Report

Research & Lecture Visit Japan, 4 November 2017-25 November 2017

Photo by prof. Yuka Shiba, Hakone autumn colors

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1 Thank you

First of all: many thanks, primarily to Tokoha University that provided a very generous budget for this research trip, but also to Ritsumeikan University, Kansai University, Kyoto University, Setsunan University, Meiji Gakuin University and Osaka Keizai University for providing the funding for my 2017 lecture and research stay in Japan. It was a very rewarding experience through which I have met many Japanese researchers, I have learned a lot about research in Japan and about the history and culture of Japan, made new contacts and renewed old acquaintances and was able to make plans for future research with Japanese colleagues. I am also very grateful to (in alphabetical order) prof. Goto for organizing the Kyoto/Osaka part and the Ministry of Culture and for taking me on a two day intense but fantastic holiday to the Hiroshima prefecture, prof. Miyamoto for organizing the tax law lectures on BEPS and prof. Yuka Shiba who organized the major part of the funding for this trip and made me think about the relation of new family forms and the impact on inheritance tax and personal income tax and who organized many interesting cultural activities, including a nice trip to Hakone and my first lecture without shoes!

All these colleagues, who have become friends over the years, brought together my research interests and gave me the opportunity to talk about tax in an interdisciplinary way. They planned the trip in an excellent way, minimizing travel time. Because of efficient planning I did not feel tired even though I never had so many lectures during a Japan research trip as this time. But because of the efficient planning and limited traveling because of clever hotel reservations it did not feel as a full program.

I am also grateful to all academics who invited me to their universities and in their classrooms and everybody who took the time to exchange views with me. It really was an invaluable experience. My only complaint is that time went so fast! I do hope to come back to Japan for another research visit. Until then, I hope to welcome of my Japanese learned friends in the Netherlands: the discourse will definitely continue, no matter the distance in time and space!
2 Outline of academic activities

2.1 Lectures

2.2.1 7 Nov: Setsunan University, Faculty of Economics: lecture for academic staff

Prof. Goto had made it possible to deliver the lecture ‘Economic aspects of the BEPS Project’ (no. 1 in the annex) at the Faculty of Economics at Setsunun University in Osaka (in English without translations). Furthermore, in the morning she arranged for me to meet her first year students and to talk a bit with them. The students were a bit shy, but there was one boy asking questions about whether people in the Netherlands liked soccer.

Between this class and the lecture I gave, I worked in the huge office of prof. Goto. The offices in Japanese universities are very big compared to what we are used to at ESL. Every professor has his or her own room with a lot of bookshelves and a big table to discuss with students or even give small seminars or tutorials. We also went to the university library. It is a beautiful building with a large collection of books. These books are not hidden in storage, but all on bookshelves which is very nice. Also there was a large collection of foreign journals. Interestingly, for all fields these journals were dominantly in English, but for law almost all foreign journals were in German. Germany still seems to be very important for Japanese scholars of the law.

I truly enjoyed delivering the lecture on ‘Economic aspects of the BEPS Project’. I was honored that not only the dean of the faculty of economics, but also the dean of the faculty of law and the dean of the faculty of management attended this lecture. Furthermore, prof. Kojima of the faculty of law who is specialized in tax law also attended the lecture which really added to the discussion after the lecture. We had a very interesting discussion on the fact that in Japan there is not a general anti avoidance rule (GAAR) and that it has been discussed a lot: the government might want to introduce a GAAR, but there is strong opposition from influential academic circles.

Furthermore, Japanese courts do not want to apply substance over form. This is different in the Netherlands where since the 1920s we both have a statutory GAAR and a substance over form doctrine (fraus legis) adopted by our supreme court. Prof. Kojima also sent me some interesting comments after the lecture by email. It was really nice to exchange thoughts with a fellow tax professor and to establish this new contact! Also the dean of the faculty of economics, prof. Kubo, had some very thought provoking questions.

After the lecture prof Kubo invited me and prof. Goto for a very nice sushi dinner. We had a very interesting discussion on increasing income inequality, a topic prof. Kubo is currently working on. He shared a presentation on this topic with me. This was very interesting as he shared some figures with me on which I was not aware of, for example
that income equality has become bigger in Scandinavian countries such as Finland and Sweden. It is thought that this is caused by globalization and technological developments. I could share with him that income equality has remained more or less the same in the Netherlands, which was endorsed by prof. Kubo’s figures. However, it is intriguing that income equality has increased in Sweden. This might be a topic for further research for me when I start my guest professorship at Lund University School of Economics and Management in February 2018.

2.2.2 8 Nov: Ritsumeikan University: workshop with PhD student

Prof. Miyamoto had organized a workshop on our book Tax Incentives for the Creative Industries with her PhD student Mikiko Nakashima in the main building of Ritsumeikan University. I was impressed by the beauty of the building. Also this building had a beautiful library. The workshop was a quite intense for the PhD student who was in the room with three professors: prof Goto, prof. Miyamoto and myself. She had prepared extremely well. She combines writing her PhD with working as a certified public tax accountant and being a mum to two young children, which is quite challenging. First prof Goto gave a short introduction on the book after which I gave a presentation (no. 2 in the annex). In between both the PhD student and we the professors asked each other questions. It was very interesting. Afterwards the four of us had a very nice dinner in a very traditional, beautiful restaurant in Kyoto. The food was delicious and served on beautiful dishes, some of them were Mishima, which pattern looked like Mishima Calendar from Shizuoka.

2.2.3 9 Nov: Osaka Keizai University: seminar for master students

Prof. Shiba had invited me to give a lecture on Fiscal partnership and inheritance tax in the Netherlands (no. 3 in the annex) to het master students of Osaka Keizai University (Osaka University of Economics). I explained the topic using examples from my own family. Prof. Shiba had expected a maximum of 10 students, but because prof. Koga and prof. Murai had also taken their students to my lecture, we were 30 people. Prof Koga kindly provided me with a reprint of the translation he made of the paper I wrote in relation to my 2014 visit to Japan “Fairness and taxation in a globalized world”. This translation was published in two parts in Osaka Keidai Ronshu, a journal edited by Osaka University of economics Institute, Vol. 66, no. 4 of November 2015 and in Vol. 67, no. 1 of May 2016
The master students are mostly older students who already have a career and now do a master in order to further their career. As opposed to the situation in the Netherlands, it is not so common in Japan to follow a master, especially not directly after finishing a bachelor. It is also quite expensive in Japan to do a master. I gave the lecture in a branch of the University which is conveniently located in the Osaka Stock Exchange. As most students came directly from their work, prof. Shiba had kindly provided for pizza for the students, which meant we started the seminar in a very friendly atmosphere. Furthermore, one student had translated my slides in Japanese, thus enabling the other students to follow my lecture more easily. Prof. Shiba provided for short summaries in Japanese during my lecture. Two students had prepared very interesting questions on my lecture, which enabled me to explore the subject further in relation to our general anti avoidance rule. Also, prof. Murai who has studied in Germany several times, speaks fluent German and is very knowledgeable on the German civil law, asked very interesting questions on the (im)possibility of harmonization in the European Union in this field, comparisons with, for example Germany and the flexibility of the Dutch system. After the lecture I was given a very nice collage of my lecture. I felt very welcome at this university and I am very grateful to the three professors who enabled their master students to attend my lecture and I want to thank the professors and the students for attending and contributing to the seminar!

2.2.4 10 Nov: Ritsumeikan University: lecture

Prof. Miyamoto, vice dean of the division of academic affairs of Ritsumeikan University and professor of law at that university invited me for a lecture on the EU implementation of the BEPS project (no. 4 in the annex) at the College of economics of Ritsumeikan University. The seminar marking the 70th Anniversary of Ritsumeikan University Department of Economics was coordinated and chaired by prof. Kawane. Both master students, international students and faculty staff, including the vice dean of the faculty attended the lecture. Also prof. Tsuji and prof. Murai attended the lecture. After an introduction of prof. Kawane and prof. Miyamoto I gave my
lecture for which prof. Goto kindly provided translations in Japanese. Prof. Miyamoto and prof. Tsuji gave further technical tax explanations in Japanese and also added information on Japan. After the lecture prof. Murai gave a discussion statement and asked how the Netherlands feels about the BEPS project. Then a student asked about the difference between ATAD1 and ATAD2 and prof. Miyamoto asked whether there is a priority order problem between the parent subsidiary directive and ATAD. A master student then asked whether we have problems in the Netherlands with enforcing the GAAR. An international student asked whether there was a central system for the automatic exchange of information and how it was possible for developing countries to meet the automatic exchange of information requirements and how it could be safeguarded that the information was safe. It was a very nice discussion with excellent input from the students. Afterwards we made a group picture and had a very nice dinner with Prof. Murai, prof. Miyamoto, prof. Goto, prof. Kawane, dr. Shinoda and Mikiko Nakashima in a French restaurant not far from the university where we could talk a bit more. Prof. Murai showed me a conference book of a conference on the CCCTB which he already organized in 2007. 10 years later the discussion on CCCTB is still going on in Europe... We also discussed the difference between legal research in Germany and the USA based on a paper prof. Schön of the Max Planck Institute in Munich wrote for the New York Law Review. We concluded that Japan and the Netherlands are somewhat in the middle between Germany and the USA. It was, again a very nice and interesting experience!

2.2.5 11 Nov: Kyoto University: joined lecture with Ritsumeikan University

Prof. Miyamoto and prof. Morotomi of the Kyoto University Graduate school of economics invited me for a joined lecture of Kyoto University and Ritsumeikan University on EU implementation of the BEPS project with a focus on controlled foreign companies (no. 5 in the annex). For this group a translation of my presentation in Japanese was not necessary, so there was much time for discussion after my lecture. First, prof. Miyamoto explained the way Japan implemented the BEPS CFC rules, which meant a change from the already existing Japanese CFC rules. Japan applies a hybrid system. A student asked whether this would be allowed under the EU ATAD or whether countries are obliged to apply either model A (categorical approach) or B (substantial approach) and cannot have a mixture. This was a very good question as this is currently debated in European tax literature and there are different opinions on this. In reply to a question of prof. Morotomi I discussed the European infringement procedure that the European Commission can start when it does not agree with the way a Member State implemented a directive. A student asked why the
Netherlands did not have a CFC rule. I explained that we have a different rule which includes the revaluation of the shares in a low taxed passive subsidiary. Also, the student asked which EU countries did not have a CFC rule before. To answer this question I referred to a website of the European Commission. Prof. Tsuji explained that in Japan CFC rules do not include rules to avoid double taxation as the taxation at the level of both subsidiary and parent is not regarded to be double taxation. I added that in the EU not only legal double taxation but also economic double taxation is taken into account also to comply with the four fundamental freedoms. A student raised the excellent question what is fair (and unfair) taxation. This is of course very subjective and really in the eye of the beholder. That is the big problem of the current discourse. Finally a question was raised about the relation between CFC rules and transfer pricing rules and new problems of double taxation that might result from this. I gave as my opinion that mandatory arbitration is really a necessary part of the BEPS project and that it is a pity that most countries who participate in the BEPS project did not want to include this in their tax treaties.

After the lecture we had a very nice lunch at the 15th floor of the Granvia hotel with a beautiful view of Kyoto and the mountains surrounding the city. Prof. Morotomi explained during lunch that the situation in Japan is very different from that in Europe. As the bubble economy already burst in the 1990s in Japan and thus there had already been a restructuring in the banking sector in Japan, the financial crisis did not hit Japan so heavily as in Europe and there was not that much angriness of citizens as in Europe. For that reason, for Japan the BEPS project is more seen as being top down, coming from international organizations than as something to relate to the wish of citizens. It was very interesting to hear about this different perspective on the BEPS project and it shows how important it is to talk about these international subjects with academics from different jurisdictions. It was a very interesting morning!

