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INVITATION

Hybrid Conference **TAX TREATY CASE LAW AROUND THE GLOBE 2022**

Tilburg University
May 12 – 14, 2022

Organized by the European Tax College of the Fiscal Institute Tilburg, in joint venture with the Institute for Austrian and International Tax Law.

The European Tax College of the Fiscal Institute Tilburg (Tilburg University) and the Institute for Austrian and International Tax Law WU (Vienna University of Economics and Business) are proud to invite you to the Hybrid Conference **TAX TREATY CASE LAW AROUND THE GLOBE 2022**.

Our Conference aims at presenting and discussing the most interesting Tax Treaty Cases in a hybrid way, which had been decided in 2021 all over the world. We are grateful that outstanding experts of 24 jurisdictions coming from five continents agreed to present the most relevant decisions taken in their countries. The Conference covers 39 tax treaty cases. The main topics we identified have been clustered into eight "baskets" which will be dealt with in our eight conference sessions:

- Session 1: Interpretation and Residence
- Session 2: Permanent Establishment
- Session 3: Business Profits, Capital Gains and Associated Enterprises
- Session 4: Dividends and Interest
- Session 5: Royalties
- Session 6: Employment Income – Government Services
- Session 7: Relief from Double Taxation
- Session 8: Exchange of Information, Non-Discrimination, MAP and Abuse of Tax Treaties

* The Foundation is a nonprofit organization which promotes the study of international tax law and supports research projects undertaken by young talents.

In each session of the hybrid conference, tax treaty cases will be presented and subsequently analyzed in a critical discussion. This discussion includes the possible impact of the cases on the interpretation and application of tax treaties in other countries. Participants are invited to join the discussions actively. The scientific results of the conference will be published in a book by the IBFD. Please, see for further details on the program.

The opening of the hybrid session of the Conference is on **Friday, 13 May, 2022, at 9:00**. The conference opening and welcoming take place **at 9:15**. All time slots are Central European Time (CET).

The participation fee for the Conference on campus is **EUR 995.--**, and online is **EUR 495.--**. A partial waiver of the participation fee may be granted to full-time academics and other full-time 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. These academics only pay **EUR 140.--** for on campus; **EUR 25.--** for online participation. The fee for the students is **EUR 25.--** for both on campus and online participation. Registration is open up to and including **10-05-2022**. The participation fee must be paid not later than **12-05-2022**, and will not be refunded in the case of cancellation one week prior to the Conference.

Register here if you are interested in participating in the Conference. If you have any questions, mail to fit-congress@tilburguniversity.edu.

Prof. Dr. Eric Kemmeren

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

Prof. Dr. Peter Essers

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

Prof. Dr. Stan Stevens

Professor at the Fiscal Institute Tilburg
(Tilburg University)

Prof. Dr. Ton Stevens

Professor at the Fiscal Institute Tilburg
(Tilburg University)

Dr. Cihat Öner LL.M.

Associate Professor at the Fiscal Institute Tilburg
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Prof. Dr. DDr.h.c. Michael Lang

Head, Institute of
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Prof. DDr. Georg Kofler

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Prof. Dr. Jeffrey Owens

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Prof. Dr. Karoline Spies

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

Prof. Dr. Daniel Blum

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

2. Brazil (Luís Eduardo Schoueri) (Online)

Administrative Council of Tax Appeals ("CARF") - Voluntary Appeal - Tarcisio Montagna vs. Federal Union, 12 May 2021	Case No: 10380.003494/2009-57
Center of vital interests set in article 4(2)(a)	

3. Canada (David Duff) (On Campus)

Tax Court of Canada, 8 March 2022	Case No: Landbouwbedrijf Backx BV (TCC, 2021)
Interpretation of tie-breaker rule for dual resident entities in Article 4(3) of the Canada-Netherlands DTT	

4. Portugal (Ana Paula Dourado) (Online)

Judgment of the South Central Administrative Court, 17 October 2021	Case No: Ac. TCAS, 42/10.8BELRS
Trust submitted a declaration to the Canadian Tax Authorities stating that it is a tax resident in Canada	

10:50 – 11:05

Coffee Break

Session 2

Permanent Establishment

11:05 – 12:25

Chairs: Ton Stevens
Yariv Brauner

5. India (D.P. Sengupta) (Online)

Technip France SAS - Authority for Advance Ruling, 2 February 2021	Case No: AAR No.1413 of 2012
Is there involvement of the PE in a turn-key project for setting up a plant?	

