

# THE SPIRIT OF INTERNATIONAL TAX LAW



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Jeroen Lammers  
Assistant Professor  
[jla.bhl@cbs.dk](mailto:jla.bhl@cbs.dk)

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**Is there a spirit of international tax law in such a way that it creates legal rights and obligations?**

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*How should the spirit of international tax law be defined?*



*Can the development of the discourse on the spirit of international tax law over the last 20 years shed light on which specific issues could hinder future reform of the international tax system?*



*Under which conditions can the spirit of international tax law improve and promote the robustness of the international tax system?*

*New Christian Aid poll: 70% believe 'legal' tax avoidance is wrong*

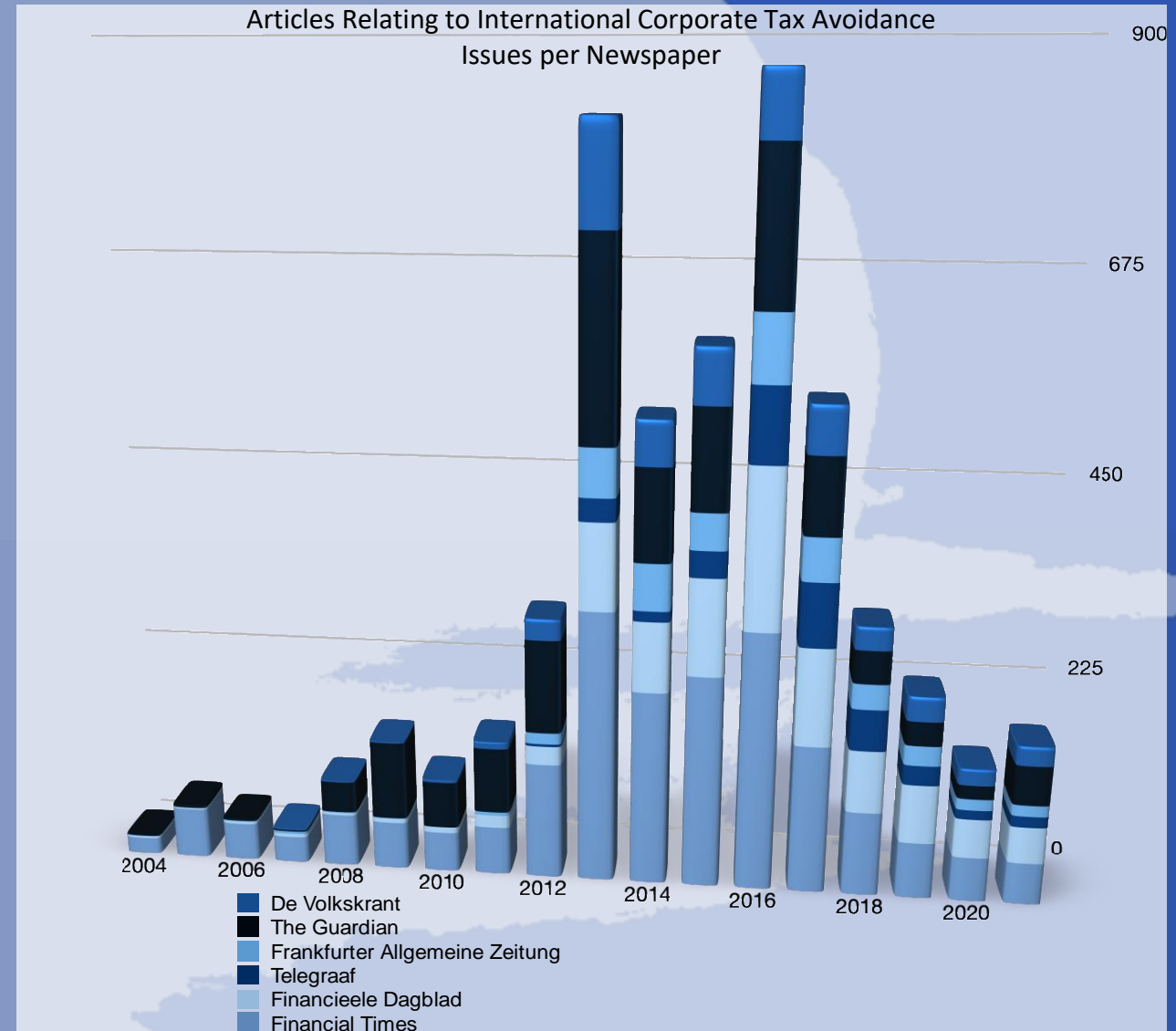
Nick Shaxson, Tax justice Network, 2015.