2.2.6 11 Nov: Kansai University: lecture for graduate students and members of Kansai University Tax Law Society

Prof. Urahigashi, professor of tax law of the faculty of law and prof. Tsuji, professor of tax law at the faculty of faculty of business and commerce of Kansai University organized for their master and PhD students and members of Kansai University Tax Law Society the lecture EU implementation of the BEPS project with a focus on financial transactions at Kansai University in Osaka (no. 6 in the annex). Also professor Miyamoto, prof. Murai and prof. Hayashi of Hiroshima University joined the lecture. Prof. Goto kindly provided Japanese translations of my presentation. After the presentation there was time for discussion.
Prof. Murai mentioned that many countries also have thin cap rules and now have to introduce the EBITDA interest deduction limitation as well. He asked how many EU countries abolished their thin cap rules. I talked about the national reasons why the Netherlands abolished the thin cap rule (it mainly hit small and medium size companies and not multinationals) and about the ECJ cases on the UK and German former thin cap rules. It struck me that in Japan much legal research is done on the details of the tax systems in other countries. This might explain for quite detailed questions on tax systems in other countries. This kind of research is not so common in the Netherlands. A student asked why there are so many Japanese companies in the Netherlands. I explained the Dutch participation exemption, the tax treaty network and the proposals to change or even abolish the dividend withholding tax. According to prof. Murai much aggressive tax planning takes place in Japan using the Netherlands: there are many interesting court cases which involve the Netherlands. Prof. Murai also asked about mandatory disclosure and gave a short closing remark pointing out that in Japan the EBITDA percentage is 50% instead of the 10-30% recommended by BEPs Action 4. Japan already introduced this limitation in 2013. It might be that the percentage will change in the future. Again, it was a very interesting discussion from which I could also learn a lot about Japan. After the lecture prof. Urahigashi, prof. Tsuji, prof. Miyamoto, prof. Murai, prof. Goto and I had a very nice dinner in an Italian restaurant. The food was very nice and we had a really good time, during which we discussed much more.

2.2.7 16 Nov: Meikai University, Faculty of real estate science: lecture for academic staff and graduate students

Before, prof. Shiba was an associate professor at Meikai University, Faculty of Real Estate Science. Prof. Suto of the Faculty of real estate science had kindly organized a lecture for me: ‘Housing taxation in the Netherlands’ (no. 7 in the annex). It was a very interesting experience as many researchers joined with different backgrounds: amongst others economics, engineering and law. After the lecture there were some questions on the housing situation in the Netherlands. The lecture and the question time were in English.
2.2.8 17 Nov: Ministry of Culture, seminar for civil servants

Prof Goto, Mr. Kosuke Norimoto, a civil servant of the Ministry of Culture (who could not attend because he had to go to Parliament) and Mr. Yoshide Miwa, deputy director of the policy planning and coordination division of the Agency for Cultural Affairs (part of the Ministry of Education, Culture and Sports) had organized a seminar for civil servants where I gave a lecture on Tax incentives for the creative industries with a focus on copyright industries (no. 8 in the annex). Through a video connection civil servants of the Kyoto branch could also attend the lecture. Prof Goto provided for Japanese translations. After the lecture we had a very interesting discussion on several topics such as examples of good practices in other countries, reduced consumption tax for cultural products and services and a real estate tax incentive for barrier free museums.

2.2.9 19 Nov: Lecture at a conference organized in Kakegawa by Tokoha University

As part of a conference prof. Shiba organized for Tokoha University in Kakegawa, I gave a lecture on tax incentives for the creative industries (no. 9 in the annex). The audience was very diverse both in age and in background: university professors from various universities and faculties (including architecture and the faculty of design) and students. She organized the conference in a beautiful building from the Meiji period which was a mixture of Japanese and western style. It was the first time in my life I gave a lecture in such a building and without shoes! Mrs. Tanaka kindly provided for Japanese translations of my lecture (she translated everything for me that day, which was fantastic!) at which she did a very good job. After the lecture we had an interesting discussion on what kind of incentives (tax or subsidies) work for which kind of purposes as a result as some interesting questions from the audience.

The evening of the conference, we had a very nice and informal party during which it was possible to discuss further and to get to know more people. It was a very well organized conference.

2.2.10 20 Nov: Tokoha University, Faculty of Law: two lectures for third year bachelor students
Prof. Shiba invited me to give two guest lectures to her third year bachelor students. The first lecture was Tax incentives for the creative industries (no. 9 in the annex). The second lecture was Work-Life Balance and Income Taxation in the Netherlands (no. 10 in the annex). Prof. Shiba provided for short translations in Japanese. The students paid very good attention and had excellent questions after both lectures, they really showed that they were third year students. Different than in the Netherlands, however, in Japan the bachelor is four years instead of three in the Netherlands. The master in Japan is two years as opposed to only one year in the Netherlands.

2.2.11  21 Nov: Tokoha University, Faculty of Law: lecture for undergraduate administrative law students

Prof. Shiba asked me to give a guest lecture in the administrative law course to the second year bachelor students. The title of the lecture was ‘Tax Law as a Special Kind of Administrative Law and Protection of Tax Payer’s Rights in the Netherlands’ (no. 11 in the annex). It was a very big group of students, about 120. Prof. Shiba provided for Japanese translations and also added information on Japan, which was very interesting for me. The students paid very good attention to the lecture and had very nice questions. After the lecture one student even came to me and asked an interesting question on tax compliance attitude in the Netherlands in very good English.

2.2.12  24 Nov: Meiji Gakuin University, Faculty of Economics, Department of Business Administration: lecture for master students

Prof. Nishiyama of Meiji Gakuin University, Faculty of Economics, Department of Business Administration had very kindly organized a lecture for master students, ‘Fairness & taxation’ (no. 12 in the annex), in English. First we had lunch with five master students (two second year and three first year master students), who all introduced themselves. Then one student had to leave for another lecture and I gave my lecture. After the lecture each student had a question for me. They had prepared the lecture for two weeks, they were very well prepared. The questions were very interesting, on the balance between government powers and rights of the individual, tax competition, the Irish
tax exemption for artists and free riding and whether or not an innovation box is leading to tax avoidance (showing the subjectiveness of ‘aggressive’ tax planning and the effects of tax competition). It was a perfect seminar to conclude my lecture tour in Japan. After the lecture prof. Nishiyama and I discussed our research projects.

2.2 Formal meetings

2.2.1 16 Nov: Meeting at the Tokyo Foundation with prof. Morinobu and prof Kawabata

Prof. Morinobu of the Law School of Chuo University had invited us to the Tokyo Foundation to discuss the Dutch income tax system. Prof. Morinobu is a senior fellow of the Tokyo Foundation, an independent Japanese think tank. He has been engaged in several policy research projects of the Tokyo Foundation on income tax reforms. Prof Kawabata is a professor of tax law of Yokohama National University and a frequent attendant of tax conferences all over the world, including the European Association of Tax Law Professors (EATLP) conference. It was very nice to meet him in Japan this time and that he could take the time to attend the meeting at the Tokyo foundation. Prof Shiba joined us later as she had to lecture in Shizuoka in the morning. We had a very interesting discussion on several topics: the move from tax deductions to tax credits, the box 3 deemed income taxation on savings and investments in the Netherlands and particularly taxation of the digital economy. Prof Morinobu has written an article on this topic in Japanese which he kindly provided to me. He had some questions about the equalization tax proposal France did for taxing the digital economy in Europe and we discussed this. After our meeting we had lunch during which we continued our discussion. During lunch we also discussed tax incentives for films and video games which we all thought not to be a good idea. Also we discussed differentiation of consumption tax rates. In the Netherlands the new government proposed to increase the reduced rate from 6% to 9%. This might be a first step towards a single VAT rate, which most economists and tax specialists in the Netherlands think would be a good idea. Japan currently has a consumption tax with only one rate of 8%. However, in two years this will be increased to 8% except for food and newspapers. This will probably lead to a lot of discussions on the definition of food and newspapers. Monthly and weekly journals are explicitly excluded because this might also
include pornographic magazines. This, together with taxes on google also lead us to the discussion on taxation of free speech: in the 18th and 19th century this was the argument used to lobby for the abolishment of stamp taxes on newspapers in Europe, in the 1990s and the early 2000 this was an argument against taxes on text messages, now it is an argument against tax on the use of megabytes. It was a very interesting discussion in which I learned a lot and which gave me much for thought!

2.2.3 17 Nov: Meeting with Ms Kawakami of Springer

On 17 November prof. Goto and I had a meeting with Mrs. Juno Kawakami at the Springer offices in Roppongi. She was the editor of our book ‘Tax incentives for the creative industries’ at Springer. We talked with Mrs. Kawakami about Springer activities and the sales of our book. Also she wanted to make twitter message of the photo we took together with the book. After our meeting we had a very nice lunch in the Restaurant Voie Lactee in the beautiful Musee Tomo nearby. Even though we were in the middle of Tokyo, there was a beautiful garden we could look at from the restaurant.

2.3 Informal meetings not linked to a lecture or seminar

2.3.1 5 Nov: Dinner with the organizing professors

On my first evening in Japan, prof Goto, prof. Shiba and prof Miyamoto had organised a very nice dinner in Kyoto in the Iyemon salon, where the menu is focused around Japanese tea. We arranged for the last practicalities of my stay, did some necessary paperwork and had a very nice evening together. We were with two professors from a law school (prof. Shiba and myself) and two professors from a school of economics/business school (prof Goto and prof Miyamoto). We discussed amongst other things that even though during my research visits to Japan female professors play a major role, in general there are not that many female professors in Japan, especially not at economic faculties.

2.3.2 14 Nov: Dinner with pro. Yagi
Prof. Yagi of Doshisha University is one of the series editors of the Creative Economy series of Springer. He kindly provided funding for the language check for the chapters of the book ‘Tax incentives for the creative industries’ which were written by Dutch authors. Prof. Goto had organized a dinner with him to thank him for his help. The dinner was in a typical Kyoto restaurant with refined Kyoto style dishes. It was delicious! During this dinner we had very interesting discussions. We talked about equality of pay between part time workers and full time workers. Prof. Yagi is currently studying this topic. In Japan part-time workers have to be paid a pro rata parte of the full timewage. However, this is not the case in Japan. This is also caused because Japan always had many flexible workers without a fixed contract thus reducing the bargaining position of people with a part-time contract to increase their payment. This might also happen to the Netherlands given the increase of so called ‘independent workers’ since the economic crisis. They do not have a contract and have to pay for their own insurance. As a result they are often uninsured. The Netherlands now has over 1 million of those independent workers which is a large amount given the fact that the total workforce is between 8-9 million people. The substantial tax benefits for entrepreneurs have accelerated this trend. Changes in these incentives are fiercely opposed by lobby groups of these independent workers. The new government has announced changed, but it remains to be seen whether the government will be successful. We also discussed world politics and the difference between economic research and legal research.

