

Dr. M.J. van Hulten LLM

Aiming for Well-Being through Taxation

A Framework of Caution and Restraint for States

 Wolters Kluwer

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CONDENSED TABLE OF CONTENTS

1. Introduction
2. The case for states to aim for well-being through taxation
3. Challenging the case for states to aim for well-being through taxation
4. Aiming for well-being through taxation: assessment framework
5. Well-being and tax incentives for innovation
6. Well-being and environmental taxes
7. Well-being and tax incentives for employment
8. Discussion of assessment results and recommendations
9. Summary and conclusions

List of reference material used

CHAPTER 1

Introduction

1.1 Motivation for research regarding states aiming for well-being through taxation

In recent years, concepts of well-being have gained increasing attention in societal debates. Studies that measure well-being of people are published on a regular basis.¹ The Organisation for Economic Co-operation and Development (“OECD”) Better Life Index is an example of such an initiative that allows us to measure well-being in our own community, and to compare it with many other OECD regions.²

In turn, some policymakers have been using notions of well-being, for instance in measuring the progress of their nations. In 2010, the Prime Minister of the United Kingdom launched a National Wellbeing Programme to complement the more traditional economic measures used by policymakers and to provide an additional way to think about what people value and the progress made as a society.³ The OECD in June 2016 set as goal to redefine the growth narrative to put the well-being of people at the centre of its efforts.⁴ New Zealand in May 2019 published its first Wellbeing Budget, broadening its definition of success for New Zealand to one that incorporates not just the health of its finances, but also of its natural resources, people, and communities.⁵ And the European Union (“EU”) serves as an example of an organisation that has explicitly codified a well-being aim. Article 3(1) of the Treaty on European Union reads: “*The Union's aim is to promote peace, its values and the well-being of its peoples.*” Since EU Member States shall facilitate the achievement of the EU’s tasks and refrain from any measure which could jeopardise the attainment of the EU’s objectives,⁶ in this way a basis is provided for the role that well-being should play in the functioning of the EU and of its Member States.

1 See for instance the Gallup-Sharecare Well-Being Index, <https://www.sharecare.com/static/well-being-index>, the United Kingdom’s Office for National Statistics’ Measure of National Well-being, <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing>, and the National Children’s Bureau measuring the well-being of children in care, <https://www.ncb.org.uk/resources-publications/resources/measuring-wellbeing-children-care>. Accessed 12 August 2019.

2 <http://www.oecdbetterlifeindex.org/#/1111111111>. Accessed 12 August 2019.

3 <https://www.gov.uk/government/collections/national-wellbeing>. Accessed 12 August 2019.

4 <https://www.oecd.org/mcm/documents/strategic-orientations-of-the-secretary-general-2016.pdf>, p. 5. Accessed 12 August 2019.

5 <https://treasury.govt.nz/sites/default/files/2019-06/b19-wellbeing-budget.pdf>, p. 2. Accessed 12 August 2019.

6 Consolidated version of the Treaty on European Union, Article 4(3).

Parallel to these policy developments, a growing body of research from different scientific disciplines is concerned with the role that well-being should play in the functioning of states. One example is the research by Kaplow and Shavell, in which they argued that legal policy analysis should be guided by reference to some coherent way of aggregating individuals' well-being (in contrast to the view that policy analysis should be guided by notions of fairness and thus, at least in part, without regard to individuals' well-being).⁷ Another example is the Report by the Commission on the Measurement of Economic Performance and Social Progress, a Commission created at the beginning of 2008 on the French government's initiative to identify the limits of Gross Domestic Product ("GDP") as an indicator of economic performance and social progress and to assess the feasibility of alternative measurement tools.⁸ In its report this Commission among other things advocated towards political leaders a shift of emphasis from economic production-oriented measurement systems to a measurement system focused on the well-being of current and future generations.⁹ Well-being is thus increasingly put forward as a policy goal.¹⁰

Particularly with respect to taxation, which as part of the funding and functioning of states is one of the major policies affecting people's everyday lives, there has also been a call for assessment not only in terms of economic measures such as GDP and unemployment but also in terms of well-being measures.¹¹ It has for instance been argued in literature that taxation in accordance with the ability-to-pay principle should be part of governments' pursuit of well-being.¹² It has also been argued in literature that good tax law unites optimal well-being and welfare.¹³ However, notwithstanding the growing attention for the interactions between well-being and taxation, the normative question whether states *should* aim for well-being through taxation has up to now not yet been the focus point in scientific research.

