

The Netherlands: a tax haven

Continuing its contribution to the corporate tax race to the bottom

1. Introduction

While EU-leaders are about to make important decisions on measures that can help to end the era of tax havensⁱ, these discussions are chaired by a true champion among tax havens: the Netherlands. This paper explores the role of the Netherlands as a corporate tax haven. It describes how the Netherlands is making tax avoidance on grand scale possible, but also that the Netherlands has obstructed progress at EU level in the pastⁱⁱ. If the Netherlands, as well as other European countries, do not change their philosophies about ‘tax competition between countries being a good thing’, the era of tax havens will never end. In its turn this will mean inequality between the rich and the rest will keep on rising and achieving the sustainable development goals by 2030 will be impossible.

As a European commission study shows, the Netherlands is the undisputed European champion in facilitating corporate tax avoidance. Of all European countries, the Netherlands offers international companies the greatest variety of options to avoid tax. Only Belgium and Cyprus come close to matching this dubious position. All three are countries, which have been criticised for years because of their tax regime for multinationals.

With its tax policy the Netherlands perpetuates poverty and extreme inequality in the world. A world in which the richest 62 people now own as much as the poorest half of the global population. It is partly thanks to the Dutch regulations that multinationals are able to avoid at least \$ 100 billion in taxes in developing countries every year. This is money that poor countries need to combat poverty and for development. Take Malawi, one of the poorest countries in the world, which has lost out on approximately \$ 27.5 million in recent years due to a Dutch tax avoidance construction. The country could have used this money to pay 10,000 nurses for a whole year.

In 2015 world leaders agreed new sustainable development goals. All countries, rich and poor, will have fifteen years to give billions of people a chance of a better life and to reduce extreme inequality within and between countries. It is an ambitious and expensive operation, which can only succeed if a fair - national and international - tax policy is in place. However, despite numerous tax avoidance scandals that reached headlines around the world, governments are continuing to make it possible for companies and rich individuals to avoid paying their fair share of tax. This situation is detrimental for citizens in rich countries like the Netherlands, but much more so for people in developing countries.

In this report Oxfam Novib demonstrates that the Netherlands is, without doubt, a tax haven. It presents powerful arguments for a Dutch tax policy, which the Netherlands can be proud of. A fair and transparent

policy, which ensures that developing countries receive the tax income they are entitled to. Income that they can use to finance schools, good teachers, hospitals, nurses, roads, badly needed agricultural reforms and social provisions. A fair tax policy would result in significant (financial) progress for the Netherlands as well. The Netherlands is also losing around € 5.5 billion a year because of the tax incentives it grants companies and because Dutch multinationals are avoiding tax just as much through constructions in other countries.

In concrete terms we call on the Dutch government to:

- Stop harmful tax practices such as the innovation box and detrimental deals with large companies.
- Initiate and encourage the European Union to adopt a powerful approach to tackling tax avoidance.
- Actively support a European and worldwide approach to halt the corporate tax race to the bottom

2. Developing countries are the biggest losers

From 2030 onwards each world citizen will have access to good education and health care. No one will be living in poverty or be hungry any more. Extreme inequality within and between countries will have been reduced. These are just five of the seventeen ambitious Sustainable Development Goals which world leaders agreed to in 2015. Of course they realise that it costs money and they were therefore very much in agreement about the importance of fair and effective tax systems, both nationally and internationally. For that reason they decided to start tackling international tax avoidance.

The corporate tax race to the bottom

But despite these commitments, countries all over the world are continuing unabated with a corporate tax race to the bottom. They are all trying to outdo each other to attract international companies, like market sellers: 'We are offering the best deal so come and set up your business here!' It would be an illusion to think that a joint international approach to poverty and inequality is possible in this situation. Governments are lowering tax rates, adapting measures to the benefit of international companies and are giving them unnecessary tax incentives (which are harmful to the country itself).ⁱⁱⁱ Tax rates for businesses are being reduced all over the world^{iv} and many countries even apply a zero rate.

In this *race to the bottom* governments are receiving less and less tax income, with developing countries being the biggest losers, while they need this income desperately for basic services such as education and health care. Dishonest tax rules breed extreme inequality in the world. The inequality crisis is reaching new extremes. 62 people now own the as much as the poorest half of the global populations five years ago this number was 388^v. More and more wealth is in the hands of fewer and fewer people. Seven out of ten people live in a country where inequality has rapidly increased in recent years. Tax avoidance by large international companies is fuelling this inequality crisis in three ways. The avoidance of tax has led to excessive profits, which has benefited shareholders, who are overwhelmingly amongst the richest people in the world. It has denied governments across the world vital tax revenue that they could have spent on inequality busting public services like health or education. Finally it has led to governments increasingly relying instead on indirect taxation such as VAT to plug their revenue gaps, despite this being a regressive tax which hits the poorest and women hardest.

In 2015 the UN conference on trade and development (UNCTAD) calculated that developing countries lose at least \$ 100 billion annually because multinationals shift of their profits to countries where they pay little or no tax. This is a huge amount, which could provide safe drinking water and sanitary facilities for 2.2 billion people each year. On top of this there is another loss of approximately \$ 138 billion due to the tax incentives (e.g. tax breaks), which countries offer to large businesses.^{vi} A poverty stricken country such as Bangladesh loses out on \$ 310 million every year due to tax avoidance. This is enough to finance 20 percent of the primary education budget. It is a world of difference for a country where there is just one teacher for every 75 children.^{vii}

The Netherlands is contributing to worldwide poverty and inequality

The Netherlands is contributing to structural poverty in developing countries. The international charity ActionAid showed through various researches how multinational companies operating in developing countries make use of the Netherlands as a tax haven. Malawi, one of the poorest countries in the world, missed out on approximately \$ 27.5 million in the past six years because the Australian mining company Paladin was able to use a Dutch tax avoidance construction.^{viii} The country could have paid annual salaries of 10,000 nurses with this amount of money.^{ix} Tax treaties, which developing countries enter into with countries like the Netherlands are often used by companies to avoid paying tax on a grand scale. For example, in 2004 the

Netherlands entered into a treaty with Uganda, which resulted in company owners who were formally established in the Netherlands not having to pay tax on certain dividends (profit distributions). The consequence is that, ten years later, almost half of all investments in Uganda were in the hands of shareholders who formally resided in the Netherlands. This results in less tax paid in Uganda where the money could be put to good use to finance health care and education.^x Having said that the Netherlands is currently reviewing its tax treaties in order to prevent abuse in the future. According to calculations by ActionAid, just two provisions in tax treaties – on dividend (profit distribution) and interest payments – are costing developing countries billions of dollars every year.^{xi}

A chronic lack of transparency

It is often completely unclear what the consequences of Dutch tax policy are for developing countries. Examples like those above in relation to Malawi, Bangladesh and Uganda require a huge amount of research due to the chronic lack of transparency on both sides of the tax deals. Companies themselves do not provide much information and are not even obliged to do so. Tax havens like the Netherlands often provide no insight into, for example, agreements (rulings) with international companies. Oxfam Novib is arguing in favour of regulations which oblige companies to indicate for each country what they do there and how much tax they pay in a public *country-by-country report*.

Rich countries also lose out

The Netherlands itself is also affected by the worldwide tax race. Following the example of other countries, the government lowered corporate tax rates as a result of which these tax returns decreased between 2000 and 2012 by more than € 4 billion. In addition, SOMO calculated that our country is losing at least € 1.5 billion due to tax avoidance tricks; Dutch companies are avoiding tax by using letterbox companies abroad^{xii}. SOMO and FNV discovered that 58 Dutch companies (well over a third of the companies studied) together have at least 388 subsidiaries in tax havens. In this way, the Netherlands is getting a taste of its own medicine which costs our country € 1.5 billion.

