Platform for Tax Good Governance

Introduction

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

This presentation evolves around these and similar questions. Its purpose is threefold. Firstly, it aims at systemizing and analyzing the interaction in the international tax debate. Secondly, it aims at understanding and explaining this development, in particular by applying insights from communication science. Thirdly, the present presentation attempts to present a way forward for the international tax debate, leading to more trust and better communication.

Part I: The international tax debate: state of play

Introduction

Let’s first focus, in Part I of this presentation, on the development of the international tax debate until the present day. Both as an academic and tax practitioner I have encountered frustration in many conversations with actors in the international tax arena. It seems as people don’t understand each other anymore, expect different things from one another, have a different perception of reality. Basically, I have experienced a lack of a basic level of trust. Let me first give you a Dutch perspective, stakeholder by stakeholder.

<u>*Dutch perspective*</u>

The tax advisory community

The Dutch Association of Tax Advisers has observed that negative publicity time and again adversely impacts the reputation of the Netherlands. Many of this publicity is unfounded and biased by non-genuine motives. A voluntary choice by the Dutch government to take anti-tax avoidance measures which go beyond what international consensus minimally requires would seriously undermine the Dutch investment climate. Especially in the context of Brexit and US tax reform, the Netherlands must preserve its reputation as the 'Gateway to Europe' and protect its traditional 'crown jewels'.

The business community

According to the Confederation of Netherlands Industry and Employers, the fight against tax avoidance should go hand-in-hand with maintaining an attractive investment climate: tax rates should go down already in 2019. Dutch and European tax policy should stimulate innovation and the competitive position of the continent. The current European Commission proposals on a common corporate tax base and a common consolidated corporate tax base fall short of that ambition in a very serious manner. And the dividend withholding tax should be abolished. The American Chamber of Commerce has added to this that political choices on fiscal policy must be supported by fundamental economic analysis that chart long-term effects on the economy and economic growth. Such an analysis is currently lacking.

Non-governmental organizations

Tax Justice NL has been making a number of points. First, it emphasizes that the policy plans on the table must be put into concrete action, because the Netherlands is still widely regarded as a tax haven. The announced abolition of the dividend withholding tax and the lowering of the corporate income tax rate must be cancelled immediately. Second, anti-avoidance measures must have real 'teeth' and be fit for purpose; there are real concerns here. Third, Tax Justice NL demands an immediate end to the 'secret Dutch ruling practice' for multinationals.

Another important NGO in the Dutch debate on international taxation is Oxfam Novib. It has devoted an important part of its website to this topic, with explanations, statements, videos, possibilities to sign petitions, etcetera. Oxfam Novib argues that the Netherlands is a tax haven, to the detriment of developing countries. Also, and importantly, it has pointed at conflicts of interest present in participants in the international tax debate. There would be alarming and suspicious ties between the ministry of Finance, academia, businesses, the Big four accountancy firms, large law firms and even the judiciary. Many participants wear 'double hats', e.g. a combination of university professor and tax advisor and there are persons who change jobs from the administration to the tax advisory community very easily.

SOMO, another NGO active in the debate, has also pointed at this issue.

The Ministry of Finance

Civil servants working in the Ministry of Finance have the difficult task of balancing the wish to counter international tax avoidance with the need to keep the Netherlands attractive for both foreign investment and for traditional Dutch multinational enterprises. I wonder whether they always feel enough appreciation for this difficult task. Sometimes, we obtain a peek inside this difficult dilemma, for instance in the recently published policy documents on international group financing of Dutch multinationals. In the end, this ruling practice has lasted until the end of 2016: the result of a balancing act, but by its nature difficult to explain to the general public.

The Dutch tax authorities

It is exactly this tension which the Dutch tax authorities also experience: it is difficult to do the 'right' thing. For instance, one part of the tax authority has expressed concern that uncertainty about the impact of the EU Anti-Tax Avoidance Directives, the BEPS project and discussions about State aid and tax avoidance, has led multinational companies to delay investment in the Netherlands. The hope has been expressed that this situation is temporary and that we can return to a stable situation quickly, stressing the importance of certainty and the competitive position of the Netherlands relative to other countries. Other parts of the tax authority, however, *welcome* uncertainty in the law because it deters companies from certain behavior and eroding the Dutch tax base. Indeed, the Dutch tax authorities may, in certain circumstances, apply a carrot-and-stick approach when giving effect to the law. The question may be asked whether outsiders to the debate on international tax law understand the phenomenon of a two-faced tax authority.

