ARTICLE

Ruling the Dutch Tax Haven: How the United States Drove the Rise and Fall of the Ruling Practice of the Netherlands

*Diederik Stadig**

Abstract

Until recently, the Netherlands was one of the world's largest tax havens. A key factor in the country's fiscal appeal was its ruling practice, which was created as a result of the Marshall aid in 1945. The ruling practice has remained mostly stable since its foundation: it underwent incremental reforms in the 1990s and 2000s, but radical reforms in the 2010s. This article seeks to explain this stability and radical change. To do so, it turns to theories on the role of ideas and institutional path dependence. It finds that the tolerance of the US for aggressive tax policies by small states was an important precondition for the stability of the Dutch ruling practice. When this tolerance disappeared in the 2010s, the Netherlands was forced to reform its ruling practice. Thus, the agency of political actors may be overestimated and the structuring role of institutions and the international context downplayed.

Keywords: corporate taxation, tax competition, historical institutionalism, globalisation, tax rulings.

1 Introduction

In 1789, Benjamin Franklin wrote that there are two certainties in life: death and taxes. Fast-forward to the 21st century, and the latter is not so certain anymore, especially if you are a multinational corporation. The certainty of taxes disappeared because the economy globalised as states negotiated trade, tax and other multilateral treaties to encourage cross-border investments and stimulate the economy. These treaties agreed on the removal of regulatory boundaries, hereby increasing capital mobility and investments. Yet, increased capital mobility also enhanced tax competition between states and, thus, opportunities for tax avoidance by multinational corporations. Capital became so footloose that some scholars spoke of 'hyperglobalisation' and argued that the ability of nation states

* Diederik Stadig, PhD Candidate, Department of Political Science and Public Administration, Vrije Universiteit Amsterdam.

to make autonomous and democratic policies was severely at risk (Rodrik, 2011; Streeck & Thelen, 2005).

As a result of increased capital mobility and ensuing tax competition, states started to offer ever-lower effective tax rates to big corporations. If they were successful in drawing in these corporations, they could gain some tax revenue and possibly jobs. However, as the number of large corporations is finite, this increased competition means that while some states gained tax revenue, others lost out. Therefore, tax policy is a most likely case of policy competition in a globalised world. Naturally, this is a worrisome development for many states as taxation is a core state power that funds essential services, (dis)incentivises behaviour and (re) distributes income and wealth.

Tax avoidance, however, is not a natural phenomenon: it is made possible by political institutions that are built by humans. This article examines one of these institutions: the Dutch 'tax ruling practice'. The ruling practice is a facility offered by the Dutch tax authority: corporations can ask for a ruling on which tax laws apply to them, and the tax authority thereby offers the taxpayer advance security on taxes to be paid in the future. This is convenient for corporations, for instance, when making an investment. The ruling practice was created in 1945 and became a potent instrument for tax competition in the 1990s, as it allows for a generous interpretation of existing tax laws. In addition, the agreements between applicants and the tax authority are not published. This means that the ruling practice is a discrete and efficient way to practice tax competition.

The ruling practice is one of the four so-called crown jewels[1] of the Dutch corporate tax system, which involve, besides the ruling practice, the participation exemption,[2] the vast tax treaty network[3] and the absence of withholding taxes on interest and royalties.[4] It is no surprise then that the Dutch government has been accused of harmful tax competition with its ruling practice on numerous occasions. The state aid investigations of the European Commission into the tax benefits of Starbucks[5] and IKEA[6] in the Netherlands are recent cases in point. Moreover, up until recently, the instrument gave the Netherlands a reputation as one of the leaders of tax competition (Devereux & Loretz, 2013; van Dijk et al., 2006) and one of the world's most harmful tax havens (Javers, 2009; Langerock & Hietland, 2019; Torslov et al., 2018). To be precise, the Netherlands functions as a conduit offshore financial centre (conduit-OFC). In the global tax avoidance network, conduit-OFCs enable the transfer of capital from country A to country C at minimal or zero taxation (Vleggeert & Vording, 2019).[7]

The case of the Netherlands is especially relevant because it is a typical case of a small economy in a globalised world (Katzenstein, 1985). The country may not be able to control the terms of the international regulatory order (like a hegemon such as the US, or possibly China and the EU), but it is able to choose its own response to, and its role in, that order. The Netherlands chose to be a conduit-OFC and enable tax avoidance of multinationals through its four crown jewels, and the ruling practice in particular. This begs the question, why a rich country such as the Netherlands would take economic policy decisions that make it a conduit-OFC. To answer this question, I turn to institutional theories.

The constructivist political economy (CPE) literature departs from the power of ideas to explain such economic policy decisions (Berman, 2001; Blyth, 1997, 2002, 2003; Hay, 2001; Matthijs, 2008). In times of economic crisis, when agents are unsure of their interests, ideas shape agents' behaviour and become (slowly) embedded in institutions. As a result of this uncertainty, policy change can be more radical than usual. Yet, these ideas are not apolitical. Coalitions of actors form around them, which means that new institutions tend to favour some social groups over others. The paradigm changes of the 1930s and 1970s are prime examples of this. In the 1930s, labour helped embedding liberalism, whereas in the 1970s, capital aided the disembedding of liberalism. Studying the reforms of the Dutch ruling practice since its inception in 1945, the CPE perspective leads us to expect significant changes in ruling policy during the 1970s and 1980s when monetarist ideas take hold.