7 L. Kaplow & S.M Shavell, *Fairness versus welfare*, Cambridge, Harvard University Press 2002, p. 27.

8 J.E. Stiglitz, A.K. Sen & J.P. Fitoussi, *Report by the Commission on the Measurement of Economic Performance and Social Progress*, 2009, p. 7, para. 1, available via <http://ec.europa.eu/eurostat/documents/118025/118123/Fitoussi+Commission+report>. Accessed 12 August 2019.

9 J.E. Stiglitz, A.K. Sen & J.P. Fitoussi, *Report by the Commission on the Measurement of Economic Performance and Social Progress*, 2009, p. 10, para. 13. Also see R. Hoekstra, *Replacing GDP by 2030; Towards a Common Language for the Well-being and Sustainability Community*, Cambridge University Press, May 2019.

10 Also see E. Diener, R. Lucas, U Schimmack & J. Helliwell, *Well-being for Public Policy*, New York: Oxford University Press 2008, making the case for implementing national accounts of well-being to help policy makers and individuals make better decisions.

11 See for instance S. Oishi, U. Schimmack & E. Diener, 'Progressive Taxation and the Subjective Well-being of Nations', *Psychological Science*, January 2012, 23(1), pp. 91-92, who called for examination of taxation also in terms of psychological measures such as subjective well-being or happiness. See also A. Akay, O. Bargain, M. Dolls, D. Neumann, A. Peichl & S. Siegloch, 'Happy Taxpayers? Income Taxation and Well-being', Discussion Paper No. 6999, November 2012, IZA, pp. 1-2.

12 L.W.D. Wijtvliet, *The Tax Tectonics: Well-being and Wealth Inequality in Relation to a Shift in the Tax Mix from Direct to Indirect Taxes*, doctoral thesis 2018, CentER Dissertation Series no. 557, p. 322. This does not mean however, according to Wijtvliet, that the ability-to-pay principle is absolute. (*Ibid.*, p. 607).

13 A.C. Rijkers, 'Hofstra's plaats en taak van de belastingwetenschap', *Weekblad Fiscaal Recht* 2009/861, pp. 861-864.

This PhD thesis specifically concerns that normative question of whether states should aim for well-being through taxation, and of what should be the framework of assessment in that regard.

Initially, there seems to be a case for states to aim for well-being through taxation, at least to a certain extent. Namely, it seems difficult to uphold that states should *not* be concerned with the well-being of their people. And if well-being should indeed be of importance for states, then it seems to make sense that taxation, as part of the funding and functioning of states and affecting people's everyday lives, should to a certain extent be aligned with states' well-being aims as well.

This research starts by elaborating on this, assessing the normative support for the position that states should aim for well-being through taxation. It will be concluded that such a general position can be argued under different – but not all – normative theories. Upon further reflection it is argued that, when it comes to concretisation, the concepts of well-being, taxation, and their purposeful combination by states raise many intricate and important issues that may often not be resolvable if one is looking for broad support. This leads to the proposal of an assessment framework that instils caution and restraint in states aiming for well-being through taxation. Application of this framework of assessment to three case studies of topics that may attract states to aim for well-being through taxation (namely the topics of innovation, environment, and employment) subsequently serves to illustrate the application of the proposed framework of assessment, and to identify practices, issues, and recommendations to be made.

The current chapter 1 presents the main research questions of this research (section 1.2), and argues the significance of the research (section 1.3). The following sections of chapter 1 also outline the methodological approach used (section 1.4), and set out the research limitations (section 1.5) and structure (section 1.6).

1.2 Research questions

The intent of this research is first to assess whether states should aim for well-being through taxation. The second aim of this research is to determine a framework of assessment, to be used when states choose to aim for well-being through taxation. The core concepts involved (namely 'well-being', 'taxation' and 'states') are briefly introduced here and are addressed in more detail in chapters 2 and 3.