The European Commission

Recently, the EU Commissioner for taxation labeled the Netherlands as a 'black tax hole'. In his view, clearly more needs to be done before the Netherlands may consider itself a country which does not facilitate aggressive tax planning. The European Parliament has almost – there was a tie – adopted a resolution calling the Netherlands a tax haven. The Dutch government has stated to be not amused by the Commissioner's comments, which would wholly disregard all that has been done by the Netherlands on a European level.

Academia

Turning the discussion to actors in academia, it seems to me that the distrust in the international tax debate plays a role on three levels: i) there may be academics who distrust other actors, ii) there may be academics who are distrusted themselves and iii) there may be academics who stay silent out of fear for becoming 'tainted' in the debate or who operate very carefully in the debate precisely for that reason.

Take away

Looking back on all of these views, a number of 'frustrations' can be distinguished:

From the business community and tax advisory practice:

- The international tax reputation of the Netherlands is being destroyed by unfounded criticism, fueled by other motives than achieving a technically sound international tax system.
- International tax competition is here to stay: be realistic and not naïve in relation to other countries!

- The Netherlands is under attack by those other countries and – surprisingly – also by fellow-countrymen.
- The overhaul of the Dutch international tax system is not based on economic facts and forecasts but rather on emotion.
- We are watching a disaster in slow-motion now European headquarters of multinational companies are being scared away from the Netherlands.

From NGOs and the European Commission:

- Efforts by the Netherlands to lose it reputation of 'tax haven' and 'tax black hole' are all about talk and no action.
- The ministry of Finance often says that effective anti-tax avoidance measures will be proposed, but once actually implemented those measures all of a sudden appear to be toothless; the ministry and politicians are saying one thing but doing another.
- Many participants in the international tax debate have conflicts of interest and wear 'double hats', especially academics; they are, therefore, not credible.

From the ministry of Finance and the tax authorities:

- We are trying to do the right thing, but we often are stuck between a rock and hard place: should we use a carrot or a stick?
- It is unfair that other participants in the debate, such as the European Commission, continue to falsely allege that we have not taken action against aggressive tax planning: we have taken the international lead!

From academia:

- Other actors in the debate are not being honest and straightforward about their motives.
- It is unfair to criticize professors of tax law for also holding positions in public of private tax practice.
- The intensity of the debate is unpleasant.

There is no scientific research available on how the above-discussed views of participants in the international tax debate have influenced – are influencing – public opinion in the Netherlands. My personal impression is that the views expressed by NGOs have been resonating more with the general public than the more 'technical' or 'economic' views expressed by the established participants to the debate.

We will now turn to the situation in the United Kingdom.

British perspective

In 2015, a large academic study has been conducted by researchers from Henley Business School at the University of Reading on what stakeholders expect from corporations when it comes to paying tax, followed by a new publication in 2017. In 2016, another report was published by the Oxford University Centre for Corporate Reputation on rebuilding trust in business in the United Kingdom, with emphasis on taxation. According to the findings of those reports, businesses are seen as not listening and as not engaging in a true and transparent dialogue with stakeholders; community groups feel excluded from the international tax debate. Businesses, however, feel that they are doing everything in their power to apply the law faithfully. Why is it that community groups do not trust them and feel that they should do more? Indeed, business seem to be surprised by the criticism exercised with respect to their tax behavior. According to them, the negative sentiment is the direct result of negative media coverage and a lack of understanding of tax practices. Also, businesses are very disappointed in politicians who do not support them when they are under attack by the public, despite all the good things they are doing for society. Business leaders are behaving defensively against expectations from the public. Generally, *all* stakeholders seem to believe strongly in their own narrative which prevents hearing the others.

Global perspective

A more global perspective on miscommunication and distrust in the international tax debate has been provided by the Association of Chartered Certified Accountants. In 2017, ACCA published the first ever in-depth study of people's views on who they trust in respect of international taxation across all of the G20 Nations. According to the ACCA report, a reset is needed: to win back the public's trust and create a more effective international tax system, fit for the 21st century.

The ACCA report shows a high level of trust in NGOs around the G20. In addition, Europe seems to distinguish itself from other G20 countries when it comes to trust in multinationals, professional tax lawyers and accountants: the level of trust is significantly lower in Europe in comparison with other parts of the world. A distrust of politicians and the media can be seen everywhere. At the same time, it is noteworthy that ACCA respondents around the globe seem to understand very well the dilemma's which international tax competition presents when it comes to attracting multinational companies.