Historical institutionalism (HI) on the other hand, departs from the existing institutional order (Hall & Taylor, 1996). It shows how institutional structures condition the policymakers that operate within them. Hence, actors tend to build on prior institutional structures and select their options from an 'institutional toolkit' that is given. Hence, for HI scholars, social causation is path dependent, and the same operative forces yield different results in different places because they are mediated by unique contextual features that are "inherited from the past" (Ibid, p. 9). This means that institutional setups can have 'unintended consequences' that were not foreseen at the outset of the institution in question. The HI perspective suggests that, when studying the reforms of the Dutch ruling practice, we should see policymakers merely incrementally adjusting the ruling practice in line with their preferences.

In short, this article aims to answer the question: *What explains continuity and change of the Dutch ruling policy since 1945?* It does so by studying the reforms of the ruling practice on a microlevel. It shows that the ruling practice has been stable over time and only been reformed five times since 1945. The reforms of 1991, 1995 and 2001 are incremental in nature. The reforms of 2014 and 2019, however, are a clear break away from the policies of the past. These radical changes came after American support for competitive tax policy by small states disappeared. The disappearance of this precondition forced the Netherlands to become cooperative in the international taxation domain and, hence, drastically reform its ruling practice. In sum, the Dutch ruling practice was characterised by institutional stasis until the Americans changed their attitude towards tax havenry.

Moreover, two other findings are particularly counterintuitive. Firstly, the Lubbers governments (1982-1994) that are often described as neoliberal (Oudenampsen, 2020), tightened the ruling policy rather than liberalising it. This happened during a time when the Netherlands underwent major market-oriented reforms and there was ample opportunity to make the ruling practice more competitive. Secondly, contrary to what one might expect from centre-left governments, the governments of Wim Kok made the ruling practice more competitive by promptly responding to American regulation in 1995.

The article proceeds as follows: Section 2 sets up the theoretical framework, Section 3 briefly describes the methodology and data collection, Section 4 delves into the stepwise evolution of the Dutch ruling policy, and Section 5 concludes.

2 Theoretical Framework: How to Explain Tax Policy Choices?

CPE has become the dominant approach to explain the long-term evolution of policy choices in the context of globalisation. Hence, it is useful to explain the premises of CPE and how we would expect them to apply to the tax policy choices of a small state like the Netherlands. As CPE developed from a critique of HI, we also return to the premises of HI and re-vindicate them in a globalised political context.

2.1 What Constructivist Political Economy Tells Us about Policy Change

Blyth (2002) proposes a punctuated evolution model of policy change that focuses on the influence of ideas in the 1930s and 1970s in Sweden and the US. According to Blyth, during an economic crisis when agents are unsure of what their interests are, ideas become leading. An economic crisis can trigger a paradigm shift, and a new ideology then becomes (slowly) embedded in institutions and determines future policy outcomes. Blyth (2002) demonstrates that certain ideas galvanise specific social groups, with dominant ideas often favouring particular interests over others.

In Blyth's model, ideas are ultimately the variables that determine path dependent trajectories, stability of institutions, and the coalitions that form around them. Ideas have five causal effects at different points in time during crises (Blyth, 2002, p. 35), namely: uncertainty reduction, coalition building, institutional contestation, institutional construction and expectational coordination. Eventually, this five-phase process leads to the embedding of ideas into organisations, patterns of discourse and collective identities (Berman, 2001; Matthijs, 2008). Hence, Blyth shows that politicians' policy options are determined by their perceived possibilities during various points in time. Matthijs (2008) adds that these perceived possibilities also need to be effectively communicated. Policy change only occurs when a leader can effectively 'narrate' a crisis (Ibid). Thus, not all crises cause paradigm changes.

These constructivist analyses focus on the direction of economic policy as a whole. So, corporate taxes are not the only object of study. Yet, they are an important part of what is often called the monetarist/neoliberal policy shift in the 1970s and 1980s. During this period, due to stagflation, governments transitioned from Keynesian demand management to more supply-side-oriented policy reforms. Specifically, regarding corporate taxes, Blyth (2002, pp. 160-170) argues that the inability of Democrats to offer an ideological alternative to supply-side economics and the infamous Laffer Curve is what caused neoliberal ideas about taxation to take hold and be rolled out in the Reagan years. Thus, Republicans created viable policy alternatives by formulating a new ideology (Perlstein, 2020). By focusing on the power of ideas, Blyth and other constructivists show how ideas

can induce radical policy change as a result of economic crises, while also showing that ideas are not simply determined by the material circumstances of policymakers.

Many constructivists present their approach as an advancement over HI (Berman, 2001; Blyth, 1997, 2002, 2003; Hay, 2001; Matthijs, 2008). They argue that while HI may be well-equipped to explain institutional stability and incremental change over time, it struggles with more radical institutional change when it occurs, even though such occasions may be rare. Moreover, Capoccia and Kelemen (2007, p. 343) have argued that HI relies heavily on critical junctures, but it often presents them as a 'deus ex machina', while others have argued that the unintended consequences resulting from these critical junctures are often left unexplained (Lindner & Rittberger, 2003).

Blyth (1997) has argued that in order to solve this predicament and explain critical junctures, HI has made an 'ideational turn' to incorporate ideas as explanatory variables. However, according to Blyth, this effort falls short of fixing HI's inherent weaknesses in explaining both the origins of institutions and radical change when it occurs. Thus, Blyth (2002, p. 231) accuses HI scholars of failing to genuinely investigate what ideas are and what they do, often viewing them as "catch-all concepts that explain variance" only when their own theories fail to do so.

