

Popper and legal science

Max Velthoven

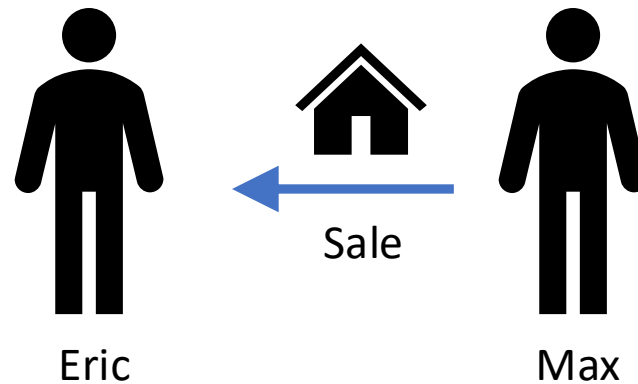
Quick intro – Max Velthoven

1. Introduction: tax lawyer at EY (Netherlands) and PhD in EU Tax Law (obtained July 2024)
2. Why Popper?
3. Work so far:
 1. PhD thesis on EU law based on Popper and Deutsch > see next slides
 2. Paper on AI and philosophy of Popper and Deutsch with Eric
4. More to come

Introduction case

Facts

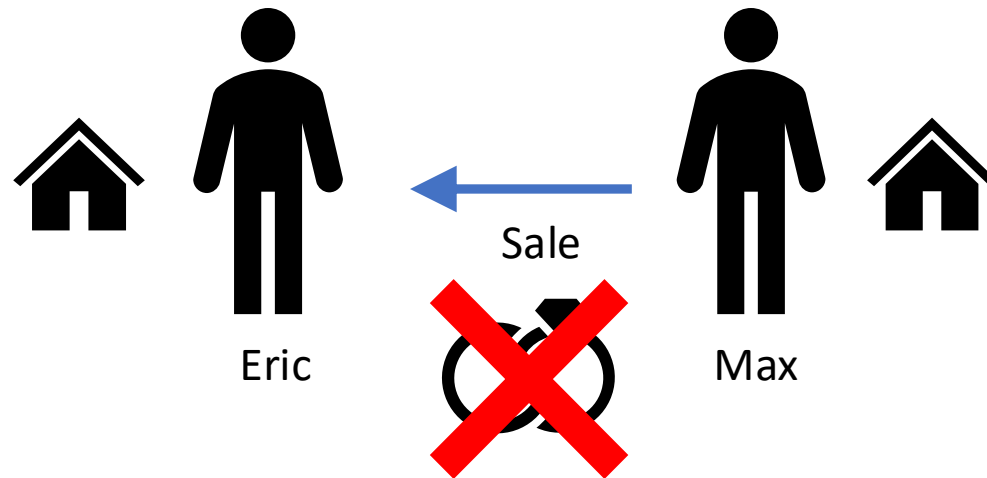
- Max wants to sell his house to Eric.
- Real Estate Transfer Tax (Stamp Duty) is due on the sale.
- Married couples can transfer goods to each other tax free.



Introduction case

Tax planning scheme

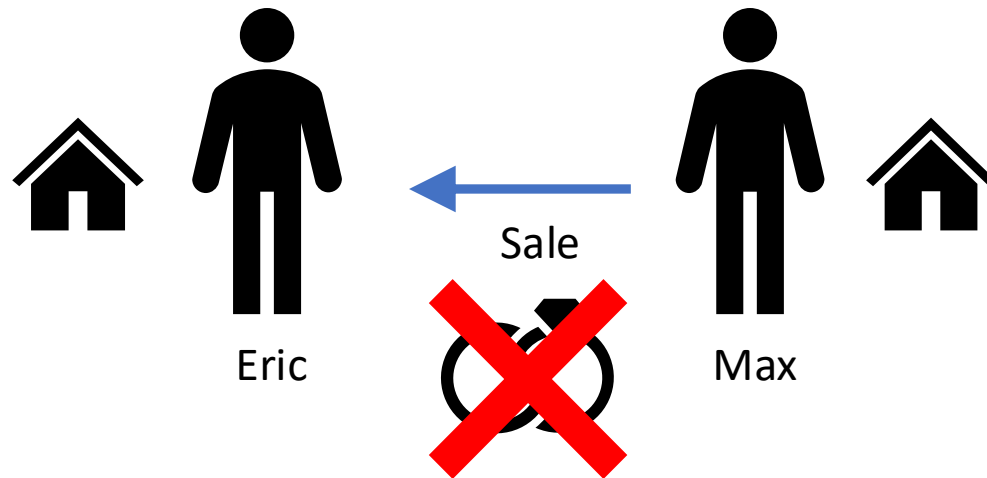
1. Max and Eric get married.
2. On the same day, Max transfers the house to Eric.
3. On the same day, Max and Eric file for divorce.



Introduction case

Dutch Supreme Court

1. Tax avoidance was the main purpose of the wedding.
2. In this case, granting the tax exemption for married couples would be against the object and purpose of the law.
3. Hence, the one-day-wedding is abuse of law and should be ignored for tax purposes.



What is my research topic?



National competence



*General anti-abuse rule for corporate income
tax changes from a national rule to an EU
rule (ATAD GAAR)*



EU competence

*News for common law folks: Australia, UK,
and the US have similar concepts.*

What is the task of legal science according to Popper?

- Popper: task of social science is to trace the unintended social repercussions of intentional human actions.
- What does Popper's philosophy mean for the legal scientist?
- We cannot find the *perfect law*, but we can make the law better by *eliminating bad laws*.
- Popperian legal science is normative and not positivist: what do we think of new laws? How can they be improved? Do they solve the issue they set out to solve (piecemeal social engineering)? How can we monitor the unintended consequences?
- In fact, *traditional* legal science is not even that bad when considered a Popperian perspective. However, inferiority complex ("aping" – Popper) pushes social scientists in the wrong direction ("empiricism", "comparative legal science", "interdisciplinary", etc.).

Popper and Deutsch: self-correction as a normative concept

- Popper's view of democracy align with his views on the scientific method which is about *removing bad ideas*.
- For example: Popper was opposed to coalition governments.
- *Society's ability for self-correction* as a normative concept. A key notion is responsibility.
- What issues does my research topic raise from a self-correction perspective? Amongst others: division of responsibility between EU and national institutions.

What is the problem from a self-correction perspective?



National parliament

National judiciary



European Commission

Court of Justice



Who is responsible for bad outcomes?

More to come

1. Many boring tax law papers
2. Bringing Popperian epistemology into tax law: “giving a glass of water to somebody in hell.”
3. Popper and AI (for tax authorities?)
4. Popper and *The Matrix* (in my [thesis](#)): Popperian perspective on Plato’s cave analogy.
Is Neo a hero or a tyrant in disguise?
5. Why legal science needs Deutsch’ *Reality of Abstractions*
6. Taxpayer position/filing position: how a *good explanation* can protect even a taxpayer who is wrong:
 1. Example of a *bad* explanation: “the sun was shining when I filed my tax return, so I treated this lunch receipt as tax deductible” > no penalty relief, because this is not an objectively defensible explanation.
 2. Example of a good explanation: “this lunch receipt was deductible based on a literal interpretation of the law.” > penalty relief, even if the judge interprets the provision differently and finds it is *not* tax deductible.

Thank you

Max Velthoven

Max.velthoven@nl.ey.com

+31 6 21 25 11 30