Concluding remarks of PART I

In conclusion, the international tax debate among stakeholders is quite intense, both in the Netherlands, the United Kingdom and in G20 countries. It is safe to say that the debate can be characterized by the words 'miscommunication' and 'distrust'. The question arises why this is so. A possible explanation may be that whomever 'wins' the debate in the media, also wins public opinion and – therefore – the path to legislative and policy change. Indeed, the impact of public opinion on public policy and lawmaking is substantial. For this reason, we will now turn to communication science, public opinion theory and the role of the media. We will try to understand why public trust in NGOs is, globally, at a high level and why NGOs seem to have been able to dominate public opinion.

PART II: Understanding the debate through communication science

In mass communication theory, McQuail distinguishes a number of models of communication.

The *transmission model* describes communication as a process of transmission of a message by the sender or a source. The model recognizes a) events and 'voices' in society, b) a channel or communicator role, c) messages and d) a receiver. A feature of this model is that the mass communicator has a selecting role on the basis of what may be interesting for the audience, without any other objective (such as persuasion or education).

The *publicity model* offers a second perspective: oftentimes mass communication is not aimed at transmitting certain information at all, but rather to ‘catch’ the audience’s attention for economic goals: a large audience means high revenues from advertisements or subscriptions.

The *reception model* deviates from the transmission model in that it focuses on the meaning which the transmitted information has for the receiver rather than it should have had from the perspective of the sender. The context and the culture of the receiver is crucial in this regard.

In the international tax debate, aspects of all of those models can be discerned. After all, participants in this debate offer messages to the media which have a selecting role before transmitting those messages. Thereby, those media inevitably take account of their own interest: the message must gain publicity and ‘sell’. Messages in the international tax debate which gain the most publicity are the most likely to be selected. Lastly, the transmitted information in the international tax debate appears to be received differently depending on the recipient’s country of residence. This may have to do with different cultural backgrounds. Again, the trust which the receiver has in the sender seems to play an important role. We will now turn to the question of how, in this light, public opinion is formed.

Public opinion

Public opinion can be seen in at least three ways. Firstly, one can think of public opinion as a rational, information-based phenomenon in which the best ideas will be at the top of the public agenda: the view famously put forward by Habermas. Citizens are exposed in the public sphere to a number of different ideas and opinions that they can hold or improve upon; the ideas that hold the most value are in the highest demand, while less popular ideas are pushed aside. Secondly, one can think of public opinion as a method of social control: the view equally famously put forward by Noelle-Neumann. Her ‘spiral of silence’-theory predicts that those who believe that their viewpoint is in the minority will be less likely to express that viewpoint. This phenomenon is rooted in individuals' fear of becoming socially isolated from a group as a result of expressing an unpopular opinion. In this way, the predominant opinion disseminated by mass media at a macro-level is adopted also at the micro-level for fear of being individually ‘different’ than ‘the rest’. According to McQuail, expressing a third angle, individual opinions can be “aggregated to form something called public opinion, which is usually taken to mean the predominant leaning, or sum of views, of the population as a whole.” Although the notion of ‘public opinion’ does not mean that individual opinions cease to exist, it does “acquire a certain independence when it is embodied in media accounts. It becomes an objective ‘social fact’ that has to be taken account of by political and other actors.”

All of these views – public opinion as rational information exchange, public opinion as social control and public opinion as the ‘social fact’ of aggregated individual opinions by the media – can be helpful to understand the international tax debate better. After all, a central argument used by businesses in this context is that public opinion is not based on the facts. This may be caused by media not transmitting the relevant information, as a result of which the public cannot form a rational, information-based opinion. In the same vein, the information actually transmitted may lead the public to adopt the views which are present most prominently in the media, in order not to adopt views which are different from the views of others. This means that we have to turn to the role of the media in forming public opinion.

The role of the media

Here, it is important to examine how new information disseminated by the media is processed by the receivers of that information, and in particular how it is integrated with already-existing information.

I will discuss three media effects models: agenda setting, framing and priming.

Agenda setting
As Scheufele & Tewksbury have noted, agenda setting refers to the idea that there is a strong correlation between the emphasis that mass media place on certain issues and the importance attributed to these issues by mass audiences. The mass media are able to signal to the public what is important. As stated by Moy, Tewksbury and Rinke, the media are able to shape individuals' perceptions of the relative importance and salience of specific issues by virtue of providing differential levels of coverage to those issues.