2.2 Revindicating Historical Institutionalism

A focus on ideas and radical policy change, however, can cloud out the extent to which historically entrenched institutions condition policy choices, even in the context of dramatically changing ideas. The essential point that HI scholars make is that the choices of actors are better understood as building upon the given institutional structure than as fully rational against a completely clean slate of options. In short, social causation is path dependent (Hall & Taylor, 1996) because of lock-in effects, positive feedback loops and social norms that reproduce existing institutions (Streeck & Thelen, 2005). This means that the same operative forces will not generate the same results everywhere, as historical contingencies are different in each case (Thelen, 2004). Instead, these operative forces are mediated by contextual features that are "inherited from the past" (Hall & Taylor, 1996, p. 9). Furthermore, institutional change is complex, incremental and tends to be characterised by a mix of continuity and change rather than radical change (Streeck & Thelen, 2005). Therefore, institutions are persistent features of a historical landscape while they push social processes forward along a given path (Hall & Taylor, 1996, p. 9) but can also impede change (Thelen, 2004). Policymakers normally respond to new challenges with a toolkit that is institutionally given. These toolkits are never perfect and regularly produce unintended consequences that were not foreseen during institutional construction (Hall & Taylor, 1996).

In complex trajectories, in which history, institutional contexts and individual actors can be causally significant, HI has great analytical merit. In contrast to explanations that solely focus on the material circumstances of decision makers, it takes goals, strategies and preferences of actors as things to be explained rather than exogenously given (Steinmo et al., 1992). Hence, HI shows that institutions constrain and shape politics but that they are never the sole cause of outcomes

(Ibid, p. 3). In addition, HI scholars tend to show that institutions are the result of uneven power distributions between social groups; hence, the interests present at the outset of an institution are key in understanding its path dependent trajectory and the unintended consequences it may yield in the future (Hall & Taylor, 1996). Lastly, individuals, context and rules can all be decisive factors in determining outcomes for HI scholars (Steinmo, 2008, p. 126).

Specifically, regarding corporate tax policies, the strength of path dependence is often overlooked but has been used occasionally. Most notably, Rixen (2011) has used HI to explain the stability of the global tax regime over time. Since its inception in the 1920s, the global tax regime focused on the prevention of double tax avoidance.[8] This critical juncture had the unintended consequence that as the world globalised, this left room for tax competition through transfer pricing,[9] hence causing corporate tax competition (Ibid). Reforms that tried to redress harmful tax competition were incomplete, gradual and indirect, as the core of the institutional regime remained stable over time.

In a nutshell, HI allows us to explain the continuity of the Dutch ruling policy by emphasising the importance of institutions, while at the same time acknowledging that actors retain scope for choice.

2.3 American Tolerance as a Precondition of Competitive Tax Policy

As mentioned, HI scholars are often criticised for their treatment of critical junctures. Hall and Taylor (1996) have argued that HI scholars tend to not adequately explain where critical junctures come from and often point to war and/or economic crisis to resolve HI's issues with explaining more radical change.

I argue that, in the case of the Dutch ruling practice, a historical institutionalist approach need not necessarily turn to ideas to account for critical junctures. HI scholars have pointed out that in policy areas heavily affected by globalisation, such as taxation, there is significant pressure for liberalisation and policy convergence between states (Streeck & Thelen, 2005). This pressure arises because states either want to follow successful models or have to follow global norms and international agreements. The countries that are able to shape these norms and agreements are thus important for the shaping of tax institutions in other countries. A historical institutionalist can therefore conceive of critical junctures as essentially exogenous events as they emanate from changes in the global regime or changes by the hegemonic actors that control these structures. These exogenous events enable or even necessitate (national) policymakers to radically change their policy choices.

In the case of corporate taxation, the overarching shadow under which national governments, particularly in the EU but also elsewhere in the world, have been setting their policy is American hegemony in tax matters. When the US cracked down on non-cooperative tax jurisdictions in the 2010s (Grinberg, 2012; Hakelberg, 2015, 2016, 2020), many small European jurisdictions (e.g. Austria, Luxembourg) reformed their competitive tax policies. Showing that critical junctures in the tax policy of small states can occur through interdependence without their governments drastically changing course of their own volition.

This does not mean that the US approach to international tax policy is the sole or most important determinant of the tax policies of small states. Rather, American tolerance of tax havenry is a precondition of small states in global markets making aggressive tax policy. However, when the tolerance of American policymakers disappears, this directly influences the ability of small states to engage in very competitive tax practices. A change in this precondition could therefore be seen as a critical juncture, as it is an exogenous shock to the tax policy autonomy of small states in a globalised world.

The reason the US is so powerful in the taxation domain is that the EU is internally fragmented on taxation. In policy domains where the EU is represented by the Commission and not internally fragmented, it can leverage its internal market and regulatory capacity in negotiations (Wasserfallen, 2014). This way, the EU is able to govern the global commons together with the US in areas such as health and safety, data protection and trade. In essence, the EU "punches above its weight" in these instances in negotiations with China and the US (Bradford, 2020; Kelemen & Vogel, 2010; Meunier & da Conceicao-Heldt, 2015). However, the EU lacks the power and the competences to govern the global commons in the taxation domain. For this reason, it is bound to lag behind the US (Farrell & Newman, 2016, 2019). So, there is an absence of a coherent EU voice on international corporate tax matters. Taxation remains an exclusive member state competence, as implied in Article 4(1) TFEU. As a consequence, the US is the standard setter in tax matters in the global economy, and within the OECD especially.

