

INVITATION

Conference

"TAX TREATY CASE LAW AROUND THE GLOBE"

WU (Vienna University of Economics and Business)
May 23-25, 2013, Vienna, Austria

Organized by the Institute for Austrian and International Tax Law, WU, Vienna, in joint venture with the European Tax College, with the support of Ernst & Young Stiftung e.V.

The Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business) and the European Tax College of Tilburg University, with the support of Ernst & Young Stiftung e.V., are proud to invite you to the Conference **"TAX TREATY CASE LAW AROUND THE GLOBE"**.

Our Conference aims at presenting and discussing the most interesting Tax Treaty Cases which had been decided in 2012 all over the world. We are grateful that outstanding experts of 22 jurisdictions agreed to present the most relevant decisions taken in their countries. The main topics we identified have been clustered into eight "baskets" which will be dealt with in our eight conference sessions:

- Session 1: Personal and Substantive Scope (Art 1, 2 and 4 OECD Model)
- Session 2: Permanent Establishments (Art 5 OECD Model)
- Session 3: Business Profits and Associated Enterprises (Art 7 and Art 9 OECD Model)
- Session 4: Royalties (Art 12 OECD Model)
- Session 5: Dividends, Interest and Capital Gains (Art 10, 11 and 13 OECD Model)
- Session 6: Employment Income (Art 15, 18 and 19 OECD Model); Directors' Fees, Artistes and Sportsmen, Students and Other Income (Art 16, 17, 20, 21 OECD Model Convention)
- Session 7 : Non-discrimination (Art 24 OECD Model)

- Session 8: Methods to Avoid Double Taxation, Mutual Agreement Procedure, Exchange of information and Assistance in the Collection of Taxes (Art 23, 25, 26 and 27 OECD Model)

In each session of the Conference four to five Tax Treaty Cases will be presented and subsequently analyzed in a critical discussion, including the possible impact of the cases on the interpretation and application of tax treaties in other countries. For further details please refer to the programme attached.

The scientific results of the conference will be published in a book.

The Conference starts on May 23, 2013 at 17:00 with the Inaugural Lecture of Prof. Neil Buchanan from the George Washington University, Washington, followed by a panel discussion and Cocktail Reception. The working sessions will be held all day on May 24 and 25, 2013 at WU (Vienna University of Economics and Business). On May 24, the Mayor of Vienna will invite all the participants to an evening at a "Heurigen".

The participation fee for the Conference is EUR 1000.--. A waiver of the participation fee may be granted to (full-time) academics and other researchers who are employed at a university or other academic institutions (wherever located) and have been engaged in research activities related to the respective topic. The participation fee must be paid not later than April 15, 2013, and will not be refunded in the case of cancellation one week prior to the conference.

If you are interested, please send us the application form as soon as possible, stating whether you would like to register as a regular participant or apply for a waiver of the participation fee. Please send your applications via e-mail to **Renée Pestuka** (renee.pestuka@wu.ac.at)

Prof. Dr. Dr.h.c. Michael Lang

Head, Institute for
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

Prof. Dr. Josef Schuch

Professor at the Institute for
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

Prof. Dr. Jeffrey Owens

Director of the WU Global Tax Policy Center at the
Institute for Austrian and International Tax Law,
WU (Vienna University of Economics
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Prof. Dr. Pasquale Pistone

Jean Monnet *ad personam* Professor at the
Institute for Austrian and International Tax Law,
WU (Vienna University of Economics and Business)

Prof. Dr. Claus Staringer

Professor at the Institute for
Austrian and International Tax Law
WU (Vienna University of Economics
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Prof. Dr. Alfred Storck

Professor at the Institute for
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Prof. Dr. Peter Essers

Director of European Tax College,
Professor at the Fiscal Institute Tilburg
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Prof. Dr. Eric Kemmeren

Director of European Tax College,
Professor at the Fiscal Institute Tilburg
(Tilburg University)

Dr. Daniël S. Smit

Docent at European Tax College,
And at the Fiscal Institute Tilburg
(Tilburg University)

PROGRAMME

Conference

"TAX TREATY CASE LAW AROUND THE GLOBE"

WU (Vienna University of Economics and Business)
May 23-25, 2013, Vienna, Austria

Thursday, May 23, 2013

17:00

Inaugural Lecture of Prof. Neil Buchanan

Prof. Neil Buchanan (PwC Visiting Professor) from the George Washington University will speak on

"The Needless Creation of Political Crises in U.S. Fiscal Policy".

