GUNN tax communication

Ideas for a Dutch Tax Governance Code

Essay by Anna Gunn and Thom Gunn - Gunn Tax Communication BV

Abridged English version with comments for non-Dutch readers[1]

I. Introduction

In this essay, we will reflect on the possibilities of a Dutch 'tax governance code' (hereinafter: code), as an instrument with which to regulate the fiscal behaviour of multinationals, and to rebuild public trust in taxation in the Netherlands. This article was written at the request of the Dutch Ministry of Finance for a seminar about the possibilities of a new code, to be coordinated by the government. The Fiscal Policy Agenda 2019 states the following:

> "The Cabinet is taking big steps to combat tax avoidance and tax evasion, by using legislation and regulations. Paying tax is not just a legal obligation. It is also a social responsibility. It goes without saying that tax evasion crosses legal and social boundaries. However, the question of the extent of the responsibility of the taxpayer and tax advisors in relation to tax avoidance, is increasingly often the subject of public debate. That social responsibility calls for this dialogue to be continued, also with the legislator. Nevertheless, legislation alone will not be the solution. If only for the reason that the legislature cannot see or prevent all new forms of tax avoidance. Business plays an essential role in this regard, as do tax advisers who affect the fiscal behaviour of both citizens and companies, through their tax advice. I see that there are already some companies and tax advisory firms which have taken up the challenge, but I hope for a broad and coordinated initiative. In this regard, it would be preferable for business and the tax advisory sector to develop a 'tax governance code', in the context of their social responsibility ."

A 'tax governance code' is seen as a remedy for certain types of tax avoidance, in cases where laws and regulations fall short. Companies and tax advisors should - on a voluntary basis - act in a more restrained manner when it comes to tax issues. A "dialogue" is considered desirable to supplement previous "big steps" by the Cabinet. At first blush, this initiative for a code seems to be only positive: who can be against high ethical standards? Self-regulation by taxpayers is

[1] The original Dutch version of the essay (including footnotes) is available on gunntax.com/news/.

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furthermore in line with the current *Zeitgeist*, where there is a lot of attention for fair taxation and the taxation of multinationals.

First and foremost, we share the view that a 'tax governance code' can have some added value, both in terms of promoting self-regulation and for the improvement of the fiscal image of the Netherlands, and - in this roundabout way - the Dutch investment climate. At the same time, there is reason to be critical. If the impression is given that tax morality has been outsourced to the commercial lobby, this will contribute very little to (re)building public trust in taxation. In addition to this, many companies will not welcome the introduction of voluntary norms as an alternative for 'proper' legislation. The introduction of a code is therefore not some nice "step in the right direction", without downsides or disadvantages: in the worst case scenario it could even be detrimental to public trust. Although we have put forward several concrete ideas on how a tax governance code could take shape, providing a 'toolbox' with both formal and material building blocks for a code, it is in our opinion not a given that a tax governance code as such is a good idea. Those criticising the code need to be taken seriously, even if that results in the delay or even cancellation of this present initiative. This does not detract from the fact that the efforts of all those combatting tax avoidance - from the civil servants to the NGOs - need to be acknowledged.

Terminology, structure and scope

For present purposes, a 'tax governance code' is conceptualised as containing a series of 'agreements', 'promises', 'commitments', or 'self-regulation mechanisms' determined by a company subscribing to that code. With this terminology, we want to continuously stress that all aspects of the code - from its design to the adherence by companies - are *voluntary* from the perspective of a company. In section II, we will start by looking at two underlying aspects that are relevant for the entire discussion on a code: fiscal ethics, and the involvement of the State in the design of the code. Sections III and IV then contain a series of (formal and material) thought experiments and examples, which could be included as aspects of a new 'tax governance code'. Section V contains a brief conclusion.

Ours is essentially an opinion piece, focussed not on whether the code is desirable, but on its concrete *content*, and on a number of disadvantages of the present initiative, which may not be receiving enough attention.

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II. Two General Aspects

A. Fiscal ethics

Ethics is of decisive importance (or at least, it should be) for both the decision to draw up a code, the design of the code, the manner in which the code is adhered to, and for the issue of assurance. It needs to be stressed that morality is an aim into itself and not some inconvenient bump in the road that needs to be quietly managed.