As shown by research carried out by, among others, Oxfam, Germany is also missing out on tax income from American multinationals. We studied the relationship between their economic presence in a country and the amount of tax they paid there. It transpired that for every four dollars of profit, one is not declared in the country in which they are economically active. That one dollar often ends up, via complicated constructions, in a tax haven like Bermuda. American companies only declare 0.7 percent their profit to the German tax authorities. Nevertheless their sales in this country are 2 percent of the total and 1.8 percent of their employees live in Germany.^{xiii}

One of the tax havens in which American profits end up (temporarily) is the Netherlands - where the greatest discrepancy between the profit and the actual economic activities of American companies can be found.^{xiv} The fact that American companies tried to avoid paying tax on a large scale via the Netherlands had already been shown by a previous study which revealed that, in 2010, \$ 127 billion of the \$ 929 billion profit of these companies ended up in the Netherlands.^{xv} The irony is, however, that the Netherlands does not benefit because most of the money flows onwards to other tax havens.

3. Is the Netherlands a tax haven?

The key question is, of course, is the Netherlands a tax haven or not? The Dutch government strenuously denies this. Although it acknowledges that our country offers an attractive fiscal climate, in gets opinion it is not another Bermuda, Panama or Luxembourg. What do others think? Is the Netherlands a tax haven? Oxfam Novib investigated a study from the European Commission on aggressive tax planning; how the Netherlands scores in accordance with internationally recognised criteria; and we recorded statements by the IMF and two well-known Dutch official bodies.

Harmful Tax Planning study by the European commission

The European Commission (EC) had a study carried out to assess the extent to which member states facilitate 'aggressive tax planning' (read: tax avoidance)^{xvi}. It transpires that the Netherlands is the undisputed champion in Europe. A list was drawn up of 33 characteristics which can be used to determine whether a country makes it extremely easy for companies to avoid tax. This list is referred to as the *Harmful Tax Practices*. Of these 33 indicators, no fewer than 17 apply to the Netherlands (see Annex 1). Only Belgium and Cyprus come close with a score of 16 and 15 indicators respectively.

According to this study, three of the indicators the Netherlands scores on are 'active' and therefore extremely worrying. These are the tax deduction allowed for deemed interest cost on interest-free debt (indicator 10), the innovation box (17) and the excess-profit rulings (31). The difference with 'passive' indicators - and with the lack of anti-avoidance measures - is that the active indicator is one 'which can directly promote or prompt an ATP structure.'

With regard to the individual Dutch tax rules you could state, to be generous, that they fit in with the open economy. However, it is the combination of rules that make the Netherlands particularly attractive to multinationals that want to avoid paying their fair share of tax. Precisely when viewed together, as explained in the Dutch newspaper *Financieele Dagblad*, these rules are 'undeniably the honey pot that attracts letterbox companies and financial holdings with little substance to the Netherlands in order to re-channel disproportionately large flows of money through this country.'^{xvii} The amounts which international companies temporarily park in the Netherlands are completely disproportional to their economic activities. Indeed, that 'activity' often involves no more than setting up their letter box in a Dutch office building where several thousand other letterbox companies have offices.

By way of a comparison: Germany, France, Sweden and the United Kingdom each score on 8 indicators, well below the 17 that the Netherlands scores on - just like Spain which got a tick for 7 indicators. A striking feature of the European comparison is that a small countries like Denmark, which is like the Netherlands strongly dependent on international trade, only scores on 4 indicators and these are passive indicators.

The European 'aggressive tax planning' top 5:

- 1) The Netherlands (17 indicators, of which 3 active)
- 2) Belgium (16 indicators, of which 3 active)
- 3) Cyprus (15 indicators, of which 3 active)
- 4) Malta (14 indicators, of which 2 active)
- 5) Latvia, Luxembourg, Hungary (13 indicators, of which 0, 1 and 2 active respectively)

Despite the length of the list of indicators, it does not cover all harmful tax practices. For example, lack of transparency with regard to tax rulings are not considered to be *Harmful Tax Practice*. An extremely low

general tax rate is not *harmful* enough either, with the limit set at a zero rate. Although the Netherlands has a tax rate for company profits of 20-25 percent, in practice this can be substantially reduced thanks partly to the innovation box (indicator 17) and the rulings (indicators 30 and 31). The Ministry of Finance is, in fact, quite prepared to negotiate about the amount of profit on which they have to pay tax. The Ministry of Finance does this without external supervision and without even scrutiny by parliament. It is partly thanks to this lack of transparency with regard to tax rulings that the Netherlands has acquired a reputation as a tax haven.

The Netherlands actually scores on 18 indicators, if you include the lack of effective *Controlled foreign company* rules (CFC) (indicator 24). Even though the Netherlands does not formally score on this indicator, the report concludes that the Dutch CFC rules do not prevent all aggressive tax avoidance. According to the Commission, the introduction of more stringent CFC rules can counteract the most common aggressive tax planning structures, in addition to rules to counteract *hybrid mismatches* (see also section 4).

OECD criteria applied to the Netherlands

What is a tax haven? In 1998 the Organisation for Economic Cooperation and Development (OECD) drew up the following criteria:

- 1) there is no or nominal tax on the relevant income;
- 2) there is no effective exchange of information with respect to the regime;
- 3) the jurisdiction's regimes lack transparency *e.g.* the details of the regime or its application are not apparent, or there is inadequate regulatory supervision or financial disclosure; and
- 4) the jurisdiction facilitates the establishment of foreign owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy.

Nice criteria, incredibly weak application so far

On the grounds of these criteria you would expect a long list of tax havens. But instead various countries have, in consultation with the OECD, adapted or abolished certain harmful tax incentives for international companies^{xviii}, and not a single country is currently listed. In practice, a country can avoid getting on the list by promising that it will cooperate on the (often still inadequate) international standards for information exchange.^{xix} The OECD response to the Panama papers even revealed that, despite not cooperating at all between 2009 and 2015, Panama had still not been added to the list of tax havens^{xx}.

Strict application of OECD criteria. How is the Netherlands actually doing?

In themselves the above-mentioned OECD criteria are not bad, but the organisation should assess its own member states critically using these criteria. The European Commission's *Harmful Tax Practice* study is a good indication of how EU member states outdo each other with harmful tax measures. By doing so they are increasing the speed of the corporate tax race to the bottom. The EC indicators in combination with the OECD criteria could be considered as a point of departure for the drawing up of an international list of tax havens. If we critically assess Dutch tax policy against the four OECD criteria, how is the Netherlands actually doing? We will now examine them one by one.

1) Low tax rates

The Netherlands does not have an exceptionally low rate for corporation tax: 20 percent on profit up to € 200,000, and 25 percent for any profit above that. However, the Netherlands has a whole range of measures, which allow companies to reduce the percentage substantially in practice.

- Thanks to the innovation the box a company only pays 5 percent tax on qualifying profits (instead of 25%). As a result of this box the Netherlands scores on EC indicator 17.