The concept of well-being is used in this research to describe that which is ultimately, or non-instrumentally, good for a person.¹⁴ Well-being is about how well one is doing, or in other words, how the life of an individual is going for that individual.¹⁵ Different possible

14 Compare S.M. Campbell, 'The concept of well-being', p. 403 in *The Routledge Handbook of Philosophy of Well-Being*, edited by G. Fletcher, Routledge 2016. Also see R.S. Crisp, 'Well-Being', in the publicly available online *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/well-being/>, accessed 12 August 2019.

15 S.M. Campbell, 'The concept of well-being', p. 403 in *The Routledge Handbook of Philosophy of Well-Being*, edited by G. Fletcher, Routledge 2016.

concepts of well-being, and divergent views on what constitutes or contributes to well-being, are extensively discussed in chapter 3 of this research.¹⁶

Taxation is used here to describe the imposition and/or the levying of taxes or more in general the system of taxing (natural or legal) persons.¹⁷ Taxes are normally payable under legal compulsion, exacted under legislative authority, assessed and collected by an institution carrying out functions of a public nature, and intended for a public purpose.¹⁸ When reference is made to taxation in this research, the various types of taxes (direct or indirect taxes, subjective or objective taxes, or taxes on wealth, income, consumption or transfers etc.) are all meant to be covered. For purposes of this research, 'taxation' can cover all instances of state operations regarding taxes. Therefore, 'taxation' is used in this research to cover for instance tax effects following from tax legislation, tax policy, and enforcement.

Notwithstanding that 'state' is an essentially contested concept,¹⁹ it is employed in this research to generally refer to an organisation that upholds law and order in a community, society, or country or, in other words, that provides a type of social ordering.²⁰ An important characteristic that is normally accorded to states is that they are aimed at the public interest, the scope and meaning of which is dependent for instance upon time, place, social developments and (not in the least place) political convictions.²¹ In any case, public interests are considered to be interests that concern all individuals in a state.²² Where this research speaks in general about the state, such reference is meant to cover all state powers in the field of legislation, administration, and execution, and therefore also encompasses the group of people with the authority to govern a state that is typically referred to as 'government'.²³ Notwithstanding, and where considered relevant in this research, different powers of state are addressed separately, to highlight particular considerations and recommendations for those specific powers. For instance, while this research does not primarily focus on the

16 Sections 3.1.2.1 and 3.1.2.2 of this research provide a discussion of (the choice between) different possible concepts of well-being, whereas sections 3.1.1 and 3.1.2 address divergent views on what constitutes or contributes to well-being.

17 Compare J. Snape, 'The 'Sinews of the State': Historical Justifications for Taxes and Tax Laws', p. 21 in *Philosophical Foundations of Tax Law*, edited by M. Bhandari, First Edition, Oxford University Press 2017. Also see R.M. Green, 'Ethics and Taxation: A Theoretical Framework', *The Journal of Religious Ethics* 12, 1984, p. 147, referring to taxation as the process whereby governments (or other communities of persons) raise revenue by imposing compulsory contributions.

18 J. Snape, 'The 'Sinews of the State': Historical Justifications for Taxes and Tax Laws', p. 9 in *Philosophical Foundations of Tax Law*, edited by M. Bhandari, First Edition, Oxford University Press 2017, with reference to M. Barassi, 'The Notion of Tax and the Different Types of Taxes', in B. Peeters et al. (eds.), *The Concept of Tax*, IBFD Amsterdam, 2005.

19 W.J. Witteveen, 'Dokteren aan het schip van staat', p. 23 in M.A.P. Bovens & W.J. Witteveen (eds.), *Het schip van staat: Beschouwingen over recht, staat en sturing*, W.E.J. Tjeek Willink – Zwolle 1985.

20 J. Snape, 'The 'Sinews of the State': Historical Justifications for Taxes and Tax Laws', p. 10 in *Philosophical Foundations of Tax Law*, edited by M. Bhandari, First Edition, Oxford University Press 2017.

21 S.A. Stevens, *De belaste overheid*, Kluwer 2003, pp. 25-26. Also see J. Snape, 'The 'Sinews of the State': Historical Justifications for Taxes and Tax Laws', in *Philosophical Foundations of Tax Law*, edited by M. Bhandari, First Edition, Oxford University Press 2017.

