

# International Tax Avoidance

---

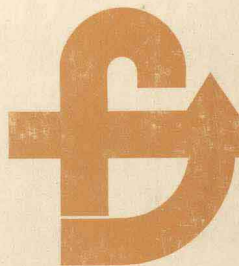
A Study by the Rotterdam  
Institute for Fiscal Studies

Volume A: General and Conceptual Material

1

International Series  
of the Rotterdam Institute for Fiscal Studies  
Erasmus University Rotterdam

KLWER



**International Tax Avoidance**

**This book has been published as no. 1 in the International Series of the  
Rotterdam Institute for Fiscal Studies, Erasmus University, Rotterdam**

# International Tax Avoidance

A Study by the Rotterdam Institute for Fiscal Studies

Volume A  
General and Conceptual Material

1979

KLUWER • Deventer • The Netherlands  
Boston • Antwerpen • London • Frankfurt

Cover design: Pieter J. van der Sman

ISBN 9020005103

Library of Congress Catalog Card Number:

© 1979, Kluwer, Deventer, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means, electronic, mechanical, photocopying, recording or otherwise, without the written permission of the publisher.

*Library of Congress Cataloging in Publication Data (revised):*

Erasmus Universiteit. Fiscaal-Economisch Instituut  
International Tax Avoidance

(International Series of the Rotterdam Institute for Fiscal Studies, Erasmus University, Rotterdam = no. 1)

Vol. A published in 1979 by Kluwer, Deventer, Boston.

Includes bibliographical references.

Contents: Vol. A. General and Conceptual Material

Vol. B. Country Reports

1. Tax Planning. i. Title. ii. Series: Erasmus Universiteit.

Fiscaal-Economisch Instituut. International Series of the Rotterdam Institute for Fiscal Studies, Erasmus University, Rotterdam = no. 1.

K4464.E7 341.48'4 79-307426

ISBN 90-200-0510-3 (Vol. A)

# Members of the Research-Team

## Project Leader

Dr. J.C.L. HUIKAMP

## Principal Authors

Dr. BARRY BRACEWELL–MILNES  
Mr. M.A. WISSELINK



# Preface

This study analyses the policy of six Western countries towards international tax avoidance within a framework that accommodates the standpoint and interests of both taxgatherer and taxpayer.

Volume A contains the general and conceptual material and starts by discussing what international tax avoidance means, what causes it and how it is achieved, especially through the use of tax havens. Attempts to prevent international tax avoidance cover the various legal measures employed and their administration and the international dimension of collaboration between governments.

This leads to the central analysis of international tax avoidance in terms of legal notions (especially the borderline between 'legitimate' and 'illegitimate' variants of avoidance).

The country measures treated in Volume B are compared and assessed in terms of the preceding analysis.

Volume B contains the country reports for  
Belgium,  
France,  
Germany,  
The Netherlands,  
United Kingdom,  
United States.

The 'Research Team' is grateful to Prof. dr. Jan H. Christiaanse and Prof. Paul R. McDaniel for commenting on certain parts of this study.





# List of Parts

	Page
<b>Part I</b>	
Introduction	23
by Dr. Barry Bracewell-Milnes	
<b>Part II</b>	
Methods of international tax avoidance	27
by Mr. M.A. Wisselink	
<b>Part III</b>	
Action centres: tax havens	67
by Mr. M.A. Wisselink	
<b>Part IV</b>	
The range of legal measures	119
by Mr. M.A. Wisselink	
<b>Part V</b>	
Administrative procedures	135
by Mr. M.A. Wisselink	
<b>Part VI</b>	
Collaboration between governments	145
by Dr. Barry Bracewell-Milnes	
<b>Part VII</b>	
Concepts of international tax avoidance: general	191
by Mr. M.A. Wisselink	
<b>Part VIII</b>	
Detailed approaches to international tax avoidance	215
by Mr. M.A. Wisselink	

	<b>Page</b>
<b>Part IX</b>	
Concepts of international tax avoidance: application to base-companies by Mr. M.A. Wisselink	259
<b>Part X</b>	
Abuse of tax treaties by Mr. M.A. Wisselink	311
<b>Part XI</b>	
Concepts and criteria of international tax avoidance by Dr. Barry Bracewell-Milnes and Mr. M.A. Wisselink	333
<b>Appendix I</b>	
Creating an Anstalt, a Stiftung, or a Trust in Liechtenstein	349
<b>Appendix II</b>	
Incorporating a Netherlands Antilles Company	359