- Companies have to pay only a small amount of, or no, tax on dividends and royalties. On top of this it does not matter whether those flows of money enter or leave our country. Thanks to this the Netherlands scores on EC indicators 1 and 19.
- It is possible to make an arrangement with the Tax Administration so that a company can reduce its taxable profit in the Netherlands and therefore reduce the amount of tax it has to pay. The above means that the Netherlands scores on EC indicators 30 and 31.
- The Netherlands has managed to reduce the tax on dividends and interest payments in tax treaties with many other countries. For example, Ghana lost out on more than € 65,000 in tax income from just one company, due to the double tax treaty with the Netherlands. This treaty states that no more than 8 percent withholding tax is levied on royalties and service payments instead of the usual 10-15 percent. What appears to be a relatively small loss for a country like the Netherlands is often a major loss for a developing country.^{xxi}

The Netherlands is losing hundreds of millions due to the 'innovation box'.

At the end of 2015 the Ministry of Finance published an evaluation of the innovation box.^{xxii} What did this reveal? This incentive for companies cost the Netherlands many hundreds of millions in missed tax income every year. In 2010 the tax loss was already € 361 million. Two years later this had increased to € 743 million and the expectation is that this will rise again in 2016 to well over € 1.2 billion. That is 7.6% of the total income from corporation tax.^{xxiii} Not only does this cost an awful lot of money, in 2015 the European Commission concluded that this kind of innovation box are not the most effective to stimulate innovation and R&D. The box was intended to encourage inventions and research and development (R&D). In practice there is a high risk these type of boxes lead to tax avoidance^{xxiv}. 'The most innovative European countries have none of these tax incentives (Germany), or have only recently introduced them (Denmark, Finland, Sweden)', the Netherlands Bureau for Economic Policy Analysis already concluded in 2014.^{xxv}

According to the evaluation by the Ministry of Finance each lost euro in tax money generates up to € 0.54 extra expenditure on R&D but the innovation box is probably not '... the most powerful means for stimulating R&D and innovation; after all there is no guarantee that the tax benefit is actually used for R&D and innovation.'^{xxvi} Shortly before this evaluation was published, the Rathenau Instituut concluded that Dutch companies spend more and more of their money on research and development abroad while foreign investments in the Netherlands lag behind. The researchers demonstrated that fiscal benefits are not decisive when companies decide where they are going to invest. The existence of knowledge, researchers and possibilities for cooperation are much more important.^{xxvii}

Did the government decide, after these conclusions and the loss of hundreds of millions to terminate the innovation box? No, instead they took a new step in the international tax race. As the government's response to the evaluation stated: 'According to the researchers, however, it is still important to have an innovation box because the country without such a regime will soon be lagging behind countries that do.'^{xxviii} In short, the innovation box in the Netherlands is not effective towards its primary objective (to stimulate innovation), but the Netherlands is keeping it because it fears that companies will otherwise leave to countries that do have one. Large international companies are the only winners of this corporate tax race to the bottom. After all, governments have to get their money from somewhere. With reduced income from tax on profits they often choose for higher taxation on work, a VAT increase or cut backs on care and other social services. This in turn increases the already growing gap between the rich and the rest.

2) No or insufficient information exchange

The well-known tropical tax havens offer exchange no or little information with other countries about their rich 'residents'. On the contrary, they promise rich people confidentiality with regard to the capital that they have parked in the tax haven in question. Panama recently got worldwide media-attention for being such a country.^{xxxix} The Netherlands does not have a reputation of a *secrecy jurisdiction* because it complies with international agreements about the exchange of information with regard to, for example, bank details.

However, the Netherlands is non-transparent as regards the question of who the actual owners are of the companies established in the country.^{xxx} Trust offices – the administrators of letterbox companies – often do not know who the actual owners of the 'company' are that they are taking care of.^{xxxi} This makes the Netherlands not only attractive to tax dodgers, but also to rich individuals, corrupt politicians and criminals who want to avoid tax, wish to finance the criminal activities or launder their ill-gotten gains.^{xxxii}

For years now, the Dutch Central Bank (DNB) has wanted the Ministry of Finance to start tackling Dutch trust offices. A large number of offices are violating the law and are insufficiently aware of the risks according to DNB. The Dutch Central Bank also claims that trust offices never or rarely meet their (international) clients. However, they still set up non-transparent and complex structures on behalf of these clients, with the risk of tax avoidance, tax evasion and money laundering of money acquired through criminal activity.^{xxxiii}

Dutch trust offices in the Panama Papers

In February 2016 Minister Dijsselbloem announced, after persistent social and political pressure, that he wanted to set up a public register containing the names of people in charge of all companies (so including letterbox companies).^{xxxiv} That pressure increased substantially after the publication of the Panama Papers in April 2016 by an international group of investigative journalists.^{xxxv} These papers showed that the Panamanian legal consultancy Mossack Fonseca helps rich individuals and companies avoid or evade tax via secret constructions. It is hardly surprising that a number of constructions involve the Netherlands.^{xxxvi} For example, it transpired that the Dutch tax consultancy and trust office, Infintax helped dozens of other Latin American companies and individuals to find financial escape routes.^{xxxvii}

3) Lack of public transparency

The rulings which large international companies agree with our Tax Administration remain secret. The Dutch Parliament was only allowed to study the ruling with Starbucks in 2015 because of the exceptional circumstances.^{xxxviii} Nevertheless, the Ministry of Finance continues to maintain that Dutch policy is transparent and that there are clear rules for obtaining a ruling from the Tax Administration.^{xxxix} This is simply something that the citizens and members of the Dutch House of Representatives have to accept. However, the example of Starbucks showed that transparency about the rules alone is by no means sufficient. For years, coffee multinational Starbucks diverted profit worth millions to avoid paying tax. It was able to do so thanks to a ruling agreed with the Dutch Tax Administration. In October 2015 the European Commission judged that the provided tax advantage was illegal under EU state aid rules^{xl}. Starbucks now has to repay its tax benefit of at least € 20 million. The Netherlands appeals against this judgement by the European Commission.

This lack of public transparency means large companies can get away with tax avoidance. They do not have to publish the deals they enter into with governments nor report on the countries they are active in, what they do their (activities, turnover, staff) and how much tax they pay in each country. Such public *country-by-country reporting* means everyone can see more quickly whether a company is moving its profit to a tax haven and then call this company to account. However, multinationals are not in any way obliged to report publicly on these matters, not even in the Netherlands.

4) Benefits without substantial activities – the Dutch letterbox

The Netherlands has around 14,400 conduit companies (most of these are letterbox companies) which together divert € 3,500 billion per year through our country. On paper a huge quantity of money enters our country. However, the Netherlands gains very little from this because almost nothing of these capital flows stays in the country. Although the government has repeatedly promised to make an end to these money channelling practices, more and more letterbox companies are used each and every year. In 2009, 80 percent of all incoming and 76 percent of all outgoing foreign investments passed through letterbox companies. Four years later, in 2013, those percentages were even higher: 83 percent of the incoming and 78 percent of the outgoing investments passed through the letterbox companies.^{xii}

Developing countries lose crucial income due to Dutch letterbox companies. Multinationals, like Paladin mentioned earlier, generate enormous profits in poor countries which are rich in raw materials. They divert that profit via the Netherlands, so that they can pay less tax in the developing country.^{xiii}

On the radar of the IMF

In its 2014 policy paper on 'spillovers in international corporate taxation' the IMF placed the Netherlands in the top three countries in which foreign investments are most disproportionate to the gross domestic product (GDP). According to the IMF this imbalance "is impossible to understand without reference to tax considerations"^{xiii}. In the IMF top three the Netherlands is surpassed only by Luxembourg and Mauritius, countries which, just like the Netherlands, have an international reputation as tax havens. In its 2013 'Fiscal Monitor' the IMF uses the 'Double Irish Dutch Sandwich' as an example to illustrate international tax avoidance. This is an infamous tax avoidance construction which involves the Netherlands and Ireland.^{xiv}

Table 1. FDI stocks relative to GDP—The Top Ten (2012) Country FDI in percent of GDP Share of world FDI (%) Share of world GDP (%)

Country	FDI in percent of GDP (2012)	Share of world FDI (%)	Share of world GDP (%)
<i>Luxembourg</i>	<i>4,710</i>	<i>10.2</i>	<i>0.07</i>
<i>Mauritius</i>	<i>2,504</i>	<i>1.1</i>	<i>0.01</i>
<i>The Netherlands</i>	<i>530</i>	<i>15.4</i>	<i>0.91</i>

Source: Calculations from IMF Coordinated Direct Investment Survey (<http://cds.imf.org/>).

