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Belastingbudget: Onderzoek betekenis budgettaire impact belastingen bij parlementaire vaststelling belastingwetgeving
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RESEARCH MEANING BUDGETARY IMPACT OF TAXES REGARDING PARLIAMENTARY ADOPTION OF TAX LEGISLATION

The budgetary impact is a determining factor in the design and creation of tax legislation. For this reason, parliament, as a tax co-legislator, should be able to weigh its budgetary impact when assessing a (part of a) tax bill, thus involving meaningful parliamentary involvement. This includes forming a substantive position on tax legislation and adjusting or correcting the tax legislation. In any case, this requires an understanding and overview of the budgetary impact of that legislation. Parliament should also be able to monitor the budgetary impact of proposed tax legislation. The cabinet has an (active) obligation to individual MPs. However, parliament does not always appear to be sufficiently informed about the budgetary impact of tax legislation. As a consequence, this does not always involve a meaningful parliamentary involvement in the adoption of the tax bill. This observation is the reason for the research, which aims to give parliament a better understanding of the origin, meaning and scope of a fiscal motive or effect. The objective of the study is to highlight and assess the budgetary impact of tax legislation for the purposes of parliamentary decision-making on that legislation. The aim is also to make improvements to the parliamentary position as a tax co-legislator.

There is no defined definition for taxation. It is defensible on the basis of the literature that in the case of taxes, the basic principles should always be minimal: (I) public basis, (II) enforceability, (III) public revenue target, (IV) no individual compensation (otherwise it is a fee). A destination levy is a tax, provided that there is a public revenue target. The Constitution makes an unspecified distinction between 'taxes' and 'other levies', which expresses a difference in the degree of delegation in the sense that this is more limited with regard to the tax law. As a tax co-legislator, parliament therefore has more permanent involvement in a tax law than in a levy law. Also in the budget, a tax as such is visible in one place while levies are scattered under different indications. Therefore, if the above principles for taxation are raised, parliament should, as a co-legislator, determine that a levy – regardless of naming – should be considered as a tax, which means that it also amounts to such a burden in the budget.

Together with social contributions and compulsory own contributions taxes constitute the so-called collective burden. Among the collective burdens – a relevant concept for the application of the national budgetary rules – are the taxes exchangeable quantities with these other levies. The budgetary

impact of tax legislation cannot be considered isolated, as the changes in other levies can also have an impact on this. However, the interaction with the other levies is not always clear to parliament when tax legislation is in front of it.

The power to enact the tax code as a tax co-legislator does not explicitly affect the budgetary impact of that law. The tax law is intended to legitimize taxation and sets out the essential elements of a tax, such as the subject of levy, the object of taxation and the rate. The budgetary impact is not one of them and is therefore not mentioned in the tax code. The tax law has a continuous effect in principle and the budgetary consequences of the relevant law will fluctuate over time. From the point of view of legal certainty, a tax law does not, in principle, have a retroactive effect, unless, among other things, there are 'special budgetary circumstances'. However, these circumstances have not been further materialized, which means that they are filled in arbitrarily by the cabinet.

The explanatory memorandum of the tax law shows its budgetary impact on a transactional basis. Since the financial year 2018, this has been supplemented by explanation of estimates per measure. Although it is useful information in its own right is not always sufficient. Parliamentarians repeatedly ask for clarification or additional information for the purpose of completing the task as tax co-legislator. This information requirement is related to: the total budgetary playing field within which a change falls (such as the tax resource, the tax facility, the budgetary space under the revenue framework) and the applicable budgetary rules as well as any other customs. It is important for parliament to include these themes, if any, in the budget paragraph of the tax code.

The budget law provides for the annual determination of tax receipt. It contains the budgetary burden of tax facilities on an extra computable basis. However, the budget law does not directly have to do with (or can be traced back to) the adoption of the tax law. The budget law only includes one total amount of net tax receipt on a cash basis. Merging the receives of all tax resources is contrary to the budget principle of specification. Moreover, the representation of net tax receipts, after the 'exit' has been deducted to budget funds, is contrary to the budgetary principle of universality (completeness). It is clearer to reflect in the budget law the gross receipt per tax resource.