2.3.3 15 Nov: lunch with prof. Shiba

Prof Shiba and I met in Shizuoka for lunch. We discussed the schedule of the coming days in Tokyo and she explained me where to go and which trains to take. We also discussed the field work students have to do for her seminar: a community bus project in Kambara. It was very interesting to learn about this. She has a seminar group of about 15 students in the 1st, 2nd, 3rd and 4th year. The seminar students for the 3rd and 4th year she can select herself. With these students she works on a project. The Kambara project is also funded by the local community. This is a very interesting way of active academic learning for students!

2.3.4 17 Nov: Coffee with Olivier Valk, associate on secondment at Allen & Overy
Gaikokuho Kyodo Jigyo Horitsu Jimusho

I had a meeting with Olivier Valk, a colleague of the Allen & Overy office Amsterdam who is now on a secondment in the Tokyo office which is located in the Ropongi Hills Mori Tower. He showed me the office and introduced me to the partners and his roommate in the office. I also met Nick Wall again, the partner with whom I had a meeting when I was in Japan in 2014. It was very interesting to hear about the work Olivier is doing in the Tokyo office and about his life in Japan. He was obviously enjoying both!
2.3.5 18 Nov: Dinner with prof Shiba in Shizuoka

After I arrived in Shizuoka again, prof. Shiba and I had a very nice dinner in a small restaurant, Roku, in the center of Shizuoka. It was run by a young couple, whose children, as prof. Shiba informed me, were sleeping in the back room. A typical Japanese small family run business, with hard working owners and delicious food!

2.4 Cultural experiences

2.4.1 6 Nov: attend children’s Karate exam in Yamashina

My friend Ikuko took me to the karate exam of her children. Their teacher is an older man who also works for the Japanese Olympic karate team and who made a big effort to have karate as an Olympic sport. The other teacher is a lady, which might explain for the fact that there were quite a lot of girls in the class. It was really nice to see these little girls being very concentrated and confident when doing karate. I think it will help them in their future lives to become strong women, maybe not even so much physically, but in any case mentally.

2.4.2 9 Nov: Osaka Doshomachi district and Osaka Central Public Hall

Yuka Shiba arranged for some special Osaka sightseeing before my lecture at Osaka Keizai University: we went to the Doshomachi district where since the Edo period Japanese pharmaceutical businesses were located. We first went to the Sukunahikona Shrine, where the Shinto deity of medicine is enshrined. As we were visiting very close to the Shinno Festival which is held every year on November 22nd and 23rd, we saw the activity of distribution of papier-maché tigers and bamboo leaves at the shrine. This tradition dates back to 1822 when an epidemic of cholera struck Osaka. It is said that pills named Kotosakkuo-en were made, prayed over to cure the disease, and distributed along with papier-maché tiger amulets free of charge, and that this cured the disease. After visiting the shrine, we went to the Doshomachi Pharmaceutical and Historical Museum which is located on the grounds of Sukunahikona Shrine. It tells the story of Doshomachi’s rise as a medicine quarter. This started in 1722 when 124 brokers of medicinal ingredients in the area were authorized by the shogunate Yoshimune as the kabunakama, a trade association that obtained the privilege of monopolizing trade in a specific field by paying a tax to the shogunate. As we were explained in the Mitsubishi Tanabe Pharma Historical Museum, the association of herbal medicine brokers had three functions: (1) a monopoly on importing herbal
medicine and ingredients from China (through Nagasaki); (2) a monopoly on the distribution of these medicines in Japan; and (3) inspections to ensure quality control and proper use of medicinal ingredients. When Western medicine was introduced in the Meiji period (1868-1912) Doshomachi merchants began studying Western medicine at the Osaka Pharmaceutical School (the predecessor of the present Osaka University School of Pharmaceutical Sciences), established in Doshomachi. Unfortunately, this building was closed when we passed it. Still the Doshomachi district is home to many pharmaceutical wholesalers and manufacturers. We went to the headquarters of Mitsubishi Tanabe Pharma which houses a historical museum. We were given a very interesting tour in English in the museum by a staff member. As one of the founding companies, Tanabe, started in 1678, the company has a very rich history. The museum houses a replica of the storefront in the Meiji area and a scale model of the whole shop, private living area and storage. The storefront was rather small, but the buildings were very deep. The reason? Tax! The wider the front of a building, the higher the tax. This explains for narrow fronts of Japanese old buildings. We learned a lot about the company. Still, Tanabe family members are working in the company. It was a really interesting journey in a very specific and interesting part of Japan's history.

We also visited the nearby Osaka Central Public Hall (also: Nakanoshima Central Hall) and its small museum. This is a western style building made of red brick that was built between 1916 and 1918 with funds donated by the stockbroker Einosuke Iwamoto. He was motivated by this donation by his experiences in the USA and the importance of charity for public causes there. The sad part of this story is that he came in financial distress afterwards and committed suicide, so he never saw the completed building. His four year old daughter presented the keys of the building to the mayor of Osaka at the opening ceremony of the building. The building features two concert halls and a restaurant. It has been restored and reopened in 2002 and has been designated an important building that should be kept for future generations. Interestingly, the building was designed by the same architect who designed the Museum of Kyoto annex, the former Bank of Japan Kyoto branch that I visited earlier that morning. The museum had a very nice special exhibition on “The Pleasure of Japanese Modern Paintings; Wood-one Museum of Art Collection”, which also featured paintings on Foujita.

2.4.3 12-13 Nov Hiroshima, Miyajima, Osakikamijima Island and Takehara

On 12 and 13 November, prof Goto had organized a trip to Hiroshima, Miyajima, Takehara and Osakikamijima Island. We first went to Hiroshima, where we went of the A-bomb dome, the peace memorial park and the museum. It was very impressive. After this serious and solemn start of the day, we went on a boat to Miyajima Island. It was very nice as we went on one of the Hiroshima rivers and then out onto the sea. We walked around on the island. It was very crowded as it was a Sunday, but when we walked a bit further it became a bit more quiet and we had a wonderful view on the O-torii Gate. It was beautiful, with the sun going slowly down on it. It was a very nice experience.
We went back by Ferry and after a short, but very nice boat trip we took the train and the Shinkansen to a station where a hotel car waited for us. We stayed in a very nice Japanese style hotel. We first went to the onsen in the hotel and after that had a very nice Japanese dinner there.

On Monday Morning we first went to the onsen. After that we had a walk in the hotel garden, where they had an open air noh theatre. We had a nice Japanese breakfast in a room overlooking the garden. The hotel taxi brought us to Takehara from where we took a ferry to Osakikamijima Island. There we rented a bicycle and cycled next to the see and passed may orange groves. It is not a touristic island yet, but they would like to welcome more tourists. It seems that before there were many shipyards, but also that many had to close down. We had lunch in a very small restaurant where we had the typical okonomiyaki for this region (which is different from, for example, the Osaka one). It was very nice. There were two other customers in the restaurant and everybody liked to chat. I was the third tourist they had ever had in the shop after people from Hong Kong and a carpenter from France who now lives in Japan. It was really nice. We cycled back to the ferry and the ferry brought us back to the city of Takehara where we visited the historic district. It was very beautiful and quiet. Where we visited sites which attract many tourists the day before, this day we visited places which are not so frequently visited by tourists. Then we took the train back to Kyoto.

2.4.4 14 Nov: Miho Museum

My friend Ikuko took me in her car to the Miho Museum. This private museum opened in 1997. It is funded by a private foundation, the initiative from the museum was by a lady and her daughter who also provided the collection of the museum. It has a spectacular location in a natural mountain reserve. Furthermore it has an intriguing design. The architect of the museum was I.M. Pie. He also designed the large bell tower which can be seen in the distance from the museum. The collection is also interesting: from ancient Egypt, the Roman and Greek era to Buddhist art, ceramic ware to the Japanese tea ceremony. The building was specially designed for this collection. It really is an intriguing combination of nature, architecture and the collection. Also it is a good example of what the private initiative can establish, having dreams instead of bureaucracy as the major diver.

2.4.5 17 Nov: National Art Centre, Tokyo
Prof. Goto and I went to the National Art Centre, Tokyo a beautifully designed building, made by the architect, Kisho Kurokawa, who also designed the Van Gogh Museum annex in Amsterdam. We went to see an exhibition on the architect Tadao Ando, which was very interesting. He has a very specific building style. The museum had even made a real life replica of one of his buildings, the church of light, which was quite impressive.

2.4.6 18 Nov: Yasukuni-jinja, Yushu-kan, Showa-kan

After having been in Hiroshima, I wanted to know more about how Japanese people had experienced the Second World War. That was why I decided to go to the Yasukuni-jinja, Yushu-kan and Showa-kan, even though the former is controversial. I really had a good thought about it. I also decided to visit the museum Yushu-kan to get a Japanese perspective. It was thought provoking. Then I visited the small National Showa Memorial Museum (Showa-kan) which shows how ordinary Japanese people and especially children lived in and just after the war.

19 Nov: Kakegawa Shunrinnin temple, Matsugaoka house, Kakegawa castle, Shiseido Art House and Shiseido Corporate Museum

Prof. Shiba took me, prof. Tanaka and Mrs. Tanaka to a Japanese temple near Hosoya station in Kakegawa. A lady donated 500,000,000 yen to Kakegawa city for building Kakegawa castle. She passed away but her adopted son lives in the temple. In the temple Shunrinnin we were informed by the adopted son of mrs Shiraki who was a priest of the temple on the life of mrs. Shiraki. She was sent to a very good school before the war where she learnt English. In the war she was in the then Japanese part of China where she was a trade woman. She learnt to speak Chinese and got very rich. After the war she managed to take her wealth with her, hidden for example as diamonds in candy cans to Japan. She invested money in Tokyo and became even richer. Then she decided to sell her land in Tokyo when she was older and came to live in Kakegawa. She gave a lot of money to rebuild the castle. She adopted the priest and after she passed away her money went to the temple. In Japan temples are exempt from inheritance tax. We were also shown the palanquins from the Edo period and the beautiful 500 year old ceiling in one of the temple buildings.

After that we went to a former house, Matsugaoka, of a rich merchant family, the Yamazaki family where we were given a very special tour by a gentleman who also joined the conference and who owns an antique shop in Kakegawa. The house was built towards the end of the Edo period. As emperor Meiji stayed there for a while in 1878 and as at that time the emperor was still seen as a god, they could no longer stay in the house and they built a new part to the house where they could live. We were shown around in the whole house, including in the big safe, which size showed how rich they must have been. It also has a very nice garden. In
2016 the house was designated as a tangible cultural property of Kakegagwa.

After that prof. Tanaka, Mrs. Tanaka and I went for a tour of the rebuilt Kakegawa castle. The tour was given by a volunteer guide and was really interesting. Because of the beautiful weather we could even see Mount Fuji from the top of the tower! The volunteer guide also led us through the Samurai place and then went with us to the place where the conference was held and where we had lunch.

After my lecture Mrs. Tanaka and I went to the Shiseido Art House and the adjacent Shiseido Corporate Museum, another kind of private patronage. Some years ago I already visited the Shiseido Gallery in Ginza (Tokyo), but this museum was much bigger. It consists actually of two museums. The Shiseido Art House has a very nice collection of Japanese paintings, crafts and international sculptures. The Shiseido Corporate Museum tells the story of Shiseido, a company founded in 1872 and also shows the history of Shiseido design and advertisements. It was a very nice museum and a very nice of the company to the people as the entrance is free!

