is the most effective and efficient instrument to reach this policy objective?
- The answers to these questions should decide the instrument
- Prerequisite: tax incentives must be accounted for and controlled in the same way as direct subsidies to ensure an efficient and effective use

9

Reality

- Often not the questions, but decisive where the easy money is
- Influence of strong lobby groups: great benefit of a small group, relatively small costs for large unanimous group of tax payers
- Ministries prefer a tax incentive (does not reduce their budget) over a direct subsidy (which reduces their budget)
- May lead to use of inefficient and ineffective instrument of tax incentives and not reaching the policy goal

10

Copyright industries

WIPO

- Definition World Intellectual Property Organization: industries which function under the protection of copyright and related rights
- Examples:
 - Literature, theatre, music
 - Film, television
 - Videogames

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Copyright

- Result of the creative process
- Intangible property right that protects an original work
- Can be sold or licensed and thus create income: royalties
- Taxed in the state where the copyright is located (source state)
- Highly mobile → can move to low taxed countries
- Reasons to introduce tax incentives:
 - attract economic activities
 - support artists

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Example of both reasons: Irish artists exemption

Since 1969: first: full exemption, 2006-2010: € 250,000 exempt, 2011-2014: € 40,000 (crisis) as of 2015: € 50,000 per year of profits of writers, composers, visual artists and sculptors from the sale of their work exempt from income tax

Artists must be resident in Ireland

Artists' tax exemption may be in line for a future revoking

13

Ireland: artists exemption

Must be an original and creative work having cultural or artistic merit:

- a book or other writing
- a play
- a musical composition
- a painting or other like picture
- a sculpture

In 2014 2,640 artists availed of the exemption at a cost of €5.8 million (average of just under €2,200 each).

14

Drawbacks

- Artists did not pay tax until 2006 and less tax than other people after 2006: fair?
- Many foreign artist moved to Ireland to benefit (singer Lisa Stansfield, authors Irvine Welsh and Michel Houellebecq, Def Leppard, singer Elvis Costello)
- Many rich artists benefitted
- Also used by writing sportsmen, politicians, journalists
- Artists/copyrights left Ireland when incentive was reduced
- Scheme can lead to tax competition in which all states loose.

15

IP boxes

- Not primarily for the creative industries: usually for Research & Development
- Reduced taxation of certain IP income, often not for copyright
- May lead to harmful tax competition

Year	IP Box rate	Non-taxable rate	Copyright	
Belgium	2007	4.8%	50%	No
Denmark	2001	2.2%	50%	No
France	2000	11.2%	30%	No
Germany	2000	4.5%	50%	No
Latvia	2011	2.2%	12.5%	Yes
Lithuania	2008	4.5%	20%	No
Malta	2010	0%	10%	Yes
Netherlands	2007	0%	20%	No
Spain	2008	1.7%	30%	No
Irish Culture of Intellectual Property	2011	8.6%	10%	Yes
United Kingdom	2013	11%	20%	No

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Film industry

17

Many countries have tax incentives for films

- France: special incentive for foreign films (Tax Rebate for International Films (TRIP))
- Because films and TV series situated in France were shot outside France because of foreign tax incentives.
- Also for animation and visual effects made (partly) by a French studio.
- Not: porn, violence, documentaries, commercials, corporate films
- Must spend at least EUR 1 million or 50% of eligible expenses in France

18

French TRIP

- Reimbursement of 30% of eligible costs (wages EU/EEA authors, actors, crew; location fees, technical expenditures, transport) if paid through French production services company.
- Priot et al 2015: TRIP funds granted to over 81 productions from 18 different countries, including Japan (Foujita and Ouhi no Yakata)

19

Nihon no hanga

Japanese Print Collection

Address for collection: 1-1-1, Nishi-Shinjyuku, Tokyo

20

Overview of U.S. Incentive Programs

Map of the United States showing various incentive programs by state.

21

Strong lobbies and tax competition

French film tax incentives less attractive than key EU counterparts, says CNC

Hungary's Film Crew Tax Rebate System Extended Through 2019

22

Problems

- Many changes in the incentives because of abuse and higher costs than estimated.
- Film incentives do not create a film industry: too many countries compete with tax incentives
- Tax incentives stimulate commercial films, not artistic films. Because the tax incentives take away the risk less market orientation.
- Conclusion: tax incentives for films are often not an efficient or effective way to reach targets of cultural policy.

23

UK: Creative Industry Tax Reliefs (CITR)

6 Corporation Tax reliefs: extra deduction or tax credit for content industry companies, reducing corporate income tax liability:

1. Film Tax Relief (FTR), April 2007
2. Animation Tax Relief (ATR), April 2013
3. High-end Television Tax Relief (HTR), April 2013
4. Video Games Tax Relief, April 2014
5. Theatre Tax Relief September, 2014
6. Orchestra Tax Relief (OTR), April 2016.

