Tax Justice NL Seminar 21st May 2008

"In search for balance"

Report of presentations, comments and discussions during the seminar

By Laurens Booijink, Jesse Clever, Francis Weyzig and Miranda Broersen

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COLOPHON

Tax Justice NL Seminar 21st May 2008, "In search for balance"

Report of presentations, comments and discussions during the seminar

Utrecht, July 2008

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www.taxjustice.nl → Downloads → Seminar 2008

INTRODUCTION

This is a report of the conference of Tax Justice NL which was held on the 23rd of May 2008 in the Rosarium in Amsterdam, the Netherlands. It aims to summarize the most important elements of the different presentations during the morning and afternoon programme. For the complete presentations please consult the downloads page on the website. The comments and discussion points made by experts and public are also presented here.

The structure of this report is chronological. The first part will present the four presentations, comments and discussion during the morning seminar. The second part consists of a summary of the four presentations and the debate in the afternoon.

Please note that this report aims to provide a fair and neutral summary of the conference. However, it has not been authorised by speakers, discussants or members of the audience and the presentations and discussions have not been recorded. Occasionally, (part of) an interruption may have been missed. It is therefore possible that the text would, unintentionally, contain a few inaccuracies or omissions.

SUMMARY OF PRESENTATIONS DURING THE SEMINAR

This is a summary of the conference of Tax Justice NL which was held on the 23rd of May 2008 in the Rosarium in Amsterdam, the Netherlands. It aims to summarize the most important elements of the different presentations during the morning and afternoon programme.

"In Search for Balance - Introduction" - Presentation by Albert Hollander

Albert Hollander welcomes all the participants to the seminar. This seminar is the second event of Tax Justice NL. Hollander is president of Tax Justice NL since January 2008. As the first president of the network, Hollander aims to keep the discussions on tax justice alive in the Netherlands. He explains Tax Justice International arose out of the Millennium Development Goals (MDGs). The question is: How to finance the gap and realization of these goals?

To answer the question, also the current tax systems and practices need to be considered. The focus of this day will be on the corporate income tax and the negative consequences of tax havens and tax competition on developing countries. The seminar will also consider future tax systems which may finance the MDGs.

Tax Justice NL aims to be a platform for discussion and dialogue between the different stakeholders. This is also the aim of this seminar. The speakers approach the tax justice discussion from very different angles. Hollander states that the goal of today is not only to search for balance, but also "find a way to balance our way forward".

"The (Development) Importance of Tax" - Presentation by Alex Cobham

Alex Cobham will discuss the role of tax and its contribution to development. He explains the four R's of how effective tax systems can contribute to development: Revenues, Redistribution Reprising and Representation.

On the other side, tax expenditure is important for development. For low income countries, problems arise because of weak states which are in or have just come out of conflict situations, unrepresentative states with inappropriate political structures, 'bad' states and unresponsive states in which the agenda of the citizens is no longer served.

Cobham explains the tax consensus. This consensus on domestic taxation has several features that have far stretching effects. The first is the aim for tax neutrality in practice. This aim for tax neutrality has lead to less pressure on direct taxation, trade liberalization and a greater emphasis on sales taxes. The second component is that redistribution of income should only come through government expenditure. The third component of the tax consensus is a revenue target of 15%-20% of GDP. Cobham explains that the tax consensus is based on the assumptions of rich economies and how the tax consensus fails in Low Income Counties. By leaving representation out the tax consensus is fundamentally flawed.

The second obstacle to effective taxation issue is the lack of transparency in international financial transactions. The central problem is opacity about the ownership and the rotation of income streams. This raises two problems: secrecy in jurisdictions and effective lack of transparency in corporate accounting. The last is related to tax evasion through the mispricing of trade between unrelated entities and abusive transfer pricing within multinationals.

Cobham explains that financial actors have the choice. On the one hand they can dismiss the concerns of development and investor communities by denying the costs of opacity and fighting moves for transparency. On the other hand financial actors can recognize and share these concerns by engaging in exactly the dialogue as mentioned by Albert Hollander. In doing so, solutions can be found that reflect both the market realities and the development costs of the lack of transparency. Today's seminar is a good step down the road to that engagement.

"Linking Human Rights, Taxation and Development – A Kenyan Case Study" Presentation by Attiya Waris

Attiya Waris will discuss the link between human rights, taxation and development. Waris makes the link of tax revenue with human rights. She shortly explains taxation principles: equity, neutrality, convenience, economy, productivity, buoyancy, flexibility, simplicity and diversity and links this to the human rights principles within the Universal Declaration of Human Rights.

Tax expenditure can also be linked to human rights. Human rights treaties always involve the right to health, the right to education and the right to housing. This makes it possible to make a clear connection between budgetary allocation and human rights. Waris gives some Kenyan and African examples to stress the importance of human rights in government expenditure.

Waris makes the comparison between the developments of taxation that has been taking place in developed countries and developing countries. In developed countries it has always been taken for granted that there is a social contract; an agreement between the people and the government. This process never took place in developing countries.

Waris explains the impact of international taxation on developing countries. The first problem is the creation of tax systems by colonial powers which did not change while the economy developed. Waris also considers the WTO and mentions the constant clash with the IMF and the World Bank: both argue for setting lower tax rates to attract investments. Waris provides an interesting case study involving Unilever and the application of the OECD transfer pricing guidelines. Afterwards, she explains the case of Kenya and the development of its tax systems.

On the international level, linking human rights to taxation is only taking place with regard to the right to development. As much as there is a need for international technological help and assistance, one of the most important issues is the development of 'home grown' ideas. In this respect there is the excellent example of the Kenyan initiative, the Constituency Development Fund, in which the Kenyan government tries to solve the representation problem and link tax to development. Another important point is that international institutions like the IMF and World Bank should lessen their pressure on developing countries to reform their tax systems in order to have lower effective tax rates for business. And last but not least, everyone, including foreign business in developing countries, should pay taxes.

"Development Friendly Fiscal Regimes" - Presentation by Sony Kapoor

Sony Kapoor starts his presentation by discussing the state of the world. Kapoor argues that it would be 'logic' that money would flow from mature economies where the investment opportunities have dried up or returns are low, to countries where opportunities and growth exist. In reality we see negative flows within and across the poorest countries. There is also a trend of more regressive tax systems as there is a strong resistance to make the tax systems more progressive.

Kapoor explains the minimum ingredients for progress for developing countries. Domestic resource mobilization involves taxing local business. Retention involves ensuring revenues from valuable natural resources in a country. Recovery could involve the fight against capital flight from developing countries. Finally, supplementation involves outside funds in the form of fiscal aid for example.

Tax competition is driving some countries into the ground, since they become unable to gather sufficient tax revenues. The focus on industrial policy, in terms of maximizing foreign direct investment for example, has led to negative effective rates of taxation. The subsidies offered to corporations have exceeded any potential tax revenue in the medium-term. Companies tend to favour capital intensive economies even though they generate less employment. The issue of the link between incentives through the tax system and employment needs to be taken far more seriously.

Kapoor shows the enormous growth and current size of financial transaction related to other transactions and explains the financial transaction tax. This tax used to be called the Tobin tax. The idea has evolved into number of different types of financial transaction tax. The idea of the currency transaction tax is to have a rate of 0,01% with the sole purpose of generating revenue. A rate of 0,005% can potentially raise 40 billion dollars if implemented internationally on the euro and the dollar and other important currencies. Kapoor also gives examples of the stock transaction tax in the UK and US, the bond transaction taxes in Germany and Austria and taxes on bank debits in Columbia, Venezuela, Peru, Brazil and Ecuador.

Kapoor explains that there are three kinds of redistributive policies. Firstly, there are those which skew pre-tax income to the poor. These relate to the development of agriculture, rural infrastructure, introduction of a minimum wage and guaranteed employment schemes. Secondly, there are policies which skew post-tax income to the poor. These add to the efficiency and redistribution of a tax system. Thirdly, there are policies which skew expenditure to the poor. In this respect we may think of a currency transaction tax, increasing aid expenditure, free provision of education and healthcare and free school meals.

"In Search for Balance – Corporate Income Tax and Transparency" - Presentation by Albert Hollander

Hollander's presentation revolves around the international aspects of the corporate income tax. Corporate income tax is a local tax. This means that countries define the tax base and the tax rates and their own tax rules.

At the European level, there are efforts to harmonize taxes but so far this has resulted in harmonization of indirect taxes, value added taxes to be precise, as opposed to direct taxation such as the corporate income tax. The lack of harmonization results in inefficiencies. Also, countries may compete against other countries with regard to the tax rate and the tax base. Because of this, legislation has become extremely complex. Hollander asks the question whether

the corporate income tax as we know it today will still be in place in twenty years. Will this tax be replaced by other forms of taxation?

Multinational corporations (MNCs) aim to prevent double taxation to make sure profits are taxed once. Within the legal framework, companies need to make choices. Does the corporation focus on maximising profits or is attention also given to the social aspects of paying taxes? This is an individual decision. It is necessary that choices relating to tax policy of multinationals are based on the relevant facts, dependencies and impact on other people and organizations. Thus Hollander argues for more transparency in order to make a proper choice with regard to the tax policy of a multinational.

He explains that non-transparency raises suspicion, can generate misinformation and can leave room for abuse. Being transparent, however, can lead to vulnerability as sensitive information may reach competitors. On the other hand, transparency means a corporation takes a clear stand in the discussion so suspicion is not raised, solid information is generated and there is less room for abuse.

“Dutch Corporate Services Industry” - Presentation by André Nagelmaker

Nagelmaker explains the origin and development of the corporate services sector in The Netherlands. With the globalization of international business and the development of free trade, the corporate services industry and the use of international finance companies developed in the Netherlands. In the 1990s many European and other countries became aware of the benefits of The Netherlands and alternative jurisdictions like Ireland and Luxembourg developed.

Around the turn of the century, innovative financial markets resulted in new instruments such as securitizations. These structures require an independent and ring-fenced special purpose vehicle which is managed by an independent entity. Furthermore, after 2000 the private equity funds emerged and these funds are extremely cost oriented. Therefore the corporate services sector is very important to these funds. Consequently, the corporate services sector grew in The Netherlands, Luxembourg and Ireland.

The Dutch corporate services industry also has a public task by means of acting as a gatekeeper. By law Dutch corporate services suppliers must apply extended client due diligence checks, checks relating to the source of wealth and continuously monitor money and capital flows. These tasks relate to the fight against money laundering and terrorism.

According to Nagelmaker, the Dutch corporate services industry contributes to the Dutch economy. In contrast to what has been said this morning by Cobham, the reduction of international transaction costs, as one of the aims of the Dutch corporate services suppliers, leads to a higher economic growth and more flexible economic environment. Other aspects related to the economic contribution are the economies of scale which companies can realize through the services suppliers and the reduction of double taxation. Nagelmaker explains the size and structure of the Dutch services industry.

Finally, Nagelmaker addresses global asset optimization and global tax justice. In the view of VIMS and DFA, the two Dutch associations of trust companies, reductions in transaction costs support international growth. The responsibility of the Dutch corporate services suppliers is expressed in the way in which anti-money laundering rules and client due diligence checks are

applied on the basis of the text and spirit of the relevant regulations. The moral development is followed through the democratic process. VIMS and DFA have a fair view of what motivates corporations and are willing to go through the relevant elements of the discussion.

"Balance and Transparency in Dutch Tax Policy" - Presentation by Leo Zuliani

Leo Zuliani discusses the history and current status of the OECD Harmful Tax Project. Tax competition is a global reality according to Zuliani. Both the EU and OECD have adopted an approach to tax competition. The EU and OECD launched projects against harmful tax competition in 1998. However, the EU focused on the rates whereas the OECD focused on cooperation.

The most important objective of the OECD was to establish a dialogue between the tax havens and the OECD members. If tax havens were willing to change the lack of transparency and adopt an effective exchange of information, then those tax havens would be considered cooperative tax havens as opposed to uncooperative tax havens. Within the framework of the OECD a Tax Information Exchange Agreement (TIEA) was developed. The purpose is to facilitate international cooperation in tax matters through the exchange of information.

The Netherlands have now signed three TIEAs with the Isle of Man, Jersey and Guernsey. In the future talks will be held with Bermuda and other Caribbean islands. The Netherlands are in a position to obtain the relevant information. The Netherlands have therefore developed a compensating benefit package for cooperating countries. Such a compensating benefit may entail a small tax treaty with regard to shipping and air transport. A second benefit is a mutual agreement procedure on the adjustment of profits. A third benefit is a clarification with regard to the application of the Dutch participation exemption.

The Dutch government has to make sure that the Netherlands are an attractive location for companies to set up and maintain a business. In 2007 a significant reform was carried out which lowered the corporate income tax rate to 25,5%. This reform also introduced a patent box regime. The interest box regime is still being investigated by the European Commission.

Zuliani stresses that a good location is not merely dependent on the tax system itself, but also depends on how the tax system is administered. Corporations nowadays require tax administrations to be predictable and consistent. Moreover, corporations would appreciate the possibility to give input when it comes to establishing new rules. The Dutch tax administration is perceived as being business friendly.

"A Code of Conduct for Taxation" - Presentation by Richard Murphy

Richard Murphy explains the Code of Conduct for taxation. Murphy stresses that this Code is a draft. The Code has been created for the purpose of discussion[1]. Murphy explains that Cobham has already talked about the social purpose of taxation. For this reason, Murphy opposes tax avoidance and tax evasion (he goes into some detail on the difference between the two) and advocates tax compliance: paying the right amount of tax, in the right place, at the right time and the economic substance of the transaction coinciding with its tax reporting form.

[1] See www.taxjustice.nl → Downloads → Seminar 2008 → Draft Code of Conduct

Tax avoidance can be defined as using artificial or contrived methods of adjusting taxpayers' social, economic or organisational affairs to reduce their tax liability in accordance with the law while not affecting the economic substance of the transactions. Tax avoidance undermines the will of parliament as tax avoidance simply means trying to get around the law. The Tax Justice Network perceives tax avoidance to be anti-democratic. Tax avoidance also encourages capital flight from developing countries and harms development. The result is that people in developing countries and elsewhere suffer from tax avoidance.