The national budgetary rules are based on the premise of a fixed and non-changing tax law, whereby tax receipts can and may fluctuate freely regardless of the cause of that fluctuation. As soon as the tax law is amended and, as a result, a budgetary effect occurs, this effect should be neutralized by taking policies with an opposite budgetary effect. This so-called 'automatic stabilization' is the starting point of fiscal policy laid down in the Public Finances Act. The European budgetary rules can nullify this premise if one of the standards is, or is likely to be, exceeded (the 3% deficit standard or the 60% debt standard in the corrective arm of the Stability and Growth Pact or the medium-term objective and the associated

spending rule in the preventive arm of the Stability and Growth Pact). This may result in changes to the tax law in order to reverse exceeding the norm or the treat to that.

Another exception to the principle of automatic stabilization is the revenue framework, which is not legally enshrined. The revenue framework is basically an agreement between coalition parties and looks at the budgetary impact of the tax law changes agreed in a coalition agreement together with the changes to the other collective burdens (social contributions and compulsory own contributions). On balance, that effect is a reduction or increase in the burden and therefore does not need to be neutralized. The budgetary impact of a (part of a) tax bill is relevant at the time of decision-making in parliament. Moreover, the budgetary impact of the indexation of various components of tax resources (such as buckets, exemptions, limit amounts, etc.) is outside the revenue framework, but it is not always clear to which components indexation is taking place and what the outcome of that indexation is. With regard to a in parliament presented tax bill, there is no longer any budgetary (playing) space in parliament for both coalition and opposition parties. The automatic stabilization and the permissible exception of the revenue framework place parliament as co-legislator of the tax law in a budgetary straitjacket.

Tax facilities (the former ‘tax expenditures’) are components of tax resources, of which, among other things, the annual budgetary burden is made clear in the “Miljoenennota”. Tax facilities sometimes seem to have a kinship with direct government spending. For the purpose of a comprehensive assessment of this direct public expenditure, the tax facilities are therefore reflected in the explanatory memorandum of departmental budgetary laws. There is also budgetary monitoring (and for some tax facilities even a multi-year budgeting mechanism) that is based on the rules of the expenditure ceiling. However, the tax facilities (with the exception of the negative tax facilities) imply an incoming cash flow that does not take place and which can therefore not be estimated until only sometime after the end of a tax or financial year. This mechanism does not compare well with an annual spending ceiling. On top of that, the starting point in the national budgetary rules on the separation of revenue and expenditure prevents them from simply shifting between tax facilities and direct public spending. There is hardly any direct relationship between the presentation of the tax facilities in the budget and budget paper and the tax legislation before parliament. In practice, the review framework for assessing the introduction or intensification of tax facilities is not effective. Moreover, the tax facilities do not require explicit consent or determination and therefore often escape parliamentary attention. By involving tax facilities more to the tax receipt in the budget cycle, there is an interest in paying attention to this.

The tax plan (package) to be submitted with “Prinsjesdag” often has a large amount of measures and for parliamentary consideration a relatively short time frame of only a few months is available. It puts the position of parliament as a tax co-legislator under (time) pressure. Moreover, there