24

Video games: Canada

Canada has the third largest video game industry in terms of employment numbers following the USA and Japan

Province	Incentive	Rate
Alberta	Rebate on digital media tax credit	10% of eligible sales
British Columbia	Rebate on digital media tax credit	10% of eligible sales
Ontario	Rebate on digital media tax credit	10% of eligible sales
Quebec	Rebate on digital media tax credit	10% of eligible sales

25

France and UK video games tax incentives

European Commission allowed these incentives for video games to compete with Canada, Australia, New Zealand and the USA

- France: tax credit of 20% of qualifying expenses related to activities carried out in France, EU or EEA (max. credit EUR 3 mln)
- Staff costs, depreciation costs for fixed assets (not buildings) for video games
- Development costs at least EUR 100,000
- Mainly made with French/EU/EEA authors and creative collaborators.
- Fair competition with e.g. Japan?

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Concluding remarks

- Tax incentives give benefits to certain copyright industries → strong lobbies for introduction
- Make tax system less fair
- Can costs more than was anticipated → costs are born by all tax payers, benefits for a small group.
- Copyright industries are very mobile
- Incentives can lead to tax competition and all countries being worse off afterwards.
- What are the benefits for a country as a whole?
- UK: employment, tourism
- also without the tax incentives?

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9. 19 Nov: Lecture at a conference organized in Kakegawa by Tokoha University 20 Nov: Lecture at Tokoha University, Faculty of Law

Tax incentives for the creative industries: from Spectre via Foujita to U2

Prof. dr. Sigrid Hemels
Erasmus University Rotterdam
hemels@law.eur.nl

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4

Cool Japan Initiative July 2014

http://www.mof.go.jp/pressroom/info_sendai/monocrop/140702CoolJapanInitiative.pdf

Severe economic environment, (i.e. decrease in domestic demand)

Change the appeal of Japanese culture, lifestyle and clothing food and housing and contents (anime, drama and music) into additional value (Commercialization of the Japanese appeal) in addition to the traditional industry such as cars, home electronics and devices.

Revive Japanese economic growth (utilization of the Japanese enterprises / job creation) by capturing vibrant overseas demand.

The global market size of the creative industries

Gain momentum of Japanese enterprises which embody "Cool Japan" as developing and expanding overseas business.

5

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- Price too low because of government interference: too much consumption/production.
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- May lead to use of inefficient and ineffective instrument of tax incentives and not reaching the policy goal

10

Some examples of tax incentives for creative industries

- Tax incentives for film industry
- UK Creative Industry Tax Relief (CITR)
- Tax incentives for videogames
- Tax incentives for artists

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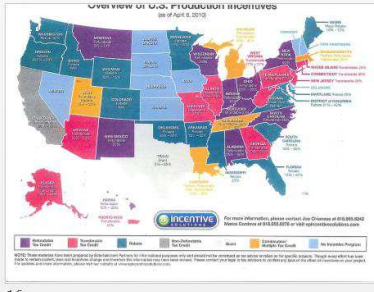
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15



16

Strong lobbies and tax competition

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The new trend to attract more foreign filmmakers to shoot in the country.



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- Film incentives do not create a film industry; too many countries compete with tax incentives
- Tax incentives stimulate commercial films, not artistic films. Because the tax incentives take away the risk less market orientation.
- Conclusion: tax incentives for films are often not an efficient or effective way to reach targets of cultural policy.



18

UK: Creative Industry Tax Reliefs (CITR)

- 6 Corporation Tax reliefs: extra deduction or tax credit for companies, reducing corporate income tax liability

 - Film Tax Relief (FTR), April 2007
 - Animation Tax Relief (ATR), April 2013
 - High-end Television Tax Relief (HTR), April 2013
 - Video Games Tax Relief, April 2014
 - Theatre Tax Relief September, 2014
 - Orchestra Tax Relief (OTR), April 2016.

19

Cultural test

Must be a 'British film', 'British programme' or 'British video game'.

Reason: EU State Aid rules

Certification and qualification by the British Film Institute (BFI) on behalf of the Department for Culture Media and Sport.




20

FTR results

- introduced in January 2007 to promote the sustainable production of British films.
- 1,390 film productions have become eligible to claim the new film tax relief since its inception.
- Of these, 1,050 film productions have made 1,900 claims, for a total £1.1bn.
- 1,700 claims have received payments totaling £995 million.



21

U.K. TV Tax Credit Injects Nearly \$400 Million in Economy in First Year

Hollywood

Tax relief sets stage for investment boom in UK cinema

Credits awarded to studios, which used on approximately equal when compared to projects with less advanced commercial appeal.

U.K. TV Tax Credit: The Numbers - December 2014 (18.12.14)

TV tax credit: The number of UK TV series and films eligible for the credit has risen sharply since the scheme was introduced in April 2010.

BRITISH CREATIVE INDUSTRY AND TAX RELIEF



22

video games: Canada

Canada has the third largest video game industry in terms of employment numbers following the USA and Japan.