22 S.A. Stevens, *De belaste overheid*, Kluwer 2003, p. 26.

23 See the definition of 'government' in the online Oxford dictionary, available via <https://en.oxforddictionaries.com/definition/government>. Accessed 12 August 2019.

judicial branches of states, certain judicial aspects are nevertheless addressed (see notably section 3.3.2 and chapter 4 of this research).²⁴

Aiming for well-being through taxation for purposes of this research means the purposeful use of taxation (for example via tax legislation, tax policy, or tax enforcement) by states in the pursuit of certain well-being aims. Well-being aims could for example be to harm well-being as little as possible, to protect well-being, or to actively promote well-being.²⁵ Aiming for well-being includes state action that purposefully creates minimum conditions for people to strive for well-being. A less far-reaching conception would be to question whether states should care about well-being in matters of taxation. Namely, as taxes influence behaviour, taxes have well-being implications.²⁶ There are mainly two reasons why this research focuses instead on the more far-reaching question of whether states should aim for well-being through taxation. In the first place, if sufficient support can be established for the more far-reaching proposition, a less far-reaching proposition should normally be acceptable as well. In the second place, if states should care about well-being in matters of taxation, then this can reasonably also be expected to generate an argument for states to purposefully aim for well-being through taxation. Thus, the findings of this research are expected to be relevant also for those concerned with a conception that is not as far-reaching as aiming for well-being. And finally, aiming for well-being is not intended to imply necessary exclusivity. States aiming for well-being may also have other aims at the same time.

Combining these concepts, the questions central to this research read:

1. Should states aim for well-being through taxation?
2. What should be the framework for assessing taxation that aims for well-being?

Answering these main research questions requires consideration of sub-questions, for instance: what does well-being exactly mean, and what constitutes well-being? Is well-being a proper aim for states? Should we be looking at taxation as a way to achieve or contribute to states' well-being aims? Are there specific considerations arising from the purposeful combination of taxation and well-being aims? Can we establish from all of this a framework for assessing tax measures undertaken by states in their aim for well-being

24 For a further demarcation, reference is also made to the limitations set out in section 1.5 of this research.

25 See A. Sarch, 'Well-being and the law', p. 479 in *The Routledge Handbook of Philosophy of Well-Being*, edited by G. Fletcher, Routledge 2016, where the possibility – and desirability – of law aiming to promote or to protect well-being is discussed.

26 Compare M.S. Feldstein, 'Effects of Taxes on Economic Behavior', National Bureau of Economic Research Working Paper Series, Working Paper No. 13745, 2008, pp. 1-2. Also see D.J. Wolfson, *Public Finance and Development Strategy*, The Johns Hopkins University Press 1979, p. 125 and p. 159, where the influence of taxes on choice is addressed.

through taxation? These and other sub-questions are addressed in this research,²⁷ and culminate in answering the main research questions in chapters 3 and 4.

1.3 Significance

Being well is argued by some to be one of the main goals of people all over the world,²⁸ and the concept of well-being has gained an increasing focus from different societal²⁹ and scientific perspectives.³⁰ One form or other of well-being can also be seen to play an important role in many of the different ways of thinking about what is good and what is right, which in turn impacts how we think and feel about state functioning.³¹ The general idea that states should look after the well-being of their people therefore has initial appeal.³²

However, notwithstanding that there is also a growing attention for the interactions between well-being and taxation,³³ the normative question whether states should aim for well-being through taxation has up to now not yet centred in detailed scientific research. Existing scientific literature addressing normative connections between states, well-being, and taxation, insofar found, does not have as primary focus, nor does it exhaustively address,

27 For an in-depth discussion of what well-being exactly means, and what constitutes well-being, reference can be had to sections 3.1.1 and 3.1.2. Whether well-being is a proper aim for states is addressed in sections 2.1 and 3.1.2 of this research. The question of whether we should be looking at taxation as a way to achieve or contribute to states' well-being aims is the focus of sections 3.2 and 3.3. Specific considerations arising from the purposeful combination of taxation and well-being aims are elaborated upon in section 3.3. And chapter 4 determines a framework for assessing tax measures undertaken by states in their aim for well-being through taxation.

28 See for instance A.K. Sen, *The Idea of Justice*, Penguin Books, 2009, p. 287, and *The Routledge Handbook of Philosophy of Well-Being*, edited by G. Fletcher, Routledge 2016, Introduction, p. 1.