*Tax avoidance by big firms is morally wrong, say 9 out of 10 in UK*

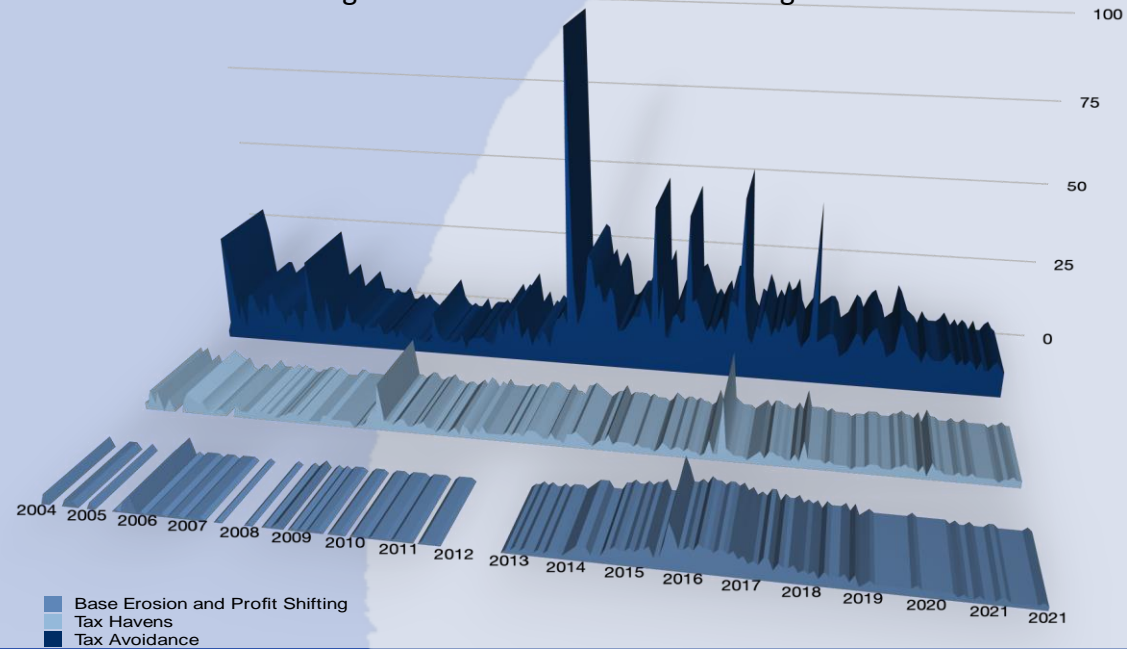
David Pegg, The Guardian, 27 November 2017.