The US is not just so influential in matters of tax cooperation because of the size of its internal market and the fragmented European approach, but also because of the way its tax system is structured. The US tax system is based on the principle of worldwide taxation. This means that "income is taxed at an equal rate regardless of where profits are earned" (Heinemann & Spengel, 2017, p. 1). As a consequence, US corporations have a disadvantage compared with non-US firms: they cannot choose to pay taxes abroad and not in the US. The check-the-box fiscal rules package of 1996 turned this around. 'Checking the box' gave the US firms the choice to label their subsidiaries as so-called disregarded entities. This option was intended to streamline corporate taxation but has effectively allowed internationally operating US firms to select which of their subsidiaries was 'disregarded' and should therefore not be liable to tax at home. These disregarded entities can be used to set up high-volume subsidiaries in low-tax jurisdictions, which greatly exacerbated transfer pricing and tax avoidance by US multinationals (Drawbaugh & Sullivan, 2013). Hence, US firms simply kept their money offshore and waited until they are offered a tax holiday to repatriate their cash.[10]

In short, a historical institutionalist account of corporate tax policy underlines the continuity in the policies that countries adopt given a specific international context. Major changes (critical junctures) in these policies are not so much triggered by ideas but rather by exogenous changes in that international context, be they structural or produced by the key hegemonic actor(s).[11]

3 Methodology, Observable Manifestations and Data

To construct a qualitative in-depth case study of the Dutch ruling practice, I employ an outcome-oriented process tracing design (Beach & Pedersen, 2019). This outcome-oriented design allows for nuance in showing why the Netherlands emerged as a tax haven and remained one through the years.

The article traces the origins and continuation of the ruling practice, going back to World War II, and examines what Dutch governments have done since the 1970s to reform it. The 1970s are chosen as a point of departure, as this is prior to the neoliberal paradigm shift of the 1980s and the era of hyperglobalisation. This yields five decades of ruling practice reform and should offer enough room to show the change and continuity of the ruling practice. To substantiate its claims, the article has assessed all five reforms of the Dutch ruling practice since its establishment. As this is a small number of reforms, the article also uses several secondary sources, including official EU, OECD, Dutch policy documents, public speeches by ministers, deliberations in the House of Representatives, and some newspaper reports.

The tax reforms of the ruling practice are organised in four phases. The first phase is the 1970s, in which there were reform pressures but little happened. The second phase is the 1980s, in which the Christian Democrats were in power and they tightened the ruling practice. The third phase is the 1990s and early 2000s, in which tax competition reached its apex, which means Dutch governments used the toolkit offered by the ruling practice. The last phase is the 2010s and early 2020s, which witnessed the disappearance of American tolerance towards tax havenry and subsequent radical policy change.

4 Change and Stability in the Dutch Ruling Policy

As mentioned, the Dutch ruling policy has undergone five reforms since 1945. The first three reforms were relatively minor adjustments that either slightly tightened or liberalised the ruling policy. In contrast, the reforms of 2014 and 2019 mark a clear shift away from past policies. This section proceeds as follows: Section 4.1 explains the foundation of the ruling practice in 1945, Section 4.2. explains its continuity through the years and Section 4.3 highlights its fundamental shift in 2014.

4.1. How Marshall Aid Laid the Foundation for the Dutch Tax Haven

The Dutch government established the ruling practice after World War II to offer foreign investors investment security. After the inflow of Marshall aid, many foreign companies saw opportunities to invest in the Netherlands. However, they were worried about expropriation by the state, as Dutch society was being rebuilt (Vleggeert & Vording, 2019). Hence, a coalition of American investors and the US government convinced the Dutch Ministry of Finance of the need for assurances. Thus, the Dutch Ministry of Finance, together with the tax authority, started to issue rulings in advance to guarantee investors a tax rate upfront before making an

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investment.[12] The fact that rulings were issued before taxes were due was a fiscal innovation. In the US, corporations had to pay their taxes, after which the Internal Revenue Service (IRS) would state whether additional taxes were due. Hence, advanced rulings had a strong appeal to US corporations. This brought in investments and aided the Dutch post-war recovery (Romano, 2002).

In the design of the ruling practice, the Ministry of Finance had given the tax authority a significant amount of freedom. This was officially justified by the tax authority's fiscal expertise but was unofficially motivated by the need to keep tax rulings outside the reach of politics, to assure foreign investors that they would not be expropriated (Kroon, 1987; Romano, 2002). This meant that the Ministry of Finance had no authority over tax inspectors when they issued rulings, and the tax authority was not obligated to publish information on advance rulings. In essence, inspectors could apply tax law as they saw fit. This design feature unintentionally provided a unique instrument for engaging in tax competition.

When the tax authority decided in the 1970s that individual corporation tax inspectors could start issuing these rulings, the Ministry of Finance was not able to counteract this decision. Hence, a small number of tax inspectors were qualified to give out rulings, and they were not accountable to the tax authority or the House of Representatives (Smetsers, 2020). Moreover, corporations could obtain rulings from more than one inspector and pay the rate in accordance with the most favourable ruling (Vleggeert & Vording, 2019, pp. 8-10). This was often referred to as 'inspector shopping': obtaining rulings until a company obtained a tax rate that was 'low enough' (Romano, 2002, pp. 22-23). This practice led to a lack of transparency and arbitrary tax rates (Smetsers, 2020).

In short, because of the initial design of the ruling practice, the Dutch House of Representatives, the government and the Ministry of Finance were not able to counteract unwanted decisions by the tax authority. As an unintended consequence, it became an instrument for conducting tax competition.

4.2 How the Ruling Practice Became a Crown Jewel of the Dutch Tax Haven

4.2.1 Den Uyl's Failure to Reform

Yet, momentum for reforming the ruling practice would pick up. Firstly, in 1973, Social Democrat Joop den Uyl led his first and only government. His cabinet was the most left-wing cabinet in the history of the Netherlands, with wealth and income redistribution as its top priorities, especially during a time of economic crisis.[13] Hence, it proposed several redistributive corporate tax reforms, along with increases in social security. Secondly, *de Hoge Raad* (the Dutch Supreme Court) issued a decision in which it annulled the ruling that granted two German corporations the application of the participation exemption.[14] This decision by the Supreme Court was controversial, as there had been a legal discussion on the applicability of the participation exemption in cases involving cross-border activities.