2.4.6 20 Nov: Dutch embassy Cleveringa Lecture

Prof. Shiba forwarded me an invitation to attend the Cleveringa Lecture “Getting the picture: Holland as a symbolic language in early modern Japan” of Ivo Smits, Professor of Arts & Cultures of Japan at Leiden University, in the Deshima Lounge in the Embassy of the Kingdom of the Netherlands. It was a very interesting lecture. Histories of early modern Japan (1600-1868) that deal with Japan’s contact with the rest of the world always mention that China and the Netherlands were the two exclusive trade partners of Japan in this period. They will also mention the creation of a Japanese discipline of “Hollandology” (rangaku), dedicated to the study of European knowledge. The story of this field of knowledge transfer has always been one of empirical knowledge. Yet around 1800, European symbolic images confronted Japanese scholars with a wholly different category of knowledge from the West. These images were not ‘realistic’ and had instead to be understood as symbolic messages. This lecture addressed the symbolic image (or emblem) as a major representative of Renaissance and later European worldviews, and its reception in early modern Japan. Specifically it will ask how early modern Japanese tried to make sense of Holland as a place that produced both realism and symbolism.

Next to the lecture, there was also a lot of time for speaking to people and meeting people. It was a big surprise when suddenly the president of Leiden University, Carel Stolker, was standing in front of me. For him it was not a surprise as he had seen the guest list because the lecture was organized by Leiden University and knew I would there, so he told me. Even though I feel an alumna of Erasmus University as that is the university where I graduated, he told me that as I defended my PhD thesis in Leiden, I am officially also a Leiden University alumna. We know each other from the time I was working at the Faculty of Law of Leiden University and he was the dean of the faculty. It was really nice to meet him in Japan! I also met Olivier Valk again to whom I had forwarded the invitation to the lecture. I also spoke to people I had not met before, such
as a retired civil servant of the Japanese Ministry of foreign affairs who worked at the Japanese embassy in the Netherlands for 6.5 years to prepare for the celebrations of 400 years of relations between the Netherlands and Japan, a Dutch third year bachelor student from Wageningen University who studies for one year in Tokyo (it was very interesting to hear her experiences with the Japanese educational system), a lady who had just returned from seven years in the Netherlands with her husband who had come to the lecture together with her colleague of the TBS broadcasting company and said that her bond with the Netherlands is “that she just likes it very much” and another lady who had worked in the Netherlands and who now works for an Indian pharmaceutical company in Japan. It was a very interesting and well spent evening and definitely worthwhile the return trip from Shizuoka to Tokyo!

2.3.7 21 Nov: interactive lecture on Noh and study tour Kambara

Prof. Shiba took me to the main campus of Tokoha University where we had a lecture on noh by a noh actor of a very old noh family, who learned from his father. When he was three he had his first role, as a monkey. It was all in Japanese, but very interactive, we even had to do some noh basics ourselves. We practice the hands, standing and walking and we did the sound of the monkey (ká, ká, ká, ká) and the sound of the dog (bjoej bjoej bjoej, bjoej). During the discussion I was asked to make the sound of the Dutch dog (waf, waf, waf), which even differs from the German dog (wau, wau wau). So even our animals are deemed to make different sounds!

Subsequently, prof. Shiba took me to Kambara where her fourth year bachelor students did field research on the community bus. We has a ride with the communitybus which was very well used by the citizens. Then we had a dinner with the fourth year students which was very nice.

2.3.8 22 Nov: Hakone

Prof Shiba, Mrs. Nagata (a friend of hers) and I went by Shinkansen to Odawara where a volunteer guide, mr. Asai, waited to take us to Hakone. He told us a lot about the history of Hakone. He had worked for Fuji Film company for 40 years, including 10 years in the USA. His English was very good. First we went by train to Hakone to leave our bags in the hotel. The hotel was located at the riverside, very nice. Then we went by bus to the lake Ashi, where we walked to the Hakone Torii and Hakone Shrine. Then we walked on the old Tokaido road which all daimio and also the Dutch had to take once every two years to pay respect to the shogun in Edo. It took so
much time and money that the daimio could not plan revolutions. We went to the checkpoint where it was checked whether no unallowed goods or people were transported to or from Edo. Then we had lunch in a nice, cosy restaurant. After that we took a boat trip on the lake. From the other side of the lake we took the bus back to our hotel, also passing the volcanic area where we saw steam coming out of the ground (and where the typical black eggs were sold). In the hotel we first went to the onsen and then had dinner in the Chinese restaurant of the hotel. It was a very nice day.

2.3.9 23 Nov: Meiji shrine and Omote-sando

My friend Yuko took me to the Meiji shrine as during the Hakone trip I was recommended by our volunteer guide to go there. After that, we admired modern Japanese architecture (including a building of Ando Tadao, Omotesando Hills) in Omote-sando.

2.3.10 24 Nov: Tokyo Metropolitan Teien Art Museum and Irish harp concert in Meiji Gakuin University

I visited the Tokyo Metropolitan Teien Art Museum which is housed in a very well preserved art deco house, completed in 1933 as the residence of Prince Asaka. Designers who contributed to the house are Renée Lalique and Henri Rapin. Also the gardens are very beautiful.

Prof Nishiyama invited me to an Irish harp concert in the chapel in the Memorial Hall (built in 1890) of her university. The musician had made the harp himself and his wife had added beautiful traditional Japanese paintings on the harp. The music was from Ireland and Scotland and dated from the 17th century. It was a very special experience.
3 Resulting research projects

The contacts I have made, the lectures I gave and the discussions I have had during my lecture and research visit will at least lead to the following new research projects:

- Paper on implementation of BEPS in the EU (based on presentation 4) for a journal of Ritsumeikan University (request of prof. Miyamoto).
- Paper on culture and tax incentives (based on presentation 9) for a book edited by prof. Shiba.
## Annex 1 Day-to-day programme

<table>
<thead>
<tr>
<th>November</th>
<th>Day</th>
<th>Traveling</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 sat</td>
<td>09:15</td>
<td>Leave from Schiphol 14:25</td>
<td>KL867: 18:30 Dinner with Prof. Goto and Shiba and Miyamoto in Kyoto</td>
</tr>
<tr>
<td>5 sun</td>
<td>15:00</td>
<td>Itako Kyoto University</td>
<td></td>
</tr>
<tr>
<td>6 mon</td>
<td>16:40</td>
<td>Seminar at Setsunan university</td>
<td>Economic aspects of the BEPS Project prof Kazuko Goto</td>
</tr>
<tr>
<td>7 tues</td>
<td>18:00-17:30</td>
<td>Ritsumeikan Uni. Nijo, Kyoto,</td>
<td>prof. Toshiko Miyamoto Title: Tax Incentives for the Creative Industries</td>
</tr>
<tr>
<td>8 wed</td>
<td>12:45</td>
<td>Kyoto 13:00 Shinosaka</td>
<td>15:00: The Terajuku School in Kitakame, Osaka.</td>
</tr>
<tr>
<td>9 thu</td>
<td>10:00</td>
<td>Kyoto Univ., Campus Plaza</td>
<td>Kyoto, Kyoto, prof. Toshiko Miyamoto Title: EU Implementation of the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plaza Kyoto, Kyoto,</td>
<td>BEPS Project (60 min presentation, 60 min discussion + welcome dinner)</td>
</tr>
<tr>
<td>10 fri</td>
<td></td>
<td>Tokyo Univ.</td>
<td>French restaurant in Shiga</td>
</tr>
<tr>
<td>11 sat</td>
<td>15:00</td>
<td>8.45 Shizuoka station; 8.56</td>
<td>Temple visit, visit to former merchants house (late edo period); 12:00</td>
</tr>
<tr>
<td>12 sun</td>
<td>10:45</td>
<td>Shinkansen = 9:10 Kakegawa;</td>
<td>meet volunteer guide for Kakegawa castle visit; 13:00 lunch</td>
</tr>
<tr>
<td>13 mon</td>
<td></td>
<td>Shizuoka = Shizuoka</td>
<td></td>
</tr>
<tr>
<td>14 tues</td>
<td>10:45</td>
<td>prof Kawabata</td>
<td></td>
</tr>
<tr>
<td>15 wed</td>
<td>14:00-16:00</td>
<td>Kakegawa; Temple visit, visit</td>
<td>Tax incentives for the creative industries: Presentation Extension</td>
</tr>
<tr>
<td>16 thu</td>
<td>9:00-10:30</td>
<td>20 third year undergraduate</td>
<td>Lecture for 20 third year undergraduate students Tokoha Tax Law +</td>
</tr>
<tr>
<td></td>
<td></td>
<td>students Tokoha Tax Law +</td>
<td>discussion</td>
</tr>
<tr>
<td>17 sun</td>
<td>10:40-12:10</td>
<td>Meijigakuin University Prof.</td>
<td>Fairness &amp; Taxation Lecture for 4 master students Tax Law Meijigakuin</td>
</tr>
<tr>
<td>18 mon</td>
<td>9:20</td>
<td>Hikari Shizuoka --&gt; Hakone</td>
<td>Hakone</td>
</tr>
<tr>
<td>19 tues</td>
<td>10:30</td>
<td>National holiday.</td>
<td></td>
</tr>
<tr>
<td>20 wed</td>
<td>13:25-15:00</td>
<td>Meijigakuin University Prof.</td>
<td>Tax law as a special kind of administrative law and protection of tax</td>
</tr>
<tr>
<td>21 thu</td>
<td>10:30</td>
<td>Shinagawa</td>
<td>ayar’s rights in the Netherlands — especially the difference between tax</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shizuoka</td>
<td>tion of families with one income earner and families with two income</td>
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<td></td>
<td>earners. Lecture for 20 third year undergraduate students Tokoha Tax Law</td>
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<td></td>
<td></td>
<td></td>
<td>+ discussion</td>
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<tr>
<td>22 fri</td>
<td>12:00</td>
<td>prof. Nishiyama will pick me</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>up at the hotel</td>
<td></td>
</tr>
<tr>
<td>23 sat</td>
<td>15:58</td>
<td>Takamawadi --&gt; 16:40 Keisei</td>
<td></td>
</tr>
<tr>
<td>24 sun</td>
<td>13:25-15:00</td>
<td>Keisei Takasago 16:53 Keisei</td>
<td>Keisei Narita (001-00004385-01 HOTEL Reservation No.)</td>
</tr>
<tr>
<td>25 mon</td>
<td>15:30</td>
<td>Narita 11:25 KL862; arrive</td>
<td>Schiphol 15:30</td>
</tr>
</tbody>
</table>
Annex 2  Presentation slides

1. 7 Nov: Setsunan University, Faculty of Economics
Combat free riding
- Impossible for one country on its own
- In a globalised world capital, patent rights etc. can be moved easily to another country
- Countries have to work together;
- OECD Base Erosion and Profit Shifting (BEPS) project
- EU: Action plan to strengthen the fight against tax fraud and tax evasion.