'Legalism' is not a substitute for ethics

In tax literature, a distinction is made between 'legalism' and 'ethics' as the leading principles for the behaviour of taxpayers. Legalism - to put it briefly - places sole importance on legal norms ('anything that's not prohibited is acceptable'), whereas the ethical perspective also takes into account other factors, e.g. moral considerations. Without wanting to delve into this, we question this sharp distinction between legalism and ethics. Of course, it is desirable that laws are ethical. But that does not mean that every conceivable moral dilemma is regulated by legislation. Taxpayers still need to think for themselves. The mere fact that a taxpayer sticks to the law, does not mean that he himself is now exempt from *moral* criticism. The degree to which a taxpayer adheres to the laws and regulations can however be a factor for assessing his behaviour from a *moral* perspective.

Ethics is already on the agenda of the tax sector

When does 'normal' and unproblematic application of the law become ethically questionable tax avoidance? The dividing line is not always clear. In tax literature, suggestions have been made for the 'operationalisation' of fiscal ethics, e.g. by formulating general approaches that a company could follow when determining its ethical course. Within the tax sector, there are also initiatives aimed at translating ethics into daily practice. Many of these are addressed in the present collection of essays. As we see it, all of these initiatives are - for now - still 'work in progress'. Writing at the end of 2020, it is abundantly clear that the tax sector in a broad sense is still grappling with the question of how to translate a general and rather abstract gut feeling of fairness into hard policies and ultimately the transfer of a concrete amount of tax into the public coffers. What is the appropriate yardstick when it comes to morality? Without wanting to sound (too) cynical, the topic of (fiscal) ethics is sometimes mainly used as a hook upon which to hang a number of other issues, e.g. corporate social responsibility (CSR) as a marketing tool ('greenwashing'), the limitation of liability, and (media) perceptions. This can raise the thorny questions: *Can we take the claim of a company, that it is striving for ethical behaviour, at face value? Is it genuine? Or just some fancy words with a feel-good factor?*

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Delineation of the concept of 'tax avoidance' in the (public and fiscal) debate

It is noticeable that little or no attention is paid to the delineation of tax avoidance in the public debate. In the media, the term tax avoidance is used relatively easily, without that term ever being defined. In this sense, the public debate is significantly different from the debate that is taking place within tax circles, and which draws upon specialist legal knowledge and practical experience. The wide societal debate could benefit from a more careful description of the concept of tax avoidance, and a clearer distinction between (a) normal application of legislation with an undesirable (sometimes unforeseen) effect, and (b) tax avoidance. Although these categories sometimes overlap, the distinction remains relevant. If a loophole can be closed by a change in the law, this would be preferable to (just) the use of a voluntary code.

Don't underestimate the importance of practical problems

A company that adopts a 'tax governance code' will agree to no longer make use of aggressive tax planning. This promise can only be fulfilled if the company continuously and critically assesses its own fiscal behaviour. The company will need to make conscious decisions. There are certainly touchstones for this, but in the hectic day-to-day reality of the average tax department, this is anything but simple. The financial interests can be considerable, and not every shareholder is in favour of a conservative fiscal strategy which reduces the dividends. In addition to this, the reflection on ethical matters may be hindered by very practical issues such as top-down decision making, the separation of different departments within the company, incomplete information, time constraints and legal time limits, or 'groupthink' within the tax department. In the discussion on fiscal ethics, such practical aspects should not be overlooked.

Bad behaviour by the State and problems with the Dutch Tax Authorities

In tax literature, it has been argued that the behaviour of the State can lead to a situation in which the taxpayer is no longer bound to ethical norms. Although we don't subscribe to this position in general terms, we note that the tax morale is relevant in the present context. It is common knowledge that there have been serious problems within the Dutch Tax Authorities in recent years. We refer for example to the problems surrounding the so-called *CAF-affaire* and the issues surrounding the payment of tax allowances (*Toeslagenaffaire*). In these cases, ordinary citizens were wrongfully denied allowances (and forced to repay large sums) and earmarked as benefit fraudsters by the Dutch Tax Authorities, at great personal cost for the citizens concerned. In our experience, issues associated with failures on the part of Tax Authorities are much less

problematic for multinationals than they are for ordinary people. Large companies can for example benefit from prior certainty in the form of tax rulings (APA/ATR) and have the benefit of highly qualified tax inspectors and contact persons. By contrast, citizens must generally make do with the Tax-Helpline (*Belastingtelefoon*) and the website of the Dutch Tax Authorities. Rightly or wrongly, this can give the impression that multinationals receive a more favourable treatment than ordinary people. This is detrimental to public trust. When designing a code, it is important to avoid any (appearance of a) preferential treatment of multinationals as compared to other taxpayers.