As a contribution to the debate Murphy proposes a Code of Conduct. The Code addresses the need for the different parties in the debate to eventually come together in order to create a common understanding with regard to taxation in the 21st century. Murphy mentions that a version of the Code consisting of two pages has been handed out to the participants. The three parties covered are the government, taxpayers and tax advisers.

Murphy states that the greatest challenge is to get the governments to cooperate. At the moment many governments create an environment for tax avoidance and tax evasion. Governments will have to come up with clear legislation which may entail cutting out loopholes, backed by a general anti-avoidance principle. No incentives must be given for the artificial relocation of transactions. Finally, full support must be given to other tax authorities to collect the tax due to them; we need a commitment to exchange information. Murphy argues in favour of an automatic exchange of information between tax authorities of different countries.

In ensuring economic efficiency in the allocation of resources, governments must require that all information on accounting, ownership and management for all legal entities is available free of charge on public record. Governments themselves must also be clear, open and transparent in their budgeting and accounting.

"How can companies account for their contribution to society" - Presentation by Robert van der Laan

PricewaterhouseCoopers (PWC) is confronted with the issues discussed during the seminar. There are different stakeholders interested in tax, which can be distinguished between external and internal stakeholders. Van de Laan points out that tax justice is a fairly new issue for NGOs and multinationals, some time is needed for business to adapt to this new reality.

The interest shared by all stakeholders is enhanced transparency. It is not sufficient to merely talk about increased transparency without establishing standards. Different stakeholders gave PWC an insight in the information they require.

PWC distinguished between three categories of information: tax strategy and risk management (objectives of a company on tax), tax numbers and performance (clear explanation as to why the current tax charge is not equivalent to the accounting profit of the statutory rate of tax) and the Total Tax Contribution and the wider impact of taxes.

Van der Laan aims to explain Total Tax Contribution. Stakeholders are interested in the total of all taxes paid by a company. Also make a distinction between taxes which are a cost to the company (such as corporate income tax) and taxes which are collected by the company (such as VAT and payroll tax). On the point of common language van der Laan explains there is the need to use the same definitions when it comes to the tax contribution of a company.

Van der Laan concludes that there will never be transparency without trust. In January 2008 the Cape Town Communiqué was released by the OECD. The OECD members mention the objective of an enhanced relationship for the first time. The countries admit that trust is essential in the relationship with the taxpayer. Van der Laan states that the world has not changed after this Communiqué but he is extremely happy with the views expressed in this document. Tax authorities start to recognize Van der Laan's belief that transparency and trust are two sides of the same coin.

Next steps by Albert Hollander

Hollander explains Tax Justice NL has the responsibility to take the dialogue to the next phase. Hollander invites all the participants to come up with suggestions as to what the next steps might be. He thanks the speakers and all participants.

OFFICIAL REPORT

MORNING SEMINAR - INTERNATIONAL TAXATION AND DEVELOPING COUNTRIES

Greetje Lubbi (the chair of the day) welcomes all participants to the seminar. She hosted last years conference of Tax Justice NL and hopes to learn more today. The seminar entails a full program with a lot of distinguished speakers from The Netherlands, other European countries and Africa. By the end of the day they will have brought balance into the discussion about tax justice. The first speaker Lubbi introduces is Albert Hollander: president of Tax Justice NL. He is a former tax partner at PricewaterhouseCoopers and currently head of the legal and compliance department at Triodos Bank in the Netherlands. He will set out the contents of today's seminar.

"In Search for Balance - Introduction" Presentation by Albert Hollander

Albert Hollander welcomes all the participants to the seminar. This seminar is the second event of Tax Justice NL. The conference last year was based on research carried out by SOMO[2] which lead to much discussion about the role of the Netherlands as a tax haven or conduit country. Hollander was not present at the conference and found out about Tax Justice NL through the newspapers. He became interested because of his background as a former tax partner at PricewaterhouseCoopers and his current career with Triodos Bank. As the first president of Tax Justice NL, he aims to keep the discussions on tax justice alive in the Netherlands.

Before addressing the outline of today's program, Hollander would like to introduce The international Tax Justice Network. This organisation arose out of a resolution adopted by the United Nations: the Millennium Declaration (Sheet 2). Most countries in the world have promised that by the year 2015 certain goals are achieved. Sheet 3 shows a number of the Millennium Goals. This year we are halfway, and by the end of this year the progress of reaching the Millennium Goals will be evaluated.

With sheet 4 Hollander raises the question: How to finance the gap and realization of these goals? To answer the question, the current tax systems and practices need to be considered. This day the focus is on one kind of taxation: the corporate income tax. This is an area of taxation that has been around for more than a 100 years. In last year's seminar the influence of the corporate income tax on developing countries was discussed. If there are negative consequences on developing countries then the question is: how to minimize these negative effects? Today Hollander hopes to take the next steps in this discussion. The seminar will also consider future tax systems which may finance the millennium goals. Last year the idea of taxing supranational streams of money was put forward: a currency transaction tax. Sony Kapoor will discuss this tax in his presentation.

Sheet 5 explains how Tax Justice NL would like to position itself. Hollander mentions that he would like to see a long-term dialogue with all the parties in the field. He is very glad to see that today there are parties from very different backgrounds, namely both the economic field and the developing field.

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[2] The report and presentations of last years conference and the SOMO report "Tax Haven and Development Partner" is available at www.taxjustice.nl → Downloads → Conference 2007

Hollander elaborates on the approach of Tax Justice NL. Tax Justice NL aims to become a platform for discussion and dialogue between different parties. He aims to take the Dutch approach of "polderen", the Dutch way of seeking similarities and common interests between (political) parties to cope with common problems.

Sheet 6 shows today's program. The speakers approach the discussion from very different angles. Those from the business field consider the economic value of the trust industry for example. André Nagelmaker will raise this issue in his presentation. But there are also those who notice problems of international taxation for developing countries and who want to alleviate those problems. It can be very difficult to connect these two approaches, but Tax Justice NL would like to do so in the best way. "Today the different routes connect here in Amsterdam in the 'Rosarium' and we hope to notice common ground instead of focusing on the differences between the parties involved."

Hollander concludes by stating that the goal of today is not only to search for balance, but also "find a way to balance our way forward". He asks Alex Cobman to start his presentation.

"The (Development) Importance of Tax" Presentation by Alex Cobman

Alex Cobman will discuss the role of tax and its contribution to development. He will analyse the development costs of current international taxation practices before focussing on corporate taxation. Sheet 2 gives an overview of his presentation. He notes that the problems in international tax structures and the role of corporate taxation are not the only obstacles to effective taxation systems in developing countries. For the presentation he will need to focus on these issues.

Cobman aims to analyze the effects of corporate taxation on development in particular. He will discuss what tax systems can do and obstacles to effective expenditure and taxation. "We have to look into the restrictions on domestic tax policy and the problem of the lack of financial transparency and the subsequent constraints on developing countries' ability to generate the tax revenue they desperately need."

With sheet 3 Cobman explains the four R's of how effective tax systems can contribute to development. *Revenues* is explained by the difference between High Income Countries (HICs) and Low Income Countries (LICs). "Nowadays we see many countries with tax ratios of around 40% of GDP while countries in sub-Saharan Africa struggle to reach 10% or 15% making these African countries very fragile as they cannot generate enough tax revenue for development to occur."

Redistribution is a particular issue in middle-income countries where you have a level of income per capita which is not low but there is growth inequality. Redistribution can contribute to development by shifting income to and investing in the living conditions of lower income communities.

The *repricing* of economic alternatives entails heightening the prices of 'bad' commodities through added taxes. Examples are the taxes on cigarettes or the tax on carbon emissions. "We need effective tax systems that can reprice carbon emissions in poor and rich countries."

The fourth R relates to political *representation*. A well known phrase is 'no taxation without representation'. Cobham states that the opposite can be observed as well: 'no representation without taxation'. There is a need for fair and effective taxation from a development perspective. "It is when people pay tax that they hold the government to account for the use of those funds." From the political science empirical literature Cobman sees two results: higher taxation leads to stronger democratization and direct taxation drives this process most powerfully as taxes on income and profits are felt the most.

After the tax revenue is raised the question arises how the funds can be spent effectively (Sheet 4). There are several reasons why we do not observe proper expenditure, especially in low-income countries. There are weak states which are in or have just come out of conflict situations, unrepresentative states with inappropriate political structures, 'bad' states such as Iraq under Saddam Hussein and unresponsive states in which the agenda of the citizens is no longer served. Cobman states that problems are not going to be solved immediately.

Sheet 5 elaborates on the first obstacle of effective taxation: the so called tax consensus. This consensus on domestic taxation has several features that have far stretching effects.

There are a number of key components to the tax consensus (sheet 6). The first is the aim for tax neutrality in practice. Tax neutrality means that all tax rates of different kinds and amounts of income should be 'neutral'; in other words the same or comparable. Tax neutrality is needed to remove the perceived distortion on trade and to remove incentive problems for business. This aim for tax neutrality has lead to less pressure on direct taxation, trade liberalization and a greater emphasis on sales taxes.

The second component is that redistribution of income should only come through government expenditure. Progressive tax systems are not advised because they aim to redistribute through taxation. This is in line with the aim for tax neutrality.

The third component of the tax consensus is a revenue target of 15%-20% of GDP. This is not far off the level of the fragile state. Cobman states that the consensus has no ambition to reach the 30%-40% we see in most rich countries.

With sheet 7 Cobman explains that the tax consensus is based on the assumptions of rich economies. Sheet 8 explains how the tax consensus fails in LICs. "In particular the assumption that governments are able to make direct payments to households simply does not hold in low-income countries and even in many middle-income countries." In effect, the only area in which redistribution could have been possible [through progressive taxation] has been taken out of the tax system proposed by the tax consensus.

When comparing a stylized taxation system for high-income countries with a stylized taxation system for low-income countries (sheet 9 and 10) we notice that in low-income countries we miss the fourth 'R': representation. The problem is thus turned on its head as it affects revenue growth, redistribution and repricing. This is something the consensus crucially fails to take into account.

Sheet 11 further explains the fundamental flaw of the tax consensus. In terms of tax compliance, Cobham observes that people pay more taxes than they should if they were simple rationale economic agents. The reason for this is that paying tax is fundamentally a social act. Compliance depends on two things: redistribution (one would be less willing to pay tax if there is the idea that the government is not going to spend it wisely) and the expectation of the compliance of another person; prominent individuals and companies play a particular role in this respect. There is a strong connection between the redistributive objective and the revenue

raising objective and that turns on the role of representation. By leaving representation out the consensus is fundamentally flawed. There is a lot of work to be done to allow effective taxation systems to emerge.

Even if we address everything discussed so far, the effective expenditure obstacles and domestic obstacles to effective taxation, Cobham states that we are still confronted with the issue of the lack of transparency in international financial transactions. Sheet 12 explains this second obstacle to effective taxation. The lack of transparency restricts the possibility of effective taxation in developing countries. This is where investor and development concerns are closely aligned. The same information that investors require for risk and reward analysis is information development actors require for tax purposes or enforcing the corporate responsibility agenda. The joint implication is that the central problem is opacity about the ownership and the rotation of income streams. This raises two problems: secrecy in jurisdictions and effective lack of transparency in corporate accounting.

With regard to the development costs of opacity (sheet 13), Cobham mentions that over the 1990's inflows of aid to developing countries average 50 to 80 billion dollars per year. However, corruption leads to outflows of 15 to 24 billion dollars per year. Furthermore, money laundering and criminal proceeds lead to significant outflows. The biggest problem is commercial tax evasion which accounts for 65% of the outflows. The outflows dwarf the official inflows.

With sheet 14 Cobman explains one aspect of tax evasion: the mispricing of trade between unrelated entities and abusive transfer pricing within multinationals. The research approach of Baker was based on 550 interviews with managers of multinationals to compare the share of declared trade. Pak took a different approach by analyzing trade data in industrial sectors and look whether internal and market prices add up. According to Cobman, the implied revenue loss for developing countries is estimated at 160 billion dollars per year.

In terms of the economic costs, higher shares of tax and redistribution in rich countries are consistent with higher levels of growth. However, there is not a great deal of evidence on developing countries. Based on his own research, Cobham finds that higher shares of tax in developing economies are systematically correlated with higher future growth (sheet 15, 16 and 17). Cobham also looked at the impact on child mortality, as a reduction in child mortality is one of the development goals to follow. Increasing tax in dollars per capita in developing countries has more than twice the impact in reducing mortality than increasing GDP per capita. Cobham stresses that these results are preliminary but he feels confident that the implications are correct.

According to Cobman, tax matters for development. "We can no longer say that tax restricts growth because governments do not necessarily spend revenues well or that tax does not contribute to development goals. It is important to note that it is not about higher taxes per se but it is about making the tax structure effective." In that respect Cobham expects to see lower corporate tax rates once we have more effective corporate taxation. This would also lead to more certainty for businesses.

With sheet 19 Cobman explains this leads to a looming agenda for development actors. He gives three reasons as to why development actors should seriously look into tax matters: tax is the only sustainable source of development finance, ending the moral outrage of the tax burden falling on the poorest people in the poorest countries to the benefit of the richest and thirdly, returning political space and effective representation to the people.

With sheet 20 Cobham discusses the looming agenda for financial actors; they have the choice. On the one hand they can dismiss the concerns of development and investor communities by

denying the costs of opacity and fighting moves for transparency. Such a choice is not without considerable risks. There may be public disapproval and by not cooperating one risks an imposed solution which does not recognize the realities of the market.

On the other hand financial actors can recognize and share these concerns by engaging in exactly the dialogue as mentioned by Albert Hollander. This will help to mitigate the risks as described above. In doing so, solutions can be found that reflect both the market realities and the development costs of the lack of transparency. Today's seminar is a good step down the road to that engagement.

