

7. The needle in the haystack: international exchange of fiscal information 2.0 in the public and private interest

Sigrid Hemels, Professor of Tax Law

Reinout Kok, Professor of Taxation of Multinational Corporations in a Globalized World

Maarten de Wilde, Professor of International and European Tax Law

Introduction

Tax evasion by multinationals has already been a focus of political and social interest for a number of years. Tax is on the front pages of newspapers and has become a hot topic in the board room. This is an important research topic for the scientific field of international and European tax law and corporation tax. The fundamental underlying question is whether the existing corporation tax system and the international treaties allocating taxing rights to countries are still appropriate in the digital age. As long as there is no new system, however, countries must work with the systems that exist and aim for greater transparency and exchange of information. The OECD/G20 Base Erosion and Profit Shifting (BEPS) project and the follow-up of the EU have led to a far-reaching obligations of companies and intermediaries to provide tax administrations with information which is subsequently exchanged internationally. The aim is to enable tax administrations to detect and combat tax avoidance and tax evasion more effectively. However, the first signs appear to show that efforts of both private and public actors are currently directed primarily at compliance with the information obligations but are losing sight of the goal, the actual use of the information. Public parties struggle with an information overload and some countries have not even opened the database with the information gathered (Report from the Commission to the European Parliament and the Council on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation, Brussels, 17 December 2018, COM(2018) 844 final). Reform of information exchange practice therefore appears to be called for, a reform in which the interests of both public and private actors play a role.

PhD project

The key question of this research project is how the information obligations and the exchange of information can be made smarter and how the focus can shift from gathering information to the use of information. A great deal of research into (international) tax law concerns the rules themselves. Little or no research takes place into the compliance aspects (meeting the rules, the way in which this takes place administratively and the effects of this). The project aims to change this and thus to accommodate a process of bringing the current practice of gathering information by private and public actors on a higher level, a situation in which public actors are able to actually use that information effectively. Finding a needle (relevant fiscal information) in the haystack of the information provided by businesses and exchanged by tax administrations is the biggest challenge that tax authorities face in the coming years. This research is not only in the interest of public actors, but is also important

for businesses, because a more effective and smarter system may reduce the administrative burden of companies. It is also important from an economic point of view that the considerable efforts, and the associated deployment of people and resources that can no longer be deployed in other ways, leads to actual results, the reduction of tax avoidance and tax evasion and therefore, tax information exchange becomes an effective tool rather than an end in itself.

The use of the ICT and knowledge of some member states, such as the Baltic States, which are far ahead of most other member states in the use of smart IT applications in the tax domain, could be helpful here. This study lends itself to an inter-disciplinary approach (tax and information technology) and a diversified method (doctrinal tax research and empirical research).

Concrete research questions are:

- What are the effects for public and private actors of the far-reaching gathering and exchange of tax information in the EU as a result of the BEPS project?
- How can the use of exchanged information be improved?
- Are there best practices in the EU for effective use by public actors or information provided by private actors?

Empirical research

In view of the research questions, which are partly of an empirical nature, it is not more than logical that the PhD student will also conduct empirical research. In fact, this is encompassed by all three of the above research questions, which concern the effects of gathering the information, improving this and the best practices. This also means that in this project, tax specialists and empirically trained legal researchers must work together, because they each possess only part of the necessary toolkit: the tax specialist has the fiscal knowledge but is generally not trained in empirical research methods, while empirical legal researchers are generally not entirely familiar with the intricacies of (international, European and corporation) tax law. This project therefore naturally calls for a partnership between both types of expertise.