This legal wrangling jumpstarted a discussion in the House of Representatives on 'perverse elements' in the tax code (Dekker & Kreling, 2022). The ruling practice and the tax shortcut through the Dutch Antilles were scrutinised in particular. The

discussion on the tax shortcut through the Dutch Antilles did not last long, as the US forced the Netherlands to renegotiate its tax treaty, resulting in offshore activities moving from the Dutch Antilles to other Caribbean islands (van Beurden & Jonker, 2021). The discussion on the ruling practice took considerably longer (Kroon, 1987; Romano, 2002). Driven by its redistributive agenda, the Den Uyl government tried to end the discussion in 1974. In coordination with the tax authority, junior finance minister and Christian Democrat Martin van Rooijen issued a resolution stipulating that, in order to obtain a ruling and apply the participation exemption, the Dutch holding company needed to exercise a so-called essential function.[15] However, as an essential function was not a legally defined concept, the resolution ensured a high level of discretion for the tax authority (Romano, 2002). In doing so, the den Uyl government followed the advice of the tax authority, which desired to retain the influence it had acquired in the original design of the ruling practice. In its plea to the government, the tax authority made use of the fact that (i) it had much more knowledge than the Ministry of Finance in retaining a balance between a competitive and a fair ruling practice and (ii) an overhaul of the ruling practice would be difficult given that the government had not been able to push through much of its tax agenda due to a hung parliament (de Rijk, 1995; Nooteboom, 1990; Ruigrok & Blokzijl, 2012).

So, although redistributive measures were high on the agenda of the den Uyl government and an opportunity for reform was present, the government decided not to pursue a reform of the ruling practice because of its inability to form a coalition around tax reform. The tax authority used this, along with its strong position and expertise, to leave the ruling practice intact. In short, despite economic downturns and ideas for redistributive tax reform, the ruling practice was not reformed.

4.2.2 The Neoliberal(?) Christian Democrats

However, the resolution of van Rooijen did not settle the debate in the House of Representatives, and the ruling practice remained on the agenda (Dekker & Kreling, 2022; Smetsers, 2020; Vleggeert & Vording, 2019). In 1979, Ad Nooteboom, junior finance minister in the first van Agt government (comprised of the Christian Democrats and Liberals), proposed the first guideline for issuing rulings (Romano, 2002, p. 27; Smetsers, 2020). While this was merely a soft guideline for the tax authority, Nooteboom's guidelines were later used by junior finance minister, Henk Koning, seveb years later in the first Lubbers government (also comprised of the Christian Democrats and Liberals). Koning proposed to centralise the ruling team in Rotterdam.

This came after a "political reflection on the growing role of the Netherlands in international tax planning" near the end of the first Lubbers government (Vleggeert & Vording, 2019). As a consequence, the Dutch Court of Auditors investigated the tax ruling practice and published a critical report.[16] It concluded that inspector shopping was a significant problem, as different inspectors made different decisions, leading to arbitrary tax rates. As mentioned, corporations made use of this by submitting the same request to various inspectors (Smetsers, 2020, p. 13). This 'shopping' was undesirable in the opinion of the Court of Auditors.

In response, Koning published a white paper on tax ruling policy, largely based on Nooteboom's earlier guidelines (Romano, 2002, p. 27). As mentioned, Koning proposed to centralise the ruling team in Rotterdam. By May 1990, the centralised ruling team was fully operational and was enshrined in Dutch law in 1991.[17] The fixing of this loophole made it harder to 'game' the Dutch ruling policy for foreign companies, and tax inspector shopping disappeared as a result (Ibid). However, Koning's successor, van Amelsvoort, later noted that the ruling team maintained a significant degree of discretion to make decisions in the interest of the Dutch fiscal climate.[18] Hence, while centralisation of the ruling team served to tighten the reins, it left the institutional core of the ruling practice intact.

While this was an incremental reform, it was an interesting one. The first and second Lubbers governments decided to tighten the ruling policy in a time of severe stagflation, while at the same time adopting significant burden reductions and corporate tax rate cuts for the private sector (Visser & Hemerijck, 1997). These burden reductions were undertaken to reinstate the profitability of the Dutch market sector, designed by a group of economic advisers often described as inveterate neoliberals (Oudenampsen, 2020). The Lubbers governments are frequently described as neoliberal and very supply-side-oriented (Ibid). Especially when comparing the policies of the 'neoliberal' Christian Democrats with those of the preceding Social Democrats, it stands out that the governments of Lubbers were able, for the first time since World War II, to take some authority away from its tax inspectors. This led to the removal of arbitrary tax rates and an increase in consultations among tax inspectors of the tax ruling team. In short, the Lubbers governments created a more stringent ruling practice than in the preceding years.[19]

Lubbers himself stated the following on the tax policies of his first cabinet:

> The tax policy of my first cabinet is social but not socialist … It could happen that outcomes are not social, in which case correction is needed. Sometimes this correction is in line with the distributive wishes of socialists, but it does have a different viewpoint. It is not redistribution as such, but rather banishing poverty and the prevention of glaring income differences. (Brinkel, 2020, p. 163)

All in all, the tightening of the ruling practice under the first Lubbers government was counterintuitive. Lubbers is often described as a classic example of a neoliberal (Oudenampsen, 2020), and his governments are often seen as the Dutch representatives of the 'New Right'. For this reason, it would make sense to see this government actively engaging in international tax competition. Yet, this is not observed when studying its tax policies. The ruling policy remained largely stable and was even reined in rather than liberalised. This happened due to increased tax avoidance and the fact that the government's tax policies aimed at fixing a problem rather than being devotee to a specific ideology.