What the Dutch governments and Dutch major institutions think of all this

In recent years, various studies have taken place in the Netherlands as well into the question of whether the Netherlands is a tax haven. Surprisingly enough, these studies consistently avoid using the politically sensitive term 'tax haven'. However they do state very clearly how the Netherlands facilitates international tax avoidance.

The Netherlands Bureau for Economic Policy Analysis (CPB) uses the following strict definition of 'tax haven' in its publication on tax treaties: 'Islands/countries with low or no taxes which are used as a (temporary) endpoint of a route via a network of countries.' Although the CPB acknowledges that this definition covers just one of the four OECD criteria, it concludes on this basis that the Netherlands is not a tax haven. So what is our country exactly? A 'conduit country' which is used by multinationals for tax planning purposes. Thanks to the

Netherlands (and specifically thanks to the tax treaties which our country enters into) multinationals can divert profits to 'the real tax havens' (according to the CPB's strict definition). According to the CPB, tax treaties are a substantial contribution to international tax competition.^{xlv}

While, in November 2014, the LuxLeaks revealed how companies avoid tax via Luxembourg and the Netherlands as well^{xlvi}, the Chamber of Audit explicitly did not refer to the Netherlands as a tax haven. Once again, the focus would appear to be more on semantics than on content because, similarly to the CPB, the Chamber of Audit concluded that the Netherlands is increasingly used by companies to divert profit to tax havens like Bermuda, where little or no tax is levied. This is partly possible because the Dutch '*substance* requirements' are so weak. The Netherlands awards tax incentives to companies that have no, or almost no, presence in the country. According to the Chamber of Audit Dutch regulations do not otherwise differ from those of the United Kingdom, Switzerland and Luxembourg, which are, indeed, tax havens as well. To date, there has been almost no response to one key conclusion by the Chamber of Audit, namely that countries are competing with each other as regards tax rules and that this can have a negative effect on government income and on the distribution of charges between companies and citizens. The Chamber of Audit is of the opinion that the Netherlands must support or initiate international measures to combat this tax competition.^{xlvii}

Just as many other notorious tax havens the Netherlands also vehemently denies that it is a tax haven. This *window dressing* even went so far that the Dutch House of Representatives, with the support of the PVV, the SGP, the CDA, the VVD, 50PLUS, D66 and the PvdA, adopted a very bizarre motion in which they asked the government to distance itself from the definition of the Netherlands as a 'tax haven'. Instead they'd be happier if the Netherlands was described as a 'fiscally favourable business location'.^{xlviii}

In the meantime the Netherlands is a fully committed participant in the *international corporate tax race to the bottom* of which the greatest victim are developing countries. After all they have much smaller financial reserves than rich countries like the Netherlands. In a poor country like Bolivia or Mali, tax avoidance means that even fewer children can go to school and that health care remains unaffordable for large numbers of people.

The Netherlands according to Wiebes: competition instead of collaboration

'Standing still is the same as going backwards' is the way State Secretary Wiebes sees the Dutch fiscal business climate in a clear call to continue participating in the tax race. If the measures, which were agreed at the end of 2015 in an OECD context, lead to an increased economic burden for companies, Wiebes will compensate them accordingly. 'We should also consider lowering the general corporation tax rate, introducing a different corporation tax structure, changing the dividend tax rate and possibly a combination of these measures.'^{xlix}

Wiebes presents the Netherlands as the embodiment of a modern tax haven, a country that is not really looking for international collaboration, but one that is always trying to compete with other countries. A country that does not focus primarily on how the sustainable development goals can be financed, but instead intensifies the tax rates race through its international tax policy and thereby actually helps to perpetuate poverty and extreme inequality.

As long as the government sticks to its outdated vision that tax competition between countries is good for the Netherlands, the Netherlands will continue to be a tax haven. That is not a semantic question, but a realistic observation. Whether you refer to the Netherlands as a 'tax haven' or 'money channelling (conduit) country' or as having a 'fiscally favourable business climate', the outcome is the same, namely that poor and rich countries lose billions annually partly as a consequence of Dutch tax rules.

4. National, European and International measures

Tackling tax avoidance requires measures at national, regional and international levels. Thanks to the many tax avoidance scandals - in which the Netherlands played a leading role - support for unilateral Dutch measures has grown in recent years. This led to a mediocre policy change with regard to the *substance* requirements and a more significant review of tax treaties with developing countries which was initiated by Minister Ploumen for Foreign Trade and Development Cooperation in 2013. The Netherlands has also taken the lead internationally with a view to acquiring support from international donors in order to strengthen the capacity of tax authorities in developing countries.

Unilateral Dutch measures

However, the Netherlands can do a whole lot more, as became extremely clear from the list of indicators for harmful tax planning which the European Commission study used to give our country a score. The Netherlands can independently choose no longer to be the European tax haven champion, for a start by closing down its innovation box and by no longer issuing Excess profit rulings. In addition, the government can publish more information about the agreements between the Tax Administration and companies (general rulings). At the moment, only the main features of the ruling policy are known and parliament is unable to execute its supervisory task due to the inaccessibility of the agreements, even behind closed doors.ⁱ The Netherlands can also improve supervision of its many trust offices.

Reinforcing European proposals

The Netherlands could also implement other measures unilaterally, but they would be more effective if they were to be implemented in a regional or international context. There are significant opportunities particularly at European level. In the first quarter of 2016 the European Commission presented various proposals to the member states, which, after some crucial amendments, could be of enormous value to developing countries.ⁱⁱ This primarily means public *country-by-country reporting*, rules against parking profits in tax havens and the protection of tax bases, as well as a CCCTB which is to be a step in the right direction towards a more fair international tax system.

Public country-by-country reporting

In April the European Commission presented a watered-down proposal for public *country-by-country report*. In this proposal, the majority of the companies are let off the hook because only companies with turnover of more than € 750 million have to report. What is even worse is that they have no obligation whatsoever to explain what they are doing in developing countries. Europe only wants to know what is happening in Europe.

The EC tried to make an impression with its requirement that multinationals also have to report what they are doing in tax havens - however the definition of a tax haven is something that the EU member states have not been able to agree on for years. After all, member states are demanding that only non-EU countries are placed on the tax havens list. On top of this, they have been unable to draw up meaningful criteria which are truly only applicable to these 'third countries'. The result is that this requirement for the time being has no real effect in practice.