Priming
'Priming' is often understood as a more specific aspect of agenda-setting. It occurs "when news content suggests to news audiences that they ought to use specific issues as benchmarks for evaluating the performance of leaders and governments." As such, the media has the power to effect changes in the standards that people use to make political evaluations. Moy, Tewksbury and Rinke have explained that the basic media-priming process consists of two steps:

> "In the first step, information received through a media channel … activates preexisting associated knowledge in the mind of the receiver (i.e., "available" cognitive units or concepts). This activation makes the cognitive units more accessible, which means that the receiver is more likely to use them in interpreting and evaluating a subsequently encountered target stimulus (…). A media priming effect occurs if, in the second step, the receiver applies the primed, now more accessible concept to a target stimulus when s/he would not otherwise have done this. The first step thus consists of the priming process, and the second speaks to its consequences."

Framing
Framing is based on the assumption that how an issue is characterized in news reports can have an influence on how it is understood by audiences. Framing is both a macrolevel and a microlevel construct. In the words of Scheufele and Tewksbury:

> "As a macro-construct, the term ''framing'' refers to modes of presentation that journalists and other communicators use to present information in a way that resonates with existing underlying schemas among their audience (…). framing, for them, is a necessary tool to reduce the complexity of an issue, given the constraints of their respective media related to news holes and airtime (…). Frames, in other words, become invaluable tools for presenting relatively complex issues (…) efficiently and in a way that makes them accessible to lay audiences because they play to existing cognitive schemas. As a micro-construct, framing describes how people use information and presentation features regarding issues as they form impressions."

According to McQuail, "framing is a way of giving some overall interpretation to isolated items of fact." It is almost unavoidable for journalists to do this and, thus, "to depart from pure 'objectivity' and to introduce some (unintended) bias." Indeed, as Lee has argued:

> “Where the issue of corporate tax avoidance is concerned, news media exerts an effect by translating complex and obscure tax issues into simple and provocative messages which then easily penetrate into the public’s mind through repetitive broadcasting.”

Such a process, which inevitably leads to the bias mentioned by McQuail, seems to be particularly high in times of economic crisis, as I will now discuss.

Reporting by the media in times of economic crisis

Empirical research – a lot of it has been conducted here at the University of Amsterdam – has shown time and again that economic news has a big impact on public opinion. Negative economic news leads to low levels of trust by consumers, independent of economic performance in reality. Positive economic news, however, does not make consumers similarly optimistic. In addition, the media not only report much more economic news in times of economic crisis, but that news is also reported in a way which is disproportionately negative. As Damstra and Boukes have argued this phenomenon distorts people’s economic expectations in a negative manner. The question arises why the media report in a disproportionately negative way in times of economic crisis. The just-discussed ‘publicity model’ may offer an explanation: negativity ‘sells’.

The role of the media in the international tax debate

In 2015, Chen, Powers and Stomberg have examined the role of the media – predominantly in the United States – in influencing corporate tax avoidance and disclosure. They found no effect of cash effective tax rates or brand name on the likelihood of coverage. Similarly, they did not find evidence that firms reduce their total level of tax avoidance following negative media coverage. In fact, they found “some evidence that firms’ income tax footnotes contain more passive voice and ambiguous words, suggesting that if anything, the quality of a firms’ tax footnote decreases after negative media scrutiny.” Lee found similar results for the United Kingdom in 2015:

> “the recent increase in media attention on tax avoidance does not stimulate firms to improve the quality and the quantity of tax disclosure in their corporate reporting. Rather, firms can be discouraged from discussing the most relevant tax items in their reporting, as shown in the case of financial firms which were the subject of the largest amount of tax avoidance news.”

In addition, evidence suggests that the media do not appear to discipline tax behavior. This in in line with findings of the Henley report, which did not find lasting links in the United Kingdom between media coverage on aggressive tax planning of a particular company and stock prices. Indeed, negative media coverage only seems to become a real ‘problem’ for businesses if public opinion is affected in such a way as to prompt legislative change in the tax legislation of a particular country.

<u>Conclusions of Part II</u>

In Part II of this lecture, I have discussed the notion of ‘public opinion’ and the effect of the media on that notion. In my view, this discussion is able to explain the observations in Part I. A lack of transparent information by communicators in times of economic crisis almost inevitably renders the formation of a balanced public opinion impossible. Negative media coverage and the media’s use of agenda-setting, priming and frames in a ‘publicity model’, leads to a predominant view in the media to which most citizens will conform themselves; the ‘reception model’ shows that variations may exist in countries because of cultural differences. In this climate, NGOs indeed seem best placed to get their views across, also because of the salience of their information and the fact that the message seems to fit in with already existing views because of the global economic and financial crisis.

