

INVITATION

Conference

"TAX TREATY CASE LAW AROUND THE GLOBE"

WU (Vienna University of Economics and Business)
June 11-13, 2015, Vienna, Austria

Organized by the Institute for Austrian and International Tax Law, WU, Vienna, in joint venture with the European Tax College.

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 2014 all over the world. We are grateful that outstanding experts of 25 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) – part I
- Session 2: Personal and Substantive Scope (Art 1, 2 and 4 OECD Model) – part II
- Session 3: Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)
- Session 4: Dividends, Interest, Royalties and Capital Gains (Art 10, 11, 12 and 13 OECD Model) – part I
- Session 5: Dividends, Interest, Royalties and Capital Gains (Art 10, 11, 12 and 13 OECD Model) – part II
- Session 6: Associated Enterprises (Art 9 OECD Model)
- Session 7: 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 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), Non-discrimination (Art 24 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 June 11, 2015 at 18:00 with the conference opening and Cocktail Reception. The working sessions will be held all day on June 12 and 13, 2015 at WU (Vienna University of Economics and Business). On June 12, 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 May 15, 2015, 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 **Jules Macrory** (julia.macrory@wu.ac.at)

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

Head, Institute for
Austrian and International Tax Law
WU (Vienna University of Economics
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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. Alexander Rust

Professor 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
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

PROGRAMME

Conference

"TAX TREATY CASE LAW AROUND THE GLOBE"

WU (Vienna University of Economics and Business)

June 11-13, 2015, Vienna, Austria

Thursday, June 11, 2015

18:00

Welcome Reception

Welcome Address:

Prof. Dr.Dr.h.c. Michael Lang (WU)

Dr. Daniël S. Smit (Fiscal Institute Tilburg)

Cocktail reception at the Institute, Building D3, 2nd floor

Friday, June 12, 2015

Session 1

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

08:30 – 10:30

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

AUSTRALIA (*Richard Vann*)

[2014] FCAFC 37 (3 April 2014)

Commissioner of Taxation v
Resource Capital Fund III LP

conflict of qualification in relation to limited partnerships;
AUS-US DTT

UNITED KINGDOM (*Philip Baker*)

UKSC 2013/0068

Anson v The Commissioners for Her
Majesty's Revenue and Customs

Whether the appellant's liability to UK income tax in relation to his membership of a Delaware limited liability company is to be computed by reference to the same profits or income by reference to which the appellant's US tax liability is computed.

BELGIUM (*Edoardo Traversa*)

Court of First instance, Mons, 9 January 2014	
Employee of the Moroccan embassy in Belgium that has acquired the Belgian citizenship (while keeping the Moroccan one). The judge considers that this person is Belgian resident.	

ARGENTINA (*Axel Verstraeten*)

National Tax Court	Petrobras Argentina
minimum presumed income tax or MPIT Petrobras Argentina held shares in Bolivian and Brazilian subsidiaries and intended to apply the tax treaties and consider such assets exempt of MPIT. The Tax Authority argument was that the MPIT was not included in the treaty when it mentioned "income taxes and other similar taxes"	

FINLAND (*Marjaana Helminen*)

Supreme Administrative Court of Finland, 6 October 2014 KHO 2014/2946 (147)	N/A
Estonian tax which a Finnish company had to pay in respect of its permanent establishment in Estonia calculated on the basis of fringe benefits, gifts and representation costs is such a tax on income which has to be credited in Finland on the basis of Article 23 of the Estonia – Finland tax treaty. The Court ruled that the tax has to be credited in Finland even though it is actually no tax on income but a tax on costs of the company	

10:30 – 11:00

Coffee Break

Session 2**Personal and substantive scope** (Art 1, 2 and 4 OECD Model)
Part II)

11:00 – 12:00

*Chairs: Eric C.C.M. Kemmeren
Pasquale Pistone***CANADA** (*Brian Arnold*)