is no legal obligation to submit a tax plan (annually), whereas the budget does. The tax plan suggests – both the bill as such and the measures contained therein – as if there are always (significant) budgetary interests at stake, but apart from editorial changes, this is in principle the case for any change in the tax code. In fact, the tax plan has no special status in fiscal terms. Research on 28 tax plans (1993-2020) shows that the average absolute budgetary impact of the tax plan on the total estimated receipt taxes and (as of 2000) social security contributions for the coming financial year is only 0.9%. At the same time, the total revenue achieved is not infrequently substantially deviated from the estimate, with research for financial years 1993-2018 showing an average absolute deviation of 3.9%. The fairly precise (assisting) estimate of the total advance receipt by means of the tax plan is therefore in contrast to the average much larger deviation that appears to occur afterwards. In addition, the tax plan also partly shifts between tax resources, but also for this they are relatively modest changes. On average, the cumulative tax increases and reductions in a tax plan are 1.3% and –1.2% of the estimated total receipt taxes and (as of 2000) social security contributions for the upcoming financial year. The budgetary impact of the tax plan is therefore relatively small in general terms. Breaking the myth that the tax plan (package) always has major budgetary interests at stake gives parliament a hand in setting out the parliamentary agenda on tax legislation much more with an eye for its own interest: to exercise substantial influence over proposed tax legislation.

When introducing new taxes, the budgetary objective is often prominent. This objective is also reflected in the revenue framework. During the parliamentary debate, the cabinet deviates from this in a relatively quiet way, without parliament having a hand in this (or being informed about it). The budgetary objective is only relevant at the time of parliamentary decision-making on the present tax legislation. This confirms the impression that the revenue framework is primarily a budgetary constraint towards parliament. After the introduction or entry into force of the new tax, there is no longer any regard for the actual budgetary impact, whereas these can be followed in the various budget papers as it is an independent tax source. A link between (the bookings under) the revenue framework and the budgetary impact of the tax legislation cannot always be made up for in the budget documents and the explanatory memorandum of the tax law, which also makes it not clear whether a booking is made at all. It is not uncommon for Parliamentarians to ask for additional information in order to be able to design amendments independently. The provision of information to parliament on the budgetary impact of the new taxes examined is briefly.

Repair legislation for tax judgments is a regular one. Nevertheless, it is still an exception. The vast majority of judgments are not repaired, and the budgetary consequences of those judgments are also affected by automatic stabilization. Arrest repair is based solely on a cabinet decision. It is not uncommon to point at the undesirability of the budgetary consequences of a judgment, although there is no objective yardstick to counter these

consequences. There is an impression that the cabinet sometimes takes a heavy look at the budgetary consequences in the justification in order to potentially create a scare effect. It happens that the budgetary consequences of a judgment to be repaired are fitted under the revenue framework, for which the budgetary impact of the repair legislation is used to compensate. But it also happens that the budgetary consequences of the judgment to be repaired are subject to automatic stabilization. This means that the budgetary consequences of the repair legislation – and not the judgment itself – must be fitted into the revenue framework. Although this approach is purer, in the sense that the budgetary consequences of all judgments – including those that are not being repaired – are treated equally, the budgetary consequences of the judgment to be repaired are not neutralized (whereas the repair on the basis of a budgetary reason is the matter of the case, although the repair legislation can also shift the tax burden rather than neutralize it). However, because the approach is not always the same, the use of arrest repair legislation because of the budgetary consequences is arbitrary.

In conclusion, parliament, as a tax co-legislator, does not always understand what's going on about the budgetary impact of tax legislation. Although information is provided in various ways on this determining factor for the design of the tax law (the explanatory memorandum of the tax law, estimates, budget paper, budget law and budgetary information), there is no consistency and a link with the tax legislation in parliament is not always visible. It is also important to stress out that parliament only formally determines the tax receipt in the budget law, but that is in its current form a power that has little material significance. Requests for budgetary information are not always accepted by the cabinet, which puts parliamentarians in an unbalanced battle. In addition, the national budgetary rules effectively reduce the budgetary leeway for parliament after the conclusion of a coalition agreement, and thus, in essence, the impact on the tax code. Parliamentary counterweight to the application of the budgetary rules is not there, although there are no formal obstacles to a firmer position of parliament. The relatively weak parliamentary position in terms of understanding and overview of the budgetary impact of tax legislation deserves to be strengthened. The recommendations made serve that purpose.