October 2015: BEPS Package

Combat free riders
- In case of (illegal) tax evasion:
  - Trace and punish tax evaders and their advisors (vertical supervision)
  - Disclose obligations and heavier punishments also for advisors
  - Media coverage to deter potential tax evaders and enforce voluntary compliance
  - Focus on persons with high exposure

Combative free riders
- In case of (legal) tax avoidance:
  - Government: moral appeal
  - Non-governmental organisations: media exposure
  - Consumers: boycott
  - Reputational risk an important factor for businesses in deciding on proposed tax schemes

Combative free riding
- Combine information already available
- Oblige third parties to provide information to the tax authority
- Employers
- Banks, pension funds and insurance companies
- One citizen service number (CSN) for all contacts with government (tax, social security, passport, pension, health insurance, bank account etc.)
- Pre-filled tax return

Tax transparency changes in the EU as a result of BEPS
- EU: automatic exchange of information important instrument to fight BEPS
- BEPS-amendments to Directive on Administrative Cooperation 2011/16/EU (DAC)

Common Reporting Standard CRS
- Pre-BEPS, but direct result of crisis
- 2010: US FATCA reporting obligations on foreign financial institutions on accounts of US tax payers
- Bilateral intergovernmental agreements (IGA) with US government sends information
- 2014: OECD single global standard (CRS) for automatic exchange of financial account information in tax matters
- Art 8 DAC, to be applied as of 2016: financial institutions must report information on non-resident account holders and their accounts
- Information is automatically exchanged in EU

Information on rulings (Action 5 / 8a DAC)
- Automatic exchange in EU of information on cross-border tax rulings and transfer pricing arrangements
- Ruling: any advice, information or undertaking provided by a tax authority to a specific tax payer(s) concerning their tax situation and on which they are entitled to rely
- Broader definition than in BEPS Action 5
- Exchange of rulings only on request Applications as of 2017

Country-by-Country Reporting (Action 13 / 8aa DAC)
- Action 12 standardised approach to transfer pricing documentation which obliges multinational enterprises (MNEs) to provide for:
  1. master file with high-level information on global business operations and transfer pricing policies which has to be available to all relevant tax administrations;
  2. local file with detailed transactional transfer pricing documentation specific to a country;
  3. for large MNEs a CCO Report that provides annually and for each tax jurisdiction in which they do business certain information on structure, transfer pricing policy and intercompany transactions.
2. **8 Nov: Ritsumeikan University**

**Mandatory Disclosure**
- Mandatory disclosure of aggressive tax planning arrangements.
  - Already in the US, UK, Ireland, Portugal.
  - 21 June 2017, EC proposal FAQA DAC.
  - As of 2017, 2018 setting for interdiction who design and promote potentially aggressive cross-border tax planning arrangements.
  - Exchanged automatically in the EU by submitting information on the discussed arrangements through a standard form.
  - Controversial: heavy administrative burden.

**Critique on increase of automatic exchange**
- Lack of tax payer and data protection.
  - Automatic exchange may lead to less control over the accuracy and use of the information.
  - More attention for tax payer’s rights needed.
  - Guilty De Flore: states are more interested in obtaining the required information rather than ensuring the procedural rights of tax payers in the phase of exchange of information.

**International shift: from the individual to the collective**
- Until recently, emphasis on rights of individual tax payer:
  - Bank secrecy
  - Sovereignty for tax payer in exchange procedures.
  - Prevent double taxation.
- Because of the economic crisis more focus on the collective:
  - Prevent tax evasion
  - Exchange of information
  - Prevent double non-taxation
  - Not black letter law but fair share.

**Difficult issue: tax competition**
- Tax competition is linked with lower corporation tax regime: key issues.
  - Countries compete for businesses and private capital with lower tax system.
  - Companies choose countries with low tax rates, make use of differences between tax systems.
  - How far will the willingness of countries to cooperate instead to compete go?

**Sterling point: the market**
- Price and quantity are set by supply and demand in a market equilibrium.
- Market for government.
- Market is efficient at the lowest equilibrium.
- New mechanism and price mechanism: reduces cost and quantity, but also cooperation in tax systems.

**Government reasons to financially support creative industries**
- Market is inefficient.
- Efficiency of public resources.
- Monetizing of public resources.

**Arguments against government interference**
- Government has limited information on market.
- Government has limited information.
- Government has limited ability.
- Government has limited time.

**How the government can interfere (instruments)**
- Exploitation
- Information campaigns, nudging
- Direct subsidies
- Taxation and tax incentives
- Tariffs only one of several possible instruments.

**Drawbacks of tax incentives (OECD 2010)**
- Is it necessary?
  - What is the policy objective?
  - What is the most effective tax instrument to reach this policy objective?
- The answers to these question should be the same.
  - For tax incentives, the answer is not as clear.
  - For tax incentives, the answer is not as clear.

**Important questions**
- What is the policy objective?
- What is the most effective tax instrument to reach this policy objective?

**Reality**
- Policy makers are not always aware of the market.
- Policy makers are not always aware of the market.
- Policy makers are not always aware of the market.

**Some examples of tax incentives for creative industries**
- Tax incentives for film industry.
- Tax incentives for film industry.
- Tax incentives for film industry.

**Concluding remarks**
- Tax incentives give benefits to certain industries, a strong value for introduction.
- Tax incentives give benefits to certain industries, a strong value for introduction.
- Tax incentives give benefits to certain industries, a strong value for introduction.

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3. **9 Nov: Osaka Keizai University**

- Problems
  - Many changes in the international league of trade and higher tariffs costs their economies.
  - Tariffs are not occurring in the trade is high.
  - Tariffs are not occurring in the trade is high.
  - Tariffs are not occurring in the trade is high.

- Video games: Canada
  - Exports: $1.1 billion in 2015.
  - Exports: $1.1 billion in 2015.
  - Exports: $1.1 billion in 2015.

- France and UK video games tax incentives
  - Exports: $1.1 billion in 2015.
  - Exports: $1.1 billion in 2015.
  - Exports: $1.1 billion in 2015.

- Concluding remarks
  - Paris and UK video games tax incentives
  - Paris and UK video games tax incentives
  - Paris and UK video games tax incentives
Living together without being married

Since the 1970s and eighties more common for couples without children. Since the 1990s more couples with children are not married. No juridical status could give problems when buying a house, upon death. The biological father of a child is not automatically the juridical parent. Has to legitimize it before it is born or adopt it after it is born.

Cohabitation agreement

- Optional, no obligation
- Civil law contract with agreements tailor made, no legal obligations unless included in the contract
- For example:
  - costs of living together, of children
  - bank account
  - division of possessions when living together ends
  - Can be with more than 1 person
  - Free, does not have to be made official, but sometimes necessary to have a notarial deed
  - In case of a house, children: last will
  - Not possible to arrange for parenthood in contract

Surname of children

- Married couples/registered partners
  - Default name of the father
  - Possibility to give the children's mother's surname
- Unmarried/no registered partner different sex
  - Default name of the mother
  - Father has to legitimize the child to give it his name
- Unmarried/no registered partner both men
  - Choice for the first child, other children same name
- Unmarried/no registered partner two women:
  - Unknown donor default name of legal mother (option name of biological mother)
  - Known donor and other mother legitimates the child (default name of biological mother, option name of other mother)

Sake of children

Position of the married woman in the Netherlands

The last Dutch civil code of 1838 if a woman married she lost her full legal capacity and had the legal status of a child. Until 1967.
She could not take decisions on joint possessions, the children or travel without permission of her husband.
A woman working as a civil servant was dismissed until 1956 if she got married.
Legislation introduced by Christian party in 1954 so that the married woman could be a good housewife and mother.
Conny Tendeloo, a Labour MP took the initiative.
Until 1971 in the civil code: man is the head of the marriage and woman owes him obedience

Formal relationships in the Netherlands

- Until the 1970s marriage dominant, in 1970 all time high: 124,000 marriages
- Until 1985 not done to live together without being married
- In 1960 average marriage age at time of marriage: 24.7 for men and 22.7 for women
- Until 1970 parents formally had to give permission for a marriage if the couple was under 50 years
- After 1960 marriage less dominant and average marriage age increases

1998: introduction of 'registered partnership' in civil code

- Alternative for marriage, legal obligations and rights
- In 1995 marriage still only for men and women, registered partnership for man and woman and for same-sex couples
- Similar but not the same:
  - Not obliged to say I do with registered partnership
  - Registered partnership without children can be ended without going to court
- Since 2014: man and woman become automatically the parents of the children born during the partnership. Two women: both automatic parents. Two men: adoption necessary for the non-biological father
- 2016: 10% of the new couples opt for a registered partnership instead of marriage
- Only with one person, not with family (same as marriage)

2001: introduction of same sex marriage

Yearly amount of same sex marriages in NL

Marriage age in 2015

So many legal forms, but what about tax?

- General State Taxes Act (GSTA; applies for all State Taxes unless a specific act arranges otherwise)
  - Person with registered partnership is treated the same as a married person
- Partner:
  - Person with whom a person is married has a registered partnership
- Unmarried adult with whom a non-juridical cohabitation agreement is made and who is registered on the same address
4. 10 Nov: Ritsumeikan University
European Commission

- 27-6-2019: "The fight against tax fraud and evasion is not only an issue of revenue, but also of fairness. (…). Particularly in these difficult times, it is essential to ensure that everyone, whether blue-collar employees or multinational companies that benefit from the single market, is able to save with confidence, contribute to public finances and pay their fair share."
- 22-5-2013: "The burden of taxation should be spread more evenly by ensuring that everyone, whether blue-collar employees, multi-national companies that benefit from the single market, are able to save with confidence, contribute to public finances by paying their fair share."

Free riding
- Making use of provisions of government without contributing

The Public Goods Game
- cooperators: Brown-Dotted
- defectors: Black-Dotted

Public Goods
- co-operation: Brown
- defection: Black

Combat free riding
- Impossible for one country on its own
- in a globalised world capital, patient rights etc. can be moved easily to another country.
- Countries have to work together
- OECD, Base Erosion Profit Shifting (BEPS) project
- EU, Action plan to strengthen the fight against tax fraud and tax evasion

OECD/G20 Base Erosion & Profit Shifting (BEPS) Action Plan
- OECD 2013: globalization boosts trade and investment, but provides tax planning opportunities for multinational enterprises (MNEs)
- BEPS: tax planning strategies exploiting gaps and mismatches to artificially shift profits to lower-tax jurisdictions with little or no economic activity
- BEPS undermines the integrity of the tax system, increases burden on other tax payers, negative effect on compliance, harms fair tax competition

BEPS project
- All members of G20, OECD (incl. all EU Member States and Japan), BRICS and some developing countries participated in project
- 15 actions to address BEPS
- Aimed at preventing double/taxation, tackling harmful tax practices and aggressive tax planning and at realignment of taxation and relevant substance (incl. improvement of transfer pricing rules) and increasing transparency
- Comprehensive package of measures ranging from new minimum standards to revision of existing standards

October 2015: BEPS Package
- 8 December 2015
- BEPS Package formally welcomed by the Council of the EU
- Find common solutions at EU level consistent with OECD BEPS conclusions
- Effective and swift coordinated implementation of anti-BEPS measures at the EU level
- EU Directives preferred vehicle: hard law, must be implemented by EU Member States

Action 2, 3, 4, 5, 12 and 13 transposed in EU Directives
- 1. Measures to establish international coherence of corporate income taxation (Action 2, 3, 4 and 5) → Anti Tax Avoidance Directive (ATAD)
- 2. Measures to enhance tax transparency (Action 5, 12 and 13) → amendments to the Directive on Administrative Cooperation (DAC)

Anti Tax Avoidance Directive
- ATAD, Directive 2016/1164/EU
- Applicable to all corporate tax payers in a Member State.
- Not only BEPS measures (e.g. taxation of GAAR);
- Minimum standards
- Implement measures from the proposal for a Common Corporate Consolidated Tax Base (CCCTB)
- Apply as of 1 January 2019 (hybrids: 2020)

Hybrid Mismatches (Action 2)
- Hybrid mismatches exploit differences in the tax treatment of an entity or an instrument under the law of two or more jurisdictions
- Lead to multiple deductions of single expense (DD) or deduction in one country, not taxed in another (DIH); example: hybrid loan
- Neutralize by denying deduction (primary rule) or by taxing the income (defensive use)
- EU Parent subsidiary directive (1-1-2016): distributed profits deductible for subsidiary, taxed at the level of the parent (defensive rule)

ATAD1 and ATAD2 (art 9)
- Mismatches between associated enterprises
- DD: investor jurisdiction must deny deduction and if this is not the case, the payer jurisdiction must deny deduction
- DIH: payer jurisdiction must deny the deduction and if it does not happen, the payer's jurisdiction must include the payment
- Consistent with Action 2

Controlled foreign company (CFC) rules (Action 3 & art 7, 8 ATAD)
- taxpayers with controlling interest (50%) in a foreign (low-taxed subsidiary can strip domestic high taxed base by shifting income into a CFC in a low-tax jurisdiction.
- CFC rules reattribute the income of the low-tax controlled subsidiary to its parent company and tax it there.
- ATAD gives choice between:
  - categorical approach: inclusion of non-distributed specific types of (passive) income
  - substantive approach: arm’s length approach, inclusion of non-distributed income from non-genuine arrangements
5. 11 Nov: Kyoto University: joined lecture with Ritsumeikan University
8 December 2015

- BEPS Package formally welcomed by the Council of the EU;
- Find common solutions at EU level consistent with OECD BEPS conclusions;
- Effective and swift coordinated implementation of anti-BEPS measures at the EU level;
- EU Directives preferred vehicle: hard law, must be implemented by EU Member States

Controlled Foreign Companies

- Taxpayers with a controlling interest in a foreign low taxed subsidiary (CFC) can strip their high taxed base by shifting income into a CFC in a low/no tax jurisdiction.
- CFC rules re-attribute the income of the low-taxed CFC to its parent company.
- The parent company becomes taxable on this attributed income.

