

INVITATION

Conference

“TAX TREATY CASE LAW AROUND THE GLOBE”

WU (Vienna University of Economics and Business)
April 27-29, 2017, 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 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 2016 all over the world. We are grateful that outstanding experts from 30 jurisdictions have 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: Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)
- Session 3: Associated Enterprises (Art 9 OECD Model)
- Session 4: Dividends and Interest (Art 10, and 11 OECD Model)
- Session 5: Royalties and Capital Gains (Art 12 and 13 OECD Model)
- Session 6: Employment Income (Art 15, 18 and 19 OECD Model)
- Session 7: Directors’ Fees, Artistes and Sportsmen, Students and Other Income, Methods to Avoid Double Taxation (Art 16, 17, 20, 21 and Art 23 OECD Model Convention)
- Session 8 : Non-Discrimination, Mutual Agreement and Mutual Assistance (Art 24-27 OECD Model)

In each session of the Conference four to six 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 April 27, 2017 at 19:00 with the conference opening and Cocktail Reception. The working sessions will be held all day on April 28 and 29, 2017 at WU (Vienna University of Economics and Business). On April 28, the Mayor of Vienna will invite all the participants to an evening at a "Heurigen".

The participation fee for the Conference is EUR 1200.--. 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 March 15, 2017, 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)

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Prof. Dr. Alexander Rust
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Prof. Dr. Pasquale Pistone
Jean Monnet *ad personam* Professor at the
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Prof. Dr. Peter Essers
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Professor at the Fiscal Institute Tilburg
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Prof. Dr. Daniël S. Smit
Professor at the Fiscal Institute Tilburg
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PROGRAMME

Conference

“TAX TREATY CASE LAW AROUND THE GLOBE”

WU (Vienna University of Economics and Business)

April 27-29, 2017, Vienna, Austria

Thursday, April 27, 2017

19:00

Welcome Reception

Welcome Address:

Prof. Dr.DDr.h.c. Michael Lang (Institute for Austrian and International Tax Law, WU)

Prof. Dr. Eric C.C.M. Kemmeren (European Tax College)

Afterwards:

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

Friday, April 28, 2017

Session 1

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

09:00 – 11:00

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

GERMANY (Alexander Rust)

German Constitutional Court of 15 December 2015, 2 BvL 1/12, IStR 2016, 191	
The German Constitutional Court decided that the legislator may enact domestic tax provisions which are not in line with a tax treaty. These treaty overriding provisions do not constitute a breach of the German constitution and are therefore not void.	
German Bundesfinanzhof of 25 May 2016, I R 64/13, IStR 2016, 770	
The German Bundesfinanzhof held that a treaty overriding provision will also prevail over a tax treaty which entered into force after the treaty overriding provision was enacted. With regard to treaty overriding provisions the later in time rule does not apply	

ICELAND (*Jón Elvar Guðmundsson*)

The Supreme Court judgment ruling that the Iceland-German DTT does not apply in a debate on inheritance tax. This is decided on the basis of the scope of the treaty.	

AUSTRALIA (*Michael Dirkis*)

Bywater Investments Ltd & Ors v FCT; Hua Wang Bank Berhad v FCT [2016] HCA 45	Bywater Investments Limited v Commissioner of Taxation
Place of effective management	

SWEDEN (*Bertil Wiman*)

15 April. HFD 2016 ref. 25	N/A
A Swedish collective investment fund has been found to be resident in Sweden under a tax treaty, despite it not being taxable in Sweden	

US (*Yariv Brauner*)

	Gerd Topsnik vs. . Commissioner
How to treat an installment sale during which a taxpayer loses (revokes) his residence	

11:00 – 11:30

Coffee Break

Session 2**Business profits and permanent establishments** (Art 5, 6, 7, 8 and 14 OECD Model)

11:30 – 13:30

*Chair: Alfred Storck***FINLAND** (*Marjaana Helminen*)

KHO 2016/2147 (71); KHO 2016/2146 (72)	
The allocation of subsidiary shares and a loan related to the acquisition of the shares to the assets and liabilities of a permanent establishment for interest deduction purposes	

JAPAN (*Tsutomu ENDO*)

Tokyo District Court	
Case on the procedural requirement for applying the treaty and on the determination of a permanent establishment for an online sale business	

POLAND (*Hanna Litwińczuk*)

II FSK 1692/14	
Is national law able to split the profits of permanent establishment due to the different source of revenues enacted in the national law and tax in the different ways income derived from economic activity and from financial capital?	

