

Taxpayers' Rights in a National, EU and International Law Context - The German and the Dutch approach -

ILS Lunch Seminar

8 November 2018

Dr. Almut Breuer, LL.M.

Why?

- Comparison of GER v NL fits my background
- Interesting differences:
 - Tax policy (large v small country)
 - Relationship between tax authorities and taxpayers (retroactive v proactive)
 - Possibility of constitutional review (no v yes)
 - Place of International treaties within the hierarchy of laws (taking precedence v equal footing)
- Important similarities:
 - Tax systems as a whole
 - Harmonising rules of OECD and EU apply to both countries

Taxes...

...suddenly have become interesting to the public.
When did that happen? In 2012!

Starbucks, Google and Amazon grilled over tax avoidance - BBC News

<https://www.bbc.co.uk/news/business-20288077> ▼ Vertaal deze pagina

12 November 2012 ... The head of Google UK and top managers from Starbucks and Amazon appeared before the Public Accounts Committee. ... Margaret Hodge, who chairs the parliamentary committee, told the BBC that she thought it ... Apple paid less than 2% corporation tax on its profits outside the US, paying \$713m ...

“We're not accusing you of being illegal, we're accusing you of being immoral”

Margaret Hodge, Chair of the Public Accounts Committee, UK

Consequences and issues:

State Aid cases
of Apple,
Starbucks and
the like

Mandatory
Disclosure

Legal
certainty

Principle of
legitimate
expectations

Right of
rebuttal

Transparency:
Exchange of
information

Right to
property

Fair share
debate

Ability to pay
principle

Privacy

BEPS Action
Plan

Anti Tax Avoidance
Directive

Paradise
Papers

Presumption
of innocence

Right of
defence

Football
Leaks

Panama Papers

Lux Leaks

A few propositions

Netherlands

- Should allow for constitutional review
- Should increase the importance of the ability-to-pay principle
- Should no longer allow the tax inspector to impose fines

Germany

- Should grant precedence to International treaties
- Tax authorities should take a more proactive approach
- Should implement right of rebuttal in *all* anti-abuse provisions

Questions?

In case you come up with questions later: a.c.breuer@law.leidenuniuv.nl