Province	Program	Incentive	Notes
British Columbia	BC Film Production Tax Credit	15% of qualified British Columbia costs	Maximum cost: \$100,000
Manitoba	Manitoba Incentive for Creative Industries Tax Credit	40% of eligible cost	New cap of CAD 500,000 per project
Newfoundland and Labrador	Newfoundland Incentive for Creative Industries Tax Credit	40% of Newfoundland and Labrador eligible cost	Maximum cap of CAD 200,000 per project
Alberta	Alberta Incentive for Creative Industries Tax Credit	40% of eligible cost	Maximum cap of CAD 200,000 per project
Ontario	Ontario Incentive for Creative Industries Tax Credit	40% of eligible cost	Maximum cap of CAD 200,000 per project
Prince Edward Island	PEI Incentive for Creative Industries Tax Credit	20% of eligible PEI cost	For corporations that carry on a business in Prince Edward Island and are eligible to claim the credit
Quebec	Quebec Incentive for Creative Industries Tax Credit	30% of eligible cost	Maximum cap of CAD 200,000 per project

23

France and UK video games tax incentives

- European Commission allowed these incentives for video games to compete with Canada, Australia, New Zealand and the USA
- France: tax credit of 20% of qualifying expenses related to activities carried out in France, EU or EEA (max. credit EUR 3 mln)
- Staff costs, depreciation costs for fixed assets (not buildings) for video games
- Development costs at least EUR 100,000
- Mainly made with French/EU/EEA authors and creative collaborators.
- Fair competition with e.g. Japan?



24

Ireland: artists exemption

- Since 1969: first: full exemption, 2006-2010: € 250,000 exempt
- Now: € 40,000 per year of profits of writers, composers, visual artists and sculptors from the sale of their work exempt from income tax
- Must be an original and creative work having cultural or artistic merit:
 - a book or other writing
 - a play
 - a musical composition
 - a painting or other like picture
 - a sculpture
- Artists must be resident in Ireland






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Drawbacks

- Artists did not pay tax until 2006 and less tax than other people after 2006: fair?
- Many foreign artist moved to Ireland to benefit (singer Lisa Stansfield, authors Irvine Welsh and Michel Houellebecq, Def Leppard, singer Elvis Costello)
- Many rich artists benefited
- Also used by sportsmen, politicians, journalists publishing books
- Scheme can lead to tax competition in which all states loose.

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Private support of artists though companies (France)

- For companies that acquire works of art of living French artists: deduction of acquisition price (over 5 years) if the art is permanently on display in a location open to the public.
- Several advantages:
 - Support of contemporary artists
 - Public is introduced to contemporary artists





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Private support of musicians (France)

- Musical instruments may be too expensive for talented musicians.
- Companies acquiring musical instruments which they give on loan to musicians may deduct the acquisition costs (over 5 years) in France
- Advantages:
 - Musician can play an instrument which fits his/her talent
 - Public can enjoy this
 - Company has a direct bond with musician
 - Corporate image company






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Concluding remarks

- Tax incentives give benefits to certain industries → strong lobbies for introduction
- Make tax system less fair
- Can costs more than was anticipated → costs are born by all tax payers, benefits for a small group.
- Can lead to tax competition and all countries being worse off afterwards.
- What are the benefits for a country as a whole?
- UK: employment, tourism
- also without the tax incentives?



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29

Tax Incentives for the Creative Industries

どうもありがとう
With warm regards from Holland!

Want to read more?



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30

10. 20 Nov: Tokoha University, Faculty of Law

Work-Life Balance and Incentive Taxation in the Netherlands

Prof. dr. Agneta Blom
Erasmus University Rotterdam
agneta.blom@er.nl



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1

Position of the married woman in the Netherlands

First Dutch civil code of 1838: if a woman married she lost her full legal capacity and had the legal status of a child. She could not take decisions on joint possessions, the children or travel without permission of her husband

A woman working as a civil servant was dismissed until 1956 if she got married.

Legislation introduced by Christian parties in 1924 so that the married woman could be a good housewife and mother.

Conny Tendeloo, labour MP, initiated abolishment in 1957

As a single woman she was seen as 'incomplete'

Until 1971 in the civil code: man is the head of the marriage and woman owes him obedience




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2

Formal relationships in the Netherlands

- Until the 1970's: marriage dominant, in 1970 all time high: 124.000 marriages
- Until 1965 'not done' to live together without being married
- In 1960 average marriage age all time low: 24.7 for men and 22.7 for women
- Until 1970: parents formally had to give permission for a marriage if the couple was under 30 years
- After 1965: marriage less dominant and average marriage age increases



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3

Living together without being married

Since the 1970s and eighties more common for couples without children.

Since the 1990s more couples with children are not married.

No juridical status: could give problems when buying a house, upon death, with children.



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4

Cohabitation agreement

- Optional, no obligation
- Civil law contract with agreements: tailor made, no legal obligations unless included in the contract.
- For example:
 - costs of living together, of children
 - bank account
 - division of possessions when living together ends
- Form free, does not have to be made official, but sometimes necessary to have a notarial deed



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5

1998: introduction of 'registered partnership' in civil code

- Alternative for marriage, legal obligations and rights.
- In 1998 marriage still only for man and woman, registered partnership for man and woman and for same sex couples. Similar but not the same:
 - Not obliged to say 'I do' with registered partnership
 - Registered partnership without children can be ended without going to court
- 2016: 19% of the new couples opt for a registered partnership instead of marriage.
- Only with one person, not with family (same as marriage)

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6

2001: introduction of same sex marriage

Yearly amount of same sex marriages in NL

Two men Two women

7

How are these changes reflected in Personal Income Tax?