B. Legitimacy and involvement of the State

Our second point concerns the role of the State in initiating a code. We will touch on three points.

Encouraging participation by companies

One of the challenges of a code is ensuing the participation of companies. The code is after all voluntary. Concerns with regard to competition from other companies that have not adopted the code, could discourage companies from signing up to the code. Coordination by the State could provide a solution for this. However, we note that not all of the multinationals that are active in the Netherlands can be qualified as 'Dutch multinationals'. It may be the case that Dutch subsidiaries of American, British or Chinese companies are less interested in a Dutch 'tax governance code'. For a Dutch company that is active in a country where 'aggressive' tax planning is the norm, introducing different/higher ethical standards than those adhered to by local competitors may cause problems This will depend on the facts of the individual case. It is hard to make general statements on the impact of a code on the competitive position of a company.

Code is not an alternative for laws and regulations

In our view, it is clear that the State can play a constructive part in developing a code and that this role can - perhaps in cooperation with stakeholders - take different forms. But the question arises whether it is desirable that the State takes a lead in developing a code at this precise time. The public debate about self-regulation is by no means finished or 'stuck'. Moreover, as was mentioned above, there are already a number of initiatives underway on the present issue. At its core, self-regulation is a private question: a company can elect to subscribe to a code. Insofar as a forum is provided for the different stakeholders - companies, NGOs, academia, and so on - to discuss self-regulation, we would support this idea: such a forum does not currently exist. To some extent, self-regulation can be a useful addition to legislation, especially when it serves to support legislation (and not to replace it). However, it is undesirable that binding, democratically mandated laws and regulations, are entirely substituted by voluntary private codes, which are not

subject to political control. Mindful of the need to restore public trust, a code must at the very least be monitored.

The legislator is not helpless when it comes to tax avoidance

One of the arguments in favour of a 'tax governance' is that "the legislator cannot see or prevent all forms of tax avoidance" (Fiscal Policy Agenda 2019). At one level, we agree with this statement. At the same time, we hope that the legislator will not give up too soon. Preventing tax avoidance is after all more than just anticipating leaks; it also involves searching for the balance between strict legislation to prevent avoidance, and other considerations such as preventing that 'innocent' parties are affected (overkill) and safeguarding administrative efficiency. In addition to this, we refer to the general anti-abuse doctrine of *fraus legis* and the international (EU) anti-abuse provisions and doctrines, which can provide a solution to certain instances of fiscal abuse.

III. Formal ideas

A. Transparency

Improving transparency is a key part of any 'tax governance code'. This is not a controversial statement. In practice, a lot of work has already been done on the issue of transparency. When designing a code, it is obvious that use must be made of the insights already gained. At the same time, a tax governance code needs to go further than the existing initiatives such as Shell's Tax Contribution Report, the approach developed by The B Team, and the Tax Transparency Benchmark of the VBDO (all of which are discussed elsewhere in the present collection of essays). Below, we will specify three aspects of the tax position of a company, which could be discussed as part of the annual report or on the website of the company.

Rulings and tax holidays

In the context of transparency, it would be of added value for the company to be as open as possible when it comes to tax rulings and the use of tax holidays. Ideally, these agreements would be published integrally (providing, of course, this is possible from the perspective of privacy and confidentiality). A more modest option would be to publish summaries of agreements (since 2019, this already happens in the Netherlands for international rulings). This could give a better understanding of the tax position of the company, and the agreements that have been reached with the Dutch Tax Authorities and the tax authorities in other countries. Ethical questions and dilemmas may potentially arise in an earlier stage. We believe that it may be easier to discuss the ethical position upfront (as opposed to after the fact), as this would allow for a proactive (as opposed to defensive) approach to ethics.

Dealing with questions from researchers

One of the key problems in the current tax debate is the lack of facts. An example of this can be found with the calculations that NGOs make of the extent of the benefit which companies obtain from (alleged) tax avoidance. Such calculations can be found in reports written by NGOs and are important in the public debate. In some cases, we find that NGO researchers have - in the absence of the actual facts - been forced to make assumptions in order to make their calculations. NGO researchers do sometimes request information from companies, but this is not always successful. The lack of factual information can cause misunderstandings that can easily be prevented: companies can after all make clear what their actual tax position is, and can provide the background information needed for a full understanding of that position. In this way, a *fact-free* discussion can be prevented.