In addition, the EC does not, in its proposal, demand reports about individual OECD countries, including the US, Japan and Canada, meaning that the information is also not as useful for the EU itself. Data on all countries individually is required in order to carry out a meaningful analysis of the worldwide distribution of activities, profits and taxes. The Netherlands must work towards a more complete European proposal that makes public reporting obligatory for all major European and non-European businesses with a turnover of more than € 40

million euros per year. They must report per country - both in Europe and elsewhere - where they are active, including information about numbers of subsidiaries per country and their assets. These elements are not included in the current European Commission proposal.

Rules against parking profit in tax havens and to protect tax bases

The European Commission has proposed legislation on controlled foreign companies (CFCs). This proposal implies that if the profit of a foreign subsidiary is not taxed, or is taxed at too low a rate, the European parent country must impose an additional levy (up to the individual corporation tax percentage). Stringent CFC rules can, therefore, prevent certain income of foreign subsidiaries remaining untaxed or only being taxed at an excessively low rate. This removes the incentive to divert profit and also helps to protect the tax base of developing countries. Changes are necessary in order to guarantee that the proposed CFC measure is effective. The measure must be easy to implement^{lii} and include a high relative threshold rate, or a fixed threshold rate.^{liii} Only then will profit shifting actually be discouraged.

In addition to CFC rules, the rules to combat *hybrid mismatches* (whereby profit is left in limbo between two countries and is not taxed anywhere) are important for developing countries. These rules can prevent profits being shifted to a hybrid structure in the EU or between an EU country and a third country. However, the current draft directive refers only to *hybrid mismatches* between two EU member states, while such mismatches also occur between an EU member state and a third country. It is therefore important that this directive is extended to include rules to counteract *hybrid mismatches* between a member state and a third country, in order to ensure that they too do something to prevent profit shifting from developing countries.

CCCTB

In September 2016 the European Commission is expected to vote for the proposal, which, even more so than the above proposals, restricts the harmful competition between European member states, in the form of the implementation of a harmonised common consolidated corporate tax base (CCCTB) in the EU. The idea is also that multinationals calculate their taxable profit as a group at EU level and that this (tax base) is divided among the member states using a formula, while taking account of the economic presence in each EU country. The current plans mean that each member state still determines its own rate that is applicable to the profit. This is an important measure to combat aggressive tax planning by international companies within Europe, which are still using the differences in regulations between member states to park profits in tax havens.

However, there is also a risk that the CCCTB will increase tax competition between European countries. After all, if they are no longer able to compete with specific tax incentives, they may be inclined to lower their general tax rate. A CCCTB in combination with a minimum rate for corporation tax at EU level is therefore much better. Eventually, the intended outcome of a CCCTB is not for multinationals to still get away with paying almost no tax on an accurate amount of profit in any country. A CCCTB will enable Europe to set a good example for harmonisation and an alternative – fairer – international tax system. An international tax system whereby company profits are taxed where the companies actually make their profit and which is based on a number of employees, turnover, assets, etc. per country.

European leaders are set to continue discussing the above proposals during the Dutch EU presidency (January to July 2016). It is therefore extremely worrying that the Netherlands has turned out to have systematically blocked EU tax reforms'.^{liv} According to leaked minutes of the EU code of conduct group on business taxation, the group that discusses measures against harmful tax practices, 'the Netherlands has been dragging its feet with regard to an effective European approach to tax avoidance for almost twenty years.' An analysis by the Correspondent even revealed that the Netherlands deliberately facilitated tax avoidance with hybrid loans for

companies during the same period that the European group was actually starting to get to grips with the problem. The Netherlands resisted finding a solution for many years after that.^{lv}

Although Europe can take a leading role if it implements the above steps, additional agreements are also necessary at international level. The international approach to tax avoidance and specifically, harmful tax regimes has not worked to date^{lvi}. Countries simply think up new rules which to fulfil the new international criteria or they reduce their general tax rate. The implementation of the international package of new measures adopted at the G20 in November 2015 actually threatens to accelerate this tax race. For example, various countries, including United Kingdom and Luxembourg announced that they were going to lower the general corporation tax rate in order to compensate companies for the (inappropriate) benefits which they would no longer be eligible for according to the new rules. The Netherlands is also under pressure, for example from the Dutch association of tax advisers (NOB), to reduce the corporation tax rates even further.^{lvii}

For that reason countries must - supplementary to the agreements which have been made within the OECD - agree worldwide that they must stop with tax competition and make agreements about far-reaching transparency (such as public *country-by-country reporting*^{lviii}) and harmonisation of tax bases and minimum (effective) tax rates. The Netherlands should argue in favour of an international summit about combating worldwide tax competition and the introduction of a simpler and fairer international tax system.^{lix}

In addition, the Netherlands must work hard to ensure that developing countries have an equal vote in international tax policy negotiations. At the moment these are dominated by rich countries (united in the OECD) and developing countries can only join in if they agree with the rich countries' existing ideas. If we want to achieve the sustainable development goals agreed in 2030, a thorough, inclusive and international approach to tax avoidance and the corporate tax race to the bottom is essential. This needs to happen quickly. With only fifteen short years to go until the deadline, there is no time to lose.

5. Recommendations

The Netherlands is the European tax haven champion. As a result, the Dutch government is robbing developing countries of tax income which they desperately need to finance schools, hospitals, roads, badly needed agricultural reforms and social provisions. With this policy, the Netherlands is also making a substantial contribution to perpetuating poverty and extreme inequality in the world. We therefore call on the Dutch government to take the following measures, or actively support them within Europe and internationally:

Unilateral:

- Close down the innovation box.
- Stop issuing excess profits rulings.
- Provide more information about tax rulings.
- Formulate policy on - and clarify the Dutch international effort against - the international corporate tax race to the bottom.
- Tighten supervision of Dutch trust offices.

European:

- Make full public *country-by-country reporting* by all large multinationals obligatory.
- Support the compilation of an objective list of tax havens (within Europe and elsewhere), and for this consider using a broader interpretation of the OECD criteria as well as the EC-study indicators for harmful tax planning.
- Support more stringent CFC rules.
- Support rules to combat *hybrid mismatches* which not only apply between EU member states, but also between a member state and a third country.
- Support the CCCTB with a minimum corporation tax rate.

International:

- Work towards a worldwide agreement to halt the corporate tax race to the bottom.
- Support an international summit about combating worldwide tax competition and the introduction of a simpler and fairer international tax system.
- Ensure developing countries having an equal place at the international tax negotiations tables, and support the establishment of a UN global tax body.

Annex 1: Description of ATP indicators that the Netherlands scores on

From “Study on structures of aggressive tax planning and indicators”, available at http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf.

1: Too generous tax-exemption of dividends received. “Indicator 1 will be granted on the basis of a subjective yet consistent assessment which will include considerations about the tax status of the paying entity. This will consider inter alia whether the regime in question applies generally to dividends from all entities, including those resident in tax havens, or only to entities resident within the EU or in tax treaty states, or if certain thresholds regarding the effective taxation of the paying entity are applicable. The assessment will also depend on whether the exemption regime applies even if the dividends are deductible at the level of the paying entity.”

4: No beneficial-owner test for reduction of withholding tax on dividends. “In cases where an MS levies withholding tax on dividends under its domestic law but offers an exemption in certain circumstances, e.g. as prescribed by the Parent/Subsidiary Directive or a tax treaty, the MS would be more exposed to playing a role in ATP if such tax exemption is granted without any test of the recipient’s real role with respect to the dividend.”

6: Income from certain hybrid financial instruments not taxable. “If one MS treats the return received on a financing instrument (loan) as a form of tax-free income (e.g. a dividend) while another MS allows a tax deduction for the same return paid, a clear mismatch arrangement has arisen and an ATP structure can be established. The main cause of such mismatch is that the tax classification of hybrid financing instruments largely depends on differing case law in each MS.”