- Crucial equity question when designing a Personal Income Tax Act (PITA): is the unit of taxation the family or the individual → How to share the tax burden: tax total family income or incomes of individuals?
- Family: families with equal incomes (no matter which family member earns the income) pay equal taxes (across-family horizontal equity)
- Individual: tax burdens marriage neutral independent of whether persons are married, live together or alone (across-marriage horizontal equity)

8

Relevance

- Most PITAs have a progressive tax rate: the higher the income, the higher the tax rate.

Table 5-7 Individual income tax rates

Amount of taxable income	Tax rate
Over 0-3,000 yen	10%
Over 3,000-6,000 yen	20%
Over 6,000-12,000 yen	23%
Over 12,000-20,000 yen	33%
Over 20,000-30,000 yen	40%

€ 10,000 = ¥ 1,320,115

9

Effect of progressivity

Family tax taxes the ability to pay of the family.

- It does not matter whether one persons earns all income or whether both earn income:
 - 1 partner earns 8,000,000 yen the other 0
 - 1 partner earns 2,000,000 yen, the other 6,000,000 yen
- Pay the same amount in tax on family
- In tax on individual two working partners pay less because of the progressive rate (Japan: situation (a) 1.05 mln taxed at 23%, in (b), all income taxed at 20%. In NL: (a) 2.6 mln taxed at 36.55%, 5.4 taxed at 40.8% (b) 4.5 mln taxed at 36.55%, 3.5 mln at 40.8%)
- Family tax discourages the non working partner to start working and to working individuals to start a family (each additional yen taxed at the highest rate) 'marriage tax'

10

Netherlands: from family to individual

- Since 1892: family tax in the Netherlands for married couples: ability to pay of family, man supposed to earn family income
- Linked with position of the married woman under the Dutch civil code
- However: tax law lagged behind the civil code!
- Married woman did not exist for the PITA until 1965: her income was regarded to be the income of the husband even if the husband had no income and the woman earned the income (typical example: nurse married to a student)
- Married woman could not file an objection against a tax assessment nor file an appeal in court.
- Unmarried couples taxed as individuals

11

Differences between married and unmarried men and women

- Remember: married woman did not exist in tax law until 1965
- As of 1941 tax rate for married man lower than for unmarried men and women: to stimulate marriage (introduced by Germans, kept after WW II)
- In 1960 high burden on unmarried men and women somewhat relieved
- As of 1962 the married man was given a deduction of 1/3 of his wife's income (e.g. 2/3 of the wife's income was taxed in the man's tax assessment)
- Still expensive if the married woman earned income: government did not deem it correct to give an incentive to married woman to work.

12

Slow movements of PITA

- 1965: married woman got her existence back in PITA, but her income was deemed to be the income of her husband (again: even if he had no income)
- Still a high tax burden if the married woman worked

13

1973: limited fiscal autonomy for the married woman

Taxed over her own labor and business income: movement from family taxation to individual taxation.

However, all her other income (e.g. pensions, alimony, income from capital) still deemed husband's income

- Deductions such as interest on mortgage always deducted from the income of the husband (even if the woman earned more income: my aunt the doctor, her husband sociologist)
- Tax free allowance of married woman only 20% of allowance of married man (even if she earned more)
- Only exception in case of an explicit request to change roles (wife regarded as the husband and the husband as the wife). Only for tax free allowance: all deductions still taken into account in the assessment of the man.

14

Unmarried couples still taxed individually after 1973

- As of 1973 same tax rate for married and unmarried individuals (no longer higher rate for unmarried individuals)
- However, tax free allowance lower for unmarried individuals than for married men (but higher than for married women: 78% of allowance of married man for over 34 and 58% for under 34)
- Married man still deemed to earn the family income
- Still officially not an object to make working more attractive for women, however, at the time the workforce was tight, so it might have been an implicit reason to stimulate married woman to start working.

15

Effect of differences in tax free allowances

- Unmarried couple over 34 both earning income: higher total allowance (156%) than married couple both earning income (120%) (under 34 and unmarried: 116%)
- Unmarried couple with one working individual lower total allowance (56%/78%) than married couple with working man (100%)
- To marry or not to marry: better not if both partners worked!
- No difference between unmarried men and women: same tax free allowance
- No difference between couples living together and people living alone: both taxed individually.

16

1984: end of tax discrimination of married woman

- Aim: equal treatment of working married woman and man
- Pensions taken into account in tax assessment of spouse who earned it (alimony only as of 1992)
- Deductions and income from capital no longer taken into account in the tax assessment of the husband but in the tax assessment of the spouse with the highest income (could be the woman)
- Same individual tax free allowance for married man and woman
- More individual system in which married man and woman are treated equally but in which still some elements of family taxation are included (income from capital, alimony, deductions)

17

1984 also: more equal treatment of married and unmarried couples

- No longer deemed self evident that if two working individuals marry, the tax burden increases.
- Furthermore: more couples did not marry and more divorces: marriage not for ever.
- More unmarried couples who were economically comparable to married couples

18

Resulting 1984 PITA changes

- Unmarried couples same tax rate and tax free allowances as married couples.
- However: married person who earns all family income gets a higher tax free allowance (eventually: double of that of an individual)
- Negative effect if other spouse takes a small job
- Therefore: if the other spouse works and does not use the full allowance he/she can transfer the unused part to the other spouse
- Still individual taxation of unmarried couples: each partner is taxed over his or her own income (including income from capital) and can only deduct his/her own deductions (e.g. mortgage interest) and not a higher allowance if only one partner works.