29 Layard observed that the interest in well-being has ballooned and referred among other things to (media attention for) support from David Cameron, Nicolas Sarkozy and a former Harvard President. R. Layard, *Happiness: Lessons from a New Science*, Penguin Books 2011, revised and updated edition, p. 239 and further.

30 For an overview see A. Alexandrova, 'The science of well-being', pp. 389-401 in *The Routledge Handbook of Philosophy of Well-Being*, edited by G. Fletcher, Routledge 2016.

31 R.S. Crisp, 'Well-Being', in the publicly available online *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/well-being/>, accessed 12 August 2019.

32 See for instance A. Gerritsen, 'Optimal taxation when people do not maximize well-being', *Journal of Public Economics* 144, 2016, p. 123, where the assumption is retained that government ought to care about people's well-being.

33 See for instance A. Gerritsen, 'Optimal taxation when people do not maximize well-being', *Journal of Public Economics* 144, 2016, p. 123; S. Oishi, U. Schimmack & E. Diener, 'Progressive Taxation and the Subjective Well-being of Nations', *Psychological Science*, January 2012, 23(1), and; L.W.D. Wijnvliet, *The Tax Tectonics: Well-being and Wealth Inequality in Relation to a Shift in the Tax Mix from Direct to Indirect Taxes*, doctoral thesis 2018, CentER Dissertation Series no. 557.

the question whether states *ought* to aim for well-being through taxation, and what the framework of assessment in this regard should be.³⁴

A more substantive body of existing literature deals with the typically economic concept of welfare and its importance for states and taxation.³⁵ Focus has also gone out to whether

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- 34 Without trying to be exhaustive, reference can for instance be made to A. Gerritsen, 'Optimal taxation when people do not maximize well-being', *Journal of Public Economics* 144, 2016, where a well-being argument for corrective taxation is proposed; S. Oishi, U. Schimmack & E. Diener, 'Progressive Taxation and the Subjective Well-being of Nations', *Psychological Science*, January 2012, 23(1), who expressed the hope that taxation will be examined not only in terms of economic measures such as GDP or unemployment but also in terms of psychological measures such as happiness or subjective well-being in the future; C. Osterloh-Konrad, 'Zur Legitimation steuerlicher Umverteilung', *Steuer und Wirtschaft* 2017, Vol. 4, p. 316, addressing normative aspects of redistributive taxation also in the context of well-being, and; L.W.D. Wijtvliet, *The Tax Tectonics: Well-being and Wealth Inequality in Relation to a Shift in the Tax Mix from Direct to Indirect Taxes*, doctoral thesis 2018, CentER Dissertation Series no. 557, arguing that taxation in accordance with the (non-absolute) ability-to-pay principle should be part of governments' pursuit of well-being (ibid., pp. 322-323 and p. 607). In Dutch literature, reference can be made to M.J.H. Smeets, 'Het begrip 'belastingen' en de toenemende betekenis van niet-fiscale doeleinden bij het heffen van belastingen', *Weekblad Fiscaal Recht* 1947/3837, who recalled that the levy of taxes is not an aim in its own, but rather a means to achieve the state goal of promoting the general well-being of citizens. According to Smeets the tax apparatus may be used for purposes of that goal also if that requires something that does not (immediately) align with acquiring budgetary funding; W.J.M. de Langen, *De Grondbeginselen van het Nederlandse Belastingrecht*, N. Samsom N.V., 1954-1958, where a strive for a maximum of well-being is identified and described, under an empirical approach, as one of the basic principles of Dutch tax law. Notwithstanding that De Langen used the term 'welfare principle', the aim of this principle is subsequently defined by De Langen with reference to well-being (ibid., p. 339), and; A.C. Rijkers, 'Hofstra's plaats en taak van de belastingwetenschap', *Weekblad Fiscaal Recht* 2009/861, stating that the direction of the study of taxation is determined by the correlation of maximisation of both well-being and welfare.
- 35 See for instance J.A. Mirrlees, *Welfare, Incentives, and Taxation*, Oxford University Press 2006; Institute for Fiscal Studies, *Tax by Design*, chaired by Sir James Mirrlees, Oxford University Press 2011, p. 23, arguing that a good tax system will not just limit negative effects on efficiency but will also promote economic welfare by dealing with externalities which arise when one person or organisation does not take account of the effects of their actions on others; E.D. Kleinbard, *We Are Better Than This: How Government Should Spend Our Money*, Oxford University Press 2016, p. 10 and 336, stating that what we should care about is aggregate welfare, incorporating all the instances of happiness, well-being, satisfaction, contentment, or similar concepts that together add up to what we would like to describe as an authentic and good life, and that taxation can complement governments trying to enhance such aggregate welfare; K. Tipke & J. Lang, *Steuerrecht*, Dr. Otto Schmidt KG Köln 2015, Auflage 22, p. 74 and 101, who indicated the public welfare principle as a social norm that can justify deviations from fundamental tax principles; H. Haller, *Die Steuern: Grundlinien eines Rationalen Systems Öffentlicher Abgaben*, J.C.B. Mohr (Paul Siebeck) Tübingen 1971, Auflage 2, pp. 208-210, proposing welfare maximisation for all citizens as one of the secondary aims of taxation; D. Brüll, *Objectieve en subjectieve aspecten van het fiscale winstbegrip*, N.V. Uitgeverij FED, Amsterdam 1965, p. 8, who did not acknowledge a welfare principle as a principle of law, but rather considered acting on the basis of a welfare principle a part of economy in tax law, and; H.M.N. Schonis, 'Het veranderende nationale fiscale landschap voor ondernemers', *Weekblad Fiscaal Recht* 1996/214, who, although pleading for a limited use of taxation as an instrument to achieve additional goals, supported the use of taxation to promote welfare as such as a goal that is in keeping with the welfare principle that underlies taxation.