8: Tax deduction for intra-group interest costs. “Most, if not all, MSs allow companies to claim a tax deduction for their financing costs, particularly interest costs on their loans and other debts. As it is relatively easy to adjust the mix of a company’s debt and equity, the use of interest costs is one of the simplest international tax planning-tools available to MNE groups”

9: Tax deduction of interest does not depend on the tax treatment in the creditor’s state. “This indicator is related to No. 6 above. Please refer to the discussion under No. 6.”

10: Tax deduction allowed for deemed interest cost on interest-free debt. “If an MS offers a tax deduction for interest costs which have actually not accrued as a result of non-arm’s-length conditions being applied to an inter-company debt, there is a risk of ATP if such a tax deduction is not contingent on a corresponding adjustment in the state of the creditor company.”

11: No taxation of benefit from interest-free loan. “A MS can only be awarded an indicator on this point in the event that Indicator 10 exists for the same MS.”

14: No withholding tax on interest (absent under domestic law. “The absence of withholding tax on interest generally serves a positive function in the international tax system.... However, under certain circumstances, the absence of such withholding taxes may allow for ATP in the sense that a withholding tax could have discouraged or impeded ATP structures based on financing structures.”

17: Patent box regime or other preferential tax treatment of income from IP. “A beneficial treatment of income from patents and other IP may well promote arrangements where royalty costs are deducted at the full tax rate in one MS but are taxed as income at a lower (beneficial) tax rate in the other MS.”

19: Tax deduction for intra-group royalty costs. “...it has to be acknowledged that patent-box structures and other ATP structures (e.g. Model ATP Structure 6) have as one of their critical components the tax-deductibility of royalty costs in the hands of the payer.”

20: No withholding tax on royalty (absent according to domestic law. “The absence of withholding tax on royalty payments generally serves a positive function in the international tax system. However, under certain

circumstance, the absence of such withholding taxes may allow for ATP in the sense that it would not discourage or impede ATP structures based on IP and royalty”

23: Group taxation with acquisition holding company allowed. “Model ATP Structures 1-3 illustrate arrangements where a target company in an MS is acquired via a leveraged acquisition vehicle – a holding company – set up in the same MS. The objective is for the holding company to claim a local tax deduction for the financing costs of the acquisition and to have this deduction set off against the taxable profits of the target company.”

24: No CFC rules: “The Netherlands has CFC rules, and therefore does not score on Indicator 24 (lack of CFC rules). However, it is reported that the Dutch CFC rules would not catch all the model ATP structures presented in this report. The reason is that the participation exemption would apply, and would apparently override the CFC legislation. The CFC rules therefore risk being weak or ineffective.”

25: Tax qualification of foreign partnership does not follow that of the other state. “Clearly, if MSs align their tax qualification of partnerships and other hybrid entities, there would be no mismatch and hence no ATP opportunity. One way of aligning qualifications could be for MSs to follow the qualification applied by the MS in which the entity is established. The absence of such an alignment is considered a passive ATP indicator.”

26: No rule to counter a mismatch in tax qualification of a domestic partnership between own state and a foreign state. “Please see No. 25 above. An alternative way for states to align their tax qualification of partnerships and other hybrid entities could be if the MS in which the entity is established were to follow the qualification applied by the MS in which the owners of entity are tax-resident.”

27: No rule to counter a mismatch in tax qualification of a domestic company between own state and a foreign state. “It is a well-known fact that the US check-the-box rules allow US MNE groups to treat non-US subsidiary companies as tax-transparent entities. This can give rise to ATP involving an MS and the US. MSs can counter such ATP structures by aligning their tax qualification of a domestic company with that of the foreign state (the US), or by other means.”

30: Unilateral ruling on e.g. interest or royalty spread possible. “Tax rulings are generally used to give certainty to taxpayers regarding the taxation treatment of their transactions. However, it is clear that the content or subject of the ruling may well include an ATP element, and hence an indicator. This is definitely so in the case of the excess-profit ruling described at No. 31 below. This can also be the case if a ruling is used to confirm an artificial flow-through arrangement of interest or royalty, and if it is used to agree what spread will satisfy the local tax authorities so that they will, for instance, abstain from challenging the arm’s-length or beneficial-ownership character of the arrangements.”

31: Excess-profit rulings possible. “Excess-profit regimes offer a tax exemption of a portion of local company profits to the extent that they are deemed to exceed a normal arm’s-length profit. This practice can be agreed with the tax authorities in the form of a ruling, and targets profits earned on transactions with related parties (i.e. member companies of the group).”

Endnotes:

ⁱ On May 25th the Economic and Financial Affairs council will meet to “agree its position (the 'general approach') on the draft anti tax avoidance directive, which aims to address some of the most common aggressive tax planning practices. Its goals are to create a minimum protection against corporate tax avoidance in the EU and to ensure a fairer environment for business.” <http://www.consilium.europa.eu/en/meetings/ecofin/2016/05/25/>

ⁱⁱ This paper is the shortened and translated version of a Dutch Oxfam Novib report, which was published on May 12 2016. Full Dutch report is available at:

http://www.oxfamnovib.nl/Redactie/Downloads/Rapporten/Nederland_belastingparadijs.pdf

ⁱⁱⁱ <https://www.imf.org/external/np/g20/pdf/101515.pdf> 'Countries often face pressures to attract investment by offering tax incentives, which erode the countries' tax bases with little demonstrable benefit in terms of increased investment.' And 'the proliferation of incentives is largely a manifestation of international tax competition – which regional coordination can help mitigate.'

^{iv} <http://taxfoundation.org/article/corporate-income-tax-rates-around-world-2015>, Tax Foundation, 1 October 2015.

<http://taxfoundation.org/article/corporate-income-tax-rates-around-world-2015>

^v '62 richest own as much as the poorest half of the global population' [62 rijksten bezitten evenveel als armste helft wereldbevolking], Oxfam Novib web page. <http://www.oxfamnovib.nl/62-rijksten-bezitten-evenveel-als-armste-helft-wereldbevolking.html> and 'An economy for the 1%, how privilege and power in the economy drive extreme inequality and how this can be stopped', Oxfam January 2016.

^{vi} 'Give us a break: how big companies are getting tax-free deals.' Action Aid, June 2013.

http://www.actionaid.org/sites/files/actionaid/give_us_a_break_-_how_big_companies_are_getting_tax-free_deals_2.pdf

^{vii} C. Godfrey (2014) 'Business among friends: Why corporate tax dodgers are not yet losing sleep over global tax reform', Oxford: Oxfam, <http://oxf.am/chP.EquityBD> (2014) 'Who Will Bell the Cat? Revenue Mobilization, Capital Flight and MNC's Tax Evasion in Bangladesh', Position Paper, Dhaka: Equity and Justice Working Group,

<http://equitybd.org/onlinerecords/mnutaxjustice>;

^{viii} <http://actionaid.org/nl/nederland/news/nederlandse-belastingroute-kost-malawi-tientallen-miljoenen> and

<http://www.goededoelen.nl/nederlandse-belastingroute-kost-malawi-tientallen-miljoenen>

^{ix} Calculation: 43 million dollars = 17,000 nurses, 27.5 million dollars = more than 10.000.

