

STATEMENT

**Hearts and Minds: Cornerstone of
the Fight Against Aggressive Tax Schemes**

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Introduction

This statement provides a brief outline of my contribution to the Hearing of the FISC subcommittee on tax matters of the European Parliament on “Case studies on Member States national tax policies - The Netherlands: implemented national tax reforms and the combat against aggressive tax schemes”. I have been asked to keep it short. For that reason, I have left a number of relevant issues, including the role of academia and civil society, largely undiscussed.

Definition of Aggressive Tax Schemes

1. I understand the term Aggressive Tax Schemes (ATS) to mean instances in which taxpayers (or their advisors) use ‘loopholes’ in domestic and international tax systems to reduce their taxes. The prime examples of this are the so-called letterbox companies. There are also legitimate situations in which little or no tax is paid as the result of the correct application of ordinary tax rules (or the total absence of such rules). These situations can also be problematic and may warrant reforms. However, they are fundamentally different from ATS. The present debate in the Netherlands is greatly hindered by the fact that all of these cases tend to be caught in the wide (and poorly defined) rhetorical net of ‘tax avoidance’.
2. Over the past ten years, the Netherlands - like many other countries - has introduced and implemented a wide range of reforms in the sphere of corporate income taxation, often (but certainly not always) as a result of international agreements (e.g. the implementation of EU Directives). This includes domestic and international rules against letterbox companies and the use of tax havens, but also measures against hybrid mismatches and other issues within the scope of the OECD’s BEPS project. The European Commission’s Dutch State aid investigations into Starbucks, Nike and IKEA contributed to change in the area of tax rulings. The list goes on.
3. It is no secret that the Netherlands has, in the past, had a very poor international reputation when it comes to tax. In 2019, the European Parliament designated the Netherlands as a tax haven. The Tax Justice Network came to a similar conclusion in 2021, branding the Netherlands the fourth global tax haven (after the British Virgin Islands, the Cayman Islands and Bermuda). This qualification does not do justice to the Dutch tax reforms over the last decade, but nevertheless sets the tone in any discussion involving this Member State and tax. Without seeking to exculpate *actual* ATS, any (unjustified) bias towards the Netherlands needs to be checked. Although the situation now is far from perfect, it would be a mistake to assume that no progress has been booked

in recent years or that the efforts of critics such as the European Parliament have been completely unsuccessful.

Changing Attitudes

4. This Hearing addresses the ‘remaining issues’ of ATS involving the Netherlands. An obvious approach would be to assess the reforms to date and then to design a series of hypothetical schemes which could be remedied by the introduction of new, hypothetical measures. In theory, this is a sensible approach. In practice, however, the chances of pre-emptively identifying every imaginable ATS risk are slim, which means that an anti-ATS strategy based solely on legislation will be insufficient. Fiscal loopholes and grey areas may be inevitable, but ATS don’t ‘just happen’. Rather, they are the product of a particular culture where designing, implementing, and selling problematic tax structures is acceptable and lucrative. It is obvious that some (not all!) experts - from tax advisors and lawyers to trusts and bankers, and in some cases even the Dutch Tax Authorities - had and have a role to play when it comes to creating (and therefore also preventing) ATS. Cultural aspects are consequently relevant.
5. Having worked in the tax sector for almost 15 years, my impression is that the attitudes of tax professionals have shifted over the last decade. There seems to be a move away from a legalistic, black-letter worldview (i.e. “all tax planning is morally acceptable, as long as it is legal”) to a wider interest in the moral dimensions of tax (fiscal ethics). Since 2017, ethics has - to give an illustration - been a priority for the Dutch Association of Tax Advisers, where the professional training now includes a mandatory course on this topic. There are also various examples where tax firms have introduced ‘ethical boards’. The subject of Fiscal Ethics is now taught at most (if not all) Dutch universities.
6. Cynically lampooning these developments as a massive exercise in window dressing, is unconvincing (if only in light of the sheer amount of time, effort and money that the tax sector has been pouring into ethics-related activities). The question is why this has not permeated into the mainstream debate. Without exploring this issue in detail, it is fair to say that the media framing of the Netherlands as a tax haven plays a part in this: good news makes for bad headlines. To the extent that this hinders informed public debate, this is obviously a problem. As tax professionals become more comfortable with ethics as a practical aspect of their work, their approach to ATS will generally become more critical. While awareness of ethics does not necessarily preclude certain (possibly problematic) structures (‘ethical’ is not a synonym for ‘non-aggressive’) such changes in the *mores* of the Dutch tax landscape can only be positive.

Next Generation

7. Slowly, a new generation of tax specialists, who started their tax careers around the time of the 2008 economic crisis, is rising to positions of influence. This is significant as the background of this new group differs from that of the generations that forged their path in the more prosperous 1990’s or 2000’s. Back then, ATS were not questioned in the way that they are today. More than perhaps the ‘older generation’, who currently hold the higher positions in not only the tax profession but also in business and academia, younger tax professionals and students seem less interested in ‘just making money’ and more interested in issues such as fiscal ethics and social impact.

8. There is reason for optimism. The relevance of ethics as such is, broadly speaking, no longer disputed. The question now is what this means 'on the work floor'. I believe that we - educators, leaders, media, politicians, civil society, etc. - need to be talking about this subject more, exploring what fiscal ethics should mean in concrete instances. What are the societal expectations? What does an ethical tax structure look like? In my conversations with students and young professionals, a clear message is that while the fight for the relevance of tax ethics *in abstracto* has been won, it remains unclear what this means *in concreto*. More and more layers of (international and EU driven) rules aren't helping. Even the most idealistic tax experts are becoming demoralised by the ever-expanding and constantly evolving net of compliance rules, reporting obligations, and other broad measures that are aimed at ATS, but end up hindering legitimate activities (the technical term for this is 'BEPS fatigue').

Comprehensive Debate

9. These are not abstract questions. If we don't provide fiscal ethics with stronger 'hands and feet' (as the Dutch would say) the opportunity for true cultural reform will be lost. In particular, there needs to be a much more specific and accurate public debate to help crystallise new norms. Many of the questions facing taxpayers (and tax advisors) are not black-and-white. Given the complexity of the rules, the myriad of different possible scenarios and circumstances, and the fundamental point that there is no broadly accepted definition of 'tax avoidance', problems are inevitable.
10. We need to move away from the gratuitously harsh and often ill-informed grandstanding that currently abounds in the public arena. Excessive moralism and finger-wagging are unhelpful. This is true when it comes to 'external' actors (media, politics, etc.) but also for actors within the tax community itself. Much of the debate is currently being dictated by an older generation that is basically out of touch with the 'real-world' problems in the fiscal workplace - or so I have repeatedly been told by junior tax specialists. There is even some annoyance about the poachers-turned-gamekeepers (i.e. professionals who retrospectively criticise the ATS that made them rich, while keeping the proverbial pot of gold earned in their previous positions). This annoyance is not entirely fair, but for the debate on fiscal ethics to be believable, there must certainly be sufficient (generational) diversity with contributions from all sides, both in terms of people and ideas.

Conclusion

11. When it comes to ATS, the Netherlands has made many improvements in recent years. These reforms are not finished (but could they ever be, given the current approach?). Dealing with ATS is not just about stricter rules; changes in the hearts and minds of tax professionals are also key. In this respect, the signs seem favourable: the fundamental relevance of ethics for tax is no longer that controversial. But what does this mean in practice? The only way to answer that question is through a comprehensive debate, both public and political, and within the Dutch tax sector. The reform of corporate taxation isn't over, but when it comes to meaningful changes, fatigue and cynicism are our greatest enemies.