19

Reflected in much lower participation of married Dutch women in the work force

- Percentage of working woman (alle vrouwen) - married women (gehuwde vrouwen): a comparison between Belgium (België) and the Netherlands (Nederland)

	België		Nederland	
	alle vrouwen	gehuwde vrouwen	alle vrouwen	gehuwde vrouwen
1960	36	20	26	6
1970	40	26	29	15
1980	48	40	38	29
1990	52	60	53	41

20

1998: registered partnership equal to marriage for PITA

- No difference at all for PITA between registered partnership and marriage.
- All other unmarried couples still treated differently

21

Income Tax Reform 2001

- One of the aims of this tax reform: to increase the participation on the labor market (also because of aging population), emancipation of women and economic independence of all citizens
- Additional tax credit for everybody who works.
- General tax credit is paid out to the partner who does not work (instead of a reduction for the working partner)
- Unmarried couples can opt to be treated as married couples
- As of 2009 reduction of transferability of general tax credit non-working partner if one partner is born after 1972

22

Current situation

- General State Taxes Act (GSTA): applies for all State Taxes, including Personal Income Tax Act (PITA) unless the PITA arranges otherwise

Partner:

- person with whom a person is married/has a registered partnership
- Unmarried adult with whom a notarial cohabitation agreement is made and who is registered on the same address
- Only one partner per person. If married to more than one person (under foreign law): spouse from oldest marriage is partner

→ Since 2011 no longer a choice for unmarried couple to be treated as a married couple, but if certain requirements are met automatically treated the same

23

In PITA even more situations in which unmarried couples are treated as married

- Individuals who are registered at the same address and who:
 - have a child together
 - have legitimized a child of the other individual
 - have registered the other individual as partner for a pension scheme
 - own a home together
 - are both over 18, live together with a minor child of one of both unless one person is formally renting from the other person
 - were partners in the previous year
- A person can have only one partner
- Partner under GSTA takes precedence.
- No partner under GSTA: first mentioned category in PITA takes precedence.

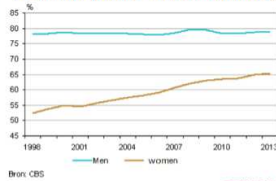
24

Effect of being regarded as partners for PITA

- Partners may freely distribute amongst themselves (as long as 100% is taken into account, if not: each partner is attributed 50%):
 - Income and interest deduction regarding the family home
 - Income from a substantial interest (in short: a share interest of 5% or more)
 - Certain personal allowances (certain family maintenance costs, certain costs for illness and handicapped children, brothers or sisters, educational costs, costs for maintaining monuments and charitable gift deduction). For thresholds income taken together
- All other income taxed individually

25

Increase of participation of women in the labor market



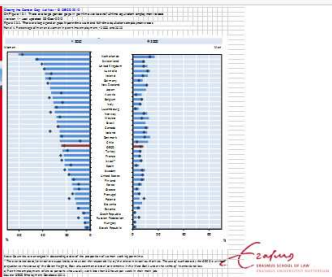
26

However, most women work part time

- Often still not economically independent
- Also more Dutch men work part time, but usually 4 days, whereas women often only work 2 or 3 days



27



28

Conservative (Christian) parties criticize the current system

- Couples with one working partner are taxed higher because of progressivity of PITA than couples with two working partners
- Suggestion to introduce a splitting system similar to Germany

29

German splitting system

- Divide the family income by half and tax each partner for half of the family income:
 - 1 partner earns 8,000,000 yen the other 0
 - 1 partner earns 2,000,000 yen, the other 6,000,000 yen
 – both taxed over 4,000,000 yen
- Beneficial for families with one income earner

30

October 2017: new government

- Even though two Christian parties are part of the government, splitting will not be introduced nor other benefits for couples with one income earning partner
- Reason: two other parties that form the government are a progressive and a liberal party who deem labor participation of women important
- Only child allowance is increased
- The Netherlands has definitely changed!


31

Modern times reflected in PITA


- Married couples and registered partners are treated the same
- Some other unmarried couples treated as married couples
- Men and women are treated the same
- An individual system with some small characteristics of a family taxation
- Both partners are encouraged to work
- Couples with the same family income with only one working partner taxed higher than two working partners
- System incentivizes economic independency and a work-life balance for both partners, but still a big difference in (full time) labor participation between men and women in the Netherlands.

32

11. 21 Nov: Tokoha University, Faculty of Law



Tax Law as a Special Kind of Administrative Law and Protection of Tax Payer's Rights in the Netherlands

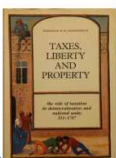



Prof. dr. Sjoerd Hemels
Erasmus University Rotterdam
hemels@law.eur.nl

1

Tax Law is a Special Kind of Administrative Law



- Special relation between government and citizens
- Citizens have to fund the government expenditures through taxation
- Government is more powerful than citizens: how to protect tax payer's rights?

2

Tax Law and the Right to Property

- Taxes are obligatory transfers of funds from citizens and companies to the government without a direct compensation
- What is the difference between robbery and taxation?