"Linking Human Rights, Taxation and Development - A Kenyan Case Study" Presentation by Attiya Waris

Attiya Waris will discuss the link between human rights, taxation and development. With sheet 2 Waris gives an overview of the content of the presentation. In the third part, she will also discuss the case of Unilever in Kenya and application of the OECD transfer pricing guidelines. In the fourth part, two Kenyan case studies are going to be used: the international relationship between taxation in Kenya and international taxation and the second study is the application of domestic taxation within Kenya and the relationship with the Constituency Development Fund.

Sheet 3 shows the elements of state resources and state expenditure of developing countries. At a first glance state resources and expenditure may not be regarded as relating to human rights. With sheet 4 Waris points out that there are the three international treaties on human rights: the Universal Declaration of Human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These documents are signed by nearly all countries in the world and are reflected in nearly all constitutions. Waris also mentions the regional treaties such as the European and African charter. These treaties also mention human rights and include the right to health, education, social security and housing. The Millennium Development Goals have already been discussed by Alex Cobham, but Waris would like to stress that these goals are geared towards human rights.

With Sheet 5 Waris makes the link of tax revenue with human rights. She shortly explains taxation principles: equity, neutrality, convenience, economy, productivity, buoyancy, flexibility, simplicity and diversity. The human rights principles within the Universal Declaration have been distilled by the United Nations into 'The Global Compact' which contains a list of 10 principles for international business[3]. Basically, the Global Compact principles provide guidance as to how businesses should deal with human rights. One of the most important issues is the abolition of child labour for example.

Sheet 6 explains the link between tax expenditure and human rights. Waris explains that the human rights treaties always involve the right to health, the right to education and the right to housing. This makes it possible to make a clear connection between budgetary allocation and human rights, as shown on the sheet.

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[3] See www.unglobalcompact.org for more information on the UN Global Compact

Waris gives some Kenyan and African examples to stress the importance of human rights in government expenditure. With respect to infrastructure, Waris gives a Kenyan example: a railroad built in 1898 was never completed and the tracks are now more than 100 years old. Busses are privately owned meaning private citizens make the profits. The freedom of movement is thus under serious pressure in Kenya. With regard to social security, Waris addresses the differences between the UK and Kenya when it comes to government pensions and the fact that in the UK people over 60 years are offered a free bus pass. Waris also mentions the example of a Kenyan hospital in which there was no separate dialysis machine to treat HIV patients. A separate machine was finally installed due to tax expenditure. Hence we see a clear connection between fiscal availability of tax revenue and its application to health issues in developing countries. With respect to housing, Waris states that there have been some groundbreaking cases in South Africa relating to the right to housing. However, even the judiciary could not affect the decisions within budgetary policy.

With sheet 7 Waris starts making her comparison between the developments of taxation that has been taking place in developed countries and developing countries. In developed countries it has always been taken for granted that there is a social contract; an agreement between the people and the government. The people would pay taxes in return for the protection offered by the government. If people could not pay their taxes they would volunteer to serve in the army. This is described by Waris as the historical development of the social contract.

This process never took place in developing countries. In Africa colonial powers carved up the country without considering adequate access to water or infrastructure for example. Today it is estimated that 30% of the African population do not have proper access to water or transport and are thus 'landlocked' (no access to the sea and thus 'locked' from sea trade). The result is that countries depend on each other's infrastructure to encourage trade and infrastructure. In the developed world it is estimated that only 1% of the population is 'landlocked'.

According to Waris, the French Declaration on the Rights of Man from 1789 forms the clearest historical example of the link between taxation and human rights. Section 14 clearly shows the connection to the right to security and taxation. Such a link was never made in developing countries. In Kenya for example, the income tax act is actually the 1922 Colonial Administration Income Tax Act which was never changed. Another problem mentioned by Waris is based on the fact that Somalia, Ethiopia, Sudan, Uganda and Tanzania all have members of ethnic communities living in Kenya. Their identity as a people, belonging to a nation or a state, has nothing to do with Kenya as Kenya is a concept that did not exist before colonialism began. This identity crisis between the citizen and the state results in the fact that people do not recognise the social contract.

Sheet 8 further explains the difference: In developed countries we notice a stronger revenue base, more wealth, more stability and citizenry awareness. Waris explains that education is a major problem in developing countries. Literacy rates in Kenya are estimated at 75%-80% and that is relatively high. However, Waris warns that high literacy rates do not translate into an understanding of the tax system. Waris offers the example of a researcher investigating the amount of money reaching the grass roots level at schools in Uganda in 1990. It turned out that only 10% of the amount dedicated actually reached the grass roots level. Fortunately, the minister took positive steps and the amount increased to 90%. Outside influences can have negative effects in developing countries. The IMF and World Bank constantly ask for lowering the customs and excise taxes. This usually leads to problems as the income tax base of the country concerned is very limited. Double tax agreements often lead to even lower taxes being collected.

Waris uses sheet 9 to explain the impact of international taxation on developing countries. The first impact is a historical one; the creation of tax systems by colonial powers. The problem is that the old tax systems do not change while the economy develops. Tax reforms (for example lowering corporate tax rates) are often implemented to cope with regional and worldwide tax competition. Waris also considers the WTO and mentions the constant clash with the IMF and the World Bank: both argue for setting lower tax rates to attract investments. Finally, there is the impact of the International Accounting Standards. The problem here is that again the Kenyan tax system follows the changing economy very slowly; under Kenyan law the International Accounting Standards are sometimes actually illegal.

With sheet 10 Waris provides the participants with an interesting case study involving Unilever and the application of the OECD transfer pricing guidelines. Unilever Kenya transferred goods to Unilever Uganda at a rate which was lower than recommended. On the basis of Section 18 of the Kenyan Income Tax Act the court decided that in the absence of specific rules of the Kenyan revenue authority, the OECD transfer pricing guidelines should be taken into account, even though Kenya is not a member country of the OECD. This provides a clear example of the relationship between Kenya and international standards.

Waris starts to explain Kenya as a case study wit sheet 11. Kenya was the one exception among the decolonized territories in deciding to renegotiate international treaties. No other developing country renegotiated the double tax agreements. Changes since the Kenyan independence in 1962 have been predominantly caused by World Bank or IMF requirements. Until 2005 there were actually no 'home grown' changes. Again, this illustrates the slow progression of tax systems in developing countries.

Kenya has ratified the three main treaties on human rights (sheet 12). Moreover, it is a member of the African Union and the African Charter contains rights relating to infrastructure, health and housing. Kenya is also a member of the East African Community which has added complexity to the situation as regionalism is causing a lot of problems. Due to the implementation of the East African Community a lower tax rate applied to the movement of goods between the countries involved, but a higher tax rate applied to transactions with other countries. The result was that Kenyan tea became too expensive for Pakistan to import. The countries in the East African Community quickly renegotiated the rules and came up with a list of goods exempt for the purpose of the customs union. Waris states that there are currently over 184 items which are exempt so the future of the customs union is quite unclear.

On the international level, linking human rights to taxation is only taking place with regard to the right to development. It is the only area where it is specifically stated that resources should be allocated to secure human rights. Sheet 13 explains the case of the Kenyan Constituency Development Fund (CDF). Within Kenya there is a semi-novel initiative which stems from the Brazilian Porto Allegre experiment. It relates to the issue of representation as discussed by Alex Cobham and participatory budgeting is used as the technique. The government dedicates 7,5% of the tax revenue directly to development: education, health and infrastructure. People within the constituencies can decide on how the money should be spent. The idea is that the people who do not feel that they belong in a country at least get the feeling that they belong to a

community. Furthermore, the fund is based on needs and there are actually pending court cases in which members of parliament challenged the allocation of the funds.

Waris hopes she has given the participants an insight into how human rights and taxation are linked. As much as there is a need for international technological help and assistance, one of the most important issues is the development of 'home grown' ideas (sheet 14). In this respect there is the excellent example of the Kenyan initiative, the Constituency Development Fund, in which the Kenyan government tries to solve the representation problem and link tax to development. Another important point is that international institutions like the IMF and World Bank should lessen their pressure on developing countries to reform their tax systems in order to have lower effective tax rates for business. And last but not least, everyone, including foreign business in developing countries, should pay taxes.

Questions and discussion

Greetje Lubbi thanks Attiya Waris and invites the public to ask questions. The first question raised is how much tax multinationals pay in the case of Kenya.

Waris answers that the corporate income tax rate is 30% but the effective tax rates are hard to establish since they can only be deduced from private and confidential contracts. In the case of Unilever the effective tax rate was 15% and this information was obtained through the PR spokesman. Waris also claims that a Canadian mining company in Kenya, Tiomin Resources Inc, has an effective tax rate of only 10%. Waris does not know whether other companies are confronted with a similar effective tax rate.

Albert Hollander raises the question what multinational companies can do themselves, given that there is certainly a willingness to contribute to society. They can of course pay their taxes and thus allocate resources but one must also consider funding corrupt regimes. Hollander invites Waris to respond to this issue of corruption.

Waris states that corruption indeed is a major problem. In Kenya, as far as accountability is concerned, all members of parliament now have to file their wealth declaration forms. Waris herself is also obliged to do so as she teaches at the university. Waris acknowledges that this is the beginning of a long battle against corruption. Waris mentions that one of the fascinating effects of the Constituency Development Fund is the fact that the government and members of parliament can now be truly held accountable for the amount of money reaching the grass roots level. The fund has awoken a lot of people with respect to how taxation works and they start asking questions about government spending. With regard to the question what multinationals can do, Waris would love to hear from the other participants.

Lubbi invites Alex Cobham to comment by stating the view of Christian Aid and looking at the role of multinationals in the UK.

Cobham mentions a report from Christian Aid[4] which came out two weeks ago and the launch of a campaign at the start of next year. At first they will look into the financial sector and investigate the room for positive engagement. The next step will be to talk to multinationals.

With regard to the question what multinationals can do, Cobham states that a possible first step relates to one of the campaign goals: an accounting standard that requires the reporting of

[4] See the report "Death and taxes: the true toll of tax dodging", available at www.christianaid.org.uk → Resources → Policy

economic operations, profits and taxation by country and not by geographic segment. Possible responses from companies could be that this is a very onerous requirement but that companies would be giving away sensitive information to competitors. Cobham believes these are valid but weak arguments. It would be interesting to talk to multinationals about what the practical implications are. At some point there is a role for a champion or a group of champions to unilaterally take the position to release their accounts on that basis and to demonstrate to the wider market that if you do not have anything to hide you have nothing to be afraid of. Potentially there is a great deal of positive publicity to be had for those taking the first step.

On the question of corruption, having set out the obstacles to effective expenditure and the domestic obstacles to effective taxation, Cobham stresses that the results he presented with regard to economic growth and child mortality are based on historic data. Cobham states that there is strong evidence from literature that if we increase tax we reduce corruption, all other things being equal. So Cobham concludes that he has given underestimates of the long-term effects of increasing the levels of taxation. Therefore we can be slightly more optimistic about the issue of corruption. What we need is to take the first steps down the road and see the results build up in a demonstrable way and then see the process role out across other countries. The Kenyan Constituency Fund is a great example.

"Development Friendly Fiscal Regimes" Presentation by Sony Kapoor

Sony Kapoor makes three points before he starts. The first is about him starting his presentation a bit later than planned. Second he remarks that it is always tricky to do your presentation between the first speakers and lunch. Thirdly he would like to share two comments on the issues of a company paying tax to a corrupt regime as discussed before. If it is all right for the multinational to do business with a corrupt regime, then it should be all right to pay taxes to the corrupt regime. And to complicate things, Kapoor argues that bribes will only be paid by foreign corporations when it is profitable for them. In that sense foreign companies sometimes are the ones that 'corrupt' the regimes.

Kapoor starts his presentation by discussing the state of the world with sheet 2. Kapoor argues that it would be 'logic' that money would flow from mature economies where the investment opportunities have dried up or returns are low, to countries where opportunities and growth exist. In reality we see negative flows within and across the poorest countries. There is also a trend of more regressive tax systems as there is a strong resistance to make the tax systems more progressive. Kapoor mentions the example of non-domiciled businesses threatening to leave a certain country.

Kapoor argues that many people are left behind as they do not share in the benefits derived from globalization leading to an increase in polarization. Kapoor discusses that the idea of 'trickle down' of economic growth has been discredited, as it is not seen in practice in developing countries. He argues redistribution can lead to more sustained economic growth.

With sheet 3 Kapoor explains the minimum ingredients for progress for a developing countries. (domestic resource) Mobilization involves taxing local business. Retention involves insuring revenues from valuable natural resources in a country. Recovery could involve the fight against capital flight from developing countries. In this respect Kapoor also mentions Africans and Russians owning massive properties in Chelsea in London. Finally, supplementation involves outside funds in the form of fiscal aid for example.

These four ingredients need to be supported by a progressive fiscal and tax policy. It is not enough to see a country become wealthier at the aggregate level. It is important to redistribute the wealth within the country and this can be achieved by the tax authority. There should also

be an enabling and stable economic environment and environmental constraints should be taken into account.

Sheet 4 explains the wind of change. According to Kapoor the global system has shiften too far to one end and everywhere he observes the willingness to re-focus on tax and fiscal policy and domestic resource mobilization. The 'plugging the leaks agenda' is now mainstream and no longer taboo. More and more people are talking about capital flight for example. The illicit finance task force in Norway is gaining influence and tax matters receive more attention in the newspapers such as the scandal in Liechtenstein and the problems surrounding UBS in the United States. More attention is paid to asset recovery as African countries become more and more aware how much wealth is located abroad. Kapoor also mentions the progress made with respect to the STAR (STolen Asset Recovery) initiative of the World Bank.

There are innovative sources of financing such as taxing airline tickets, carbon emissions and financial transactions. These contribute to finance development expenditure. Kapoor mentions that the currency transaction tax for example, has not gone off the agenda over the past three to four years. Furthermore, the word 'redistribution' is no longer taboo and the financial systems are under significant stress. According to Kapoor, the argument that these systems may not be 'touched' does not hold, as these systems are going to 'explode' anyway. At the same time, however, there is a long way to go.