6. Finland (Marjaana Helminen) (Online)

Korkein Hallinto-oikeus (Supreme Administrative Court), 3 December 2021	Case No: KHO 2021/H4294 (171)
Is there a PE under article 5(1) of DTT? If so, whether the activities were of a preparatory or auxiliary character under Art. 5(5) of the DTT	

7. Italy (Guglielmo Maisto - Cesare Silvani) (On Campus – On Campus)

Supreme Court, Tax Chamber (Cass. Civ. Sez. Trib.) 25 March 2021	Case No: 8500
Retrospective application of the OECD Reports on the attribution of profits to PEs	

8. Turkey (Cihat Öner) (On Campus)

Supreme Administrative Court, 4 th Chamber, 18 January 2021	Case No: 2016/16413 E., 2021/297 K.
Understanding of the concept of PE under Turkey-Germany DTT Attribution of income to a PE	

12:25 – 14:00

Lunch Break

Session 3

Business Profits, Capital Gains and Associated Enterprises

14:00 – 16:00

Chairs: Carla De Pietro
David Duff

9. USA (Yariv Brauner) (On Campus)

Whirlpool Financial Corporation; Consolidated Subsidiaries, V. Commissioner (6th Cir), 9 June 2021	Case No: Nos. 20-1899/1900
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CFC legislation and tax treaties – the branch rule and double non-taxation

Adams Challenge (Uk) Limited,
V. Commissioner, 21 January
2021

Case No: 156 T.C. No. 2

Whether domestic rules violate the business profits article or the nondiscrimination article of the DTT

10. Austria (Daniel Blum) (On Campus)

Austrian Supreme
Administrative Court (VwGH),
23 April 2021

Case No: Ra 2020/13/0089

Concerns Art 7 DTT Austria-UK: Court supports that the hiring out of labor fee has to be split economically into two parts: (1) mark-up of the entrepreneur and (2) wages of the hired out personnel

11. UK (Philip Baker) (Online)

Royal Bank of Canada v Revenue
and Customs Commissioners,
Hearing Date: 7-9 December 2021,
Release Date: 17 February 2022

Appeal No: UT/2020/000371

In this case, the court had to decide whether the payment in question falls within Art. 6 of the UK-Canada DTT

12. Finland (Marjaana Helminen) (Online)

Korkein Hallinto-oikeus (Supreme
Administrative Court), 21 May
2021

Case No: KHO 2021/346 (66)

Cost-plus method may be used to determine intra-group interest, because providing intra-group financing is an intra-group service

13. South Africa (Craig West) (On Campus)

The Tax Court of South Africa, 7 January 2021	Case No: IT 14305
TP Methods, CUP, Arm's Length Principle	

16:00 – 16:15

Coffee Break

Session 4

Dividends and Interest

16:15 – 17:55

Chairs: Cees Peters
Philip Baker

14. Denmark (Søren Friis Hansen) (On Campus)

The Eastern High Court, 3 May 2021	Case No: SKM2021.304ØLR
Whether the subsidiaries were in fact, the 'Beneficial Owners' of the distributed dividends	

15. France (Marilyne Sadowsky) (On Campus)

French Supreme Court (Conseil d'Etat) 8e et 3e ch. HSBC Bank Plc Paris Branch, 11 May 2021	Case No: n°403692
Interpretation of the conventional terms "profits", "income," and "other positive income" and imputation of tax credits	

16. India (D.P. Sengupta) (Online)

Concentrix Services Netherlands BV v Income Tax Officer- Delhi High Court, 22 April 2021	Case No: WP (C) 9051/2020
Interpretation of the MFN clause in respect of passive income found in some of India's treaties with the OECD Member countries	

17. Luxembourg (Werner Haslehner) (On Campus)

Trib. Admin., 28 October 2021	Case No: 41517
The qualification of cross-border interest between a tax transparent partnership and its partner	

18. Portugal (Ana Paula Dourado) (Online)

Decisão Arbitral do CAAD, 12 May 2021	Case No: 401/2020-T
A domestic exemption applies to investment income (interest, dividends), rental income and capital gains, provided that such income is taxable in the source country	

Saturday, 14 May, 2022

Location Tilburg University, Dante Building, Room DZ 2
Warandelaan 2, 5037 AB, Tilburg

08:45 Hybrid session opens

Session 5 Royalties

09:00 –10:20 *Chairs:* Cihat Öner
Guglielmo Maisto

19. Brazil (Luís Eduardo Schoueri) (Online)

Federal Regional Court of the 4th Region (TRF4) –WEG Equipamentos Elétricos S/A., WEG Tintas Ltda. and WEG Drives & Controls - Automação Ltda. vs. Federal Union, 09 June 2021	Case No: Appeal no. 5000547-48.2016.4.04.7209 –
The assessment on whether the payments could qualify either as “royalties” or income from “independent professional services”	

20. France (Marilyne Sadowsky) (On Campus)

Sté Sopra Steria Group CE 9e et 10e ch., 18 June 2021	Case No(s): n°433315 / 433319 / 433323
Qualification of remunerations paid in the context of software licensing and maintenance services and interpretation of articles on royalties or elimination of double taxation of several bilateral tax treaties	

21. Peru (Esteban Montenegro) (Online)

Peruvian Tax Court, date 21 July 2020 (made public in October 2021)	Case No: Ruling N° 03306-9-2020
The application of Art. 12 on royalties of the DTT between Peru and Chile – beneficiary owner issues	

22. Poland (Karolina Tetlak) (Online)

Supreme Administrative Court, 12 August 2021	Case No: II FSK 126/19
Recognition of a foreign organization associating artists and selling copyrights to their works as the actual beneficiary of the receivables	