3

Right to Property is a Human Right

Article 17 Universal Declaration of Human Rights:

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be **arbitrarily** deprived of his property.



Problem: Universal Declaration is not a treaty → does not create legal obligations for countries




4

Right to Property and Human Rights Treaties



- Not included in the International Covenant on Civil and Political Rights
- Not included in the International Covenant on Economic, Social and Cultural Rights

5

Reason for Non Inclusion Right to Property

- One of the most controversial human rights, both in terms of its existence and interpretation:
 - Who is deemed to have property protected (also for entities)?
 - What type of property is to be protected (used for consumption or production)?
 - Reasons for which property can be restricted (regulations, **taxation**, nationalization in the public interest) → definition *not arbitrarily*





6

European Convention on Human Rights

Protocol, article 1:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.






7

Explicitly Allows for Taxation:

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of **taxes or other contributions** or penalties.

Relevant for the Netherlands, as Dutch Courts cannot test legislation against the Constitution (no Constitutional Court) but only against international treaties (take precedence over national legislation)

8

N.K.M. v. Hungary, 66529/11

- Hungarian civil servant dismissed (with many others) after 30 years: right to 8 months pay
- Taxed with 98% in 2011
- 98% tax introduced in 2010: successfully challenged before Hungarian Supreme Court.
- Hungarian Constitution was changed: Constitutional Court could no longer test tax legislation against the right to property.
- Still 98% tax for severance payments of certain civil servants over 3.5 million Hungarian Forint (1.5 million yen)




9

European Court of Human Rights (ECtHR)

- Although a little skeptical, satisfied that there was a legitimate aim: protection of the public purse.
- The real issue: proportionality.
- Tax rates exceeding 50% found unconstitutional in Germany and France
- Elsewhere marginal rates of 75% but started at much higher level than Hungarian tax.
- Overall tax burden on severance pay 52%: 3 times general Hungarian personal income tax
- Excessive and disproportionate burden.
- Not proportionate to the aim sought to be realized.




10

Other Case Law of the ECtHR

- Countries have a wide margin of appreciation.
- Breach of article 1 of the Protocol not quickly assumed in relation to taxation
- Example: Dutch Supreme Court allowed a 16% additional tax for employers over employee's wages over EUR 150.000 (20 million yen) during the financial crisis on top of the 52% tax from employees




11

However: Has to Be a Right to Remedy

- Both Dutch local and State taxes regarding real estate based on "WOZ-value"
- The Municipality establishes the WOZ value in a statement which is subject to objection.
- However, to reduce the administrative burden of municipalities and courts it was not possible to file an objection if the WOZ value deviated 5% or less from the value according to the tax payer.
- For example: a house with a value of € 350,000 could be assigned a WOZ value of 367,5000 without the possibility of appeal.




12

Dutch Supreme Court

- 2008: no breach of right to property
- 2010: Supreme Court explicitly changed its view art. 1 Protocol demands an effective right of remedy of every measure that prejudices the right to property (in the same way ECHR)
- Impossible because of the 5% margin → not binding and may not be applied by municipalities and courts
- Conclusion: Dutch Supreme Court applies a wide margin of appreciation, but does demand an effective right of remedy.

13

Right to Remedy in the Netherlands

- General administrative law in the Netherlands: appeal against all decisions of an administrative body
- However deviation in tax law: only appeal possible against:
 - tax assessments
 - statement which is subject to objection
- To reduce the administrative burden of the tax administration
- Criticized but not changed.

14

Japan: Article 29 of the Constitution

The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare. Private property may be taken for public use upon just compensation therefor.

→ last sentences open possibility for taxation, any Japanese case law on right to property and taxation?

15

Safeguard for Tax Payers: Legality Principle

Dutch Courts cannot give much protection because of wide margin of appreciation

- However: basic and long standing principle that taxes may only be raised with approval of citizens
- Magna Carta 1215: King cannot impose taxes without the approval of the common counsel of the Kingdom

16

Constitutional Principle

- Taxes to be created based on democratic rules
- Netherlands: article 104 of the Constitution: *Taxes can only be levied based on a law*
- Japan: article 30 of the Constitution: *The people shall be liable to taxation as provided by law.*

→ Parliament, the democratically elected representatives of the people, has to agree on tax legislation

→ Important safeguard for tax payers

17

Other Important Safeguard: Principles of Sound Administration

- Important to test the legality of actions of the tax administration
- Based on tax case law and also (partly) codified in the Dutch General Act on Administrative Law

18

Examples of these Principles

- Principle of legitimate expectations
- Principle of equality
- Principle of fair play
- Proportionality principle
- Principle of duty of care

19

Principle of Legitimate Expectations Important in the Netherlands

- Dutch "polder model": cooperation
- Certainty in advance basic cornerstone of Dutch tax policy
- Rulings for companies on tax treatment
- Cooperative compliance

20

Conclusion

- Tax law is a special kind of administrative law: has a big impact on the human right to property
- Requires special safeguards
 - No excessive individual burden
 - Right to remedy
 - Taxes may only be based on legislation
 - Principles of sound administration

21

12. 24 Nov: Meiji Gakuin University, Faculty of Economics, Department of Business Administration

Fairness & Taxation

Prof. dr. Sigurd Hamada, Economics University of Southampton

Isle of Shady Tax Haven
Poor people keep out!