^x 'Mistreated: how restrictive treaties encourage inequality and poverty' [Mistreated: hoe beperkende belastingverdragen ongelijkheid en armoede in de hand werken], February 2016 <http://actionaid.org/nl/nederland/2016/02/mistreated-hoe-beperkende-belastingverdragen-ongelijkheid-en-armoede-de-hand-werke>

^{xi} 'In general the objective of the Netherlands as well is to focus on a reduction in withholding tax when negotiating tax treaties. Answers to parliamentary questions in the report by the Chamber of Audit [Algemene Rekenkamer] on tax avoidance (3 March 2015)

^{xii} From “Grote bedrijven, kleine lasten”: 'The average effective tax burden for the 93 listed companies was 21.45 percent in the 2005-2014 period. For the 58 non-listed companies it was 17.88 percent. The percentages are lower than the weighted statutory rate (29.1 percent for listed companies and 28.2 percent for non-listed companies) used in this study and lower than the currently applicable corporation tax rate in the Netherlands (25 percent). This means that governments bring a loss in tax income. The actual amount of the loss is estimated to be approximately € 3 billion per year. Of this, € 1.5 billion can be allocated to the Dutch treasury and € 1.5 billion to foreign governments. Data from Statistics Netherlands [Centraal Bureau voor de Statistiek] (CBS) shows that large Dutch companies generate approximately half of their profits abroad.'

^{xiii} 'Still Broken: Governments must do more to fix the international corporate tax system', Oxfam, Tax Justice Network, Public services international, Global Alliance for tax justice, 10 November 2015 <https://www.oxfam.org/en/research/still-broken-governments-must-do-more-fix-international-corporate-tax-system>

^{xiv} *ibid*

^{xv} 'The Netherlands is the US's favourite tax haven' [Voor de VS is Nederland hét favoriete belastingparadijs], Volkskrant, 11 June 2014. <http://www.volkskrant.nl/voordeel/voor-de-vs-is-nederland-het-favoriete-belastingparadijs~a3669963/>

^{xvi} European Commission Taxation paper No 61: Study on Structures of Aggressive Tax Planning and Indicators.2016

http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf

^{xvii} 'Lowering the corporate tax rate is an obvious way to proceed' [Verlaging tarief winstbelasting ligt voor de hand], FD, 2 February 2016. <http://fd.nl/economie-politiek/1137890/verlaging-tarief-winstbelasting-ligt-voor-de-hand>

^{xviii} 'The OECD's project on harmful tax practices: 2006 update on progress in member countries', OECD

<https://www.oecd.org/ctp/harmful/37446434.pdf>

^{xix} OECD web page on the list of uncooperative tax havens. <http://www.oecd.org/countries/monaco/listofunco-operativetaxhavens.htm>

^{xx} OECD web page, Q&A on the Panama Papers. <http://www.oecd.org/tax/questions-and-answers-on-panama-papers.htm>

^{xxi} 'Calling time, why SabMiller should stop dodging taxes in Africa',

https://www.actionaid.org.uk/sites/default/files/doc_lib/calling_time_on_tax_avoidance.pdf and 'The Dutch Route. How poor countries miss out on income via Dutch tax leak' [De Nederlandse Route Hoe arme landen inkomsten mislopen via

belastinglek Nederland], Oxfam Novib, 20 May 2013.

<http://www.oxfamnovib.nl/redactie/Downloads/Rapporten/DeNederlandseRouteBP21052013.pdf>

^{xxii} Letter to parliament concerning the government's response to the evaluation of the innovation box.

<https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/19/kamerbrief-betreffende-kabinetsreactie-evaluatie-innovatiebox>

^{xxiii} List of questions and answers about the evaluation of the innovation box from 2010 to 2012 (15 April 2016)

<https://www.tweedekamer.nl/kamerstukken/detail?id=2016D16135&did=2016D16135>

^{xxiv} European Commission Taxation paper on Patent boxes design, patents location and local R&D, 2015.

http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_57.pdf and

^{xxv} Mapping study made by CPB Netherlands Bureau for Economic Policy Analysis (CPB) for the European Commission, 2014: <http://www.cpb.nl/persbericht/3215451/belastingvoordelen-rd-niet-doorslaggevend-voor-innovatie>

^{xxvi} Evaluation of innovation box [Evaluatie innovatiebox] 2010-2012, 19 February 2016.

<https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/19/evaluatie-innovatiebox-2010-2012>

^{xxvii} Ratenau web page, 'Parliamentary committee responds to 'R&D goes global' report [kamercommissie reageert op rapport 'R&D goes global'], 10 February 2016. <https://www.rathenau.nl/nl/nieuws/kamercommissie-reageert-op-rapport-rd-goes-global>

^{xxviii} Letter to parliament concerning the government's response to the evaluation of the innovation box.

<https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/19/kamerbrief-betreffende-kabinetsreactie-evaluatie-innovatiebox>

^{xxix} Website on the Panama papers by Trouw and FD. 'Panama papers, revelations from the hidden world of tax havens' [Panama papers, onthullingen uit de verborgen wereld van belastingparadijzen]. <https://panamapapers.nl/#!>

^{xxx} 'Private gain – public loss, mailbox companies, tax avoidance and human rights, SOMO, June 2013.

http://www.somo.nl/news-and/copy_of_the-netherlands-haven-for-companies-that-violate-human-rights/image/image_view_fullscreen

^{xxxi} DNB web page, 'Functions insufficiently separated at trust offices' [Functies onvoldoende gescheiden bij trustkantoren], 25 April 2014. <http://www.dnb.nl/publicatie/publicaties-dnb/nieuwsbrieven/nieuwsbrief-trustkantoren/nieuwsbrief-trustkantoren-april-2014/dnb306898.jsp>

^{xxxii} 'Anti-money laundering and combating the financing of terrorism, the Netherlands', Financial Action Task Force, 25 February 2011 <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Netherlands%20ES.pdf>

^{xxxiii} 'DNB position paper for the trust sector hearing/round-table discussion' [Position paper DNB t.b.v.

hoorzitting/rondtafelgesprek trustsector] on 23 March 2016'

<https://www.tweedekamer.nl/kamerstukken/detail?id=2016D12185&did=2016D12185> en

<http://www.nrc.nl/next/2016/04/06/bij-waakhond-dnb-lusten-ze-de-trustfirmas-rauw-1608197>

^{xxxiv} Letter to parliament about the shape of the UBO register, 10 February 2016.

<https://www.rijksoverheid.nl/documenten/kamerstukken/2016/02/10/kamerbrief-over-de-contouren-van-het-ubo-register>.

By doing so the Netherlands is taking a very important step that should be followed by all governments.. We want to encourage the Netherlands (and other countries) to ensure that the register is easily accessible (no substantial financial barrier must prevent the register being searched and the register must also have an open data format).

^{xxxv} 'Behind the screen of the Panama papers [Achter de schermen bij de Panama papers], Trouw, 3 April 2016.

<http://www.trouw.nl/tr/nl/38754/Panama-Papers/article/detail/4274888/2016/04/03/Achter-de-schermen-bij-de-Panama-Papers.dhtml>

^{xxxvi} "How do I get \$ 32 mln out of the country without the tax authorities noticing [Hoe krijg je \$ 32 mln het land uit zonder dat de fiscus het ziet?]' Trouw and FD, Thursday 14 April <https://panamapapers.nl/#!hoe-krijg-je-32-mln-het-land-uit-zonder-that-the-fiscus-het-ziet>

^{xxxvii} New reports on the Panama papers in Trouw and De Volkskrant: <http://www.trouw.nl/tr/nl/38754/Panama-Papers/article/detail/4276439/2016/04/06/Dutch-hulp-bij-opzetten-dubieuze-constructies.dhtml> and

<http://www.volkskrant.nl/buitenland/de-amsterdamse-firma-infintax-blijkt-het-panama-aan-de-zuidas~a4277234/>

^{xxxviii} Letter to parliament requesting insight into the Starbucks ruling, 19 February 2015.