# Contents

	Page
Part I – Introduction	23
Part II – Methods of international tax avoidance	27
Chapter 1 Introduction and definition of international tax avoidance	29
1.1 Introduction	29
1.2 A definition of international tax avoidance	29
Chapter 2 Movement of persons	31
2.1 Avoidance of residence of individuals	31
2.1.1 Avoidance of residence (fiscal domicile)	31
2.1.2 Transfer of residence	31
2.2 Avoidance of other personal attachments of an individual to a tax jurisdiction	33
2.3 Temporary taxpayer status for individuals	33
2.4 Avoidance of residence of corporations	34
2.4.1 Avoidance of residence	34
2.4.2 Transfer of residence (‘emigration’)	34
2.5 Choice of residence of corporations for tax reasons	35
2.5.1 ‘Letter-box’ companies and other companies	35
2.5.2 Intermediary operations	35
2.6 Movements of persons or bodies other than individuals or corporations	36
2.6.1 Partnerships or other agreements	36
Chapter 3 Non-movement of persons	37
3.1 Trusts or other fiduciary contracts	37
Chapter 4 Movement of funds, goods or services	38
4.1 Avoidance of a permanent establishment	38
4.2 Avoidance of attachments other than those creating permanent establishments	40
	11

## CONTENTS

	Page
4.3      Transfer of income or cost	40
4.3.1    Transfer between permanent establishments	40
4.3.1.1    Methods of allocation of profits: general	40
4.3.1.2    Head-office cost	42
4.3.1.3    Interest, royalties and other similar payments	43
4.3.1.4    Services	43
4.3.1.5    Prices of goods	43
4.3.1.6    Other cases	44
4.3.2    Intercompany pricing	45
4.3.2.1    General	45
4.3.2.1.1    Some rules of thumb	46
4.3.2.2    Prices of goods or services	47
4.3.2.3    Loans	47
4.3.2.4    Patents and know-how	47
4.3.2.5    Hire; hire-purchase; leasing	48
4.3.2.6    Management cost	48
4.3.2.7    Tax treaties	49
4.4      Movement of funds to tax havens	49
4.4.1    References	49
4.4.2    Further remarks on the concepts of base companies, letter-box companies and intermediary operations	50
4.4.2.1    Base companies	50
4.4.2.2    Letter-box companies	52
4.4.2.3    Intermediary operations	53
4.4.2.4    Recapitulation and conclusion	53
4.5      Replacement of branch by subsidiary or <i>vice versa</i>	54
4.6      Transfers or mergers of enterprises	55
4.7      Transfers of income or property by individuals	56
4.7.1    Sale of private (substantial) participations	56
4.7.2    Constructions with trusts or foundations	56
4.8      Income from employment or other labour income	57
4.9      International tax avoidance aspects of methods of relief from international double taxation	57
 Chapter 5    Non-movement of funds, goods, or services	 58
5.1      Reference to Chapter 4	58
5.2      Accumulation of income and property	58
 Chapter 6    Combinations of movements and non-movements	 60
 Chapter 7    Conclusions	 63
 Literature	 64

## CONTENTS

	Page
<b>Part III — Action centres: tax havens</b>	<b>67</b>
Chapter 1      Concepts and terminology: list of tax havens	70
Chapter 2      High-tax jurisdictions and the creation of tax havens	72
Chapter 3      Tax and non-tax functions	75
3.1          Exchange control	76
3.2          The tax functions	78
3.2.1      Business income or capital gains	78
3.2.1.1    Holding companies	79
3.2.1.2    Investment companies	81
3.2.1.3    Finance companies	83
3.2.1.4    Patent holding companies	87
3.2.1.5    Trading companies	89
3.2.1.6    Shipping and aircraft companies	91
3.2.1.7    Insurance companies	92
3.2.1.8    Offshore banks	94
3.2.1.9    Service companies	95
3.2.1.10   Miscellaneous	96
3.2.2      Personal income (non-business income)	97
3.2.3      Inheritance, gift and net wealth tax	98
3.2.4      Complexity of constructions	99
Chapter 4      Secrecy and protection of properties	103
4.1          Secrecy and fiscal authorities	103
4.2          Protection of assets and guarantees	104
4.3          Non-tax reasons for secrecy	106
Chapter 5      Regional aspects of tax havens	107
Chapter 6      Selectivity; popularity; competition between tax havens	109
6.1          Selectivity	109
6.2          Popularity	109
6.3          Competition	110
Chapter 7      Relative importance	111
Chapter 8      Tax havens and their environment	115
8.1          Causes of instability	115
8.2          Tax havens and tax treaties: the gathering of information	115
8.3          Tax havens and the EEC	116
8.4          The use of tax havens: examples from the tax literature	117
8.5          Reactions of high-tax jurisdictions	117