Sheet 5 explains that most taxation systems are regressive. Capital and corporate taxes are falling compared to taxes on labour and consumption which are rising. The issue of direct versus indirect taxation is a big discussion in Africa where regressive value added taxes have replaced taxes on imports.

Tax competition is driving some countries into the ground, since they become unable to gather sufficient tax revenues. The focus on industrial policy, in terms of maximizing foreign direct investment for example, has led to negative effective rates of taxation. The subsidies offered to corporations have exceeded any potential tax revenue in the medium-term. Kapoor does not feel the need to explain the issues of tax avoidance and tax evasion.

With regard to the impact of growth on employment, companies tend to favor capital intensive economies even though they generate less employment. Unemployment is a major problem and even in relatively developed countries such as South Africa the unemployment rate is around 25%. The issue of the link between incentives through the tax system and employment needs to be taken far more seriously. The preferential treatment of foreign investors has led to the phenomenon whereby domestic capital leaves a country and comes back disguised as foreign investment. Kapoor also mentions the extractive sector and states the enormous differences between Zambia and Norway when it comes to the wealth these countries obtain through their natural resources.

With sheet 6 Kapoor shows capital in- and outflows to Sub-Saharan Africa (SSA). Debt has hardly played a role in sub-Saharan Africa, compared to other outflows. Foreign exchange reserves relate to sub-Saharan African money held in accounts in France and London and this does not

help development. Portfolio equity goes in and out of a country and can cause financial instability. . Many African countries face penalties relating to delayed payments with regard to loans. Between 10% and 25% of the government budget of African countries can be spent on servicing loans. This means that new loans coming into Africa have not played a significant role as a net source of finance. Furthermore, capital flight is a serious problem. South Africa is estimated to loose 9,6% of its GDP annually via capital flight.

With sheet 7 Kapoor shows that inequality is rising across countries and he observes that higher inequality leads to lower levels of growth. A participant also asks the question which type of inequality Kapoor is discussing. Kapoor answers that his observations relate to income inequality as opposed to consumption inequality which is slightly lower due to redistribution.

The IMF has recognized that inequality leads to significant welfare costs and is at least as important as economic growth (sheet 8). The IMF is now pushing for an agenda which addresses inequality as playing a major role in worldwide welfare.

Sheet 9 goes into the effectiveness of tax policies in developing countries and redistributing income. Kapoor observes inefficient tax systems whereby inequality levels before and after tax are about the same. In Brazil, there is no redistribution and in Russia, the poor pay more tax. The share of pro-poor-growth in worldwide growth has been shrinking so inequality rises.

With sheet 10 Kapoor shows the enormous growth and current size of financial transaction related to other transactions. Kapoor perceives an increase in inequality as those who own the assets see their wealth go up as their assets increase in value. Kapoor also states that as the financial markets have grown exponentially, they have lost the connection with the real economy.

In sheet 11 Kapoor explains the financial transaction tax. This tax used to be called the Tobin tax. The Tobin tax had a dual purpose: to reduce financial instability and raise revenue. However, the idea has evolved into number of different types of financial transaction tax.

The idea of the currency transaction tax is to have a rate of 0,01% with the sole purpose of generating revenue. A rate of 0,005% can potentially raise 40 billion dollars if implemented internationally on the euro and the dollar and other important currencies. It can reduce the massive inequalities we see across countries and it can increase the aid budget by at least 50%.

Another financial transaction tax is the stock transaction tax. These exist in the United Kingdom (stamp duty) and the United States; supposedly the most liberal tax systems. The stamp duty in the UK alone raises 7 billion dollars annually.

Bond transaction taxes exist in Germany and Austria and have the potential to raise 50 billion dollars annually if implemented in more countries. Taxes on bank debits have been implemented in Columbia, Venezuela, Peru, Brazil and Ecuador. In Brazil alone it raises 50 billion dollars per year. Kapoor also considers special taxes on transactions with tax havens which can raise 40-100 billion dollars per year.

Sheet 12 gives some facts on transaction taxes. All of the G10 countries except Canada have had financial transaction taxes so the use is certainly mainstream. Moreover, Kapoor mentions that the stamp duty tax in the UK only has 1/50 of the costs of collection compared to the UK income tax. In Latin America between 0,2% and 0,8% of GDP is raised through financial transaction taxes. To get an idea of the turnover relating to such taxes: foreign exchange markets are worth 500 trillion dollars, equity markets are worth 60 trillion dollars, bond markets are worth 60 trillion dollars and automated payment systems such as bank debits are worth 3.000 trillion

dollars. All that is needed is to implement a tax of 0,001% in order to gain a substantial amount of money to redistribute and finance development.

With sheet 13 Kapoor discussed the relevant changes to the financial system. Kapoor mentions that financial markets have grown. The turnover and velocity of the financial system have grown. Financial crises have become more frequent. Tax evasion and tax avoidance are on the rise. The internet has facilitated cross-border flows. There is a lack of transparency especially if money is channeled through tax havens. National regulations are not up-to-date. There is a redistribution of wealth. At the same time there have been regulatory developments which have made it easy for financial transactions to be implemented such as the messaging system called SWIFT. Such a system has great potential for generating information.

Sheet 14 explains that financial transaction taxes thus have a large and growing revenue potential. They are technically easy to implement and in many cases implementation would merely involve an added line of code in the software. They are more predictable compared to income taxes which will generate less revenue in case of a recession. The costs of collection are very low. They are redistributive since they have progressive incidence. They can also play a major role in gathering information; in Brazil the information generated helped reduce tax evasion by an amount which was twice the amount actually collected through the tax. Another benefit is the regulatory role as originally suggested by Tobin. Furthermore, Kapoor states that with such taxes we are riding the wave of globalization instead of fighting it. The taxes are mainstream; China and India have implemented transaction taxes on their stock exchanges. Step by step we can make progress. Kapoor also mentions that these taxes are very difficult to avoid and evade because of the automated financial systems.

With regard to the state of discussion Kapoor uses sheet 15. Financial transaction taxes are currently discussed in France and Brazil and Austria put forward the idea of using such taxes to finance the EU. Kapoor also perceived massive interest in Japan and mentions that Norway came close to the implementation of a pilot scheme, but the 'battle was lost' due to state aid regulations.

Kapoor also explains the Brazilian CPMF which entailed a 0,38% tax on bank debits in sheet 16. Health expenditure accounted for 0,2%, 0,1% went to financing the pension deficit and 0,08% was used to fight poverty. The combination of this progressive way of financing with progressive incidence and programs whereby poor families receive a fixed amount of money, has contributed to falling levels of inequality in Brazil. The families would only receive the money under certain conditions; children would have to attend school and be vaccinated for example. Kapoor states that this combination results in a redistribution from the wealthiest to the poorest people. The Brazilian example is so successful that the city of New York is going to implement the program; however, the money will come from mayor Bloomberg instead of financial transaction taxes.

Sheet 17 shows the lessons to be learned from a number of other interesting tax policies that countries have unilaterally experimented with. Brazil for example, implemented a higher withholding tax on transactions with companies located in tax havens. Italy experimented with publishing tax records. The underlying idea was that rich people had disproportionate lifestyles compared to their reported income.

With sheet 19 Kapoor explains that there are three kinds of redistributive policies. Firstly, there are those which skew pre-tax income to the poor. These relate to the development of agriculture, rural infrastructure, introduction of a minimum wage and guaranteed employment schemes with which India is experimenting. Secondly, there are policies which skew post-tax

income to the poor. These add to the efficiency and redistribution of a tax system. In this respect Kapoor also mentions relatively low levels of value added taxes. This issue is discussed in many African countries with regard to exemptions for medicines and food. Thirdly, there are policies which skew expenditure to the poor. In this respect we may think of a currency transaction tax, increasing aid expenditure, free provision of education and healthcare and free school meals.

Open debate with participants

The first reaction comes from mr. Van den Dool from the Dutch Central Bank. He would like to start off by saying that he is somewhat overwhelmed by what he has heard in the last thirty minutes. He would also like to stress that in his daily work he is not confronted with the issues addressed, so he hopes the other participants will forgive him for asking questions to which the answers might seem obvious.

Van den Dool raises the issue of countries avoiding tax competition. He states that this issue was discussed in last year's seminar and would now like to hear the view of Waris. Can multinationals be blamed if they are offered great deals by corrupt governments? What can countries, in Africa for example, do to avoid this practice? His second question is addressed to Sony Kapoor who discussed the taxation of a thin slice of the financial transactions given the relatively low rate. Given that the amount generated is still enormous, the question arises whether the industry or society as a whole would still be willing to pay such taxes.

Van den Dool's third and final question relates to the phenomenon of 'round tripping' and he invites the speakers to comment. He heard several speakers mention negative outflows from countries such as South Africa. Is this a statistical phenomenon or is there more to it? Is the capital being reinvested in those countries?

Waris responds to the first question and states that African countries are economically weak from the start and dealing with a multinational with a budget which is usually bigger than their national budget. This is a big concern when it comes to finding balance in contract negotiations. Another problem relates to globalization; there is always another country that can do it cheaper and offers a lower tax rate or certain subsidies.

Waris does not have hard and fast answers as to what African countries can do but she would like to share her ideas. One of these ideas is that multinationals should look at the treatment in their home country and apply the same provisions in the country in which they invest. Waris provides the example of an OECD regulation stating that corruption of a public official in a foreign country amounts to corruption of a public official in the home country.

Waris recognizes that multinationals still have to make a profit and that accountants will look for ways to increase the profit and use regulations in different countries in order to pay less taxes. The developing countries should unite and coordinate so as to form a front 'against' the multinationals. Unfortunately this has not taken place. Furthermore, we see countries which have few and the same natural resources joining forces in terms of the East African Community for example and providing for attractive tax rules. According to Waris, this is not necessarily a good thing as there is the problem of competing resources.

Waris also provides the example of the mining of a blue diamond called Tanzanite which is only found in one location in Tanzania. Therefore only one corporation can set up a mining business to mine Tanzanite. In Tanzania a corporation is offered a tax holiday for ten years if it sets up a mining business. The mining company will then be sold on after 10 years t with the result that to this day Tanzania has only received 20.000 dollars out of Tanzanite mining. This example illustrates how some multinationals approach laws in developing countries.

Kapoor would like to comment on 'round tripping'. He states that this is one of the unfortunate side effects of the focus on maximizing foreign direct investment. China is an interesting example since we perceive spectacular growth as well as capital flight amounting up to 9% of GDP each year for the past fifteen years. Some of this capital flight is related to 'round tripping' whereby the capital flows back into China disguised as foreign capital. Kapoor estimates this flow to account for a quarter of the capital leaving China and coming back in 'under the table'.

The incentive to disguise the capital as foreign capital may stem from preferential asset rights and tax holidays. Kapoor states that in Africa the extractive sector plays a major role in accounting for the amount of capital flight which is not related to 'round tripping'. He mentions Nigeria as an example; the amount of oil exported is underreported and there is manipulation in distinguishing between crude and finished products. Effectively the domestic wealth is leaking away and much cannot be replenished.

The second effect of giving preferential tax treatment to foreign investors relates to the issue of a domestic company having to compete with a multinational which already has superior resources and is then also given preferential treatment. The domestic company simply does not stand a chance.

With regard to the thin slice of financial transactions being taxed, Kapoor mentions that doomsday scenarios have been predicted before. In Peru for example, there was strong opposition when the government decided to implement the financial transactions tax. However, after implementation there was significant credit growth, the stock market value went up and the number of transactions and therefore the turnover increased. So in spite of all the negative projections, nothing bad happened. The economy as a whole and the financial sector even grew at a faster pace. Nobody wants to pay more tax, yet somebody has to. A financial transactions tax forms a tool. Kapoor also mentions that we can start off with a relatively low rate and gradually increase the rate.

Richard Murphy would also like to comment and states he is doing so in his capacity as an adviser to the secretariat of the international Tax Justice Network. Murphy would like to ask Sony Kapoor the question as to how dialogue plays a role, as Murphy is very concerned about representation that this is an issue of 'either/or' or 'us/them'. It simply is not like that as it is an exceptionally complex subject. "What actually is required in this process is a dialogue. I am not sure whether you properly addressed the need for a dialogue in your presentation." Murphy asks Kapoor where he sees room for dialogue and how it is going to progress.

Kapoor replies that he is not sure whether he sees any differences in the viewpoints since the discussion taking place in this seminar is a form of dialogue. Kapoor mentions he recently had a meeting with the chief economist of Goldman Sachs for example. The important thing is to note that there are shared interests.

Mr. Shaxson from the Tax Justice Network would like to comment and ask a question. Shaxson states that we need to treat mineral rich countries in an analytically different manner compared to other countries.

"Oil is in the ground and oil companies know they have to conduct their business in a certain location. This puts the governments of oil rich countries in a strong position. Angola receives 85% of the revenues relating to the oil fields for example. In countries where there are fewer mineral resources, it is easier for companies to relocate. In mineral rich countries we come across the problem of representation as discussed by Cobham. The governments in these countries tax the companies instead of the citizens. So the relationship in terms of accountability is different."

Shaxson's question relates to the changing political mood towards tax competition: "If there is a sense of improving international cooperation in taxation, is it going to be a dialogue that merely involves developed countries or can developing countries join in? What are the strategies to push this change forward?"

Greetje Lubbi invites Hollander to reflect on the morning session and she does not expect Hollander to provide answers to all the questions raised.

Hollander: "In the morning we listened to people who approach the discussion from the development side. In the afternoon we will listen to those from the economic side of the discussion. We will see that even though we all live on the same planet, the world can be perceived in different ways. It will thus be interesting to see if we can make a connection." Hollander was especially struck by the remark made by Cobham that an increase in the level of taxation can lead to an increase in the social structure of a developing country. Hollander considers this to be a very interesting thought. Hollander thanks those who have delivered their presentations so far and invites all the participants to lunch.