CFC rules before BEPS

- Many countries (including Japan) already had CFC rules
- Scope and application varied.
- Half of the EU Member States (including the Netherlands) did not have CFC rules

BEPS Action 3

- Aim: help countries to design CFC rules that effectively prevent taxpayers from shifting income into foreign subsidiaries
- No minimum standards, but 6 building blocks:
  - definition of CFC;
  - exemptions and threshold requirements;
  - definition, computation and attribution of income;
  - prevention and elimination of double taxation.
- Design options in line with EU law

Anti Tax Avoidance Directive

- ATAD, Directive 2016/1164/EU
- Rules applicable to all taxpayers subject to corporate tax in a Member State.
- Minimum standards
- Also CFC rules: art 7 and 8 ATAD
- Must be implemented by Member States as of 1 January 2019

ATAD CFC-rule – The basics

- CFC-rule – Method A v. Method B

Member States may apply stricter CFC rules

- Reduce the control threshold;
- Employ a higher threshold in comparing the actual corporate tax paid with the corporate tax that would have been charged in the Member State of the taxpayer;
- Apply domestic or agreement based provisions which grant a higher level of protection

CFC-rule – Method A

- Calculation of income parent
  - Calculated in proportion to the taxpayer’s participation in the CFC in the tax period of the taxpayer in which the tax year of CFC ends
6. 11 Nov: Kansai University

Conclusion
Financial and economic crisis hit Europe, especially EMU countries hard.
Consumers felt that they had to bear the burden of the crisis which was caused by banks.
Call for more transparency in tax matters and closing of loopholes leading to tax evasion and tax avoidance.
BEPS project succeeded in EU developments.
BEPS project huge impact on EU hard law:
- substantive provisions in EU corporate income tax laws
- increased automatic exchange of information obligations.
Worries about many differences in CFC-rules because of options for Member States.
European Commission

- 27-Apr-2012: 'The fight against tax fraud and evasion is not only an issue of revenue, but also of fairness.' (David O’Hare)
  - Particularly in these difficult economic times, ... productive efforts to make up for revenue losses incurred due to tax fraudsters and evaders.
- 22-Oct-2012: ‘The burden of taxation should be spread more equitably by ensuring that everyone, whether blue-collar employees, white-collar employees, or national companies that benefit from the single market or wealthy individuals with offshore savings, contribute to public coffers by paying their fair share.
- Fairness: protecting compliant tax payers from non-compliant tax payers.

Free riding

- Making use of provisions of government without contributing
- The Public Goods Game
- Free-riders
- cooperators
- benefits
- Public Goods

Combat free riding

- Impossible for one country on its own
- In a globalised world capital, patent rights etc. can be moved easily to another country.
- Countries have to work together
- OECD: Base Erosion and Profit Shifting (BEPS) project
- EU: Action plan to strengthen the fight against tax fraud and tax evasion.

OECD/G20 Base Erosion & Profit Shifting (BEPS) Action Plan

OECD 2013: globalization boosts trade and investments, but provides tax planning opportunities for multinational enterprises (MNEs)
- BEPS: tax planning strategies exploiting gaps and mismatches to artificially shift profits to low/no-tax locations with little or no economic activity
- BEPS undermines the integrity of the tax system, increases burden on other tax payers, negative effect on compliance, harms fair tax competition,

BEPS project

- All members of G20. OECD (incl. all EU Member States and Japan), BRICs and some developing countries participated in project.
- 15 actions to address BEPS
  - Aimed at preventing doubles/low taxation, tackling harmful tax practices and aggressive tax planning and a realignment of taxation and relevant substance (incl. improvement of transfer pricing rules) and increasing transparency.
- Comprehensive package of measures ranging from new minimum standards to a revision of existing standards.

October 2015: BEPS Package

- BEPS Package formally welcomed by the Council of the EU.
- Find common solutions at EU level consistent with OECD BEPS conclusions.
- Effective and swift coordinated implementation of anti-BEPS measures at the EU level
- EU Directives preferred vehicle: hard law, must be implemented by EU Member States

8 December 2015

Anti Tax Avoidance Directive

- ATAD Directive 2016/1164/EU
- Rules applicable to all taxpayers subject to corporate tax in a Member State
- Minimum standards
- Way for European Commission to implement measures from the Proposal for a Common Corporate Consolidated Tax Base (CCCTB)
- Apply as of 1 January 2019 (hybrid 2020)

Hybrid Mismatches (BEPS Action 2)

- Hybrid mismatches exploit differences in the tax treatment of an entity or an instrument under the laws of two or more jurisdictions
- Lead to multiple deductions of single expense (DE) or deduction in one country, not taxed in another (DNI), example: hybrid loan
- Neutralize by denying deduction (primary rule) or by taxing the income (defensive rule)

1. Amendment EU Parent subsidiary directive (PSD)

- Original aim (1991): prevent economic double taxation of profits distributed within an EU group of companies
  - 1. No withholding taxes on dividends
  - 2. No taxation on distributed profits at level of parent (cf Dutch participation exemption)
- As a result of BEPS second aim (2015): counter avoidance tax planning within the EU by tackling hybrid loan mismatches and introducing a general anti-abuse rule.

Hybrid mismatches and PSD

- Distributed profits deductible for subsidiary taxed at the level of the parent.
- Not in line with BEPS: instead of primary rule (no deduction at level sub), defensive rule.
- Limited scope: only hybrid profit distributions from subsidiaries to parents

2. ATAD1 and ATAD2 (art 9)

- All mismatches between associated enterprises (25%)
- Also with third countries
- DD: investor jurisdiction must deny deduction and if this is not the case, the payer jurisdiction must deny deduction.
- DNI: payer jurisdiction must deny the deduction and if this does not happen, the payer jurisdiction must include the payment.
- Consistent with Action 2
- Rules apply as of 1 January 2020
7. Meikai University, Faculty of real estate science
Important source of income for local municipalities
Cadastre established in 1831
Used to levy land tax (% of the value of the
lease or rent
1970 Law on Property tax (Onroerende-
zaakbelastingen) for municipalities
1973 first leases by municipalities, since
1980 all municipalities.
Tax basis: 1970 square metres, 1995 market
value

National law on assessment of real estate (WOZ)
Since 1985: municipalities assess the value
of properties and levy property tax
- Objections must first be filed at municipality, appeal at tax courts
- Supervision of valuation by Waarderingkamer (valuation Chamber)
- Municipality can set the tax rate

Differences in tax rates and WOZ values
Income local taxes; C3 = property taxes
Municipalities are bound to national rules: little discretion
- Can only levy the tax from:
  - house owners
  - owners of non-houses (companies)
  - users of non-houses (idem)
- No income policy by municipality in tariff
  and exceptions, only tax cancellation for
  the poor.
- Property tax most important source of
  income for municipalities (40% of income)

WOZ valuation of municipalities also important for national taxes
Gift and inheritance tax
- Heirs can ask for a new valuation with the
  municipality and have right to appeal.
- Problem of time lag with decreasing prices
- Example: person dies on 25 December 2014,
  valuation as of 1 January 2013 used as tax base
  for inheritance tax.
- Might be a big difference with the price for which
  heirs can sell the house.
- Since 2012 heirs may choose the valuation of the
  next year (in the example: as of 1 January 2014).
- Still a problem if the price has decreased further,
  Beneficial if prices have increased.

Taxation of wealth in the Netherlands
- House property which is not part of an entrepreneur’s
  declaration on the basis of a deemed return on income from
  savings and investments (Table 3)
- Effect: real income not taxed, but capital gains (for example
  interest on loans) not deductible.
- Since 2017 two fictitious
  - Balance (2017 only fictious)
  - Investment portfolio (new)
- The deemed return on income from savings
  and investments is taxed at a rate of 30%.
- Effect for house: valuation of real estate houses as far as it
  exceeds the debt for the house. No deduction for mortgage
  interest.
- Tax can be higher than the income

Fiction regarding return
- Before 2017: deemed return 4% for all kinds of
  savings and investments
  - Criticized: impossible to get 4% interest on a
    savings account (now less than 0.75%)!
  - As of 2017:
    - Class I: savings ⇒ deemed return 1.63%
    - Class II: investments ⇒ deemed return 5.38%
  - Realistic?

Fiction regarding portfolio
- Higher the net value of the assets, the
  more is deemed to be invested
  - Even if all assets are savings, still
    deemed to have investments!

Consequences of the fictions
- Fixed income for government
  - Beneficial if return on long-term bonds or
    real estate is 7%, adverse if real
    estate rented out in social sector or only
    savings account.
  - Still very much criticized.
- New government (October 2017) has
  promised to investigate whether it is
  possible to tax real returns.
8. 17 Nov: Ministry of Culture
First: back to basics

Starting point: the market
- Price and quantity are set by supply and demand = market equilibrium
- Reason for government to interfere: market failure
  - Insufficient demand
  - Insufficient supply at the market equilibrium.
  - After interference not (only) price mechanism decides price and quantity, but also budgetary mechanism: democratic/bureaucratic process.

Government reasons to financially support creative industries
- Cultural policy reasons
  - Maintenance of excellence, originality and access.
  - Recognition and celebration of national, regional or local identity.
  - Innovation and continuity, maintenance of diversity.
- Economic policy reasons
  - Contribution to the economy.
  - Positive externalities.
  - Reduces price discrimination.
  - Brand’s own disease.
  - Positive spillover effects of the cost reduction (high sunk and fixed costs and low marginal costs).

Arguments against government interference
- Government has limited information: market can do better.
- Price too low because of government interference: too much consumption/production.
- Undermines side effects.
- Inefficiencies.
- Competition between states leads to prisoners dilemma: less welfare for all.

Cool Japan Initiative July 2014

How the government can interfere (instruments)
- Legislation
- Information campaigns, nudging
- Direct subsidies
- Taxation and tax incentives
- Tax incentives only one of several possible instruments.