Lobby activities

It is no secret that companies, advisors, and interest groups carry out lobbying activities in, amongst other places, The Hague and Brussels. Currently, the role of the tax lobby is damaging when it comes to public trust (cf. the public discussion on the abolition of the Dividend Withholding Tax in 2018). Companies need to be more transparent when it comes to lobbying: What is the objective of lobbying activities? In what - specifically - do these activities consist? And how successful are they? This needs to go a lot further than just 'publishing the schedules' of those involved (i.e. a lobby register) without any further explanation. The issue of lobbying can be addressed in a code. The commitments by companies regarding (fiscal) lobby activities, in our view, need to go further than any existing legislation or rules on this matter.

B. Assurance

A code would need to be embedded in a robust assurance framework. This means that the results of the code (i.e. the actions taken by companies) need to be measurable. Third parties should also be able to verify information. It is important that the framework is not too complicated. However, at the same time, the reliability of data and processes needs to be safeguarded. It may be possible to learn from the experiences of Horizontal Monitoring as well as the documentation requirements for transfer pricing. When designing a new 'tax governance code', there needs to be sufficient room for companies to utilise existing structure for assurance. The wheel does not need reinventing.

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The Dutch Tax Authorities could facilitate all of this by confirming the numbers presented by companies based on the information available in the systems of the Dutch Tax Authorities (e.g. regarding the amount of taxes paid or the use of a particular fiscal facility).

C. Organising opposition

The third formal point pertains to the organisation of critical discussion on important fiscal decisions. The objective of organising opposition is to prevent tunnel vision and groupthink within the company and its external advisors, so that the code is followed in the best possible way. We have six suggestions with regard to organising opposition.

Devil's Advocate

Our first suggestion for companies is to instal a fiscal ethical 'Devil's Advocate'. This is someone who systematically raises critical questions about the way the company is dealing with its taxes, and defends contrary points of view (even if these are not his or her own). The added value of this is that counterarguments and alternative viewpoints become a fixed element of the decision-making process. This person should be well informed about the normal decision-making process, but not directly involved in, or responsible for, that process.

Whistleblower protection

The 'tax governance code' needs to contain a provision on the protection of whistleblowers. In the Netherlands, whistleblower protection is in some instances mandatory. In a 'tax governance code', the whistleblower protection could be extended to include foreign (fiscal) whistleblowers. To give an example: the Dutch head office could introduce policies ensuring that foreign subsidiary companies do not undertake steps against a whistleblower.

Workers' council

In the Netherlands, companies meeting certain criteria are legally required to have a workers' council (*ondernemingsraad*). For certain decisions, the company needs the approval of the workers' council. In other cases, the workers' council has an advisory role. In the context of a code, we see an additional role for the workers' council as the provider of information and critical opposition. After all, the workers' council has access to detailed knowledge about the company, and consists of employees (stakeholders) with an own perspective on the company. An additional advantage is that the workers' council is an existing body with a legal basis. Furthermore, it can easily fall within the sphere of confidentiality obligations within the company.

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Stakeholders

Stakeholders can play a role with the external control. We interpret the term 'stakeholders' in a broad manner: everyone who considers themselves a stakeholder, is a stakeholder. By consulting stakeholders or starting an official (written) consultation process, valuable information and (critical) feedback can be gained. This can then be used to improve the decision-making process of the company. In this case, it is important to manage the expectations of the stakeholders properly. An invitation to provide feedback is not the same as a right to determine the course of a company.

Internal cooperation

In our experience, the tax position and decision-making of a multinational is the result of the cooperation between multiple departments or parties (e.g. the tax manager, the HR department, and a department dealing with subsidies and facilities). At each level, there may be information or insights which are relevant for the discussion on CSR and (fiscal) ethical behaviour by the company. Under the heading of 'organising opposition' we therefore also include internal *cooperation*: cooperation between these departments (and external advisers) that goes further than just formally checking off points from a list for compliance and risk analysis.

External monitoring and reporting

Joining a 'tax governance code' is voluntary, but nevertheless has consequences. Although we at present doubt the feasibility of a hard enforcement mechanism for a code (cf. disciplinary law), independent monitoring by journalists and academics should be realistically possible. The crucial point in this regard, is the collection of information about compliance (if needed anonymously or on an aggregated basis). This information needs to be made public on the internet. External monitoring and reporting provides the general public with insight into the application of the code and - depending on the nature of those insights - this could help restore public trust.