AFTERNOON SEMINAR - CORPORATE TAXATION AND TAX TRANSPARENCY

Greetje Lubbi welcomes everybody back and invited Albert Hollander to give his presentation.

"In Search for Balance - Corporate Income Tax and Transparency" Presentation by Albert Hollander

Albert Hollander skips the first sheets to get right to the start of his presentation on sheet 4. The central theme of Hollander's presentation revolves around the international aspects of the corporate income tax. Hollander will start off with some short remarks concerning the corporate income tax, given the fact that not all the participants have a tax background.

First of all, corporate income tax is a local tax. This means that countries define the tax base and the tax rates. Countries define their own tax rules; the applicability of the rules stops at the border and the rules of another jurisdiction begin. If a business operates in two countries, rules have to be established in order to determine the taxing rights of these countries. Those rules are laid down in tax treaties.

At the European level, there are efforts to harmonize taxes but so far this has resulted in harmonization of indirect taxes, value added taxes to be precise, as opposed to direct taxation such as the corporate income tax. The lack of harmonization results in inefficiencies. Hollander refers to the area of transfer pricing as an example. If you have a subsidiary in one country and a subsidiary in another country, how do we determine the pricing of transactions between these (related) subsidiaries? For the company there is a significant burden of proof to show the state that the correct transfer pricing method has been chosen as there are many complex rules. There is a small army of tax professionals explaining multinationals how to deal with transfer pricing issues. There is also a small army of employees within the multinational working on the extensive documentation requirements. In terms of collecting the taxes, we thus see high costs both on the side of the multinational and on the side of the government.

Countries may compete against other countries with regard to the tax rate and the tax base. In many cases, the country more or less begs the multinational to set up business in that country by granting a favorable tax treatment. Hollander observes that the result is that countries do not approach each other in a friendly manner when it comes to taxation resulting in tax competition. There are even countries in which a company does not pay any taxes.

Because of the aspects mentioned, legislation has become extremely complex. Hollander asks the question whether the corporate income tax as we know it today will still be in place in twenty years. Will this tax be replaced by other forms of taxation?

Sheet 5 focuses on multinational corporations (MNCs), which aim to prevent double taxation; making sure profits are taxed once. These corporations have to deal with a number of aspects (see sheet) when determining their tax policy. With the last point, lack of awareness, Hollander mentions that multinationals are simply too busy doing their work for that day. There is certainly a willingness to learn about the impact on developing countries, but the systems to make this visible and transparent are simply not yet in place. There is certainly not a negative attitude; the information is just lacking.

Sheet 6 shows that within the legal framework, companies need to make choices. Does the corporation focus on maximizing profits or is attention also given to the social aspects of paying taxes? First of all, it is an individual decision. There should not be any accusations when it comes to the choice of somebody else. On the other hand, it is quite necessary that choices relating to tax policy of multinationals are based on the relevant facts, dependencies and impact on other people and organizations. Thus Hollander argues for more transparency in order to make a proper choice with regard to the tax policy of a multinational. Sometimes research may be necessary, but sometimes individuals and corporations just have to open their eyes to see the facts, dependencies and impacts.

With sheet 7 he explains that non-transparency raises suspicion, can generate misinformation and can leave room for abuse. Being transparent, however, can lead to vulnerability as sensitive information may reach competitors. On the other hand, transparency means a corporation takes a clear stand in the discussion so suspicion is not raised, solid information is generated and there is less room for abuse.

Hollander mentions that during the afternoon presentation will be given by speakers who approach the discussion from the economic side as opposed to the developing side. Hollander is very pleased to have these speakers at the seminar, especially considering the fact that it may take a certain amount of courage. "Their attendance clearly shows that these parties are also open to discussion and we can thus see where there is common ground to take the next steps forward." Hollander invites André Nagelmaker, board member of the Dutch association of trust companies which is one of the main actors in making international financial structures, to give his presentation.

"Dutch Corporate Services Industry" Presentation by André Nagelmaker

Nagelmaker thanks Hollander for the kind introduction and is grateful for the opportunity to speak at the seminar. Nagelmaker introduces the structure of the Dutch corporate services sector. There are primarily two associations: the Vereniging International Management Services (VIMS) and the Dutch Fiduciary Association (DFA). In his presentation, Nagelmaker will in principle speak on behalf of both.

Sheet 2 shows the agenda for his presentation. Nagelmaker will talk about the origin and development of the corporate services organizations in The Netherlands Then he will discuss the current roles and functions of these organizations, the economic contribution and the Dutch practice and regulatory regime. Finally, he will address global asset optimization and global tax justice.

With sheet 3 Nagelmaker explains the origin and development of the corporate services sector in The Netherlands. The Netherlands have always had an open economy. Due to the Dutch polder model, the international tax policy has always been coordinated with the multinational corporations. This has resulted in a participation exemption as well as an early recognition of the avoidance of double taxation (by means of tax treaties). In 1940, due to the Nazi occupation, certain companies were forced to move their business outside The Netherlands in order to find a safe haven. Consequently, companies moved their head offices to Curaçao. This event actually constitutes the origin of the corporate services industry as we know it today. For corporations the event underlined the

importance of corporate and tax planning in a proper way to secure the continuity of the enterprise.

With the globalization of international business and the development of free trade, the corporate services industry and the use of international finance companies developed in the 1970's. This process started mostly in Curaçao and other Caribbean islands and later these developments reached The Netherlands. The recognition of the participation exemption and the use of tax treaties are pillars for an economically viable, secure and predictable environment. Such an environment resulted in many companies moving to The Netherlands. This development was strengthened by the excellent Dutch accounting and banking system as well as the political stability.

In the 1990's many European and other countries became aware of the benefits of The Netherlands. Those countries have responded in various ways; the introduction of CFC (controlled foreign company) legislation, copying the Dutch system or attacking the Dutch system through the EU or OECD. In addition, Nagelmaker mentions the process of harmonization of tax systems. Consequently, alternatives to The Netherlands were put in place and Nagelmaker mentions Luxembourg and Ireland as examples of alternative jurisdictions. During this period the Dutch corporate services industry suffered to some extent because Dutch politics was unable to respond to the challenges posed to the Dutch system. Around the turn of the century, innovative financial markets resulted in new instruments such as securitizations. These structures require an independent and ring-fenced special purpose vehicle which is managed by an independent entity. Furthermore, after 2000 the private equity funds emerged and these funds are extremely cost oriented. Therefore the corporate services sector is very important to these funds. Consequently, the corporate services sector grew in The Netherlands, Luxembourg and Ireland.

Sheet 4 discusses the current role and function of the Dutch corporate services sector. It is integrated in the Dutch financial industry. Research carried out by the Stichting Economisch Onderzoek (Foundation for Economic Research) on the Dutch corporate services industry has shown that this industry is a key element of the stable and predictable Dutch financial infrastructure. Other elements include the developed tax system, the experienced tax and accountancy firms, the banks and the Dutch tax authority. The same research shows that the Dutch corporate services industry is primarily a corporate services industry and most of the corporations find their origin in Europe. It is therefore a business-to-business industry.

The Dutch corporate services industry is an example of outsourcing business processes. The processes relate mainly to the management and administration of strategic entities within an international organisation. The reasons for the outsourcing are cost savings, separation of strategic commercial and production operations, the need for flexible part-time staff with local financial and administrative expertise. The Dutch corporate services industry also has a public task by means of acting as a gatekeeper. By law Dutch corporate services suppliers must apply extended client due diligence checks, checks relating to the source of wealth and continuously monitor money and capital flows. These tasks relate to the fight against money laundering and terrorism. The demands imposed form a very large burden for the Dutch corporate services industry and have worsened the competitiveness vis-à-vis other countries where the standards are not as high. Corporate services suppliers need to be reliable, responsive to the needs of clients and authorities, responsible, multi-lingual and capable with respect to the tasks.

Sheet 5 shows the main elements of how the Dutch corporate services industry contributes to the Dutch economy. Nagelmaker mentions that details are given in a research report by the Stichting Economisch Onderzoek which will be published soon as it has to be presented to the stakeholders first. The report shows, in contrast to what has been said this morning by Cobham, that the reduction of international transaction costs, as one of the aims of the Dutch corporate services suppliers, leads to a higher economic growth and more flexible economic environment. Other aspects related to the economic contribution are the economies of scale which companies can realize through the services suppliers and the reduction of double taxation. Another important element of the economic contribution relates to the independence of the Dutch corporate services industry. Structures should be set up by a party which has no interest in the connected income or capital flows. The services suppliers take the role of administrator and manager of the special purpose vehicles which are involved in these flows. There is also a contribution in terms of The Netherlands functioning as a financial main port which may assist in achieving increased transparency in the financial flow in the world. Finally, the services suppliers do contribute to the Dutch economy as will be shown in detail in the upcoming report.

Looking at the Dutch practice and the regulatory regime with sheet 6, there are at the moment 145 trust companies licensed by the Central Bank. About half of these companies are members of VIMS or DFA. It is estimated that VIMS has a market coverage of approximately 60% and DFA has a market coverage of approximately 25%. The trust companies are subject to the Act on Supervision on Trust Companies; this Act was created shortly after 9/11. Policy makers became aware of the large capital flows through The Netherlands and feared that these flows were related to money laundering and the financing of terrorism. Nagelmaker states that the Dutch corporate services industry had already asked for such supervision in order to create a level playing field and secure the reputation of the activities. The consequent regulations have resulted in a Dutch compliance practice. For example, before entering into any client relationship, a full client due diligence report is drawn up; there is a full check on the source of the wealth of the client and the objectives of the structure. The consequent documentation is supervised by the Dutch Central Bank. Due to the compliance model, the transparency of the activities has improved. Nagelmaker regrets the fact that the Dutch Central Bank does not share the findings with the Dutch corporate services industry or anybody else.

Finally, Nagelmaker addresses the global asset optimizations and global tax justice with sheet 7. In the view of VIMS and DFA, reductions in transaction costs support international growth. The division of that growth is of course another matter. Furthermore, an optimal international asset allocation is supported; capital is used efficiently and effectively. The starting point for the Dutch corporate services suppliers is the legal and regulatory framework and the suppliers will work within this framework. Their social responsibility is expressed in the way in which anti-money laundering rules, client due diligence checks etc. are applied on the basis of the text and spirit of the relevant regulations. The moral development is followed through the democratic process. "The Dutch corporate services industry cannot follow the 'flavor' of the day but looks at laws and regulations within The Netherlands, the EU or preferably on a global scale. The industry is a professional and not a political organization supporting a certain ideology. For example, if the objectives of the Tax Justice Network are expressed within the democratic process, the industry will follow these objectives accordingly." Despite the fact that VIMS and DFA do not take part in the discussion regarding what is moral and what considered to fall under justice, they are pleased to discuss whether certain approaches will work or not. VIMS and DFA have a fair view of what motivates corporations and are willing to go through the relevant elements of the discussion. Nagelmaker thanks the participants for their attention.

Questions and discussion

Hans Gribnau from Tilburg University asks the question whether Nagelmaker can give some figures with regard to the importance of the financial sector to The Netherlands. Nagelmaker answers that these figures are in the upcoming report which cannot be discussed yet. The results of the report will have to be discussed with the relevant stakeholders before the report is made available through the VIMS website[5].The report will be made public.

Greetje Lubbi asks Nagelmaker to tell a bit more about the Dutch Foundation for Economic Research. Nagelmaker explains that the foundation is an independent body supported by the two universities located in Amsterdam. Nagelmaker stresses that there is not a chance for VIMS and DFA to have an influence on the outcome of the research.

Burghart Ilge from the organisation 'Both Ends' asks the question if Nagelmaker could explain the differences between the 145 registered trust companies in terms of their size and the ethical approach. Nagelmaker states that the largest companies have more than 300 employees. There is also a considerable group of companies which employ 3 people or less. In this respect there are big differences. Some operate in niche markets so they are basically an extension of a corporate group or entity. Others operate for a wide range of clients. However, every trust company must be licensed. Under this license there are standards in terms of what a trust company can do. Nagelmaker assures the participants that in the review of the client files, the Dutch Central Bank really focus on the background of the client, the intentions of the client, the legal framework and the source of money going in and out of the Dutch company. This review applies to all trust companies and the answers have to be documented.

Albert Hollander asks the question how trust companies are regulated outside The Netherlands and is curious about the international development. Nagelmaker believes The Netherlands have the status of a frontrunner. In Luxembourg for example, some companies need a license and some do not. Some companies are automatically allowed to operate. The same applies to Guernsey, Jersey and Switzerland. Nagelmaker does not have details on other countries, but based on the stories from abroad the Dutch system is one of the strictest and strongest in terms of prevention of money laundering and the financing of terrorism.

[5] See www.vims.nl

"Balance and Transparancy in Dutch Tax Policy" Presentation by Leo Zuliani

With sheet 2 Leo Zuliani gives an overview of his presentation. He will discuss the history and current status of the OECD Harmful Tax Project Afterwards He will elaborate on the Tax Information Exchange Agreement (TIEA) which was developed within the OECD. Then Zuliani will discuss the Dutch policy with regard to tax treaties and finally he will touch upon the Dutch corporate income tax.

Nowadays tax competition is a global reality according to Zuliani. Some politicians may dislike it but it is not going to go away. Therefore we have to adapt to this more competitive environment. Before going into the OECD Harmful Tax Project, Zuliani would like to mention two issues.

The first is the question: what influence does taxation have on decisions regarding the location of a business? If we look at the removal of non-tax barriers, cross-border activities, new communication technologies and development of regional economic blocks, we perceive that capital and skilled labour have become more mobile and sensitive to differences in taxation. However, tax is not the sole factor in making the decision where to locate a business. If tax were the only determinant, we would observe a massive outflow from high-tax jurisdictions to low-tax jurisdictions and this is simply not the case. Companies consider the long-term profitability. This depends on factors such as access to markets, availability of qualified labour and political stability. All other things being equal, a corporation will obviously prefer a low-tax jurisdiction as opposed to a high-tax jurisdiction. But all other things are not equal. A relatively high-tax jurisdiction with a proper infrastructure, educated and flexible labour force and functioning health and pension system will be more attractive than a low-tax jurisdiction which does not have these items. The success of Ireland proves this point. The success of Ireland has got less to do with the tax regime than it has to do with the educated and flexible English speaking labour force and convenient geographic location. Zuliani mentions that favorable taxation will obviously help to attract businesses.