*Almost all Tory voters agree company tax avoidance morally wrong, poll finds*

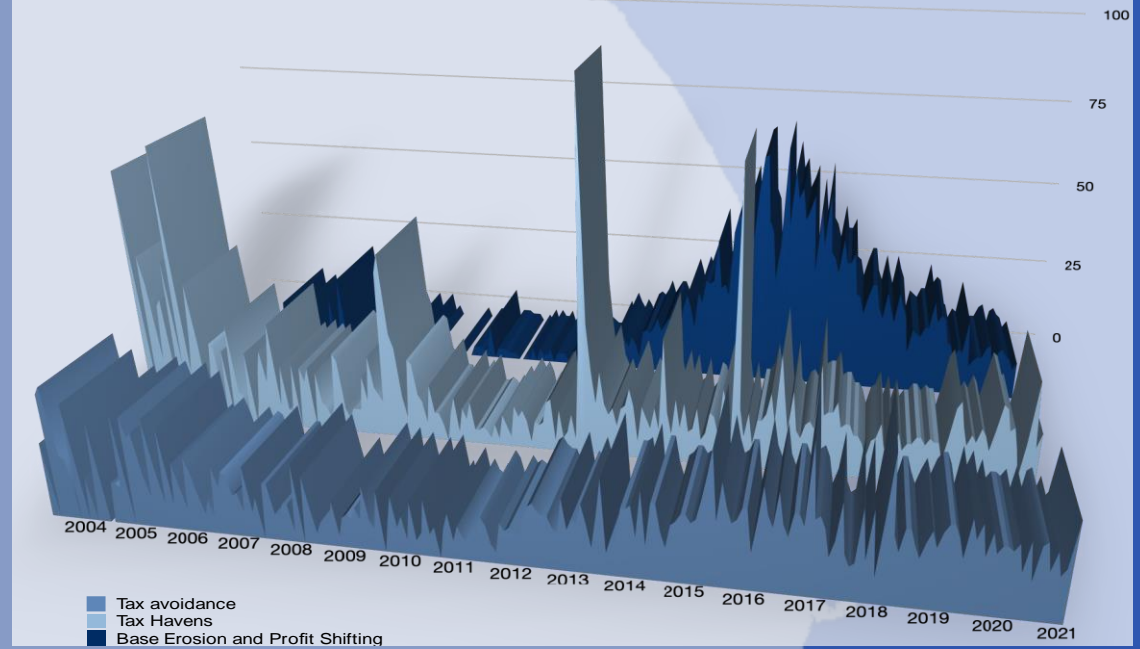
David Conn, The Guardian, 22 October 2021.



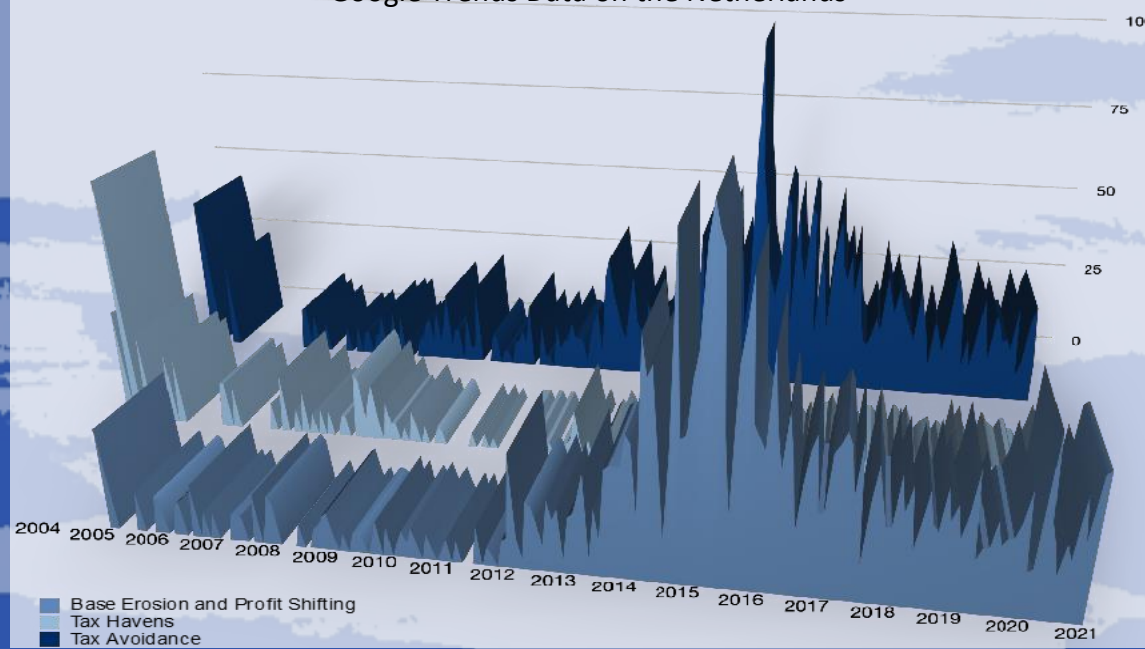
Google Trends Data on the United Kingdom



Google Trends Data on Germany



Google Trends Data on the Netherlands



*There is a hierarchy in the policy concerns that drive much of the work on tax avoidance and tax evasion.*