4.2.3 The Competitive Reforms of the Kok Governments

In 1995, shortly after the first reform, the ruling practice was reformed again. This time, the reform was a relaxation of the ruling policy (Romano, 2002; Smetsers,

2020, p. 15). During the first Kok government, Social Democrat Willem Vermeend standardised the ruling practice, loosened the substance requirements for foreign companies to obtain a ruling and increased the speed with which the Dutch tax authority could offer a ruling (i.e. elimination of administrative checks). This bolstered the reputation of the Dutch conduit-OFC considerably; in the words of Vermeend, it "increased the Dutch comparative advantage in tax matters".[20] Vermeend made it possible for the ruling team to tailor rulings to individual cases.[21]

These reforms were consequential, as the Clinton administration introduced the check-the-box package in 1996 with the aim to simplify taxation.[22] Inadvertently, this package created the largest loophole in the history of US corporate taxation (Drawbaugh & Sullivan, 2013), allowing US corporations to shift profits unencumbered. Liberalising the ruling practice prior to the creation of this loophole gave US corporations an incentive to funnel money through the Netherlands. Thus, Vermeend's reforms are an important explanation for why the Netherlands became the favourite conduit of US multinationals (Frederik, 2017).

If Vermeend had not been junior finance minister, it is questionable whether the Netherlands would have been as proactive as it was. His successor, Wouter Bos, was significantly less hawkish on tax competition (Frederik, 2017). Moreover, Vermeend was also driven by his personal convictions: the Netherlands had an accessible tax authority, so why not build on this comparative advantage? Or as Vermeend himself put it: "From an international perspective, the Netherlands has a leading position in the field of providing advance assurance, which, in my opinion, we should build on."[23] Vermeend was incredibly productive in terms of the quantity of reforms. However, his approach to international enterprises and the ruling policy has often been described as too friendly, arbitrary and unfair to national corporations.[24] In response to such criticism, Vermeend acknowledged that he was on a mission to make the Netherlands more fiscally attractive:

> Above all, the Netherlands should become more attractive to international corporations. International competition will increase in the future, and I want to be ahead of the curve. My policies ensure that we remain in the driver's seat. (de Rijk, 1996)

Unfortunately for Vermeend, the responses of the OECD and the EU to his reforms were less enthusiastic. In 1998, in its report "Harmful Tax Competition an Emerging Global Issue", the OECD qualified the Dutch ruling practice as damaging to other member states (OECD, 1998, p. 28). The report took aim at Vermeend's reforms, specifically the lack of transparency and the near absence of the arm's length principle[25] in Dutch tax rulings. The European Commission quickly followed suit. Spurred by British junior finance minister, Dawn Primarolo, it characterised the Dutch ruling practice as a harmful tax practice (Council of the European Union, 1999, pp. 34 and 314). Still, the European Commission refused to qualify the ruling practice as state aid, as there was no proof of the ruling practice constituting a selective advantage (ibid).

The Netherlands promptly agreed to redress its ruling practice.[26] In November 2000, Vermeend informed the House of Representatives that the ruling

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practice would be reformed into a more 'standard' and 'less harmful' Advance Pricing Agreement/Advance Tax Ruling (APA/ATR) practice, information exchange with other tax authorities would be smoothed and the arm's length principle would be codified in Dutch tax law.[27] In short, the Dutch tax rulings team now had to treat all ruling applications individually. This meant that rulings went from confection to bespoke: each ruling became tailored,[28] a direct result of the pressure from the OECD and the EU.[29]

However, this was largely a symbolic reform, as Vermeend also tried to improve the fiscal climate for corporations in a different way.[30] With the same reform, he lowered the net spread for royalty flow-through schemes,[31] made foreign withholding taxes fully creditable against Dutch corporate income taxes[32] and further expedited the ruling process (Pijl & Hählen, 2001). Given these improvements in the fiscal competitiveness of the Netherlands, and the fact that the rates offered in rulings remained competitive, scholars argue that while international pressure was effective, it did not fundamentally change the Dutch 'fiscal behaviour' (Romano, 2002, p. 48).

In short, the reforms of Vermeend were largely driven by material circumstances, as the demand for conduit-OFCs increased when the check-the-box regulation freed up large amounts of American corporate capital. In addition, Vermeend's beliefs about actively engaging in tax competition definitely played a part in his decision to target this corporate capital. Yet, Vermeend merely expanded the institutional toolkit at his disposal. If a competitive ruling practice had not existed prior to Vermeend taking office, he would not have been as successful or as swift in drawing in American multinationals for Dutch conduit services.

4.3 How the Disappearance of American Tax Tolerance Fuelled Reform

After the second reform of Vermeend, the APA/ATR practice was reformed twice. The first reform took place in 2014. The cause for reform was the advent of the first Obama administration. In 2009, Obama branded the Netherlands, Ireland and Bermuda as the world's most harmful tax havens (Javers, 2009). This was no surprise, as the Netherlands was the favourite conduit of US multinationals (Frederik, 2017; Garcia-Bernardo et al., 2021). The Obama administration accelerated its tax agenda with the establishment of the Foreign Account Tax Compliance Act (FATCA) in 2010.[33] FATCA required financial institutions to act as tax intermediaries: banks and other institutions had to exchange information with the IRS so that they would be able to tax the money of American citizens held in offshore accounts (Grinberg, 2012). Moreover, to make the regulation have its desired effect, the US threatened sanctions to non-cooperative jurisdictions. As a result, the Common Reporting Standard (CRS) and automatic exchange of information (AEI) were established, effectively ending bank secrecy for the IRS (Grinberg, 2012; Hakelberg, 2015, 2016; Hemels, 2022). However, the hegemonic position of the US was confirmed by the fact that it did not reciprocate[34] the exchange of information.