1

10 years ago: the start of the financial crisis

HEARST
LADYBIRD BRANDS

2

Result: increased budget deficits

- Bail out of banks and some European Union (EU) countries;
- Less corporate and personal income tax income for governments; and
- Increased expenditures for unemployment benefits

→ Many countries cut back on expenses and increased VAT

→ Additional burden on consumers

3

Do they pay their fair share?

Google, Amazon, Starbucks: The rise of 'tax shaming'

NEWS MAGAZINE

GOO
STARBUCKS
AMAZON

DOICE, GARRANA

WNTU FUR

4

Principle of Fairness: legal and political philosophy

- H.L.A. Hart: principle of mutual restrictions: "when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission."
- John Rawls: principle of fair play
the tax-dodger violates the duty of fair play as he accepts the benefits of government but will not do his part in releasing resources to it.

5

Fairness in relation to taxation

- Government provides for certain goods and services
- Financed by taxes
- Taxes: involuntary and compulsory contributions of citizens and companies to government without an individual return based on legislation.

6

Example Ireland: artists exemption

Since 1969: first: full exemption profits artists resident in Ireland, 2006-2010: € 250.000 exempt. Artists did not pay tax until 2006 and significantly less tax than other people after 2006: fair?

- Many foreign artist moved to Ireland to benefit (Lisa Stansfield, Irvine Welsh, Michel Houellebecq, Def Leppard, Elvis Costello)
- Many rich artists benefitted
- Not only used by artists, also by sportsmen, politicians, journalists publishing books
- Scheme can lead to tax competition which all states loose.




7

Fairness: defined in relation to other tax payers

George Klosko: fairness thesis

Individuals are more willing to pay their taxes if they believe that others are paying their taxes: important reason for tax compliance.

Explains emphasis on fairness in the economic crisis with heavier tax burdens to be shared.




8

Does fairness require consent to tax system?

Multinationals, non-residents cannot vote on the tax system. Not bound?

- Locke (1764) tacit consent
- Rawls/Klosko: no specific consent needed
- Residing or operating in a certain jurisdiction implies benefiting from it and thus obliges to contribute no matter whether one has consented to the tax system or not.




9

Free riding

Making use of provisions of government without contributing

The Public Goods Game



cooperators free-riders

contribution benefits


Public Goods



10

Free riding violates fairness


- Rawls:** Acting unfairly is not so much the breaking of a particular rule, but taking advantage of loop-holes or ambiguities in rules, availing oneself of unexpected or special circumstances which make it impossible to enforce them, insisting that rules be enforced to one's advantage when they should be suspended, and more generally, acting contrary to the intention of a practice.
- Happé:** the idea of fair share implies that there is a limit to the tax adage that everyone is free to opt for the cheapest solution: one should not only adhere to the letter of the law but also feel bound to its spirits, "everyone's tax contribution is an expression of respect for society and fellow citizens"



11

Difference between fairness and other principles (e.g. equality)

- Most principles in tax law: obligation on governments (e.g. treat citizens in equal situations equally)
- Fairness: primarily obligation on tax payers towards each other
- Role of government: to ensure that tax payers obey the principle of fairness: protect compliant tax payers from free riders



12

European Commission

fight tax fraud

- 27-6-2012: "the fight against tax fraud and evasion is not only an issue of revenue, but also of fairness (...) Particularly in these difficult economic times, (...) honest taxpayers should not suffer additional tax increases to make up for revenue losses incurred due to tax fraudsters and evaders."
- 22-5-2013: "The burden of taxation should be spread more evenly by ensuring that everyone, whether blue-collar employees, multi-national companies that benefit from the single market or wealthy individuals with offshore savings, contribute to public finances by paying their fair share..."
- Fairness: protecting compliant tax payers from non-compliant tax payers



13

How can government protect compliant tax payers

- Combat free riders
- Combat free riding
- more complex in a globalised world
- Countries have to work together
- Willingness to reduce tax competition?



14

Combat free riding


- Impossible for one country on its own
- in a globalised world capital, patent rights etc can be moved easily to another country.
- Countries have to work together
- OECD: Base Erosion and Profit Shifting (BEPS) project.
- EU: Action plan to strengthen the fight against tax fraud and tax evasion



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OECD/G20 Base Erosion & Profit Shifting (BEPS) Action Plan

- OECD 2013: globalization boosts trade and investments, but provides tax planning opportunities for multinational enterprises (MNEs)
- BEPS: tax planning strategies exploiting gaps and mismatches to artificially shift profits to low/no-tax locations with little or no economic activity
- BEPS undermines the integrity of the tax system, increases burden on other tax payers, negative effect on compliance, harms fair tax competition.



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BEPS project

- All members of G20, OECD (incl. all EU Member States and Japan), BRICs and some developing countries participated in project.
- 15 actions to address BEPS
- Aimed at preventing double/no/low taxation, tackling harmful tax practices and aggressive tax planning and a realignment of taxation and relevant substance (incl. improvement of transfer pricing rules) and increasing transparency.
- Comprehensive package of measures ranging from new minimum standards to a revision of existing standards




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October 2015: BEPS Package



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Combat free riders

- In case of (illegal) tax evasion:
 - Trace and punish tax evaders and their advisers (vertical supervision)
 - disclosure obligations and heavier punishments also for advisers
 - Media coverage to deter potential tax evaders and enforce voluntary compliance
 - Focus on persons with high exposure



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Football Stars Set For Prison?