(2014) 3 CTC 2237 (TCC)	Black v. The Queen
Place of corporate residence of a company with only minor passive activities	

LUXEMBOURG (*Werner Haslehner*)

Cour Administrative (Supreme Administrative Court of Luxembourg), 33872C	N/A
Taxpayer is a dual resident in Germany and Luxembourg, who wants to be treated as non-resident in Luxembourg (no joint taxation with his spouse who lives there permanently). The Court held that he is a resident of Germany under the tax treaty tie-breaker rule, but that the tax treaty does not prevent treating a non-resident as a resident to the extent that doing so does not violate Germany's primary taxing right.	

NORWAY (*Eivind Furuseth*)

Appeal Court NOR-IRE DTT	N/A
which law should be applied when determining whether an Irish company is a separate taxable entity under taxation of the Norwegian parent company	

SOUTH KOREA (*Hyejung Byun*)

Supreme Court 2012Du11836, decided on June 26, 2014	DM Case
Substantive ownership of capital gains	

12:00 – 13:30

Lunch Break

Session 3

13:30 – 16:00

Business profits (Art 6, 7 and 14 OECD Model) and
Permanent Establishments (Art 5 OECD Model)Chairs: *Alfred Storck*
*Alexander Rust***BRAZIL** (*Luis Eduardo Schoueri*)

Superior Court of Justice, Judgment No. 1.325.709/RJ	National Treasury vs. Companhia Vale do Rio Doce
The Superior Court of Justice faced the National Treasury's arguments with respect to the qualification of profits of controlled foreign companies under the DTCs. The Brazilian authorities' argued that the legislation taxed the profits of the Brazilian company, and not those of the CFC, thus not falling within the scope of the DTCs. The Court, however, ruled that the taxation as set forth by the legislation was in breach of Article 7 of the DTCs.	

FRANCE (*Emmanuelle Cortot-Boucher*)

Conseil d'Etat, 12 March 2014	Société DGFP
issue of how exchange gains should be considered in the view of tax treaties when they are made through the sale of building	
Conseil d'Etat, 11 April 2014	minister vs. Bayerische Vereinsbank
issue of the way the taxable profits of a PE located in France are determined when that PE is owned by a company whose head office is located in a foreign country with which a tax treaty was concluded	

AUSTRIA (*Alexander Rust*)

VfGH 23.6.2014, SV 2/2013	N/A
question whether Art. 14 of the DTT between Austria and Liechtenstein complies with constitutional requirements	

POLAND (*Hanna Litwinczuk*)

Voivodeship Administrative Court of Warsaw (III SA/Wa 1146/13), 2 January 2014	N/A
Taxation of the income arising from shares in limited joint-stock company	

BOLIVA (*Alvaro Villegas*)

Supreme Court, 30 Dec 2013 N° 638/2013	Total E&P Bolivie Sucursal Bolivia (TEPB)
Payments by TEPB to a French company TOTAL S.A. for services are subject to Bolivian withholding tax (IUE) according to Article 5 of the Bolivia- France Tax Treaty, disregarding that TEPB is not a branch (PE) of TOTAL S.A. but a branch of a French company TOTAL E&P BOLIVIE.	

ITALY (*Pasquale Pistone*)

Supreme Court, 30 September 2014, No 40327/2014	N/A
Goods are delivered to intermediate customers by an Italian warehouse of a Luxembourg company, but the decision making, management and planning of such deliveries remains with the non-resident parent company. In such circumstances, the execution of contractual arrangements and supplies is immaterial for the purposes of determining whether an Italian PE exists in this specific case.	

SPAIN (*Adolfo Martin Jimenez*)

Supreme Court, 18 June 2014, No. 1933/2011;	N/A
A fixed PE exists where a subsidiary in Spain is part of a "complex operative settlement" and closes a business cycle in Spain	
Spanish Central Administrative Court, 6 February 2014, RG 2871-10	N/A
Taxpayer won despite the fact that there may have been a deliberate fragmentation of activities in Spain in order not to reach the threshold of PE.	