states should use taxation to influence the happiness of people.³⁶ However, as is argued in more detail further on in this research,³⁷ concepts such as well-being, welfare, and happiness cannot always – and most often cannot – be fully equated and should in principle be carefully distinguished. Well-being is often considered a comprehensive concept, for instance involving ethical considerations and value judgments,³⁸ and dependent also upon non-material aspects³⁹ or upon non-scarce resources⁴⁰ that determine the quality of our life. Well-being was for example described as dependent on welfare but also on the value of individual rights.⁴¹

While there is growing attention for the interactions between well-being and taxation, the question whether states should aim for well-being through taxation has up to now

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- 36 See for instance T.D. Griffith, 'Progressive Taxation and Happiness', *Boston College Law Review* Vol. 45, 2004, pp. 1363-1398, and R. Layard, *Happiness: Lessons from a New Science*, Penguin Books 2011, revised and updated edition, pp. 153-155. For a more empirical approach to happiness, taxation, and states, reference is made to D. Lubian & L. Zarri, 'Happiness and tax morale: An empirical analysis', *Journal of Economic Behavior & Organization* 80(1), 2011, pp. 223-243.
- 37 See notably section 3.1.1.1 for a discussion of different concepts such as well-being, welfare, and happiness.
- 38 See for instance P. Hennipman, *Welfare Economics and the Theory of Economic Policy*, Edward Elgar 1995, p. xvii (introduction), where it is remarked that welfare, as distinct from well-being, is not an ethical concept. Rather, welfare, as consisting in the satisfaction of individual preferences, is mentioned to be a value-free (non-normative) concept (*ibid.*, pp. xix-xxiii).
- 39 See for instance B.M.S. van Praag & P. Frijters, 'The Measurement of Welfare and Well-Being; The Leyden approach', p. 31 in D. Kahneman, E. Diener, N. Schwartz (eds.), *Well-Being; The Foundations of Hedonic Psychology*, Russell Sage Foundation, New York, 1999, pp. 413-433, who described welfare as the evaluation assigned by the individual to income or, more generally, to the contribution to our well-being from those goods and services that we can buy with money. In comparison, they mentioned the comprehensive concept well-being to also encompass aspects other than material resources determining the quality of our life, such as health, the relationship with our partner and family and friends, the quality of our work (job satisfaction), our political freedom, our physical environment, et cetera. Also see P. Frijters, *Explorations of Welfare and Well-being*, Tinbergen Institute Research Series No. 196, University of Amsterdam 1999, pp. 2-3, where satisfaction with income is termed 'welfare', and satisfaction with life as a whole is termed 'well-being'. Compare B. Hessel, *Rechtsstaat en economische politiek*, Tjeenk Willink 1987, p. 19 and pp. 24-36, where well-being is described as the material and non-material needs of a people, which in ordinary speech is often distinguished from welfare, the latter being limited to material needs. As Hessel rightly notes, economic concepts of welfare nowadays however often also depend on non-material aspects (*ibid.*, p. 19). Wolfson for instance discussed welfare economics dealing with choices between scarce resources for the satisfaction of any want, be that material or non-material wants. See D.J. Wolfson, *Public Finance and Development Strategy*, The Johns Hopkins University Press 1979, pp. 12-13. And see Hennipman, who discussed the broad view that welfare is what results from the use of scarce means to satisfy needs. See P. Hennipman, *Welfare Economics and the Theory of Economic Policy*, Edward Elgar 1995, p. 18.
- 40 Compare Hennipman, who discussed the broad view that welfare is what results from the use of scarce means to satisfy needs. See P. Hennipman, *Welfare Economics and the Theory of Economic Policy*, Edward Elgar 1995, p. 18. Wolfson discussed welfare economics dealing with choices between scarce resources for the satisfaction of any want, be that material or non-material wants. See D.J. Wolfson, *Public Finance and Development Strategy*, The Johns Hopkins University Press 1979, pp. 12-13. Also see B. Hessel, *Rechtsstaat en economische politiek*, Tjeenk Willink 1987, notably p. 30, where a distinction between welfare and well-being is mentioned to be of little practical use, unless well-being also depends on gratuitous friendliness.
- 41 See K. Suzumura, 'Welfarism, Individual Rights, and Procedural Fairness', p. 605 in K.J. Arrow, A.K. Sen & K. Suzumura, *Handbook of Social Choice and Welfare; Volume Two*, Elsevier 2011.