IV. Material ideas

In this section, we will consider a number of ideas relating to the material content of a code. We do so from the perspective of individual companies, and not from that of an overarching code which would apply in all cases. We envisage a scenario whereby an overall 'tax governance code' provides room for a company to make choices, within the framework of the code (i.e. the overarching 'tax code of governance' should contain some optional elements to allow for a tailor-made application).

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A. Introduction

Some existing tax codes contain provision regarding the material aspects of the tax position of a company. For example, companies promise that they will not use tax havens or letterbox companies, or that fiscal considerations will not be leading and that instead, the real business activities will always be decisive when taking decisions ('tax follows business'). As we see it, aspects relating to the substantive position of a company should have a place in a new tax governance code. More specifically, we are referring to situations where a company commits itself to a particular outcome in terms of the company's overall tax position.

B. What should be in a code?

Two fundamental approaches to the contents of a code

The amount of tax which follows from a correct application of laws and regulations, is the bare minimum which must, in all cases, be paid. As an addition to this, further agreements are conceivable. A distinction can be made between obligations to attain a certain outcome, and obligations to strive for a particular outcome. In both cases, the company would go 'further' than what may be the case based on the relevant laws and regulations. These types of obligations are qualitatively different from the procedural aspects such as transparency or assurance on the quality of the decision-making process (e.g. by introducing sufficient checks and balances; external and internal mechanisms providing opposition). The objective of promises by companies regarding the substantive tax position of the company, is to make a firm commitment upfront about the amount of tax which is to be paid.

- *Should a company enter into a code?* - When considering the question of whether to enter into a code in the first place, internal organs (e.g. the supervisory board, the workers' council or the annual meeting of shareholders) could contribute to the decision-making process. Information could also be obtained from external stakeholders (e.g. local authorities, academics and NGOs).

- *Determining the content of a code (what can the company commit to?)* - Specific circumstances could furthermore be taken into account when agreeing a code. This can be illustrated with an example: in some cases, the application of the participation exemption might provide an explanation for a relatively low effective tax rate (ETR), without this being problematic from the perspective of tax avoidance. When designing a commitment to attain a particular result, this could be a relevant factor to explicitly take into account: the mere existence of a low ETR might not always tell the whole story.

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Commitment to a certain outcome (bottom line commitment)

There are various options for a company seeking to make firm commitments regarding a particular outcome at the 'bottom line'. First and foremost, this obviously includes commitments on a specific amount of tax due or a minimum ETR. In both cases, the amount of tax that follows from the normal application of the relevant legal provisions is of course the minimum. Such a commitment can be structured in a number of ways. For example, a bottom line commitment can be scoped in a particular way: e.g. the commitment could pertain to a particular period or a specific part of a company (the entity as a whole, a specific jurisdiction, a division, and so on). Of course, a bottom line commitment can include caveats.

Including a commitment for attaining a particular result has two main advantages. The first is clarity. In principle, it would be clear in advance how much (at the least) the company would pay in taxes. This contributes to the second advantage, namely the message which the company gives to society. Even if the amount of tax is low (from the perspective of some citizens), we think that this openness and the fact that the company takes a clear position, will be viewed favourably by the wider audience. In particular this will be the case if it contributes to a better understanding of the tax position by politicians and journalists.

Commitment to try and achieve a certain result (best efforts commitment)

A disadvantage of an agreement to reach a certain outcome, is the lack of flexibility. If it is not possible to take into account actual business developments, it may be the case that a commitment to pay a specific amount of tax or achieve a certain ETR, is not appropriate. One solution for this is to avoid making hard commitments regarding a certain outcome, and instead to fall back on promises to *endeavour* to reach a particular outcome. A best efforts commitment can of course have different forms. One example could be for a company to make a hard commitment for a minimum ETR in a particular period but only subject to a retrospective review of the situation. The review of the situation may identify good reasons to renege on the promise if - for example - the actual profits realised in a particular year are much lower than was anticipated at the time when the commitment was made. Such a review could include an analysis of the reasons why the amount of profit is lower than expected, and a technical analysis regarding the (lower than expected) ETR. The review could be carried out by the tax department itself or even a third party, taking into account the input from internal bodies and external stakeholders. The aim is to obtain a detailed and holistic understanding of the tax position in relation to the promise made. The review could, for example, lead to the conclusion that a lower amount of tax or a lower ETR is - notwithstanding the ambition to pay a certain higher amount - (morally) acceptable once all the facts and

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circumstances are taken into account. Equally however, the outcome of the review could be that there is in fact no (morally) valid reason to not make good on the promise and pay the higher amount of tax pledged.