## CONTENTS

	Page
Chapter 9      Conclusion	118
 Part IV – The range of legal measures	 119
Chapter 1      Introduction	121
Chapter 2      Administrative and procedural measures: information gathering	122
2.1      Introduction	122
2.2      Reporting duties in general	122
2.2.1      Legal techniques	122
2.2.2      Situs of facts	123
2.2.3      Taxable subjects	125
Chapter 3      Shifting the burden of proof onto the taxpayer	126
Chapter 4      Fiscal audit	127
Chapter 5      Classification of tax measures against international avoidance	128
5.1      Introduction	128
5.2      Anti-avoidance legislation	128
5.2.1      General anti-avoidance articles in tax statutes	128
5.2.2      Specific anti-avoidance articles in tax statutes	129
5.2.3      Specific provisions combined with general criteria	130
5.2.4      Specific provisions for one or more groups of international-tax-avoidance practices	130
5.2.5      A systematic and comprehensive set of provisions against the whole complex of the principal international-tax-avoidance practices	131
5.2.6      General anti-avoidance provisions for the whole of tax legislation	131
5.2.7      Obligation to obtain government consent	132
5.2.8 <i>Forfataire</i> or notional taxable object	132
5.3      Tax rulings and tax compromise	133
 Part V – Administrative procedures	 135
Chapter 1      Introduction	137

## CONTENTS

	Page
Chapter 2      Obligations on the taxpayer or on third parties to report tax information	138
Chapter 3      Bank secrecy and secrecy obligations on the tax administration	140
Chapter 4      Co-operation between national tax administrations in the gathering of information	142
Chapter 5      Tax investigation methods	143
Literature	144
 Part VI – Collaboration between governments	 145
Chapter 1      League of Nations	147
1.1          London Model Convention: assessment of tax	148
1.2          London Model Convention: collection of tax	149
1.3          London Model Convention: reservations and conditions	149
Chapter 2      Unilateral measures	150
Chapter 3      Bilateral measures	153
3.1          The German Foreign Tax Law of 1972	155
3.2          The German-Swiss Tax Treaty of 1971	156
3.3          The French-Swiss Tax Treaty of 1966	159
Chapter 4      European Economic Community	160
Chapter 5      The Nordic Convention	166
Chapter 6      Organisation for Economic Co-operation and Development	170
Chapter 7      United Nations	175
7.1          Multinational corporations	175
7.1.1      Transfer pricing	176
7.1.2      Taxation	176
7.2          Tax treaties between developed and developing countries	179
7.2.1      First report	179
7.2.2      Second report	180
7.2.3      Third report	180
7.2.4      Fourth report	183



## CONTENTS

	Page
7.2.5 Fifth report	186
7.2.6 'Guidelines for Tax Treaties between Developed and Developing Countries'	186
7.2.7 Sixth report	186
 Chapter 8 Conclusion	 189
 Part VII – Concepts of international tax avoidance: general	 191
 Chapter 1 Introduction	 193
 Chapter 2 General methods of interpreting tax law	 197
 Chapter 3 Particular methods of interpreting tax law	 199
3.1 Introduction	199
3.2 Substance over form and preliminary questions	199
3.2.1 Introduction	199
3.2.2 Validity of civil-law form (agreements, etc.)	200
3.2.3 Substance over form, sham and business purpose	202
3.2.3.1 General	202
3.2.3.2 Substance over form	203
3.2.3.3 Sham	205
3.2.3.4 Business purpose	206
3.2.3.5 General conclusion	209
3.3 Abuse of tax law	209
3.3.1 General: abuse of law	209
3.3.2 Abusive circumvention of tax law	211
3.3.2.1 Introduction	211
3.3.2.2 The German concept	211
3.3.2.3 The Dutch concept	212
3.3.2.4 The French concept	213
3.3.2.5 The Belgian concept	213
3.4 Comparisons and conclusion	213
 Part VIII – Detailed approaches to international tax avoidance	 215
 Chapter 1 Movements of individuals and corporations	 217
1.1 Introduction	217
1.2 Emigration of individuals	217
1.2.1 Freedom of emigration	217
1.2.2 Tax law	218