not yet been the focus point in scientific research. Therefore, there is room for further research based on a normative approach, to determine more extensively and in more detail whether states should aim for well-being through taxation, and thus improve clarity and reduce uncertainty. Considering that policymakers are already using notions of well-being, also in relation to taxation,⁴² such further research is also relevant. The choice for well-being as the main topic of this research does however not mean that well-being is presumed to be the criterion by which taxation should be assessed. Rather, the intent is to scrutinise whether well-being, which has gained increasing attention also from a tax perspective, is a proper tax-related aim, and to determine a framework of assessment that contributes to decision making processes regarding taxation aimed at well-being. Indeed, this research emphasises that the concepts of well-being and taxation, and their purposeful combination by states, raise many intricate and important issues linked to fundamental considerations of, for instance, law, economics, politics, and society. Part of the societal and scientific significance of this research is that it calls attention to, and addresses, these questions and issues.

This research expands on the body of existing research through an approach from multiple perspectives, in an effort to link perspectives of philosophy of law and of tax law with perspectives of economics, politics, and psychological and social science. The chosen approach from multiple perspectives brings with it that this research cannot, and does not set out to be, all encompassing or exhaustive when it comes to the discussion of the different perspectives included.⁴³

In literature, the concept of well-being has been considered as a way to balance what can sometimes be conflicting values and viewpoints, such as regarding the importance of welfare and rights, in order to make reasonable decisions for a group.⁴⁴ Specifically social choice theories, that focus on development of a framework for rational collective decisions,

42 New Zealand for example introduced a Working for Families package in 2004, to help with the cost of raising a family. As part of the related Working for Families Tax Credits, New Zealand offered in-work tax credits for families where the parents have paid work for a required amount of hours, and family tax credits for each child in the family. In New Zealand's 2019 Wellbeing Budget, these latter credits are associated with the aim of improving child well-being. See <https://treasury.govt.nz/sites/default/files/2019-06/b19-wellbeing-budget.pdf>, pp. 24-25. Accessed 12 August 2019. Also see <https://www.ird.govt.nz/topics/working-for-families/how-working-for-families-works>. Accessed 12 August 2019.

43 Compare B. Hessel, *Rechtsstaat en economische politiek*, Tjeenk Willink 1987, pp. 3-5 and p. 572. The objective of Hessel was to develop a view of the (welfare) state that involves dimensions of legality, efficiency, and acceptability. Hessel noted that under the multidisciplinary approach taken, it was "impossible to do justice to all of the currents of opinion within the three disciplines mentioned." (*ibid.*, p. 572).