Secondly, how do governments respond to the more competitive environment? Zuliani states that governments respond to the more competitive environment by cutting the corporate and personal income tax rates. For the Netherlands, the corporate income tax rate was reduced from 48% to 43% in 1984. Two years later the rate was lowered to 42%. In 1988 the rate was lowered to 35%. Nowadays the rate is 25,5%. Zuliani mentions that The Netherlands came to this somewhat peculiar rate because it would be perceived as a tax haven by a major Asian country (Japan). Zuliani believes an increase in the corporate income tax rate in West-European countries is highly unlikely. Governments have also responded by abolishing taxes on capital. Another response was to shift from income taxes to consumption taxes. Countries change their tax system by moving away from taxing on a worldwide basis and towards taxing on the basis of territoriality.

How did the international community respond to this growth in tax competition? Both the EU and OECD have adopted an approach to tax competition (sheet 3). Both have endorsed tax competition as an economic reality. However, they also recognize that international tax rules are needed in order to distinguish between fair and unfair tax competition. These rules should be adopted by as many countries as possible. Secondly, the EU and OECD launched projects against harmful tax competition in 1998. However, the EU focused on the rates whereas the OECD focused on cooperation.

In 1998 the OECD identified four criteria in order to distinguish between fair and unfair tax competition: an absence of taxes in the case of tax havens or no or low taxation in the case of OECD members with a preferential tax regime, a lack of transparency, a clause in tax treaties resulting in an effective exchange of information and an absence of substantial activities in the case of tax havens or ring fencing in the case of OECD members with a preferential tax regime. In 1998 the OECD identified 35 tax havens and 47 preferential tax regimes in OECD members. The most important objective of the OECD was to establish a dialogue between the tax havens and the OECD members. If tax havens were willing to change the lack of transparency and adopt an effective exchange of information, then those tax havens would be considered cooperative tax havens as opposed to uncooperative tax havens. Competition based on secrecy, non-cooperation and discrimination was therefore challenged by the OECD. If countries use strict banking rules to enable residents of other states to avoid or evade taxes in the state of residence, the competition is unfair. In March 2008 the secretary-general of the OECD stated that bank secrecy is a relic of the past.

Within the framework of the OECD a Tax Information Exchange Agreement (TIEA) was developed (sheet 5). The purpose is to facilitate international cooperation in tax matters through the exchange of information. Zuliani stresses the fact that it is not a binding document but that there are two models which can be used in bilateral agreements. If a TIEA is in force, countries will exchange information upon request. Both civil and criminal tax matters are covered. At the moment there are between 20 and 30 TIEAs. Most TIEAs have been signed during the early stage of the Harmful Tax Project when tax havens were really concerned with being labeled as uncooperative. Moreover, most TIEAs have been signed by the Unites States. One may therefore come to the conclusion that the project is not very successful. However, there are clear signs that a next 'wave' of TIEAs is coming. In the last three months, Nordic countries have signed several TIEAs for example. Furthermore, The Netherlands signed a TIEA with Guernsey in April 2008.

However, there is one disturbing issue. Only a limited number of countries enter into negotiating TIEAs. There seems to be a group of tax havens which apparently cannot see the benefits of having TIEAs. There is therefore a considerable risk that the project does not succeed. Recently we saw a scandal in Liechtenstein. Basically, wealthy Germans had bank accounts in Liechtenstein and benefited from the existing bank secrecy laws. The scandal raised a lot of publicity. To a certain extent the public perception was that only the man in the street pays taxes but those at the top of society do not. Zuliani therefore believes that it is the right time for the EU and OECD to take the next step in the process of eliminating the lack of transparency and establishing an exchange of information. Zuliani states that the discussion is very complex as we are not merely looking at tax havens; the exchange of information is also limited by some OECD members due to bank secrecy rules. The tax havens which are not cooperating at the moment of course want a level playing field with respect to the aforementioned OECD members.

So what is the status of the Harmful Tax Project with regard to those OECD members applying bank secrecy rules? In terms of obtaining information in criminal matters progress has been made with respect to Switzerland. If we look at the tax treaties of Switzerland we notice that the Swiss will exchange information in the case of fraud for example. There is also progress in obtaining information for civil purposes. If we look at the tax treaty between Belgium and the United States for example, we notice that Belgium will exchange information regarding civil tax matters in exchange for a 0% withholding tax on dividends to Belgian shareholders. The

Netherlands fully support the OECD in eliminating the lack of transparency and establishing an effective exchange of information.

The Netherlands have now signed three TIEAs with the Isle of Man, Jersey and Guernsey (sheet 6). In the future talks will be held with Bermuda and other Caribbean islands. However, the lack of transparency and limited exchange of information is not restricted to the Caribbean. We also observe several Asian counties applying bank secrecy rules or limiting the exchange of information. In order to establish a level playing field we should therefore also look at Asia. Zuliani mentions that there are positive signals coming from India in the sense that there are plans to renegotiate tax treaties in such a way that bank secrecy rules do not apply.

So what is in it for The Netherlands? Firstly, The Netherlands are of course in a position to obtain the relevant information. Secondly, The Netherlands gain information relating to trusts. Zuliani also highlights the fact that the OECD does not mention compensating benefits for tax havens which become willing to cooperate. The Netherlands have therefore developed a compensating benefit package. Such a compensating benefit may entail a small tax treaty with regard to shipping and air transport. A second benefit is a mutual agreement procedure on the adjustment of profits. A third benefit is a clarification with regard to the application of the Dutch participation exemption. If a subsidiary is not liable to tax in another country, the Dutch participation exemption is nevertheless applicable if the subsidiary is engaged in the active conduct of trade or business.

Due to the time constraint, Zuliani is forced to skip the part of the presentation relating to the Dutch policy with regard to tax treaties (sheet 7 and 8).

Zuliani continues with the last part of his presentation dealing with the Dutch corporate income tax (sheet 9). In the beginning of the presentation Zuliani mentioned that tax competition is simply a reality. Consequently The Dutch government has to make sure that the Netherlands are an attractive location for companies to set up and maintain a business. In 2007 a significant reform was carried out which lowered the corporate income tax rate to 25,5%. This reform also introduced a patent box regime. The interest box regime is still being investigated by the European Commission.

Zuliani stresses that a good location is not merely dependent on the tax system itself, but also depends on how the tax system is administered. Corporations nowadays require tax administrations to be predictable and consistent. Moreover, corporations would appreciate the possibility to give input when it comes to establishing new rules. There is no index showing how tax administrations perform. Zuliani mentions that the Dutch tax administration is perceived as being not as aggressive.

The European initiative relating to the Common Consolidated Corporate Tax Base (CCCTB) should also be mentioned. Zuliani believes that the CCCTB will constrain tax competition. A level playing field will be created by such an initiative. Counties such as Ireland and Slovakia will not experience difficulties but The Netherlands will face new challenges. In the short-term there may be less tax competition between EU Member States. However, Zuliani states that in the long-term a fiercer tax competition could arise with regard to tax rates. France and Germany have actually asked for minimum tax rates as part of the measures to be taken in relation to the adoption of a CCCTB.

Zuliani thanks the participants for their attention and regrets the fact that he was unable to discuss the Dutch tax treaty policy. Greetje Lubbi invited everyone for a coffee break.

"A Code of Conduct for Taxation" Presentation by Richard Murphy

Richard Murphy explains he is a chartered account who is now a member of the Tax Justice Network. He calls himself a 'reformed sinner'. In his former career he was involved with 'offshore' planning through his work for KPMG. At the time he did not ask any questions and therefore 'he did not know what he was doing'. Murphy then worked as an accountant in his own firm in London for 15 years. This firm adopted an ethical accounting policy which is in part reflected in the Code of Conduct which he will discuss today.

Sheet 2 gives some general information on the Code of Conduct for taxation. Murphy stresses that this Code is a draft. The Code has been created for the purpose of discussion[6].

Sheet 3 elaborates on the positive role of tax. Murphy mentions that Cobham has already talked about the social purpose of taxation. However, Murphy would like to add the aspect of fiscal policy to the four 'R's' of Cobham. Therefore Murphy ends up with five 'R's' (including the reorganization of economic activity) but other than that he agrees with Cobham.

According to Murphy, tax compliance underpins the Tax Justice Network (sheet 4). Murphy notices that in the discussion the distinction between tax avoidance (legal by making use of tax differences) and tax evasion (illegal) always comes up. Murphy stresses that there simply is no clear boundary between these two concepts. He also argues that tax compliance might be called tax planning. Murphy does not have particular problems with that term but he prefers tax compliance: paying the right amount of tax, in the right place, at the right time and the economic substance of the transaction coinciding with its tax reporting form.

Murphy: *"Accountants of course know about the difference between substance and form. To explain it bluntly, substance is what really happens and form relates to how a transaction can be dressed up. With regard to the Dutch trust industry for example, we can ask the question whether an economic substance is reflected in the transactions or is one creating the form of a transaction? That is one of the challenges we are facing."*

Sheet 5 explains that the Tax Justice Network does not believe in tax avoidance. Tax avoidance can be defined as using artificial or contrived methods of adjusting taxpayers' social, economic or organizational affairs to reduce their tax liability in accordance with the law while not affecting the economic substance of the transactions. Should you create artificial or contrived transactions to achieve the aim of reducing the tax liability? Murphy also adds that when democratic parliaments designed certain allowances for tax avoidance, then it is not seen as tax avoidance by Tax Justice Network.

The debate on tax avoidance has been going on for a long time. The background of the discussion is given by two decisions of the UK House of Lords, shown in sheet 6. Firstly, there is the Duke of Westminster principle from 1936. The Duke constructed an arrangement to pay his gardener and basically claimed that his gardener was a charity. "he got away with this claim. Thus any taxpayer may organize his affairs in any way he wishes (provided it is legal) so as to minimize tax. Most accountants think that this conclusion is the end of the debate."

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6 Available at www.taxjustice.nl → Downloads → Seminar 2008 → Draft Code of Conduct

Secondly, there is the Ramsay principle from 1982 which was abandoned in 1998. This principle entails that the taxpayer should be taxed on the effect of his transactions instead of looking at the way in which he has chosen to organize the transactions for tax purposes. However, under the influence of Margaret Thatcher the House of Lords started to apply the Duke of Westminster principle again from 1998 onwards. Conclusion: this conflict has been around for a long time.

Sheet 7 goes into answering the question: Why does Tax Justice Network not believe in tax avoidance? As stated by Cobham, tax has a positive role to play in society. Undermining that role is anti-social; taxes are the price we pay for civilization. Tax avoidance undermines the will of parliament as tax avoidance simply means trying to get around the law. The Tax Justice Network perceives tax avoidance to be anti-democratic. Others may disagree but disagreement is of course part of the ongoing dialogue. Tax avoidance also encourages capital flight from developing countries and harms development. The result is that people in developing countries and elsewhere suffer from tax avoidance.

As a contribution to the debate a Code of Conduct has been proposed (sheet 8). The Code addresses the need for the different parties in the debate to eventually come together in order to create a common understanding with regard to taxation in the 21st century. Murphy mentions that a version of the Code consisting of two pages has been handed out to the participants. The three parties covered are the government, taxpayers and tax advisers.

With sheet 9 Murphy states that the greatest challenge is to get the governments to cooperate. Murphy explains that there is a misallocation of resources because tax is an artificial factor of production. The fact that tax is not a real factor of production is unfortunately overlooked by many people involved in the debate. Therefore the government has to create the environment for tax compliance.

At the moment many governments create an environment for tax avoidance and tax evasion. Murphy for example strongly disagrees with those in the Swiss bankers association who say that it is not up to a banker to worry about the activities of the client. Murphy points out that these bankers clearly have not read the money laundering rules properly.

Governments will have to come up with clear legislation which may entail cutting out loopholes. The legislation should be backed by a general anti-avoidance principle. Murphy argues that no incentives must be given for the artificial relocation of transactions. Murphy illustrates that this view would just about destroy the Irish tax system. Murphy gives the example of Microsoft which accounts a large profit in Ireland, while this profit is not taxed. This does not make sense. When asking questions about this, it came out that Microsoft re-registered as an unlimited company.

Finally, full support must be given to other tax authorities to collect the tax due to them; we need a commitment to exchange information. Every government loses if people evade taxes so Murphy argues in favor of an automatic exchange of information between tax authorities of different countries.

Sheet 10 explains an English court case from 1865 which dealt with the question of how tax should be charged. Basically the conclusion was that if a situation does not fall into the letter of the law, the government cannot impose a tax. If it does fall into the letter of the law, however unjust it is, the government will tax. Murphy states that this principle now operates in tax havens and throughout the UK. But there is also the phenomenon of the equitable principle. This

principle basically focuses on getting the right result as opposed to focusing on the legislation. Murphy asks the question why this principle is not applied in tax matters.

With sheet 11 Murphy explains why and how governments should also change their own accounting and the environment for accounting. In ensuring economic efficiency in the allocation of resources, governments must require that all information on accounting, ownership and management for all legal entities is available free of charge on public record. This will challenge the entire tax haven mentality of course. If corporate social responsibility means anything then there should be transparency with regard to the location of corporations, the activities and the amount of taxes they pay.

Governments themselves must also be clear, open and transparent in their budgeting and accounting. Publication must occur on a timely basis. Murphy mentions the impossible task of trying to establish the GDP of the UK as an example. Another example is the Cayman Islands which have a 700 page report on their yearly budget, but no information on their income. According to Murphy, this has to be corrected and governments need to be transparent.