16:00 – 16:30

Coffee Break

Session 4**Dividends, Interest, royalties and Capital Gains** (Art 10 -13 OECD Model) Part 1

16:30 – 17:30

*Chairs: Alexander Rust***NETHERLANDS** (*Eric C.C.M. Kemmeren*)

Supreme Court May 23, 2014, No. 13/02237, BNB 2014/170	N/A
The Supreme Court held that the Dutch taxation of inbound dividends on a fictitious basis rather than on a real basis does not constitute a treaty override.	

DENMARK (*Søren Friis Hansen*)

Supreme Court, 14 February 2014 SKM2014.347HR	N/A
Transfer of shares from one PE located in Denmark to another PE located in Denmark as a result of a merger between two German banks DK-GER DTT	

NORWAY (*Eivind Furuseth*)

First instance Court	N/A
Distribution of dividends from a Norwegian company to a Danish intermediate holding company which redistributed the dividends to a Cayman Island Company	

20:00

Evening at typical Austrian "Heurigen" (wine tavern)

Saturday, June 13, 2015**Session 5****Dividends, Interest, royalties and Capital Gains** (Art 10 -13 OECD Model) **Part 2**

09:00 – 10:30

Chair: *Pasquale Pistone***ARGENTINA** (*Axel Verstraeten*)

Criminal Federal Court of Appeals	N/A
Dividends flowed through ChiHoldCo and were received by ArgHoldCo tax free. The main issue under analysis is the application of anti abuse provision to treaties.	

AUSTRALIA (*Richard Vann*)

[2014] FCA 38 (6 February 2014) Federal Court of Australia	Task Technology Pty Ltd v Commissioner of Taxation
[2014] FCA 1411 (22 December 2014) Federal Court of Australia	Seven Network Limited v Commissioner of Taxation
Definition of royalties and use of OECD commentary in relation to treaty provision not found in OECD Model AUS-CAN DTT	
Definition of royalties AUS-SWI DTT	

SWITZERLAND (*Stefano Bernasconi*)

Supreme Administrative Court, 5. Mai 2015 (2C_364/2012, 2C_377/2012 und 2C_895/2012)	N/A
The Swiss Supreme Court decided the swap case in favor of the tax administration. It found that the use of a fully hedged total return swap had the effect of removing beneficial ownership from the owner of the shares.	
Supreme Administrative Court	N/A
The Swiss Supreme Court decided on a case regarding futures and beneficial ownership.	

POLAND (*Hanna Litwińczuk*)

Supreme Administrative Court, 14 January 2014 II FSK 187/12	N/A
Gratis shares in exchange for parts of a loan. Are the remunerations dividends?	

10:30 – 11:00

Coffee Break

Session 6**Associated Enterprises** (Art 9 OECD Model)

11:00 – 12:30

Chair: Josef Schuch
Daniel Smit**CANADA** (*Brian Arnold*)

(2014) 2 CTC 172 (FC)	Sifto Canada Corp. v. MNR
administrative issues and penalties concerning transfer pricing	
[2014] CTC 2001 (TCC)	McKesson Canada Corp. v. The Queen
costs concerning transfer pricing litigation	

FINLAND (*Marjaana Helminen*)

Supreme Administrative Court of Finland, 3 July 2014 KHO 2014/2117 (119)	N/A
Reclassification of a hybrid loan as equity and therefore denying deductibility of interest paid on the loan completely – Court says not possible	

INDIA (*D. P. Sengupta*)

Mumbai Tribunal 2014-TII-296-ITAT-MUM-TP	Vodafone India Services Pvt Ltd Vs. ACIT
An Indian subsidiary of Vodafone transferred its call centre business to an Indian subsidiary of Hutchinson. The tax authorities found that the transfer was part of a global purchase agreement and there existed a prior agreement and the transaction was a deemed international transaction.	