World soccer god & Tottenham star striker as Legendary UK Homeless Bayern Munich's President Got sentenced to a 2 and half years jail term for a tax fraud crime worth over 25 million Euros by a German judge. With the Prosecution now set, are there more Sportsmen in line?

Current German coach Holger Hesse & Borussia Dortmund's FC, and not too long ago, Borussia Dortmund's owner Armin Gröbbeck, Africa's own Anthony 'Yellow' amongst others have all had tax fraud charges brought up against them in the past.



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General Anti Abuse Rules

- Activities are within the letter of the law, but not within the spirit.
- Example: making use of tax exemption real estate transfer tax for married couples by marriage for one day.
- Cannot be combated by using the law
- Some countries (UK, Netherlands, EU Anti Tax Avoidance Directive etc etc): general anti abuse rule



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Fairness goes further than abuse of law


- Broad, relative, subjective concept of fairness difficult for a judge to apply
- Conflicts with principle of legitimate expectations and legal certainty



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Combat free riders

- In case of (legal) tax avoidance not covered by GAAR:
 - Government: moral appeal
 - Non-governmental organisations: media exposure
 - Consumers: boycott
- Reputational risk an important factor for businesses in deciding on proposed tax schemes




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Combat free riding

Combine information already available

Oblige third parties to provide information to the tax authority

- Employers
- Banks, pension funds and insurance companies

Netherlands:

- one citizen service number (CSN) for all contacts with government (tax, social security, passport, pension, health insurance, bank account etc etc)
- Pre-filled tax return



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Tax transparency changes in the EU as a result of BEPS


- EU: automatic exchange of information important instrument to fight BEPS
- BEPS-amendments to Directive on Administrative Cooperation 2011/16/EU (DAC)




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Common Reporting Standard CRS



- Pre-BEPS, but direct result of crisis
- 2010: US FATCA reporting obligations on foreign financial institutions on accounts of US tax payers
- Bilateral Inter-Governmental Agreements (IGA) with US: government sends information
- 2014: OECD single global standard (CRS) for automatic exchange of financial account information in tax matters
- Art 8 DAC, to be applied as of 2016: financial institutions must report information on non-resident account holders and their accounts
- Information is automatically exchanged in EU



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Information on rulings (Action 5 / 8a DAC)

- Automatic exchange in EU of information on cross-border tax rulings and transfer pricing arrangements
- ruling: any advice, information or undertaking provided by a tax authority to a specific tax payer(s) concerning their tax situation and on which they are entitled to rely
- Broader definition than in BEPS Action 5
- Exchange of rulings only on request
- Applies as of 2017






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Country-by-Country Reporting (Action 13 / 8aa DAC)

Action 13 standardised approach to transfer pricing documentation which obliges multinational enterprises (MNE's) to provide for:

- master file with high-level information on global business operations and transfer pricing policies which has to be available to all relevant tax administrations;
- local file with detailed transactional transfer pricing documentation specific to a country;
- for large MNE's a CbC Report that provides annually and for each tax jurisdiction in which they do business certain information on structure, transfer-pricing policy and internal transactions

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Mandatory Disclosure (Action 12 / proposed DAC change)



- Mandatory disclosure of aggressive tax planning arrangements
- Already in the US, UK, Ireland, Portugal
- 21 June 2017: EC proposal 8aaa DAC
- As of 2019 reporting obligation for intermediaries who design and promote potentially aggressive cross-border tax planning arrangements.
- Exchanged automatically in the EU by submitting information on the disclosed arrangements through a standard form.
- Controversial: heavy administrative burden




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Critique on increase of automatic exchange

- Lack of tax payer and data protection
- Automatic exchange may lead to less control over the accuracy and use of the information → more attention for tax payers' rights needed
- Giusy De Flora: states are more interested in obtaining the required information rather than ensuring the procedural rights of tax payers in the phase of exchange of information.
- Administrative burden for tax administrations
 - insufficient capabilities and resources
 - information overload

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International shift: from the individual to the collective

- Until recently: emphasis on rights of individual tax payer:
 - (Bank)secrecy
 - Safeguards for tax payer in exchange procedures
 - Prevent double taxation
- Because of the economic crisis more focus on the collective
 - Prevent tax evasion
 - Exchange of information
 - Prevent double non-taxation
- Not black letter law but fair share



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Difficult issue: tax competition

UK takes on Ireland with lower corporation tax regime

Official says multinationals that would have chosen Ireland in past are opting for Britain.

- Countries compete for businesses and private capital with their tax system
- Companies choose countries with low tax rates, make use of disparities between tax systems
- How far will the willingness of countries to cooperate instead to compete go?

Hybrid loans tax loophole worth billions of euros closed

Hybrid loans tax loophole worth billions of euros closed

EU finance ministers meeting today (28 June) have closed loophole exploited by multinationals to pay little or no tax worth billions of euros, after states disagree for adjustment in a comprehensive deal on hybrid loan arrangements.




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