With sheet 12 Murphy explains how this change of attitude of government will affect the taxpayer.

Sheet 13 shows how tax advisers will promote tax compliance. Murphy states that the tax adviser can actually use tax compliance as an excellent marketing tool; what can possibly beat the fact that you can tell a client that he or she can sleep at night? Clients obtain the certainty they need. The tax adviser will refuse to engage with those who are not pursuing tax compliance. Finally, the tax adviser will not sell arrangements that are not tax compliant.

Sheet 14 answers the question: What is the special role for the accountants in this discussion? Murphy explains how the privileged status and the monopoly right to carrying out an audit results in responsibility. The professional status is granted by law and accountants have an obligation to respect and uphold the law. There is a duty to the state that grants the accountant the privileges. There is an obligation to work as a profession to protect those disadvantaged by the actions of those who abuse the system. This is what a professional and ethical code of conduct should do.

Sheet 15 gives a short summary. Murphy would like to remind the participants what tax compliance means: paying the right amount of tax in the right place at the right time, whereby substance and form. If we can promote tax compliance then we change the culture of taxation forever. "Society will benefit as a result because of increased transparency and an improved allocation of resources. The existing model of taxation management has serious inherent problems and now is the time for change. Professionals have a special responsibility to participate in the process." However, Murphy stresses that governments are the prime target as the professionals have to operate within the environment created by law. Murphy thanks the participants for their attention.

"How can companies account for their contribution to society" Presentation by Robert van der Laan

Robert van der Laan starts by reacting on the previous presentation: "I hope I have clients who sleep at night." In his daily work he does not come across the possible effects of taxation on developing countries. The issues addressed during today's seminar have not been discussed at previous seminars attended by Van der Laan. Colleagues even stated that by attending today's

seminar, Van der Laan was going into the lion's den. However, Van der Laan experiences a friendly atmosphere so he is confident he will 'survive' the day.

PricewaterhouseCoopers (PWC) is confronted with the issues discussed during the seminar. As a professional organization it is certainly part of the discussion. The debate on tax justice started in the UK and spread out across the world.

Van der Laan: *"one has to be modest in the sense that employees of PWC represent clients and do not sell beliefs. However, it is important for the tax adviser to talk about today's issues with the client as the stakeholders' interests may also be at stake."*

Sheet 2 shows the agenda for his presentation. Van der Laan will share the current insights on how to help multinationals in contributing to society. In his presentation we will first look at the stakeholders. The second part of the presentation deals with the total tax contribution of companies and is related to transparency.

Sheet 3 gives an overview of different stakeholders interested in tax. These can be distinguish between external and internal stakeholders. Van der Laan mentions that over the past five years stakeholders have really started to take an interest in tax matters. In the past analysts would for example simply put in a certain tax rate in their calculations without investigating whether this rate is actually correct. The way of working has changed considerably. This development is being reflected in NGO's: the birth of Tax Justice NL last year is an excellent example.

Van der Laan has two messages from this. The first is that we should not forget that only recently tax has become a matter of interest. Tax is getting higher on the agenda. Reporting and responsibility on tax has become more important. "Do not be surprised that multinationals need some time to adapt to this reality and the changing environment." Second, the question arises how a company should serve all the interest of the different stakeholders. Van der Laan highlights that sometimes stakeholders have conflicting interests. The interest of the tax authority is obviously in conflict with the interest of the shareholder.

Sheet 4 shows the different interest of three groups of stakeholders. The company cannot serve all interests at the same time. Van der Laan argues to look at the common denominator. There are some overlapping interests but the interest shared by all stakeholders is enhanced transparency. The issue of increased transparency has already been mentioned several times during today's seminar. Van der Laan would now like to look at the practical consequences from the perspective of the company: "how can we put some meat on the bone?"

Sheet 5 shows the need to consider how a multinational responds to stakeholders' needs. A stakeholder can have a level of impact and a level of interest. The level of interest of an NGO such as Tax Justice Network may be very high but the level of impact may still be very low.

With sheet 6 Van der Laan gives the example of tax issues in the news: Financial Times in August 2007. Van der Laan stresses that after the publication the government stated that the information was incorrect and that the companies paid their fair share.

Since it was not unlikely that such an event could take place in The Netherlands, the idea was launched to organize a debate with the Dutch employers organization in order to prepare for such publications. At the time the response was negative.

Sheet 7 shows nowadays we see real copies of the UK article in the Dutch newspapers on low share of tax payments by stock listed companies. The underlying message is that only the small companies pay taxes. Also in this case the government immediately responded that all corporations pay their fair share of tax. However, sheet 8 shows how members of the opposition in the parliament pick up this debate. This debate is not going to go away and multinationals take this into account.

Sheet 9 goes further into transparency and what stakeholders exactly want to know. It is not sufficient to merely talk about increased transparency without establishing standards. In order to make true progress in this debate we should make the discussion more concrete. Different stakeholders gave PWC an insight in the information they require. PWC then distinguished between three categories, discussed next.

With sheet 10 van der Laan discussed the first category: tax strategy and risk management. This category relates to the objectives of a company. As taxation has moved up on the corporate agenda, corporations put more effort in thinking about their tax strategy. In the financial statements companies never share the objectives of the company in relation to taxation. However, stakeholders are genuinely interested in the tax strategy and would like to receive quality information. Therefore there should be a clear discussion about the company's tax strategy.

Sheet 11 shows the second category which related to the accounting standards: tax numbers and performance. It is rarely the case that stakeholders are tax experts. Therefore there should be a clear explanation as to why the current tax charge is not equivalent to the accounting profit of the statutory rate of tax. In the financial statements there is a distinction between current tax and deferred tax. Stakeholders want to know about the company's cash tax.

The third and final category relates to the Total Tax Contribution and the wider impact of taxes (sheet 12). The company should provide details as to how tax impacts the wider business strategy and results of the company. There should be disclosure of the impact of tax on shareholder value. Finally, stakeholders would like to establish clear communication of the economic contribution of all taxes paid by the company.

With sheet 13 van der Laan aims to explain Total Tax Contribution. Stakeholders are interested in the total of all taxes paid by a company and therefore also look at VAT for example. Also make a distinction between taxes which are a cost to the company (such as corporate income tax) and taxes which are collected by the company (such as VAT and payroll tax). On the point on common language van der Laan explains there is the need to use the same definitions when it comes to the tax contribution of a company.

On sheet 14 van der Laan shares the results of a Dutch survey carried out by PWC in 2007. One of results is that corporation tax only represents 55% of all taxes borne by a company. Sheet 15 shows that the amount of total taxes collected by companies is 4,4 times higher than the amount of taxes borne. Sheet 16 compares the Total Tax Contribution that in The Netherlands with Australia, the UK and Belgium.

Van der Laan would like to share two examples in which companies do share the relevant information with the stakeholders. Sheet 17 shows the first example: the UK company called Diageo. They published the distribution of cash value added in 2006. They show the stakeholders to whom the cash is distributed.

Sheet 18 shows the second example relates to taxes paid directly to governments per country and involves Anglo American. The company provides the total tax bill (taxes borne and collected) amounting to $4,5 billion. The company also shares that this figure was split between developed countries (36%) and developing countries (64%). Van der Laan states that these two examples clearly put more meat on the bone when it comes to the debate about increased transparency.

With sheet 19 van der Laan concludes his presentation by discussing that there will never be transparency without trust. "If you do not trust multinational companies then you cannot expect them to give you the information you are looking for." Van der Laan mentions that maybe he is too optimistic. In 2006 OECD members met in Seoul which resulted in the Seoul Declaration dealing with tax avoidance and tax evasion. Van der Laan believes that the tone of this declaration was extremely aggressive. There was also a confrontational tone with regard to the tax advisers.

The discussion continued and in January 2008 the Cape Town Communiqué was released. This OECD document dealt with the same topics which were discussed in Seoul. However, in this document the OECD members mention the objective of an enhanced relationship for the first time. The countries admit that trust is essential in the relationship with the taxpayer. Van der Laan states that the world has not changed after this Communiqué but he is extremely happy with the views expressed in this document. Tax authorities start to recognize Van der Laan's belief that transparency and trust are two sides of the same coin.

Open debate with all participants

Greetje Lubbi invites the participants to an open debate.

The first question comes from Hans Gribnau from Tilburg University. It is directed to Richard Murphy and Robert van der Laan. The question relates to compliance and trust.

"There is a problem in defining compliance because there is a tension between the two aspects of compliance. On the one hand there is the relationship between the multinational and the tax authority. We may think of horizontal supervision or the Tesco affair involving the Cayman Islands. In this affair the CEO of Tesco stated that they had a good relationship with the tax authority. On the other hand there is the question of whether a company pays its fair share to society. Should the tax authority stress this aspect? Such a stance could be perceived as being confrontational."

Gribnau would like to hear how others view this tension.

Murphy states that he presented his Code of Conduct to people involved in the making of the Cape Town Communiqué. The OECD initiative is to a large extent based on developments in the UK. In the UK the relationships with the taxpayers are ranked. In this respect Murphy would like to say that the four big accountancy firms have cleaned up their act enormously. To a certain degree these firms had to as things went terribly wrong in the 1990's. Some of trust is therefore back. Some corporations have done quite a bit to win back the trust. Some corporations do

actually publish their tax strategy. Therefore relationships based on trust can be built but some are still outside this relationship. If we talk about the relationship between multinationals and civil society, which was non-existent five years ago because nobody asked any questions, we see a big change. However, the change is seen in the relationship between the multinational and an individual tax authority. Murphy wants to see a change on a country by country basis.

In respect of Murphy's wish to see change on a country by country basis, Lubbi asks Murphy to comment on the example of Anglo American as shown in the presentation of Van der Laan. Murphy thinks this example is just not good enough. The reason is that the example shows the top of the cake. Murphy is interested in the bottom. How many subsidiaries does Anglo American have? What is happening in countries in which there are no employees, no third party sales and no fiscal assets while there is still a profit? This is something that civil society wants to know.

Lubbi asks Attiya Waris the question whether the approach of Anglo American would be beneficial from a Kenyan perspective. Waris answers that it would definitely improve the situation but she agrees with Murphy in the sense that the use of multiple subsidiaries creates difficulties. Waris would also like to see a breakdown on a country by country basis.

Murphy states that there is a big problem with consolidated accounts due to secrecy spaces. Every single intragroup transaction is taken out. However, 60% of world trade is intragroup. Until corporations publish intragroup transactions we are not in a position to know what is happening. The degree to which there is a reallocation of profits due to the abuse of transfer pricing is unknown. Until this problem is tackled we cannot have a relationship which is based on trust.

Van der Laan would like to answer Gribnau's question relating to tax compliance. Van der Laan wonders where the discussion is going since people use many different meanings when it comes to defining tax compliance. Van der Laan does not believe in a definition but in the process. All multinationals care about their reputation. That reputation is built in all the relationships with the different stakeholders. "It is about the process and then we also come to the issue of having a good relationship. It is then also up to the government and the tax authority to make their intentions clear." Van der Laan does not believe in a concrete definition of tax compliance as it is not going to help us in the debate.

Lubbi asks Van der Laan what he thinks of Murphy's Code of Conduct as it is also about the behavior in the process. Van der Laan states that the Code is related to normal governance. If we can convince multinationals to include a code related to taxation then this is a great step forward. However, we need trust to come to this level of transparency.

Kapoor would like to refer to André Nagelmaker's presentation and the role of special purpose vehicles. In the past Kapoor was involved in developing risk management products for developing countries. Use was made of special purpose vehicles (SPCs). A big problem is that the share of foreign transactions, cross-border capital flows and international structures are far ahead of tax systems.

Secondly, Kapoor would like to comment on the statement that trusts contribute to the optimal allocation of assets. Does it for example mean that if the Chinese government forbids Chinese citizens to invest in the United States, it is economically optimal for the Chinese to have a diversified portfolio and invest in the United States? Are we looking at economic optimality even if the consequence is a violation of domestic law? This interesting question needs to be addressed.

We also talked about a reduction in transaction costs which may be a positive aspect. However, one cannot drop such a statement without looking at the effect on the tax base and the distribution of tax revenue across countries. Of course there are economic benefits but there are also economic costs. It is difficult to exactly determine the effects of taxation on developing countries but we are making progress. Everybody has a shared interest in the continuation of the debate.

With regard to TIEAs (in the presentation by Leo Zuliani), Kapoor mentions that the problem is that many tax havens do not respond. Moreover, without an automatic exchange of information you do not know what you are looking for. But Kapoor stresses that there is a shared interest between OECD members and developing countries. The Netherlands can play a much larger role than they currently do. Domestic issues such as those relating to the trust industry need to be addressed but in the meantime The Netherlands can make a public stance along with Norway for example. Neither The Netherlands nor Norway are benefiting from bank secrecy rules. We cannot merely look at domestic issues in this debate.

Finally, Kapoor claims that *"with regard to the OECD's Harmful Tax Project we should consider the way in which we communicate in order to win the public relations battle. So far developing countries have been able to paint a picture portraying OECD members as being big bullies. We should consider 'wrapping the message'. Zambia versus Switzerland has a different ring to it than Cayman Islands versus Germany."*

Nagelmaker would like to respond to Kapoor's comments. With regard to the Chinese example given by Kapoor, Nagelmaker states that VIMS and DFA work within the legal and regulatory framework: "If a Chinese citizen would ask for a structure and we know that there is no permission we will not cooperate. We would simply not act on behalf of that client. In his own career Nagelmaker has dealt with cases in which clients are unable to show a permission regarding foreign investment. These clients simply left and at least did not conduct their business through Nagelmaker's firm."

On the issue of transaction costs, Nagelmaker would like to point out that 90% of the structures relate to the avoidance of double taxation. The other 10% relate to financing transactions. These transactions are primarily between developed countries and focus on interest and sometimes royalty withholding taxes. Tax evasion should not be supported in any event but the avoidance of double taxation is justified. The avoidance of double taxation will support the economic development. The business of the Dutch corporate services industry primarily relates to developed countries.