Part III: The way forward

Introduction

The analysis thus far has brought two issues to light. Firstly, the miscommunication and distrust in the international tax debate, combined with a negativity bias in the media, have shaped public opinion in a particular way. If this process has led to a public opinion which is not based on facts, as the business community argues, there is a risk that public policy and lawmaking will be affected such that ‘bad law’ is adopted by policy and lawmakers. A public opinion of good quality leads to public policy of equally good quality. Secondly, negative media attention for companies has generally decreased their transparency in annual statements. This effect is unintended. I will try to put forward a number of suggestions in order to improve the quality of public opinion and to remind the media of their responsibility.

Towards a public opinion of better quality

Trust among stakeholders is crucial for the legitimacy of the international tax system. Without trust, public opinion will be negative. Transparency and communication have emerged as two very important factors to build trust between participants in the international tax debate. Stakeholders are very keen to take part in this debate and to be heard and listened to. In this respect, the initiative of the Platform for Collaboration on Tax, formed by the IMF, the OECD the United Nations (UN) and the World Bank (WB), seems very relevant. In February 2018, the Platform held its first global conference in the context of the UN Sustainable Development Goals (SDGs) which set ambitious aims on stakeholder engagement. Also, I want to mention the initiative taken by the B Team. The B Team has developed seven principles for ‘A New Bar For Responsible Tax’. I believe that these principles – if actually implemented – address many of the issues and may actually lead to a public opinion of a better quality.

Media ethics

I have explained earlier that the media report more frequently and disproportionately negatively about economic news when the economy goes downward. Public opinion is very sensitive to this: general economic expectations – strong predictors of economic behavior – are distorted negatively. In addition, negative media attention has an adverse effect on the disclosure of tax related information in the annual financial statements by companies. This means something for the functioning of economic journalism in modern democracies. As Damstra and Boukes have noted, “a tension seems to exist between the fulfillment of the watchdog role and other essential media functions, such as informing the citizenry in a correct manner”.

This means that media should actively check whether the information provided to them by communicators is factually correct before transmitting it and be actively aware of their own negativity bias and (unintended) framing effects.

In the end, what matters is whether the media are able to support the Habermasian public sphere in an approach which is more than today based on the 'transmission model'.

Conclusions and outlook

The present presentation has focused on the way in which persons in the international tax system have been interacting both with each other within the system and with others outside the system. This interaction has given rise to frustration and distrust, played out in the media. Can participants in the international tax debate still understand and trust each other, under pressure as they are from public opinion?

In Part I I have reviewed to what extent those participants at present actually trust each other and the international tax system. It has been shown that the international tax debate among stakeholders is quite intense, both in the Netherlands, the United Kingdom and in G20 countries, although considerable differences seem to exist between European countries and other States. It is safe to say that the debate can be characterized by the words 'miscommunication' and 'distrust'. A possible explanation may be that whomever 'wins' the debate in the media, also wins public opinion and – therefore – the path to legislative and policy change. Indeed, the impact of public opinion on public policy and lawmaking is substantial. At present, public trust in NGOs is, globally, at a high level. They seem to have been able to dominate public opinion.

In Part II I have tried to understand and explain the international tax debate by applying insights from communication science. Although negative media coverage about 'aggressive tax planning practices' by particular companies does not immediately affect their behavior, such coverage does impact public opinion. A lack of transparent information by communicators in times of economic crisis almost inevitably renders the formation of a balanced public opinion impossible. Negative media coverage in such times and the agenda-setting, priming and framing, leads to a predominant view in the media to which most citizens will conform themselves. In this climate, NGOs indeed seem best placed to get their views across, also because of the salience of their information and the fact that the message seems to fit in with already existing views because of the global economic and financial crisis. This has left other participants in the debate with negative feelings.

In Part III, an attempt has been made to reflect concrete suggestions for a better public opinion through the keywords transparency, stakeholder engagement and communication. Concrete initiatives employed by businesses and international organizations seem very encouraging in this respect. In my view it is better for politicians to wait for the effects of these and similar initiatives on public opinion before trying to bring back trust through legislative change. After all, without trust among the stakeholders and participants in the debate, such legislative changes will not solve the issue of the legitimacy of the international tax system.

Thank you