44 See K. Suzumura, 'Welfarism, Individual Rights, and Procedural Fairness', p. 605 in K.J. Arrow, A.K. Sen & K. Suzumura, *Handbook of Social Choice and Welfare; Volume Two*, Elsevier 2011.

recognise the plurality of competing viewpoints, and nevertheless see possibilities for (at least partial) resolutions.⁴⁵

This research serves as a demonstration of the possibility to work with different and sometimes competing normative viewpoints while getting useful and robust conclusions, under a method of plural reasoning that is discussed in more detail in section 1.4 of this research. This way, the research provides further formation of scientific theory and operationalisation of the importance of well-being in taxation and for states. This research combines such different normative viewpoints in a proposed framework for assessment of taxation that is used to aim for well-being. The proposed framework provides an addition to currently applicable or suggested frameworks that often depart primarily from one normative viewpoint, and that concern assessment of instrumental use of (tax) law more in general.⁴⁶

The chosen approach of normative reflection allows to subject presumptions and intuitions to critical examination.⁴⁷ Such reasoned scrutiny from different perspectives contributes to diversity, objectivity, and impartiality.⁴⁸ And while it is true that our reasoning is exposed

45 A.K. Sen, *The Idea of Justice*, Penguin Books, 2009, p. 92 and pp. 106-108. For the development of the theory of social choice, with major contributions from for instance Condorcet, Arrow, and Sen, reference can be had to K.J. Arrow, A.K. Sen & K. Suzumura, *Handbook of Social Choice and Welfare; Volume One*, Elsevier 2002; K.J. Arrow, A.K. Sen & K. Suzumura, *Handbook of Social Choice and Welfare; Volume Two*, Elsevier 2011, and; A.K. Sen, *The Idea of Justice*, Penguin Books, 2009, pp. 87-113.

46 For instance, Boer discussed and assessed different Dutch legal frameworks of assessment for instrumental use of taxation, and recommended that the use of taxation to influence or steer behaviour should be thoroughly assessed within a framework of principles such as, notably, equality, certainty, and expediency or purposiveness. See J.P. Boer, *Sturende belastingheffer een monster? Juridische kanttekeningen bij fiscaal instrumentalisme en 'tax nudging'*, Sdu uitgevers, 2013. Furthermore, Gribnau discussed how the exercise of authority should be compatible with an overall framework of basic values of a legal order, such as legal equality and legal certainty, in order for such exercise to be legitimate. See J.L.M. Gribnau, 'Legislative instrumentalism vs. legal principles in tax', *Coventry Law Journal* 16, 2013, p. 108. Gribnau operationalised such principles to contribute to a framework of assessment that uses concretised (sub)principles of legal certainty (for instance simplicity, clarity, and sustainability), equality (for instance neutrality, consistency, and unity), transparency, subsidiarity and proportionality, and ability-to-pay. See for instance J.L.M. Gribnau, 'Rechtsbeginselen en evaluatie van belastingwetgeving: rechtvaardigheid hanterbaar gemaakt', pp. 27-66 in *Vijf jaar Wet IB 2001*, edited by A.C. Rijkers & H. Vording, Deventer Kluwer 2006. Also see J.P. Boer & J.L.M. Gribnau, "Tax Nudges": Legal Aspects of Behaviourally Informed Strategies to Enhance Tax Compliance', 4 December 2018, available at SSRN: <http://dx.doi.org/10.2139/ssrn.3295964>. Accessed 12 August 2019. Kaplow and Shavell argued for a framework in which legal policy analysis should be guided exclusively by reference to some way of aggregating individuals' well-being. See L. Kaplow & S.M. Shavell, *Fairness versus welfare*, Cambridge, Harvard University Press 2002. Similarities with certain existing and applicable frameworks for assessment of (tax) law are further discussed in section 4.1 of this research.

47 A.K. Sen, *The Idea of Justice*, Penguin Books, 2009, pp. 35-36.

48 A.K. Sen, *The Idea of Justice*, Penguin Books, 2009, p. 45. See also: J.B. Rawls, 'Political Liberalism', New York: Columbia University Press, p. 110 and 119; A. Smith, *The Theory of Moral Sentiments: or An Essay Towards an Analysis of the Principles by which Men Naturally judge concerning the Conduct and Character First of Their Neighbors, and afterwards of Themselves*, 1759, 6th ed. London, 1790, part III, Chapter I, p. 2.