Zuliani would like to elaborate on the issue of TIEAs. In his presentation he told the participants that there is only an exchange of information upon request. So-called fishing expeditions are not allowed. An automatic exchange of information would be better. In future TIEAs will entail an automatic exchange but this is not the final solution. If the software is not compatible then the tax authority cannot use the information provided.

With regard to the problem of jurisdictions not entering into TIEAs, Zuliani believes that the OECD should take the initiative to make sure that these jurisdictions cooperate.

"There should be consequences if countries do not cooperate. But why do we not hear about Africa? We have talked about Asian countries and the Caribbean but Zuliani never hears anything

about Africa. Are there many African countries imposing restrictions on the exchange of information?"

Burghart Ilge mentions that it is not about the exchange of information but that it is about the outflow of capital. There is a lack of transparency when it comes to the question where the funds are going.

Waris mentions that within Africa regional blocks have set up customs unions. At the level of customs officials information is exchanged to a large extent. As an example we can look at the East African Community in which Kenya, Uganda, Tanzania, Ethiopia and Rwanda have joined forces. Problems arise at the border of these unions due to war for example. Sudan and Somalia are bordering Kenya and there is no control on information going across these borders. Waris thus concludes that there is an exchange of information but it is limited. With regard to multinationals investing in Africa, most countries are more concerned with regional or national businesses in terms of exchanging information.

Zuliani states: *"when we look at the new technologies the OECD might be helpful to those countries." Zuliani believes that the scope of the Harmful Tax Project should cover situations in which there is a lack of transparency, a restriction in the exchange of information or a situation such as the situation in Africa.*

Kapoor invites Zuliani to comment on the issue of how the OECD should convey the Harmful Tax Project. Zuliani states that The Netherlands is co-chair of the Tax Information Exchange Agreement (TIEA) sub-group of the OECD project. The Netherlands are still working within the OECD to make sure that those countries which are not cooperating will eventually cooperate. Moreover, The Netherlands address the fact that some OECD members restrict the exchange of information. Countries which are not cooperating have a valid argument when they say that they will not cooperate because OECD members themselves are not fully cooperating. There is no level playing field.

Murphy would also like to make some comments on this issue of 'let us get back to Africa'. The Tax Justice Network has approached the UN Tax Committee. "We have to consider the fact that many countries perceive the OECD as a rich men's club. The UN has an alternative double tax treaty. To a certain extent it is very similar to the OECD Model Tax Convention. However, the UN model assumes that a developing country is not the same as a developed country. It recognizes that one of the solutions for Africa is source state taxation." The OECD model revolves around taxation on the basis of residence. Murphy believes that the OECD should embrace such a shift in taxation because in the long-term existing aid will have to be replaced by an alternative source of income. Moreover, developing countries do not have the capacity to ask the right questions. Even if they have the capacity, they are often not in a position to get the right answers. There are relatively few companies operating in the developing countries and it has taken years to attract these companies. Accounting on a country by country basis is a solution. A unitary style formula creates transparency with regard to third party sales, employees and physical assets. There is thus a test for economic substance. In the end we can establish whether countries do receive their fair share of tax or not. We have to change our culture and this change is part of the answer.

Zuliani would like to make some comments on the UN model. In the near future we will see a change to the OECD model by applying the reasoning which is behind art. 26 of the UN model. Moreover, if we look at the Dutch treaty policy we see that the Dutch always adopt one condition. When we negotiate tax treaties we want a 0% withholding tax on interests, dividends and royalties. However, the Dutch let go of this goal in the case of developing countries by reasoning that these countries need the revenue. Finally, Zuliani fully agrees with Murphy when he says that developing countries do not have the capacity to ask the right questions. "In this respect we may think of adjusting profits via art. 9 of the OECD model for example." OECD members should help those developing countries to improve skills to deal with transfer pricing and help them with asking the right questions.

Murphy agrees but he also states that we should be clear about treaty shopping. One of the ways in which the Dutch participation exemption is used is through treaty shopping. If you want to limit the amount of taxes you pay, using Cyprus and putting together a series of participation exemptions is an excellent way of moving money out of Africa.

Nagelmaker believes that Murphy gives the impression that such structures are used on a large scale. However, figures show that the amount of Dutch structures involving developing countries is extremely low. This will be shown in the upcoming report and Nagelmaker will be more than happy to discuss this report in the future.

Nagelmaker would also like to comment on Murphy's statement regarding economic substance. Nagelmaker states that Murphy implies that the activities of the Dutch corporate services industry have no substance. The substance lies in the expertise and in the organisation of international activities of a group. Nagelmaker understands that there is no industrial product but there is a product and for that matter it is very real.

Nagelmaker would also like to comment on Murphy's statement that form is more or less dressing up a transaction. "Nowadays one of the problems is that nobody agrees on the substance anymore! As a result, companies are in a difficult position because they have no basis to rely on." Nagelmaker has even had talks with officials who say that we should all go back to looking at the form of a transaction because we will never agree on the substance.

Van der Laan is curious whether Hollander is going to promote unitary taxation and invites Hollander to respond. Lubbi gives Hollander some time to think about the question as she would like to give others the opportunity to raise questions or make comments.

Theo Keijzer from Shell International finds it a very interesting debate and hopes that next year more tax professionals working for multinationals will join the debate. According to Keijzer, ,taxation is very simple. "There is a transfer of money from a party which allegedly has money to a party which wants money. There are rules and codes of conduct. Most multinationals have a code of conduct and if you violate this code you are in trouble. Typically one gets fired. If you send back your tax return it only takes one person from the tax authority to disagree with how the tax return has been filled in." This simple 'no' forms the beginning of the whole carrousel.

This is too easy; double taxations starts there. Double taxation is a big barrier for any discussion on the international tax climate. The Cape Town Communiqué is a start but Keijzer would like to point that this team from the OECD has been disbanded. There are no signs that the work is scheduled to continue.

Another issue is defining tax avoidance and tax evasion. Tax evasion is not simply loosing a case in court. Keijzer is looking forward to a continued discussion with Hollander and others so that we can make taxation more transparent and less costly for the taxpayer. It should also become less costly for the government; in The Netherlands there are 30.000 people working in respect of the tax revenue.

To conclude, Keijzer would like to share his utopia with the participants: *"Once a year I would like to go to the secretary-general of the United Nations and simply put the cash on the table and ask the UN to split it between the different jurisdictions. Then international companies will no longer be in trouble, and the countries can 'fight it out' themselves how to split it."* Keijzer argues that the last might become a serious issue, but it at least lowers the costs for multinationals.

This kind of unitary taxation is a solution as it increased transparency. Countries should come together to agree on transfer pricing issues for example. There is a lot to be gained by countries cooperating and taxpayers cooperating with the countries. "If we all take the high road maybe we will get there. We will not get there in one year or in five years, but we will get there."

Arnold Merkies (policy advisor on tax and finance for SP [Socialist] faction in Dutch parliament) asks Murphy the question what we should understand under a fair share of tax. Is it not enough for a company to bring employment to a country? Murphy answers that the fair share can amount to 0%. It is up to the country. The point is that the 0% is fine as long as it does not mean that the taxpayer no longer has to pay taxes in another jurisdiction.

Lubbi would now like to give the floor to Hollander for the concluding remarks at the end of the today's seminar. She is very glad that she does not have to draw conclusions given the complexity of the discussion. Lubbi is delighted that Hollander can do so as a tax professional.

Next steps by Albert Hollander

Hollander thanks Lubbi for the introduction.

"Today we have witnessed the next step in the dialogue. For Tax Justice NL this dialogue started with last year's seminar. Today's seminar brought together those from the economic side of the discussion and those from the development side of the discussion."

Maybe those from the economic side do not pitch ideas as those from the development side do, but Hollander is grateful for the fact that both parties recognize their role in the discussion and are present here today.

Tax Justice NL has the responsibility to take the dialogue to the next phase. Hollander invites all the participants to come up with suggestions as to what the next steps might be. "We could think of setting up specialist groups working on selected issues for example. In the end the dialogue will contribute to your own thinking as an organisation or an individual. In the end you also have to make your own choices. On which side of the discussion do you want to be and how can you create a balance? We need each other so that we can feed on each other's thoughts."

The interest in tax justice is a global interest. "The global impact on companies will depend on the roles we play in the organizations we are involved in. The step we took today here in The Netherlands forms the starting point for each participant in taking the next step in whichever direction you may choose to go."

Hollander would again like to stress that nobody should hesitate to contact Tax Justice NL if there are any suggestions. Hollander answers the question from Van der Laan regarding the allocation of the total tax bill on the basis of a certain formula by stating: "I believe that in our lifetime we will see taxes being collected at a supranational level. The question is which organizations will take up such a role on a global scale." It would not surprise Hollander if we see such organizations emerging over the next twenty years.

To conclude the seminar, Hollander would like to thank the speakers, the participants and Arend Jan van Lint for taking photographs and invites everybody for a drink.

ANNEX 1

Speakers Tax Justice NL Seminar 21 May 2008

Greetje Lubbi is president of Jubilee Netherlands.

Albert Hollander is president of Tax Justice NL. Since 2004 he is Head of Legal and Compliace of Triodos Bank NV, a European sustainable bank. Before that he was a tax partner at PricewaterhouseCoopers in Amsterdam, where he worked for 14 years.

Alex Cobham manages the policy team at Christian Aid, the UK's leading international grant-making development NGO. Before taking up this post in 2007, he worked for eight years in a range of economics research and teaching posts at Queen Elizabeth House (Dept of International Development) and St Anne's College, both at the University of Oxford.

Attiya Waris is Vice-Chairperson of Tax Justice International and a Member of Tax Justice Africa. She is Tax law lecture at the University of Nairobi, School of Law, Kenya and is currently working on her PhD on Tax Law , Human Rights and Development.

Sony Kapoor is the Executive Director DEFINE, the development, environment and finance exchange a new international think tank. Sony started his career in investment banking and derivatives trading and then moved to working on strategic issues in development and international finance. He has played a pivotal role in progress on debt cancellation, on innovative sources of financing and tackling capital flight. Sony has helped set up the Norwegian led illicit finance task force and is the strategy adviser to the same.

Andre Nagelmaker started his career in banking and investment research at ABN Bank. In 1988, he changed to ABN Trust. There he built a strong practice on corporate services. Later followed Credit Lyonnais and Rabobank focussing on structured finance, corporate international tax planning, and cash-box companies. In 2002 he joined ATC Corporate Services with his team. In 2003 he became a member of the board of the Dutch Association International management Services (VIMS). On behalf of this association he also participates in the Dutch Foundation Holland Financial Centre.

Leo Zuliani is Deputy Director International Tax Policy and Legislation Directorate

Ministry of Finance

Richard Murphy is a UK chartered accountant and director of Tax Research LLP. He directs TJN's 'Mapping the Faultlines' research project on tax haven abuse. He wrote the TJN / Association of Accounting and Business Affair's Code of Conduct on Taxation based on his twenty five year's experience as a tax practitioner and business person.

Robert van der Laan is partner at PricewaterhouseCoopers since 1996 and leader of the Dutch PwC practice Tax Management & Accounting Services. Robert is a specialist in the area of Tax Function Effectiveness, and takes a special interest in tax strategies of Dutch companies.

ANNEX 2

Participants Tax Justice NL Seminar 21 May 2008

Initials	NAME	ORGANISATION
M.A.G.	Admiraal	Menno Admiraal Belastingadvies
A.	Bakker	IBFD
H.J.	Bakker	stichting Oikos
M.	Beckers	Stichting Oikos
L.	Booijink	
M.	Broersen	Tax Justice NL
J.E.	Clever	University of Maastricht
A.	Cobham	ChristianAid
G.	van den Dool	DNB
M.A.G.	Van Dijk	SOMO
C.	Driessen	FNV
P.	Ebels	Fair Food
E.	Fortuijn	Fair Food
J.W.	Van Gelder	Profundo
F.	Gille	
J.	van Gilst	PvdA
J.E.	Gooyer	PriceWaterhouseCoopers
H	Gribnau	University of Tilburg
R.	Van der Grinten	Orangefield Trust
R.	Hafkenscheid	Deloitte
R.	Hamers	PWC/ University of Leiden
R.H.	Happé	University of Tilburg
F	Haver-Droeze	Min. BUZA, DGIS
H.	van den Heuvel	Jubilee Nederland
D. C.	Hissink	Molade Trust Management
A.	Hollander	Tax Justice NL
B.	Ilge	
E.	Jonker	PriceWaterhouseCoopers
A.	Kaag	FNV Mondiaal
C.A.	de Kam	University of Groningen
S.	Kapoor	DEFINE
T.	Keijzer	Shell International
M	Kokke	SOMO
A.G.	Krieger	eKraft
F.	de Laaf	Oxfam Novib
R.	van der Laan	PriceWaterhouseCoopers

K.	Leers	
A.J.	van Lint	
G.	Lubbi	Jubilee Nederland
A.	Merkies	SP
R.	de Meyer	11.11.11
W.A.	Monasso	Filad
R.	Murphy	Tax Research LLP
A.	Nagelmaker	ATC Trust/ VIMS
M.	Nijman	
E.	Oosterwegel	IKV Pax Christy
H.	Pelgröm	Ministry of Foreign Affairs
H.	Poortman	
E.j.	Quak	Global Issues
O.	Senalp	Transnational Institute
N.	Shaxson	Tax Justice Network
T.	Stok	CDA Duurzaamheidsberaad
E.	Van der Stroom	PriceWaterhouseCopers
R.	Veltmeijer	Triodos
M	van den Ven	Ernst&Young
A.	Verhoeven	DNB
J.	Visser	FNV
P.	Vlaanderen	Ministry of Finance
A.	Waris	Tax Justice International
P. J.	Wattel	Hoge Raad
E.	Weller	IKV Pax Christy
F.	Weyzig	SOMO
W.	Wiertsema	Both Ends
J.	Willems	Dutch Fiduciary Association (DFA)