Reverse tax avoidance

From a technical perspective, there are many ways in which a taxpayer could seek to increase its ETR, depending on facts and circumstances. A company could choose to *not* claim optional facilities such as R&D facilities, accelerated depreciation schemes or some treaty benefits. The same may be the case for the utilisation of (carry forward and carry back) losses or the use of optional tax consolidation schemes (e.g. the Dutch fiscal unity). This is counterintuitive for tax specialists, but the fact remains that there are many ways in which a company can increase its share in taxes by simply not optimising its tax position. Essentially, this is 'reverse tax avoidance'. It goes without saying that the possibilities of creating a *higher* tax burden are restricted by the relevant laws and regulations, i.e. the tax position of a company that engages in reverse tax avoidance will always require a legal basis.

But even if reverse tax avoidance is not an option, a company can of course choose to simply make a higher contribution to the public funds, as a unilateral gesture. A case in point is Starbucks, which in 2012 contributed GBP 20 million of extra 'tax' in the United Kingdom.

C. Use of the Effective Tax Rate (ETR)

For present purposes, the concept of an 'effective tax rate' is understood in a simple, broad manner, and can be found by dividing the tax that has actually been paid by a company by the commercial profit. The ETR is important for a number of reasons, including the fact that this concept is frequently presented as a touchstone for tax avoidance, in the public debate. The advantage of the ETR is that it focusses on the relationship between the commercial reality of a company and the tax contribution which that company itself has paid. The ETR also seems to be a relatively intuitive concept, which the general public can relate to. However, in certain situations, the ETR may not provide full insight, e.g. situations where the ETR is very low but where this can be explained by the normal application of a participation exemption. In such a case, the low ETR might in fact not be problematic from the perspective of the code. The ETR is a useful tool, but does not tell the full story.

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Clarifying the concept of the ETR

In this article, the emphasis is on taxes on profit (corporate income taxes). In the context of the ETR, it is however possible to also take into account (a combination of) other taxes levied from the company. This is the concept of a 'total tax contribution' (the total amount of tax paid by a company). In this regard, a distinction needs to be made between the taxes that a company has itself paid ('taxes borne') and the amount of taxes which a company has collected or withheld from others ('taxes withheld'; amongst other things this could include wage taxes and VAT). We think that both approaches to the ETR could be useful, providing it is made very clear which approach is taken in a particular case. Unless it is stated otherwise, it is likely that the general public will assume that the term ETR refers to taxes borne.

D. Timing and unforeseen circumstances

In the above, we have assumed that the relevant timeframe for making and/or analysing the commitments made is one tax year. It may be the case that, in practice, it would make more sense to look at a longer period of time, e.g. a number of years. A situation where there the commercial results fluctuate greatly, could be a case in point. Looking at each individual year in isolation may not provide the best insight into the actual tax position of the company. One way of dealing with this in a code, is to make provision for the assessment of - for example - the ETR over a longer period of time. In addition to this, it may sometimes make sense to apply commitments retroactively (i.e. it may be the case that a particular commitment turns out not to be ambitious enough in hindsight). A balance must be struck between making a code sufficiently flexible from the perspective of the company and ensuring the code is robust enough to be effective.

V. Conclusion

The use of voluntary governance codes for companies is not new. In the field of taxation, we see advantages in the use of a code as a way to get (more) clarity regarding the norms which should apply to the fiscal behaviour of companies. However, a code must not have a detrimental effect to the 'ordinary' laws and regulations.

We have made a series of proposals for the possible contents of a code. A distinction has been made between 'material' and 'formal' aspects. We have looked at the issues of transparency, assurance and the safeguarding of the ethical quality of the own decision-making of a company (organising feedback). Furthermore, we see room for the inclusion of specific substantive commitments (or best effort commitments) as part of a code. In these cases, companies commit

themselves to a specific fiscal outcome. This goes a step further than only including formal aspects ('way of working') in a code.

Lastly, in order for the code to have legitimacy, public support is needed. This needs to go further than just the support of the 'usual suspects' (taxpayers, NGOs, tax advisors and the Dutch Tax Authorities). In order to start (re)building public trust, a broad base of citizens needs to support the code. This is no small feat. If a 'tax governance code' is introduced, this code needs to be as concrete as possible and must go much further than just summing up good intentions. The impression that the code is nothing but an exercise-in-lobbying-behind-closed-doors, must be avoided at all costs. The stronger the commitments, the stronger the code.

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