FATCA was so successful in repatriating tax revenues that the US decided to push for information exchange in other tax areas as well (Hemels, 2022). This was achieved with BEPS Action Plan 13: Country-by-Country Reporting (CbCR). OECD

member states started sharing information on tax rulings with one another (Ibid). The Dutch reform of 2014, enacted by a right-wing government led by the Liberals, should be seen in this light. The reform paved the way for cooperation with CbCR once it became fully operational in 2016.[35]

The 2014 reform not only paved the way for CbCR but also increased substance demands and cracked down on shell companies. To be precise, it required companies to have 'significant economic activity' in the Netherlands to obtain a ruling.[36] The aim of this reform was to make it harder for corporations to get a tax ruling in the Netherlands: a letterbox[37] should no longer be enough.

After the 2014 reform, the House of Representatives[38] argued that no tax ruling should be extended to corporations that do not have a 'serious' intention to establish themselves in the Netherlands (Kerste et al., 2013). In response, junior finance minister, Menno Snel (Liberal Democrats), agreed to further increase substance demands, improve the transparency of the ruling practice for the Dutch House of Representatives and share information on rulings with EU member states. This was done to counteract tax evasion and avoidance, as well as base erosion.[39] In November of 2019, the reform was enacted, once again under a right-wing government led by the Liberals.[40] It established the International College for International Fiscal Security (ICIFS). The reform mandated that the tax authority publishes an anonymous summary of every new international ruling, along with a summary of all cases where a ruling was not issued, along with the reasons for why a ruling was not issued. Regarding substance requirements, these were replaced by a requirement of so-called economic nexus with the Netherlands. This means that in the international allocation of profit, the Netherlands would not agree to a single employee overseeing the disbursement of billions of euros in royalties. A ruling would no longer be issued when (i) the sole or decisive reason for performing the transactions is to save Dutch and/or foreign tax (motive) and/or (ii) the requested advance certainty relates to transactions with entities established in countries appearing on the Dutch blacklist (low-tax and non-cooperative jurisdictions as established by the Council of the European Union, 2022). In short, the establishment of ICIFS was a clear shift away from the aggressive corporate tax policies of the previous decades, thus constituting a groundbreaking reform for the Netherlands.

In short, the Dutch ruling practice was competitive as long as the US accepted tax havenry by small states. When the position of the US regarding international tax cooperation changed, the Netherlands quickly reformed its ruling practice. Without this change in the position of the US, it is unlikely that right-wing governments led by the Liberals would have significantly tightened the ruling practice based on their own preferences.

5 Discussion and Conclusion

As examined above, the Dutch tax ruling practice has been reformed five times since its conception in 1945. An overview of these reforms can be found in Table 1.

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Table 1 The Five Reforms and Their Rationales

Reform	Direction	Rationale
1991 – Lubbers/ van Amelsvoort (Christian Democrats)	Tightening: – Centralisation	Material circumstances and ideology
1995 – Kok/ Vermeend (Social Democrats)	Liberalisation: – Substance demands – Decision-making speed – Standardisation	Material circumstances and ideology
2001 – Kok/ Vermeend (Social Democrats)	Tightening: – International information exchange	International pressure and ideology
2014 – Rutte/ Weekers (Liberals)	Tightening: – Substance demands – International information exchange (OECD)	International pressure
2019 – Rutte/Snel (Liberals & Liberal Democrats)	Tightening: – Substance demands – Transparency – International information exchange (EU)	International pressure

All these reforms should be seen in the context of American hegemony in tax matters. As long as the US allowed it, Dutch policymakers could align the ruling practice with their needs based on the economic situation and/or their ideological preferences. When American tolerance for competitive tax policies by small states disappeared, the Netherlands quickly reformed its ruling practice under right-wing Liberal-led governments. This shows that countries that are able to shape international norms and agreements also shape tax institutions in other countries.

Yet, when closely examining the timing, sequence and circumstances of the first three ruling practice reforms, two things become clear. Firstly, ideas were not their primary driving force. Secondly, a neoliberal paradigm shift in the 1970s and early 1980s is not evident from the ruling practice reforms since 1945. Rather, the course of the Dutch ruling practice was largely determined by the way it was originally established, with a significant degree of freedom for the tax authority, underlining the importance of path dependence. Moreover, the left-wing government of den Uyl had the opportunity and momentum to tighten the ruling practice but was met with institutional stickiness. In contrast, the centre-right Lubbers governments were able to enact a tightening in 1986 during stagflation and market-oriented reforms. They did so without changing the core of the regime, but it was the first time the power of the tax authority was reined in. The reason it is listed as a partly ideological reform in Table 1 is because the Lubbers government wanted a 'social' tax system, and arbitrary tax rates did not fit this description (Brinkel, 2020).

In a completely constructivist world, we would have seen a much more neoliberal tax agenda in the late 1970s and 1980s. This might have involved a focus

on faster rulings, more attraction of foreign capital, and rate reductions. Instead, the Lubbers governments chose to centralise the ruling practice to close loopholes, whereas the den Uyl government ran into institutional unwillingness to alter the core of the ruling regime. If den Uyl had been successful, this might have involved increased transparency of rulings, more and faster international tax cooperation and more stringent democratic oversight.

Hence, the core of the regime has remained stable over time. However, this does not mean that the ideas of individual politicians do not matter, as we have seen in the case of Willem Vermeend. The timing of the American check-the-box regulation coincided with his time in office, giving him the opportunity to liberalise the ruling practice. Regardless of his Social Democratic party affiliation, Vermeend used the institutional toolkit at his disposal; without the ruling practice available it is highly doubtful Vermeend would have succeeded in attracting a lot of conduit-OFC activity.