- 1. Tax revenue concerns*
- 2. Economic efficiency concerns*
- 3. Inter-taxpayer equity concerns on competition*
- 4. Inter-taxpayer equity concerns on the overall tax-mix*
- 5. Inter-nation equity concerns*

*The concept of the spirit of international tax law is colloquially used to indicate a conflict with:*

- The intent or purpose of national or international tax standards; or*
- The changed political morality which might not have found its way into formal (national) legislation just yet; or*
- A non-legal set of norms and/or personal moral preferences.*

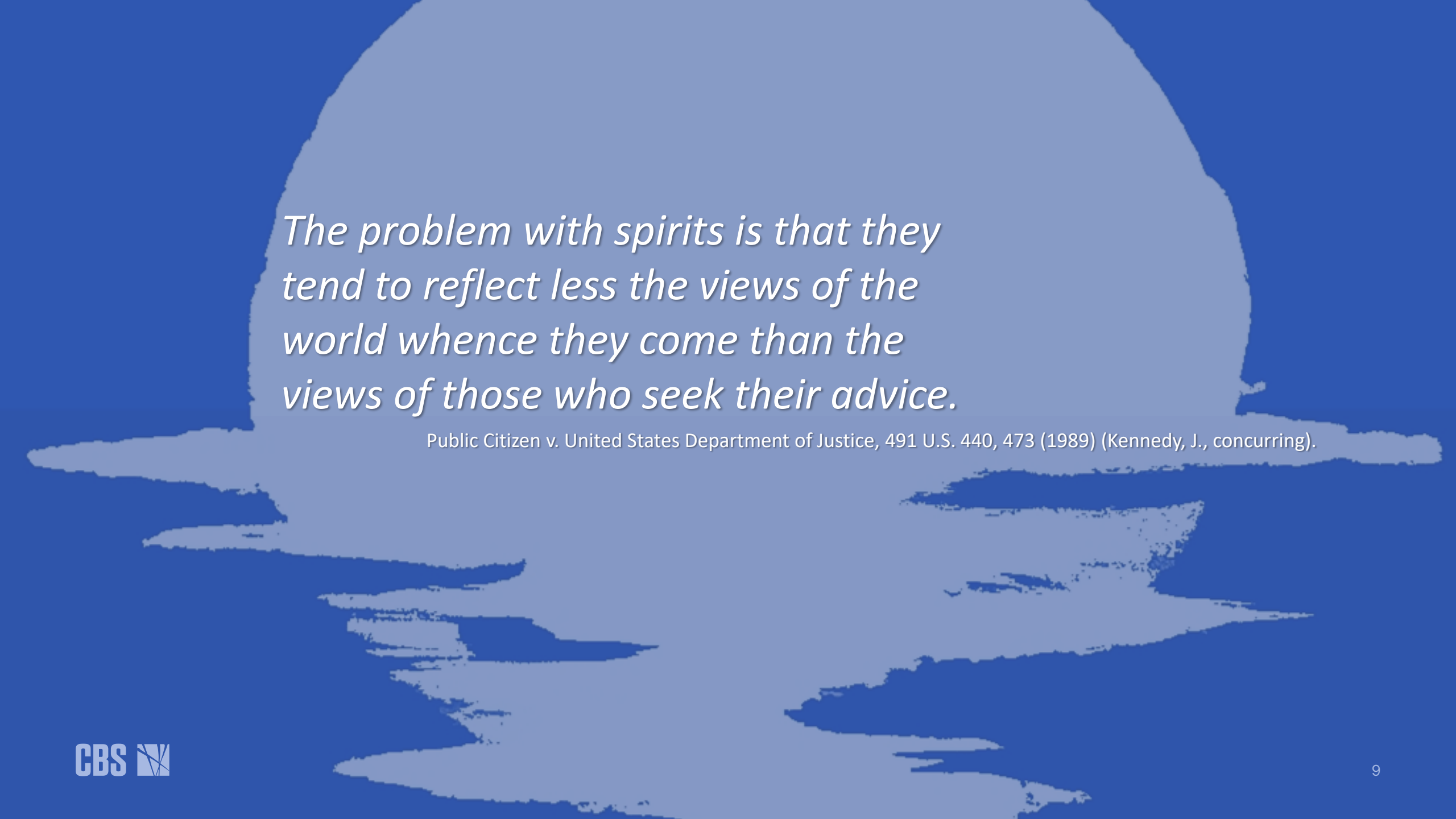
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**How should the spirit of international tax law be defined?**