Drawbacks of tax incentives (OECD 2010)
- Fairness: small group with strong lobbying power benefits.
- Infringement upon ability to pay principle ("spillover effect").
- Complexity.
- Difficult to calculate costs.
- Difficult to target at certain groups (VAT).
- Invizibility undermines budgetary principles and functions: "no such thing as a free lunch!"

Important questions
- Why is government interference necessary?
- What is the policy objective?
- Which is the most effective and efficient instrument to reach this policy objective?
- The answer to these questions should determine the instrument.
- Prerequisites: tax incentives must be accounted for and controlled in the same way as direct subsidies to ensure an efficient and effective use.

Reality
- Often not the questions, but decisive where the easy money is.
- Influence of strong lobby groups: great benefit of a small group, relatively small costs for large unanimous group of tax payers.
- Ministries prefer a tax incentive (does not reduce their budget) over a direct subsidy (which reduces their budget).
- May lead to use of inefficient and ineffective instrument of tax incentives and not reaching the policy goal.

Copyright industries
- Definition World Intellectual Property Organization: industries which function under the protection of copyright and related rights.
- Examples:
  - Literature, theatre, music.
  - Film, television.
  - Videogames.

Copyright
- Result of the creative process.
- Intangible property right that protects an original work.
- Can be sold or licensed and thus create income.
- Royalties.
- Taxed in the state where the copyright is located (source state).
- Highly mobile → can move to low taxed countries.
- Reasons to introduce tax incentives:
  - Attract economic activities.
  - Support artists.
9. 19 Nov: Lecture at a conference organized in Kakegawa by Tokoha University  
20 Nov: Lecture at Tokoha University, Faculty of Law
Government reasons to financially support creative industries

Cultural policy reasons
- Performance of excellence, innovation and access;
- Recognition and promotion of national, regional or local identity;
- Promotion of continuity;
- Promotion of diversity.

Economic policy reasons
- Contribution to the economy;
- Positive externalities;
- Job creation and business creation;
- Benefit cost ratio;
- Reduction of negative effects of the fear of terrorism, high tax and low imported costs.

Government interference

Why is government interference necessary?
- What is the policy objective?
- What is the most effective and efficient instrument to reach this policy objective?
- The answers to these questions should decide the instrument.
- Prerequisite: tax incentives must be accounted for and controlled in the same way as direct subsidies to ensure an efficient and effective use.

Fairness:
- Small group with strong lobbying power benefits
- Infringement upon ability to pay principle
- " upside down effect"

Complexity:
- Difficult to calculate costs
- Difficult to target at certain groups (VAT)
- Invisibility undermines budgetary principles and functions: "no such thing as a free lunch!"

Important questions

Reality
- Often not the questions, but decisive where the easy money is
- Influence of strong lobby groups: great benefit of a small group, relatively small costs for large unanimous group of tax payers
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Some examples of tax incentives for creative industries
- Tax incentives for film industry
- UK Creative Industry Tax Relief (CITR)
- Tax incentives for videogames
- Tax incentives for artists

Film industry

Reality
- Often not the questions, but decisive where the easy money is
- Influence of strong lobby groups: great benefit of a small group, relatively small costs for large unanimous group of tax payers
- Ministries prefer a tax incentive (does not reduce their budget) over a direct subsidy (which reduces their budget)
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Some examples of tax incentives for creative industries
- Tax incentives for film industry
- UK Creative Industry Tax Relief (CITR)
- Tax incentives for videogames
- Tax incentives for artists
Many countries have tax incentives for films
- France: special incentive for foreign films (Tax Rebate for International Films (TRIP))
- Because films and TV series situated in France were shot outside France because of foreign tax incentives.
- Also for animation and visual effects made partly by a French studio.
- Not porn, violence, documentaries, commercials, corporate films
- Must spend at least EUR 1 million or 50% of eligible expenses in France.

French TRIP
- Reimbursement of 30% of eligible costs (salaries, EUESA, authors, actors, crew: location fees, technical expenditures, transport) if paid through French production services company.
- Pirat et al 2015: TRIP funds granted to over 80 productions from 18 different countries, including Japan (Poupee and Oui no Yakata).

Ninon
No hanga

Strong lobbies and tax competition
- Commonal agreements between screen guilds
- CFTC/CFTC (producer collective)
- Need to develop strategies to attract more funding.

Problems
- Many changes in the incentives because of abuse and higher costs than estimated.
- Film incentives do not create a film industry: too many countries compete with tax incentives.
- Tax incentives stimulate commercial films, not artistic films. Because the tax incentives take away the risk, less market orientation.
- Conclusion: tax incentives for films are often not an efficient or effective way to reach targets of cultural policy.

UK: Creative Industry Tax Reliefs (CITR)
- Corporation Tax reliefs: extra deduction or tax credit for companies, reducing corporate income tax liability.
  1. Film Tax Relief (FTR), April 2007
  2. Animation Tax Relief (ATR), April 2013
  3. High-end Television Tax Relief (HTR), April 2013
  4. Video Games Tax Relief, April 2014
  5. Theatre Tax Relief September, 2014
  6. Orchestra Tax Relief (CTR), April 2016.

Cultural test
- Must be a ‘British film’, ‘British programme’, or ‘British video game’.
- Reason: EU State Aid rules.
- Certification and qualification by the British Film Institute (BFI) or the Department for Culture Media and Sport.

FTR results
- Introduced in January 2007 to promote the sustainable production of British films.
- 1,365 film productions have become eligible to claim the new film tax relief since its inception.
- Of these, 1,000 film productions have made 1,900 claims for a total £1.7bn.
- 1,700 claims have received payments totaling £955 million.

video games: Canada

France and UK video games tax incentives
- European Commission allowed these incentives for video games to compete with Canada, Australia, New Zealand, and the US.
- France: tax credit of 20% of qualifying expenses related to activities carried out in France, EU or EEA (max: credit EUR 3 mln)
- Staff costs, depreciation costs for fixed assets (not buildings) for video games.
- Development costs at least EUR 100,000.
- Mainly made with French/EU/EBA authors and creative collaborators.
- Fair competition with e.g. Japan?
10. 20 Nov: Tokoha University, Faculty of Law

**Position of the married woman in the Netherlands**

- First Dutch civil code of 1839: a woman married in her full legal capacity and had the legal status of a child. She could not take decisions on joint possessions, the children or travel without permission of her husband.
- A woman working as a civil servant was dismissed until 1950 if she got married.
- Legislation introduced by Christian parties in 1924 so that the married woman could be a good housewife and mother.
- A single woman serving as an incomplete until 1978 in the civil code.
- The head of the marriage is the husband and the woman owes him obedience.

**Cohabitation agreement**

- Optional, no obligation.
- Civil law contract with agreements: tailor-made, no legal obligations unless included in the contract.
- Examples:
  - cohabit together, of children
  - bank account
  - division of possessions when living together ends
- Form free, does not have to be made official, but sometimes necessary to have a notarial deed.

**Formal relationships in the Netherlands**

- Until 1967, not done to live together without being married.
- In 1950, average marriage age all time high: 24.7 for men and 23.7 for women.
- Until 1970, parents formally had to give permission for a marriage if the couple was under 30 years.
- After 1965, marriage less dominant and average marriage age increases.

**Living together without being married**

- Since the 1970s and eighties, more common for couples without children.
- Since the 1990s, more couples with children are not married.
- No juridical status; could give problems when buying a house, upon death, with children.
2001: introduction of same sex marriage

Netherlands: from family to individual

Differences between married and unmarried men and women

Relevance

- Most PITAs have a progressive tax rate: the higher the income, the higher the tax rate.
- Tax rates in the Netherlands 2013

Effect of progressivity

Slow movements of PITA

1973: limited fiscal autonomy for the married woman

Unmarried couples still taxed individually after 1973

Effect of differences in tax free allowances

1984: end of tax discrimination of married woman

1984 also: more equal treatment of married and unmarried couples

How are these changes reflected in Personal Income Tax?

- Crucial equity question when designing a Personal Income Tax Act (PITA): is the unit of taxation the family or the individual?
- How to share the tax burden: tax total family income or incomes of individuals?
- Family, families with equal incomes (no matter which family member earns the income) pay equal taxes (across-family horizontal equity)
- Individual tax burdens reflect marriage neutral independence of whether partners are married, live together or alone (across-marriage horizontal equity)

Effect of progressivity

Family tax taxes the ability to pay of the family, does not matter whether one person earns all income or whether both earn income:
- 1 partner earns 8,000,000 yen the other 0
- 1 partner earns 2,000,000 yen the other 6,000,000 yen
- Pay same amount in tax on family

In tax on individual two working partners pay less because of the progressive rate; Chapter 8: taxation (at 8.5%), all income taxed at 20% (in NL), (9.5% taxed at 36.5%), (4.5% taxed at 40.5%) (5% taxed at 45.5%)

Family tax discourages the non working partner to stop working and to working individuals to start a family (each additional yen taxed at the higher rate) marriage tax

1973: limited fiscal autonomy for the married woman

- Eased over her own labor and business income: movement from family taxation to individual taxation.
- However, all her other income (e.g. pensions, alimony, income from capital) taxed at the husband's income.
- Deductions such as interest on mortgage: always deducted from the income of the husband (even if the woman earned more income; my aunt the doctor, her husband ecologist)
- Tax free allowance of married woman only 20% of allowance of man (even if she earned more)
- Only exception if in an explicit request to change rates only regarded as the husband and the husband as the wife.
- Only for tax free allowance, all deductions still taken into account in the assessment of the man.

Unmarried couple over 3id both earning income: higher total allowance (10%) than married couple both earning income (20%) under 34 and unmarried: 112%

Unmarried couple with one working individual lower total allowance (56% of the married couple with working partner (157%)

To marry vs. to not marry: better not if both partners work

No difference between unmarried men and women, same tax free allowance

No difference between couples living together and people living alone; both taxed individually.

1984: end of tax discrimination of married woman

- Aim: equal treatment of working married woman and man
- Pensions taken into account in tax assessment of spouse who earned it (only until as of 1992)
- Deductions and income from capital no longer taken into account in the tax assessment of the husband but in the tax assessment of the spouse with the highest income (could be the woman)
- Some individual tax free allowance for married man and woman
- More individual systems in which married man and woman are treated equally but in which with some elements of family taxation are included (income from capital, alimony, deductions)

1984 also: more equal treatment of married and unmarried couples

- No longer deemed self evident that if two working individuals marry, the tax burden increases.
- Furthermore: more couples did not marry and divorce; marriage not for ever.
- More unmarried couples who were economically comparable to married couples

How are these changes reflected in Personal Income Tax?

- Crucial equity question when designing a Personal Income Tax Act (PITA): is the unit of taxation the family or the individual?
- How to share the tax burden: tax total family income or incomes of individuals?
- Family, families with equal incomes (no matter which family member earns the income) pay equal taxes (across-familiar horizontal equity)
- Individual tax burdens reflect marriage neutral independence of whether partners are married, live together or alone (across-marriage horizontal equity)

Relevance

- Most PITAs have a progressive tax rate: the higher the income, the higher the tax rate.
- Tax rates in the Netherlands 2013
Resulting 1984 PITA changes
- Unmarried couples same tax rate and tax free
  allowances as married couples.
- However: married person who earns family income
  gets a higher tax free allowance (eventually double of
  that of an individual).
- Negative effect if other spouse takes a small job.
- Transition: if the other spouse works and does not use
  the full allowance he/she can transfer the unused part
to the other spouse.
- Still individual taxation of unmarried couples: each
  partner is taxed over his or her own income (excluding
  income from capital) and can only deduct his/her own
deductions (e.g. mortgage interest) and not a higher
  allowance if only one partner works.