In short, this article has argued that the corporate tax policy of a conduit-OFC such as the Netherlands is best understood through HI. The Dutch ruling policy has followed a path dependent trajectory since 1945 and was not radically reformed until the US changed its approach to international tax cooperation. Prior to the US changing its approach, the Netherlands was one of the world's worst tax havens and the country was critical in the global tax avoidance industry. This illustrates that the Netherlands and other small European conduits are an important object of study. Microlevel research into the considerations of decision makers in these countries allows one to show that economic policymaking in small, open and advanced economies moves slowly and is often heavily affected by institutional legacies. In doing so, the present analysis seeks to offer much-needed context and nuance in debates on international power relations, ideology, interests, institutional path dependence and sheds light on why a rich country such as the Netherlands funnelled large sums of money abroad at minimal or zero taxation. It shows how the operative forces of globalisation were mediated by Dutch institutional structures inherited from the past.

Notes

1 Kamerstukken I 2015/16, 25 087, L, 13.

2 The participation exemption gives a parent company the possibility to enjoy the profits of a subsidiary untaxed. This was instated to prevent the double taxation of companies that fall under one corporate umbrella.

3 A tax treaty is an agreement between two countries about which country may levy tax on a certain income. The Netherlands has concluded the fourth most tax treaties of any country in the world. This means that when the Dutch tax authority rules that profits should be taxed at an agreed upon percentage over an agreed upon base, many other countries do not have the right to levy additional taxes.

4 In contrast to many other countries, the Netherlands did not levy withholding taxes on interests and royalty payments. The recent state aid cases by the European Commission targeted these Dutch tax practices specifically.

5 See Competition Policy European Commission SA.38374: https://ec.europa.eu/competition/e.
6 See Competition Policy European Commission SA.46470: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46470.
7 So, conduits are in between the origin country (where profits are earned) and the destination country (where profits end up).
8 When the economy globalised, corporations did not want to be subject in multiple countries for the same activities. Double tax avoidance means that companies are not subject to taxes over activity X in Country B when they already paid taxes over activity X in Country A.
9 Transfer pricing is the practice where divisions of the same company pay each other for goods and services. So, if division Z in Country A possesses the parent company's intellectual property, division Y in Country B pays subsidiary Z a certain amount for the use of the parent company's IP. These transactions should be made at arm's length (see footnote 26).
10 A tax holiday is a limited timeframe in which US firms can bring back accrued profits that are held offshore into the US at a large discount or even zero taxation.
11 The possible causes of such changes in the international context or in policy of the hegemon are beyond the scope of this analysis.
12 Brief van de Staatssecretaris van Financiën van 24 December 1986, Kamerstukken II 1986/87, 19700 IX-B, nr. 36.
13 Parlement.com: Kabinet den Uyl (1973-1977).
14 Hoge Raad 7 november 1973, No. 17 182, in BNB 1974/2.
15 Resolutie van 15 oktober 1974, No. 74/215516, in BNB 1975/11.
16 Kamerstukken II 1986/87, 19700 IX B, nr. 71, 3.
17 Resolutie van de staatssecretaris van Financiën van 26 April 1990, CA90/3.
18 Brief van de Staatssecretaris van Financiën, Kamerstukken II 1992/1993, 22860, nr. 4.
19 Resolutie van de staatssecretaris van Financiën van 26 April 1990, CA90/3.
20 Kamerstukken II, 1994-1995, 24086, nr. 1: p. 3.
21 Kamerstukken II, 1994-1995, 24086, nr. 1.
22 The Clinton administration announced the package in 1995.
23 Kamerstukken II, 1994-1995, 24086, nr. 1: p. 3.
24 Retro.NRC, Kabitnet Kok II, W.Vermeend.
25 The arm's length principle entails that transactions between divisions of the same company should be priced the same as transactions between unrelated entities.
26 Besluit van de staatssecretaris van Financiën van 21 december 2000, RTB2000/3227.
27 Kamerstukken II 2000/2001, 27505, nr. 1.
28 Persbericht Ministerie van Financiën 30 maart 2001, 2001/093.
29 Brief van de staatssecretaris van Financiën van 16 april 2003, Kamerstukken II 2002/03, 27505, nr. 8.
30 Ibid.
31 Net spread is a measure for the small amount of money that stays in a conduit. By lowering this, an even larger percentage flows through the Netherlands. See also: https://www.government.nl/binaries/government/documenten/reports/2021/10/03/the-road-to-acceptable-conduit-activities/Committee+on+Conduit+companies+-+The+road+to+acceptable.pdf.

32 This way foreign withholding taxes could now be deducted from a company's Dutch tax bill, which could mean a net gain if a company pays significant taxes in the Netherlands.
33 This shift of the US in global tax matters predates the financial crisis, but is accelerated by it (Hakelberg, 2020).
34 Hence, new secrecy jurisdictions for European citizens have been popping up in places like South Carolina and Reno. See, for instance, Bullough (2018).
35 Besluit van de staatssecretaris van Financiën van 13 juni 2014, DGB 2014-3099.
36 Ibid.
37 Most corporate tax avoidance in the Netherlands happened through shell corporations that were infamous for only owning a letterbox.
38 Brief en Nota van de staatssecretaris van Financiën en de minister voor Buitenlandse Handel en Ontwikkelingssamenwerking van 30 augustus 2013, Kamerstukken II 2012/13, 25087, nr. 60.
39 Brief van de staatssecretaris van Financiën van 23 februari 2018, 25087, nr. 188.
40 Brief van de staatssecretaris van Financiën van 22 november 2018, nr. 2018-0000185524.

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