<https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/eric-wiebes/documenten/kamerstukken/2015/02/11/kamerbrief-verzoek-om-inzage-in-ruling-starbucks>

^{xxxix} TaxLive web page, 'Insight into rulings' [Rulings in het vizier], 4 February 2015. <http://taxlive.nl/-/rulings-in-het-vizier>

^{xl} http://europa.eu/rapid/press-release_IP-15-5880_en.htm

^{xli} Fact sheets on, among other things, tax avoidance via the Netherlands, created by SOMO, 23 December 2015.

<http://www.somo.nl/news-nl/aanhoudende-belastingontwijking-ondermijnt-europese-solidariteit> and

<http://www.somo.nl/news-nl/Nederlandparadijsvoorbelaastingontwijkers.pdf>

^{xlii} <http://www.actionaid.org/publications/extractive-affair-how-one-australian-mining-companys-tax-dealings-are-costing-worlds-po>

^{xliii} <https://www.imf.org/external/np/pp/eng/2014/050914.pdf>

^{xliiv} IMF Fiscal Monitor, October 2013. <http://www.imf.org/external/pubs/ft/fm/2013/02/pdf/fm1302.pdf> A double Irish Dutch Sandwich involves the use of (at least) two companies in Ireland and one in the Netherlands (possibly with a head

office in, for example, the US and a branch in a tax haven like Bermuda). Profits are channelled to a tax haven via Ireland and the Netherlands. In the face of international pressure, Ireland has now taken measures to combat the Double Irish (<http://www.nrc.nl/handelsblad/2014/10/15/ierland-sluit-internationaal-populaire-fiscale-vlu-1431020>)

^{xlv} Bilateral tax treaties and foreign investments [Bilaterale belastingverdragen en buitenlandse investeringen]

CPB Policy Brief 2013/07 | 30-08-2013 <http://www.cpb.nl/publicatie/bilaterale-belastingsverdragen-en-buitenlandse-investeringen>

^{xlvi} Website of the International Consortium of Investigative Journalists concerning the Luxembourg leaks.

<https://www.icij.org/project/luxembourg-leaks> see also the NRC article entitled 'The Netherlands is not a tax haven at all, or is it?' [Nederland is helemaal geen belastingparadijs, of toch?] of 6 November 2014

^{xlvii} 'Tax avoidance, an in-depth study of tax avoidance in relation to the fiscal rules and the treaties network' [Belastingontwijking, Een verdiepend onderzoek naar belastingontwijking in relatie tot de fiscale regels en het verdragenennetwerk], Chamber of Audit, 6 November 2014

<http://www.rekenkamer.nl/Publicaties/Onderzoeksrapporten/Introducties/2014/11/Belastingontwijking>

^{xlviii} Motion by member van Vliet, submitted on 14 January 2013. <https://zoek.officielebekendmakingen.nl/kst-25087-35.html>

^{xlix} Appreciation by the government of the outcome of the BEPS project and a look into the future as regards the Dutch fiscal business climate, 5 October 2015. <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/10/05/brief-based-erosion-profit-shifting>

ⁱ Countries should be able, at least, to publish the basic information which is already being exchanged between countries (such information includes the name of the party liable to pay tax, a summary of the content of the ruling, the term of the ruling, the type of ruling and the countries involved). However, as Francis Weyzig argued after Luxleaks in 2015, there are good arguments for making rulings public in their entirety: 'End the secrecy, publish tax rulings'. Blog posted on June 21, 2015. <https://francisweyzig.com/2015/06/21/end-the-secrecy-publish-tax-rulings/>

ⁱⁱ On 28 January, the European Commission presented the *Anti-Tax Avoidance Package* (ATAP) to counteract tax avoidance by multinationals. This package contains, among other things, two directives namely the *Anti-Tax Avoidance Directive* (ATAD) and an amended *Directive on Administrative Cooperation* (DAC4). These directives contain important elements from the BEPS package which was adopted last year by the OECD and G20.

ⁱⁱⁱ The current discussions within ECOFIN run the risk of losing sight of this principle by leaving it up to member states to choose which income from a low taxed entity they include in the tax base. One of the proposed options is only to tax income from a low-tax entity which has not been paid out which results from entirely artificial construction set up with the aim of obtaining a tax benefit. This would make the most ineffective because it is extremely difficult to provide proof of entirely artificial constructions and their intended goals. Identifying such constructions would also require a huge effort on the part of the tax authorities. Our recommendation is that CFC income must be included in the tax base of a party liable to pay tax as proposed by the European Commission in Article 8 §1 (c). Any concerns about unintended effects on companies with real economic activities can be compensated for with an exception clause which would give companies the opportunity to demonstrate that CFC income results from real economic activities and is not connected to profit shifting from other countries.

ⁱⁱⁱ After all, the CFC measure is aimed at profit which is moved to jurisdictions with a low or zero tax rate. However, the current draft directive imposes a threshold rate of 40% of the effective rate in the EU member state in question. This limit is much too low and will reinforce undesirable tax competition between member states because some multinationals will try to relocate their parent company to an EU member state with a lower corporation tax rate. By way of an illustration, we would like to refer to a study by the OECD which shows that many countries with CFC legislation imposed a threshold rate which amounts to 75% of the domestic corporation tax rate.

^{liiii} *Financieel Dagblad*, Thursday 14 April 2016 'The Netherlands has turned out to be a notorious fiscal for one in the EU's side [Nederland blijkt binnen EU notoire fiscale dwarsligger].

^{lv} 'How the Netherlands deliberately made it easier to avoid tax' [Hoe Nederland opzettelijk belastingontwijking gemakkelijker maakte], *The Correspondent*, 25 April 2016. <https://decorrespondent.nl/4381/Hoe-Nederland-opzettelijk-belastingontwijking-gemakkelijker-maakte/1163239225291-db9dcbcd>. Additional clarification: In 2014 the European Parent-Subsidiary Directive was adopted and included a restriction on the exemption from the interest on a hybrid low. This signalled the end of some of the aggressive tax planning with hybrid mismatches. The new EU anti-tax avoidance measures are intended to reduce this even further (whereby it is consequently important that these rules not only prevent mismatches within the EU, but also with third countries).

^{lvi} 'Still broken, governments must do more to fix the international corporate tax system', November 2015, Oxfam, PSI, GATJ, TJN. <http://www.oxfamnovib.nl/Redactie/Pdf/Onderzoeksrapporten/bn-still-broken-corporate-tax-101115-embargo-en.pdf>

^{lvii} NOB: reduce corporation tax and abolish dividend tax [VPb verlagen en dividendbelasting afschaffen], Taxence newsletter, 2 November 2015. <http://www.taxence.nl/branchenieuws/branchenieuws/2015/nob-vpb-verlagen-and-dividendbelasting-afschaffen.108573.lynkx>

^{lviii} Although agreements have also been made within the OECD about reporting by companies, this information will not become public and will not apply to all large companies (only those with turnover of 750 million). Public transparency is urgently required so that multinationals and tax authorities can be called to account.

^{lix} An alternative system would be one in which “MNCs would be taxed according to the genuine economic substance of what they do and where they do it” <http://taxjustice.blogspot.nl/search?q=unitary>