Income Tax Reform 2001
- One of the aims of this tax reform: to increase the
  participation in the labor market (also because of
  aging population), emancipation of women and
  economic independence of all citizens.
- Additional tax credit for everybody who works.
- General tax credit is paid out to the partner who
does not work (in case of reduction for the working
partner).
- Unmarried couples can opt not to be treated as
  married partners.
- As of 2009 reduction of transferability of general
  tax credit non-working partner if one partner is
  born after 1972.

Conservative (Christian) parties criticize the current system
- Couples with one working partner are
taxed higher because of progressivity of
PITA than couples with two working partners.
- Suggestion to introduce a splitting system
to the Netherlands.

Modern times reflected in PITA
- Married couples and registered partners are treated
  the same.
- Some other unmarried couples treated as married
couples.
- Men and women are treated the same.
- An individual system with some small characteristics of
  a family taxation.
- Both partners are encouraged to work.
- Couples with the same family income with only one
  working partner taxed higher than two working partners.
- System incentivizes economic independence and a work
  balance for both partners, but still a big difference in
  (full time) labor participation between men and women in
  the Netherlands.

October 2017: new government
- Even though two Christian parties are part of the
  government, splitting will not be introduced nor
  other benefits for couples with one income
  earning partner.
- Reason: two other parties that form the
government are a progressive and a liberal party
who deem labor participation of women important.
- Only child allowance is increased.
- The Netherlands has definitely changed!
11. 21 Nov: Tokoha University, Faculty of Law

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<thead>
<tr>
<th>Right to Property is a Human Right</th>
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<tr>
<td><strong>Article 17 Universal Declaration of Human Rights:</strong></td>
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<td>1. Everyone has the right to own property alone as well as in association with others.</td>
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<td>2. No one shall be arbitrarily deprived of his property.</td>
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<td><strong>Problem:</strong> Universal Declaration is not a treaty → does not create legal obligations for countries.</td>
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<th>European Convention on Human Rights</th>
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<td><strong>Protocol, article 1:</strong> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.</td>
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<td>The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. Relevant for the Netherlands, as Dutch Courts cannot test legislation against the Constitution (so Constitutional Court) but only against international treaties (take precedence over national legislation).</td>
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<tr>
<th>European Court of Human Rights (ECHR)</th>
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<td>Although a little skeptical, satisfied that there was a legitimate aim: protection of the public purse. The real issue: proportionality. Tax rates exceeding 50% found unconstitutional in Germany and France Elsewhere marginal rates of 75% but started at much higher level than Hungarian tax. Overall tax burden on severance pay, 52%. 3 times general/hungarian personal income tax Excessive and disproportionate burden. Not proportionate to the aim sought to be realized.</td>
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<th>Other Case Law of the ECHR</th>
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<td><strong>Countries have a wide margin of appreciation.</strong></td>
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<td><strong>Breach of article 1 of the Protocol not quickly assumed in relation to taxation.</strong></td>
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<td><strong>Example:</strong> Dutch Supreme Court allowed a 16% additional tax for employers over employee’s wages over EUR 150.000 (20 million yen) during the financial crisis on top of the 52% tax from employees</td>
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<th>However: Has to Be a Right to Remedy</th>
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<td><strong>Both Dutch local and State taxes regarding real estate based on “WOZ-value.”</strong></td>
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<td><strong>The Municipality establishes the WOZ value in a statement which is subject to objection.</strong></td>
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<td><strong>However, to reduce the administrative burden of municipalities and courts it was not possible to file an objection.</strong> If the WOZ value deviated 5% or less from the value according to the tax payer.</td>
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<td><strong>For example:</strong> a house with a value of € 330,000 could be assigned a WOZ value of €327,500 (30% deviation) without the possibility of appeal.</td>
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<tr>
<th>Tax Law and the Right to Property</th>
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<tr>
<td><strong>Taxes are obligatory transfers of funds from citizens and companies to the government without a direct compensation.</strong></td>
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<td><strong>What is the difference between robbery and taxation?</strong></td>
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<tr>
<th>Tax Law is a Special Kind of Administrative Law</th>
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<tr>
<td><strong>Special relation between government and citizens.</strong></td>
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<td><strong>Citizens have to fund the government expenditures through taxation.</strong></td>
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<tr>
<td><strong>Government is more powerful than citizens: how to protect tax payer’s rights?</strong></td>
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<th>Reason for Non Inclusion Right to Property</th>
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<td><strong>One of the most controversial human rights, both in terms of its existence and interpretation:</strong></td>
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<td>- Who is deemed to have property protected (also for arrears)?</td>
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<td>- What type of property is to be protected (used for consumption or production)?</td>
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<td>- Reasons for which property can be restricted (regulations, taxation, nationalization in the public interest?</td>
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<tr>
<td><strong>Definition not arbitrary</strong></td>
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<th>N.K.M. v. Hungary, 68529/11</th>
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<tr>
<td>Hungarian civil servant dismissed (with many others) after 30 years, right to 6 months’ pay. TAxed with 94% in 2011 94% tax introduced in 2010; successfully challenged before Hungarian Supreme Court. Hungarian Constitution was changed: Constitutional Court could no longer test tax legislation against the right to property. Still 94% tax for severance payments of certain civil servants over 3.5 million Hungarian Forint (1.5 million yen)</td>
</tr>
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512x52
12. 24 Nov: Meiji Gakuin University, Faculty of Economics, Department of Business Administration

Result: increased budget deficits
- Bail out of banks and some European Union (EU) countries:
  - Loss corporate and personal income tax income for governments;
  - Increased expenditures for unemployment benefits;
  - Many countries cut back on expenses and increased VAT;
  - Additional burden on consumers

10 years ago: the start of the financial crisis
- Irish Islanders Shady Tax Haven Poor people keep out!

Do they pay their fair share?
- H.L.A. Hart: principle of mutual restrictions:
  - When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have not submitted to these restrictions when required have a right to a similar expropriation from those who have been compelled by their submissions.
- John Rawls: principle of fair play,
  - The tax collector violates the duty of fair play as he accepts the benefits of government but does not do his part in enabling resources to it.

Principle of Fairness: legal and political philosophy
- Government provides for certain goods and services
- Financed by taxes
- Taxes: voluntary and compulsory contributions of citizens and companies to government without an individual return based on legislation.

Examples of these Principles
- Principle of legitimate expectations
- Principle of equality
- Principle of fair play
- Proportionality principle
- Principle of duty of care

Principle of Legitimate Expectations Important in the Netherlands
- Dutch "polder model": cooperation
- Certainty in advance basic cornerstone of Dutch tax policy
- Rulings for companies on tax treatment
- Cooperative compliance

Conclusion
- Tax law is a special kind of administrative law: a big impact on the human right to property
- Requires special safeguards:
  - Rights to remedy
  - Tax exemptions only be based on legislation
- Principles of sound administration

Safeguard for Tax Payers: Legality Principle
- Dutch Courts cannot give much protection because of a wide margin of appreciation
- However, basic and long standing principle that taxes may only be raised with approval of citizens
- Magna Carta 1215: King cannot impose taxes without the approval of the common counsel of the Kingdom

Constitutional Principle
- Taxes to be created based on democratic rules
- Netherlands article 104 of the Constitution: taxes can only be levied based on a law
- Japan: article 30 of the Constitution: The people shall be liable to taxation as provided by law.
- Parliament, the democratically elected representatives of the people, has to agree on tax legislation
- Important safeguard for tax payers

Other Important Safeguards: Principles of Sound Administration
- Important to test the legality of actions of the tax administration
- Based on tax case law and also (partly) codified in the Dutch General Act on Administrative Law

Japanese: Article 29 of the Constitution
- The right to own or to hold property is inviolable
- Property rights shall be defined by law in conformity with the public welfare
- Private property may be taken for public use upon just compensation therefor
- Last sentence open possibility for taxation: any Japanese case law on right to property and taxation?
Example: Ireland. Artists' exemption
Since 1989, Ireland has a full exemption for artists. Artists who are residents in Ireland but are not employed by resident companies do not pay tax on their earnings. Many foreign artists moved to Ireland to avoid paying tax. Many rich artists benefited.

Fairness: defined in relation to
other tax payers

George Klosko: fairness thesis
Individuals are more willing to pay their taxes if they believe that others are paying their taxes. Important reason for tax compliance. Explains emphasis on fairness in the economic crisis with heavier tax burdens to be shared.

Does fairness require consent
to tax system?

Multinationals, non-residents cannot vote on the tax system. Not bound to.
Locke (1784): tax consent. Ravis/Klosko: no specific consent needed. Residing or operating in a certain jurisdiction implies benefiting from it and thus obliges to contribute no matter whether one has consented to the tax system or not.

Free riding violates fairness

Rawls: Acting unfairly is not so much the breaking of a particular rule, but taking advantage of loopholes or ambiguities in rules, avoiding sensed of unfairness or injustice. People should not be benefited by the kind of unfairness that is difficult to prevent. People who benefit from this unfairness should have to bear the results.

Happiness: the idea of fair share implies that there is a need to the tax estate that everyone is free to opt for the cheapest solution, one should not only adhere to the letter of the tax law but also to its spirit.
Everyone's tax contribution is an expression of respect for society and fellow citizens.

Difference between fairness and
other principles (e.g., equality)

• Most principles in tax law: obligation on governments (e.g., treat citizens in equal situations equally)
• Fairness: primarily obligation on tax payers towards each other
• Role of government: to ensure that tax payers obey the principle of fairness, protect compliant tax payers from free riders.

European Commission

• 31-Oct-2012: “The fight against tax fraud and evasion is not only an issue of revenue, but also of fairness. If we let tax fraud go unchecked, taxpayers who pay their fair share will bear the cost.”
• 23-3-2013: “The burden of taxation should be spread more evenly by ensuring that everyone, whether blue-collar employees, multinational companies that benefit from the single market or wealthy individuals with offshore savings, contributes to public finances by paying their fair share.”
• Fairness: protecting compliant tax payers from unfair, compliant tax payers.

How can governments protect
compliant tax payers

• Combat free riders
• Combat free riding
• More complex in a globalised world
• Countries have to work together
• Willingness to reduce tax competition?

Combat free riding

• Impossible for one country on its own
• A globalised world, fiscal rules etc.
• EU: Action plan to strengthen the fight against tax fraud and tax evasion.

OECD/G20 Base Erosion and Profit Shifting (BEPS) Action Plan

OECD 2013: globalisation boosts trade and investments, but provides tax planning opportunities for multinational enterprises (MNEs)
BEPS: tax planning strategies exploiting gaps and mismatches to artificially shift profits to low-tax locations with little or no economic activity
BEPS undermines the integrity of the tax system; increases burden on other tax payers; negative effect on compliance, harms fair tax competition.

October 2015: BEPS Package

• All members of G20, OECD (incl. all EU Member states and Japan, BRICS and some developing countries participated in project)
• 15 actions to address BEPS
  • Aimed at preventing double/taxation, tackling harmful tax practices and aggressive tax planning and a realignment of taxation and tax benefit/substance (incl. improvement of transfer pricing), and increasing transparency
  • Comprehensive package of measures ranging from minimum standards to a revision of existing standards

BEPS project