His presentation will be followed by a **panel discussion**.

Panel members:

Prof. Dr.Dr.h.c. Michael Lang (WU, Discussion Leader),
Prof. Dr. Josef Schuch (WU), Prof. Dr. Pasquale Pistone (WU),
Prof. Dipl. Ing. Mag. Fritz Rödler (PwC), Prof. Dr. Claus Staringer (WU),
Prof. Dr. Alfred Storck (WU)

Cocktail reception on invitation of PwC

Friday, May 24, 2013

Session 1

08:30 – 11:00

Personal and substantive scope (Art 1, 2 and 4 OECD Model)

*Chairs: Michael Lang
Eric C.C.M. Kemmeren*

GREECE (*Katerina Perrou*)

[Administrative Court of Appeals of Athens \(Nr. 481/2012\), dated 07.02.2012](#)

N/A

[Can an extraordinary levy on business profits imposed due to the economic crisis be regarded as "tax" and therefore be covered by DTC?](#)

PORTUGAL (*José Almeida Fernandes*)

Tribunal Central Administrativo – Sul (Proc. 05071/11), dated 06.05.2012)	N/A
Can a reimbursement made by a Portuguese corporation to a related French corporation for the payments made to an employee of such French corporation that had been hired to work in Portugal be considered as income under DTC Portugal – France?	
Tribunal Central Administrativo – Sul (Proc. 05568/12), dated 07.10.2012	N/A
Shall treaty benefits be granted to a non-resident which had failed to provide the forms required under Portuguese tax law?	

CANADA (*David Duff*)

Federal Court of Appeal, dated 12.06.2012, 2012 FCA 320	George Trieste
Residence and habitual abode	

SLOVAKIA (*Renata Blahova*)

Slovak Supreme Court (no. 18/2012), dated 23.10.2012	N/A
Place of effective management of a Dutch holding, double non-taxation (with regard to dividend distribution)	

NETHERLANDS (*Daniel Smit*)

Dutch Supreme Court (no. 11/05198), dated 30.11.2012 NTFR 2012/2808	N/A
Place of corporate residence of a company with only minor passive activities	

GREAT BRITAIN (*Philip Baker*)

First-Tier Tribunal (UKFTT 568 (TTC)), dated 22.08.2012	Lynette Dawn Yates
Tie-breaker tests of permanent home, centre of vital interests and habitual abode	

11:00 – 11:30

Coffee Break

Session 2

11:30 – 12:30

Permanent Establishments (Art 5 OECD Model)

*Chairs: Pasquale Pistone
Peter Essers*

ITALY (*Pasquale Pistone*)

Corte di Cassazione (3769/2012), dated 13.03.2012	Boston Scientific International BV("BSI BV")
Can agent activities of a Dutch company constitute a PE in Italy?	

SPAIN (*Maria Teresa Soler Roch*)

Spanish Supreme Court (Nr 1626/2008), dated 12.01.2012	Roche
TEAC (Nr 00/2107/2007), dated 15.03.2012	DELL
The concept of "dependent agent" and the concept of "fixed place of business"	

CZECH REPUBLIC (*Danuše Nerudová*)

Court ...(Nr. 2 afs 29/2012-18)	N/A
Is there a service PE due to the provision of services by a non-resident?	