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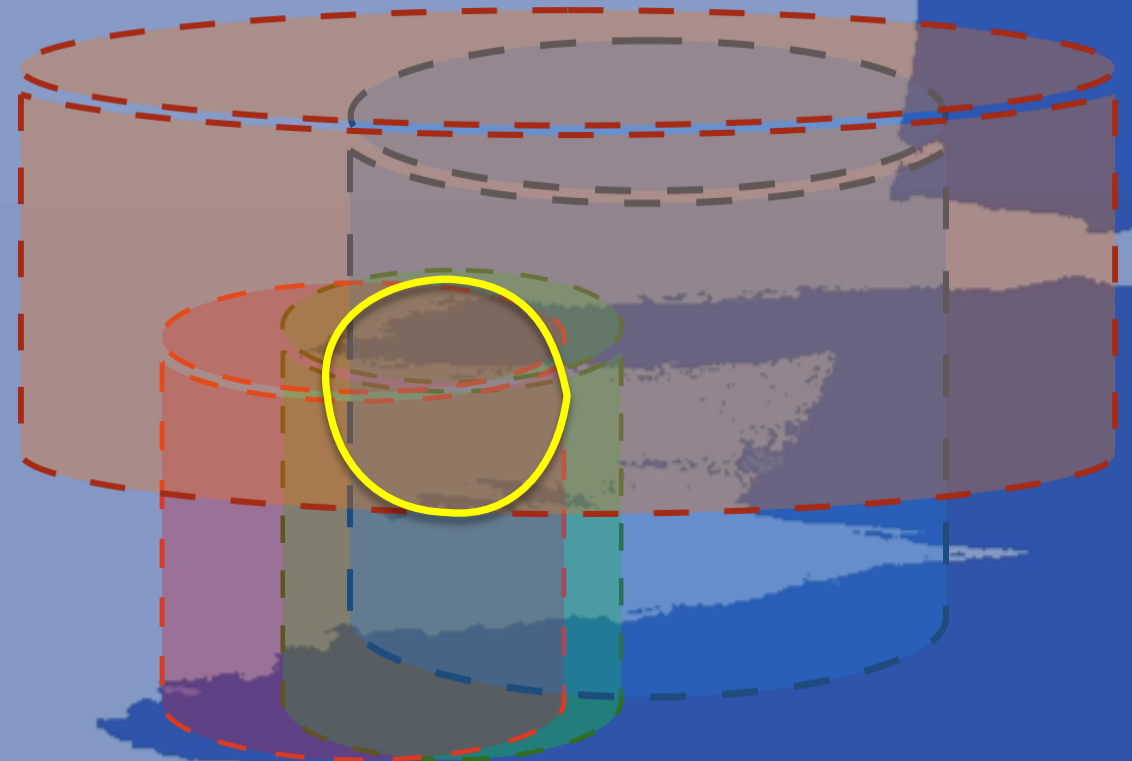
*The problem with spirits is that they tend to reflect less the views of the world whence they come than the views of those who seek their advice.*

Public Citizen v. United States Department of Justice, 491 U.S. 440, 473 (1989) (Kennedy, J., concurring).

*Spirit has generally been understood to mean  
the intention or rationale behind the law*

*Peer-reviewer 1 of my thesis*




*Too narrow a definition in the  
multi-dimensionality of reality*




*[I]nterpretation is not merely ascertainment of legislative intent. [...] The difficulties arise in the myriad of cases in respect to which the lawmaker had no intention because he had never thought of them.*

R. Pound, *The Spirit of the Common Law*, Transaction Publishers 1921, p. 174.

## *The concept of the spirit of international tax law is:*

-  *The intent or purpose of national or international tax standards;*
-  *The changed political morality which might not have found its way into formal (national) legislation just yet;*
-  *A non-legal set of norms and/or personal moral preferences.*