10:20 – 10:35

Coffee Break

Session 6

Employment Income – Government Services

10:35 – 12:15

Chairs: Mart van Hulten
Ana Paula Dourado

23. Croatia (Hrvoje Arbutina) (Online)

High Administrative Court of Croatia, 14 April 2021	Case No: Usl-918/19-12
Calculation of employment income earned in Croatia and third countries	

24. Poland (Karolina Tetlak) (Online)

Judgment of the Supreme Administrative Court, 29 April 2021	Case No: II FSK 2241/20
Whether part of the applicant's Danish tax resident income from an employment relationship with a Polish employer relating to work performed as part of business trips to third countries should be taxed in Poland	

25. Norway (Eivind Furuseth) (On Campus)

Supreme Court, 6 June 2021	Case No: HR-2021-1243-A
Issues on the understanding of work performed "offshore" or "offshore" for 30 days or more during a 12-month period	

26. Austria (Daniel Blum) (On Campus)

Austrian Supreme Administrative Court (VwGH) 10 May 2021	Case No: Ra 2019/15/0095
The application of Arts. 15 and 16 of the DTT Austria-Russia and the role of multiple authentic languages in the interpretation process	

27. Italy (Guglielmo Maisto - Cesare Silvani) (On Campus – On Campus)

Supreme Court, Tax Chamber (Cass. Civ. Sez. Trib.), 24 June 2021	Case No(s):18237 and 1838
Residence State cannot exercise taxing even if the income is exempted from tax in the source State	

12:15 – 13:45 Lunch Break

Session 7

Relief from Double Taxation

13:45 – 15:05 *Chairs:* Ricardo Garcia
Marilyne Sadowsky

28. The Netherlands (Eric Kemmeren) (On Campus)

Supreme Court (Hoge Raad), 24 September 2021	Case No: 20/01875
Explanation of the application of Art. 17 OECD in the context of the possibility of tax crediting foreign withholding taxes	

29. Belgium (Anne Van de Vijver) (On Campus)

Antwerpen (burg.) (B6Me k.) nr. 2019/AR/1299, 19 januari 2021	Case No: rolnr : 2019/AR/1299
The application of the "exemption vaut impôt" principle is subject of discussion in Belgium – Subject to tax condition	

Cass. (1e k.) AR F.18.0112.N, 25 juni 2021 (J. B., P. V. / Belgische Staat)	Case No: rolnr : F.18.0112.N
Concerns the subject to tax condition. Art. 23 of the DTT between Belgium and United Arab Emirates provides condition "inkomsten ... die ... in zijn belast"	

30. Norway (Eivind Furuseth) (On Campus)

First Instance Court (Hordaland tingrett), 4 October 2021	Case No: 19-083263TVI-THOD/1
The question is whether the Norwegian/domestic tax credit rules were in conflict with article 23 of the DTT	

15:05 – 15:20 Coffee Break

Session 8 Exchange of Information, Non-Discrimination, MAP and Abuse of Tax Treaties

15:20 – 17:20 *Chairs:* Peter Essers
Daniel Blum

31. Switzerland (Michael Beusch - Moritz Seiler) (Online - On Campus)

Swiss Supreme Court, 25 March 2021	Case No: 2C_750/2020
Exchange of information regarding an individual who was thought to hold an account with a bank that had been subject to a data leak ("Falciani" data)	

Swiss Supreme Court, 1 February 2021 and 10 March 2021	Case No(s): 2C_780/2018 and 2C_542/2018
Questions regarding the scope of the EOI provisions in the Netherlands-Switz. and India-Switz. DTTs	

32. Australia (Michael Dirkis) (On Campus)

Addy v Commissioner of Taxation, High Court, 3 November 2021	Case No: [2021] HCA 34
The DTT between Australia and the UK - discrimination by imposing a more burdensome taxation requirement on a national of the UK than that imposed on an Australian national in the same circumstances	

33. Argentina (Mirna Solange) (On Campus)

Molinos Rio de la Plata vs. DGI Supreme National Court, 2 September 2021	Case No: CAF 1351/2014/2/RH2
Treaty abuse involving conduit companies and Art.11 Dividends	

34. Spain (Adolfo Martín Jiménez – Ricardo Garcia) (Online – On Campus)

The Audiencia Nacional (National Tribunal) Qatar Holding, 31 May 2021 and Acciona, 18 June 2021	Case No(s): SAN 3097/2021, SAN 2804/2021
The economic substance of the companies and dividend exemptions	

Supreme Court, SGL Carbon, 22 September 2021	Case No: STS 3572/2021
Supreme Court denied MAP in cases of tax abuse	

35. Canada (David Duff) (On Campus)

Supreme Court of Canada, Alta Energy Luxembourg SARL (SCC, 2001), 26 November 2021	Case No: 2021 SCC 49 - 39113
Tax treaty shopping case involving the capital gains article (Art. 13) in the Canada-Luxembourg DTT and Canadian GAAR	

17:20 – 17:30 Eric Kemmeren Closure