12:30 – 14:00

Lunch Break

Session 3**Business profits and Associated Enterprises** (Art 7 and 9 OECD Model)

14:00 – 15:30

*Chairs: Alfred Storck
Philip Baker*

BRAZIL (*Lúis Eduardo Schoueri*)

Superior Court of Justice (Appeal no. 1.161.467/RS), dated 17.05.2012	Copesul S.A.
Shall provision of technical services fall under the scope of Art 7 or 21?	
Administrative Council of Tax Appeals (Judgment no. 9101-001.388), dated 17.07.2012	Sofisa Serviços S.A.
Qualification of profits earned by Brazilian foreign controlled companies	

ROMANIA (*Aurelian Opre*)

Court of Appeal Timisoara (Nr 5/30/2011), dated 26.04.2012	N/A
The qualification of the incomes made by non-residents and the establishment of the place of taxation	

INDIA (*D.P. Sengupta*)

Indian Income Tax Appellate Tribunal (Mumbai) (2013-TII-02-ITAT-MUM-INTL), dated 06.11.2012	Mediterranean Shipping Co
Shipping income whether effectively connected with PE-interpretation issues	

NETHERLANDS (*Eric C.C.M. Kemmeren*)

Dutch Supreme Court (Nr 10/05268), dated 21.09.2012 BNB 2013/15	N/A
Do Dutch thin capitalization rules contradict DTC provisions and EU law?	

15:30 – 16:00

Coffee Break

Session 4
16:00 – 18:00

Royalties (Art 12 OECD Model)
Chairs: *Claus Staringer*
Jacques Sasseville

PORTUGAL (*José Almeida Fernandes*)

Tribunal Central Administrativo – Sul (Proc. 03506/09), dated 07.03.2012	N/A
Can software payments be considered as royalties for tax treaty purposes?	
Tribunal Central Administrativo – Sul (Proc. 04665/11), dated 05.08.2012	N/A
Can income arising in connection with event organization and promotion agreement be considered as royalties?	

TURKEY (*Billur Yalti*)

Tax Court of Bursa (E.2011/977), dated 22.03.2012	N/A
Does income derived in connection with Centralized Information System Services qualify as royalties or business profits?	
Tax Court of Istanbul (E.2011/1221), dated 09.03.2012	N/A
Does income derived in connection with coordination services qualify as royalties?	

MEXICO (*César Alejandro Ruiz Jiménez*)

Thirteen Collegiate Tribunal of the First Circuit (D.A. 562/2011), dated 10.08.2012	N/A
Do payments for leasing helicopters qualify as royalties under the Mexican-Canada DTC? What is the meaning of the term “scientific, industrial and commercial equipment”?	

20:00

Evening at typical Austrian “Heurigen” (wine tavern)

Saturday, May 25, 2012

Session 5
08:30 – 10:30

Dividends, Interest and Capital Gains (Art 10, 11 and 13 OECD Model)
Chairs: *Josef Schuch*
Daniel Smit

SWITZERLAND (*Michael Beusch*)

Bundesverwaltungsgericht (Nr A-6537/2010), dated 07.03.2012	N/A
Beneficial ownership issues in the light of Art 10	

FINLAND (*Marjaana Helminen*)

Central Tax Board of Finland (KVL 2/2012), dated 01.02.2012	N/A
Can an investment fund distribution be considered as dividend under the Nordic multilateral tax treaty?	

KAZAKHSTAN (*Tomas Balco*)

Specialized Interregional Economic Court of Atyrau Oblast, (Nr 2-1443/6-10)	NWKC
May a transparent entity enjoy treaty benefits under Art 10 if it is unable to provide certificate of residence of the company?	

POLAND (*Hanna Litwińczuk*)

Judgment of Supreme Administrative Court (II FSK 2487/11), dated 24.07. 2012	N/A
Does interest paid to a German air transport enterprise fall under the scope of Art 8 or Art 11 of DTC Poland-Germany?	