*How much do  
multinationals  
pay in corporate  
income tax?*

*Where do  
multinationals pay  
their corporate  
income tax?*

*In the twenty-first century, countries increasingly support [...] a “full taxation” norm that dictates that all of a company’s income should be taxed in places where it has real business activities.*

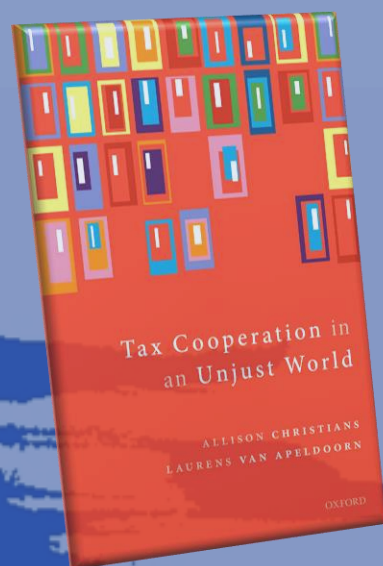
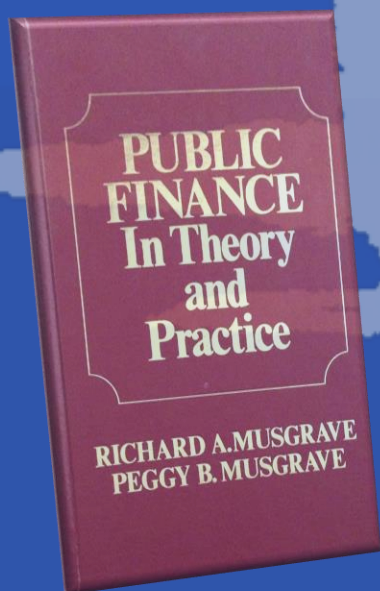
*Ruth Mason, *The Transformation of International Tax*, *American Journal of International Law*, 114(3), 353-402, 2020, p. 370.*

*In the Beneficial Ownership cases, the 13 judges of the Grand Chamber of the ECJ just did not like what they were looking at. You could feel it in the room.*

*Quote by Arne Møllin Ottosen, Partner at Kromann Reumert, during his presentation at the Beneficial Ownership – Last Dance seminar, Copenhagen University, 17 May 2023*

*Currently, there is no generally accepted mechanism based on concepts of justice and fairness for what a country's fair share should be.*

Cees Peters, *The Faltering Legitimacy of International Tax Law*, Doctoral Thesis, University of Tilburg, 2013, p. 85.



*[T]hese actions are not directly aimed at changing the existing international standards on the allocation of taxing rights on cross-border income*

OECD, *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, 2013, p. 11.

*You can take anything you want, but  
you better not take it from me.*

Guns'n'Roses, Welcome to the Jungle, on *Appetite for  
Destruction*, Geffen Records, 1987

**Pillar 2 as the end of history: what  
happens if we kill off tax  
competition completely?**

6 articles



**Jeroen Lammers**

Assistant Professor International Tax Law | Entrepreneur

October 25, 2020



**Senator Mike Crapo**

@MikeCrapo



The global tax code negotiated at the OECD condemns  
tax competition, but blesses government subsidies. This  
deal is already sparking a global subsidy free-for-all.  
[reuters.com/world/asia-pac...](https://www.reuters.com/world/asia-pac...)

31/05/2023, 23:04



*International tax coordination can come at a price for especially (capital-poor) developing countries, as it increases the lock-in effect and strengthens the biases of the existing system.*

*If you always do what you have always done, you will always get what you have always gotten.*

Charles Doyle, Wolfgang Mieder & Fred Shapiro, *The Dictionary of Modern Proverbs*, Yale University Press, 2012, p. 57.

*To overcome this lock-in effect, two approaches could be considered:*

- 1. Start over and redesign the entire international system of profit taxation from first principles.*
- 2. Change the political narrative by recalibrating the policy concerns and/or their hierarchy.*

*Repurpose the spirit of international tax law by presenting it as concrete and ambitious policy goals guiding the development of the law, rather than implicit and abstract notions of fairness in the hope it will guide virtuous behaviour.*



# The Spirit of International Tax Law

From fiscal virtue to mission-oriented moon-shot

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