12:30 – 13:30

Lunch Break

Session 7**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)

13:30 – 15:00

Chairs: Claus Staringer**SPAIN** (*Adolfo Martin Jimenez*)

High Court of Madrid, 12 March 2014, rec. n. 110/2011	N/A
Tax year in which the exercise of the options are taxable and the system of taxing them. This decision is interesting also because it considers the interaction of the stock option taxation with the Spanish special regime for impatriates.	

RUSSIA (*Danil V. Vinnitskiy*)

Federal Commercial Court of the North-West District, 3 February 2014, No A56-20669/2013	N/A
Agency fee, right to withhold income tax RUS-GER DTT	

BELGIUM (*Edoardo Traversa*)

Ghent Court of Appeal, 25 February 2014	N/A
Taxation of sportsmen (cycling). The court considers that only the days of official competitions have to be taken into account to determine the part of the activity to this taken place of the road, therefore excluding the days of training.	
Liege Court of Appeal, 15 January 2014, Liege Court of appeal, 2 April 2014; Mons Court of Appeal, 15 January 2014	N/A
Taxation of directors' remunerations falling outside the scope of Art. 16 OECD-MC / The court has to decide which portion of the remuneration of a director of the company established in Luxembourg can be taxed in Belgium.	

UNITED KINGDOM (*Philip Baker*)

Upper Tribunal FTC/145/2013	MACKLIN vs. THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS
The appellant formerly worked for the World Bank and now receives a pension from its staff retirement plan ("the SRP"). The principal question raised by this case is whether article 17(1)(b) of the UK-USA DTT entitles Mr Macklin to claim partial exemption from the income tax that he would otherwise have to pay on his pension.	

USA (*Yariv Brauner*)

142 TC No. 22	Abrahamsen vs. Commissioner
Applicability of the saving clause to green card holders and its relationship with Art. 19	

15:00 – 15:30

Coffee Break

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), **Non-discrimination** (Art 24 OECD Model)

15:30 – 17:45

Chair: *Michael Lang***BELGIUM** (*Edoardo Traversa*)

Constitutional Court, 29 January 2014 (No 14/2014)	N/A
Tax credit on foreign interest, compatibility of tax credit with the applicable DTT AUS-BEL DTT	

NETHERLANDS (*Daniel Smit*)

Supreme Court January 31, 2014, No. 12/02201, BNB 2014/77	
worldwide taxation of non-resident taxpayer for purposes of calculating the average tax rate ("progressivity rule"): tax treaty override?.	

SWITZERLAND (*Michael Beusch*)

Federal Administrative Court A-1606/2014, 7 October 2014	N/A
Scope of Art. 26 OECD-MC if domestic law of the requested State impedes data transfers.	
Federal Administrative Court A-3294/2014 8 December 2014	N/A
„Burden of proof“ for the requesting State if a double-residence is at stake.	

SOUTH AFRICA (*Jennifer Roeleveld/ Craig West*)

High Court of SA Case No. 1319/13	Commissioner for the South African Revenue Service v Mark Krok.
Re-exchange of information and mutual assistance	

INDIA (*D.P. Sengupta*)

Hyderabad Tribunal 2014-TII-147-ITAT-HYD-INTL	Viajay Electricals Limited Vs. Additional Commissioner of Income Tax
The taxpayer had not received to full amount of interest, but accounted for the full interest, and claimed relief under Art. 23 of the treaty. The Revenue held that as the amount actually withheld was less, it was eligible for the lesser amount of credit.	
Delhi High Court 2014-TII-05-HC-DEL-INTL	Director of Income Tax Vs. E Funds IT Solution
There was a competent authority agreement on the existence of a PE. The court held that MAP proceedings could be relevant but are not determinative about the existence of a PE:	

Sessions will take place at the new Campus of WU (Vienna University of Economics and Business), Welthandelsplatz 1, 1020 Vienna, LC building, in Ceremony Hall Nr. 1, room LC.0.100.