CANADA (*David Duff*)

Federal Court of Appeal, dated 13.07.2012, 2012 FCA 270	Peter Sommerer
Capital gains on disposition of shares by an Austrian Private Foundation	

10:30 – 11:00

Coffee Break

Session 6

Employment income (Art 15, 18 and 19 OECD Model)
Directors' fees, Artistes and Sportsmen, Students and Other Income (Art 16, 17, 20 and 21 OECD Model Convention)

11:00 – 12:30

Chairs: Michael Lang
Neil Buchanan

FRANCE (*Philippe Martin*)

Conseil d'Etat (Nr 323592), dated 16.04.2012	Paupardin
Taxation of wages of a French resident being a captain of oil tankers operating in international traffic: concept of place of effective management.	

GERMANY (*Alexander Rust*)

Bundesfinanzhof (I R 15/11), dated 12.10.2011	N/A
Do days spent outside the working state during the weekends count for calculating the 183 days?	
Bundesfinanzhof (I R 5/11), dated 07.12.2011	N/A
Is a pension paid to a former partner of a partnership covered by Art 7 or 18 if German domestic law qualifies such pension as business income?	

INDIA (*D.P. Sengupta*)

ITAT Ahmedabad (2012-TII-46-ITAT-Ahm-Intl), dated 04.05.2012	Shri Mohan Balakrishnan Pookulanagara
Interpretation of the term "top level managerial position"	

SPAIN (*Jacques Sasseville*)

Tribunal Supremo (Nr 1139/2010), dated 07.12.2012	Stage entertainment S.L.
Taxation of income of artistes, Art. 17 of the DTC Spain-Ireland	

12:30 – 14:00

Lunch Break

Session 7

14:00 – 16:00

Non-discrimination (Art 24 OECD Model)

Chairs: *Eric C.C.M. Kemmeren*
Jacques Sasseville

BELGIUM (*Edoardo Traversa*)

Court of cassation, dated 16.02.2012	K.P., H.D.S.
Allocation of allowances for dependent children in the light of non-discrimination provision	

FINLAND (*Marjaana Helminen*)

Central Tax Board of Finland (KVL 14/2012), dated 14.03.2012	N/A
Application of the PE non-discrimination provision under DTC Finland-USA	

RUSSIA (*Danil V. Vinnitskiy*)

RF Supreme Commercial Court (N VAS-7104/12), dated 21.6.2012	Naryanmarneftegas
Non-discrimination, thin capitalisation, associated enterprises	

USA (*Yariv Brauner*)

T.C. Memo. 2012-45, dated 21.02.2012	LeTourneau
T.C. Summ.Op. 2012-12, dated 01.02.2012)	Ready
Dual resident flight attendants: no credit in the US for tax paid in another country	

16:00 – 16:30

Coffee Break

Session 8**Methods to Avoid Double Taxation, Mutual Agreement, Exchange of information and Assistance in the Collection of Taxes** (Art 23, 25, 26 and 27 OECD Model)

16:30 – 18:00

Chair: *Michael Lang*
*Peter Essers***GREAT BRITAIN** (*Philip Baker*)

First-Tier Tribunal Tax Chamber (TC/2010/3902), dated 03.08.2012	Paul Weiser
Is double taxation relief available if a pension is not actually taxed in the other contracting state (interpretation of the expression "subject to Israel tax")?	

BELGIUM (*Edoardo Traversa*)

Court of Appeal, Gent, dated 03.01.2012	N/A
Application of exemption method	

GREAT BRITAIN (*Malcolm Gammie*)

The High Court of Justice Chancery Division (HC 12 C 00707), dated 20.07.2012	Ben Nevis (Holdings) Limited; Metlika Trading Limited; HSBC Trustee (Guernsey) Limited
Assistance in the collection of taxes	

USA (*Yariv Brauner*)

United States Court of Appeals for the Ninth Circuit (No. 10-17136), dated 15.11.2012	Aloe Vera Of America, Inc
Update on the Aloe Vera case	

Sessions will take place at the main building (UZA 1, Augasse 2-6, 1090 Vienna) of the WU (Vienna University of Economics and Business) in the ceremony hall ("Festsaal"), 1st floor.