PORTUGAL (*Ana Paula Dourado*)

a case on net taxation of PEs and applicable rules	

BELGIUM (*Isabelle Richelle*)

Supreme Court 29 Sept. 2016 case No F.14.0006.F	
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the blurry tax status of income from an SCI	
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NETHERLANDS (*Eric C.C.M. Kemmeren*)

Hoge Raad 3 June 2016, no. 14/05100, BNB 2016/171	
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No internal royalty between Dutch resident BV (head office) and its permanent establishment in Spain in the context of a Dutch fiscal unity.	
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13:30 – 15:00

Lunch Break

Session 3**Associated Enterprises** (Art 9 OECD Model)

15:00 – 16:00

Chair: *Eric C.C.M. Kemmeren***INDIA** (*D.P. Sengupta*)

[ITA Nos. 1548 and 1549/Kol/2009 [2016-TII-372- KOL-TP-SB	Instrumentarium Corporation Ltd, Finland Vs. ADIT
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Transfer pricing - if there is a transaction between associated enterprises, ALP adjustment has to be made and contention about erosion of tax base if the Indian subsidiary is allowed corresponding deduction is not available.	
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US (*Yariv Brauner*)

	Medtronic and Consolidated Subsidiaries vs. Commissioner
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transfer pricing for intangibles case	
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	Guidant vs. Commissioner
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Must transfer pricing adjustments be made always on an entity by entity basis (separate for each), or a more holistic group view may be taken?	
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16:00 – 16:30

Coffee Break

Session 4**Dividend and interest** (Art 10 and Art 11 OECD Model)

16:30 – 18:30

Chair: *Alexander Rust***ARGENTINA** (*Mirna Screpante*)

National Court of Appeals, Chamber I, 19 May 2016	Molinos Rio de la Plata vs. DGI
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It is confirmed that just the sole existence of a holding company as a receiver of dividends is not a conclusive ground to exclude the application of a Double Tax Treaty under the argument of treaty	
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abuse without taking into consideration a proper analysis of its substance and corporate structure.

CZECH REPUBLIK (*Danuše Nerudová*)

8 Afs 34/2015-71 decided on 7.6.2016

N/A

called CTP property - the scope is financing within the group and the possibility to deduct interests from the tax base

POLAND (*Hanna Litwińczuk*)

II FSK 3666/13

N/A

The cause of the dispute is a possibility of levying diminished rate (preferential rate) of withholding tax on interests paid by the entity to the Pool Leader (Cash Pooling Agreement). Tax administration authority denied such statement and states that the withholding tax shall be levied on the national rate

SPAIN (*Adolfo Martín Jiménez*)

Supreme Court of 24 February 2016, rec. 3976/2014, rec. 416/2016, 948/14

N/A

the interaction of the concept of dividends in tax treaties with the domestic concept and the one in the Parent Subsidiary Directive, the application of anti-abuse / sham rules to international transactions protected by a tax treaty or the use of the concept of aggressive tax planning as a benchmark for certain transactions

BRAZIL (*Luís Eduardo Schoueri*)

Decision No. 1201-001.382, 2nd Chamber

Brazil, CARF

The disputed issue in this case is whether taxation under Brazilian former CFC legislation should be regarded as profit or dividend taxation. (decision is not final)

ITALY (*Pasquale Pistone*)

Corte di Cassazione, Judgment 25 May 2016, n. 10792

Eco-bat

Meaning of beneficial ownership in tax treaties under Article 10 of the Italy-United Kingdom tax treaty. Relevance of internationally accepted tax practice and of meaning under the OECD Model Convention.

20:00

Evening at typical Austrian "Heurigen" (wine tavern)

Saturday, April 29, 2017

Session 5

Royalties and capital gains (Art 12 and 13 OECD Model)

09:00 – 11:00

Chair: *Josef Schuch*

BULGARIA (*Slavka Dimitrova Slavcheva*)

Supreme Administrative Court N 533 of January 19th 2015	
Capital Gains - Procedural requirements for the application of the DDT relief.	

AUSTRALIA (*Michael Dirkis*)

Federal Court of Australia (Full Court) [2016] FCAFC 70	Commissioner of Taxation v Seven Network Limited
Are the payments for the broadcasting rights to the Olympic Games treated as royalties	
Federal Court of Australia (Full Court) [2016] FCAFC 130	Mahindra Limited v Commissioner of Taxation
royalties, fees for technical services, effectively connected	

KAZAKHSTAN (*Tomas Balco & Xeniya Yeroshenko*)

Supreme Court of Kazakhstan decision of February 2016	
taxation of engineering services – application of Technical Services Article in Kazakhstan – India Tax Treaty and application of Most Favourite Nation Treatment Clause	

ESTONIA (*Helen Pahapill*)

Tallinn Circuit Court 3-14-26	Dalkia International S.A v. the Tax and Customs Board
The dispute was concentrated on the issue of what is an immovable property	

TURKEY (*Billur Yalti*)

Istanbul 8th Tax Court Decision, E. 2015/404, K.2016/386, date: 26.2.2016	
The decision discussed whether the CCA payments should be treated as royalty payment or a service fee	

11:00 – 11:30

Coffee Break

Session 6

11:30 – 13:00

Employment income (Art 15, 18 and 19 OECD Model)*Chair:* Pasquale Pistone**BULGARIA** (*Slavka Dimitrova Slavcheva*)

Supreme Administrative Court N° 11595 of November 1st 2016	Bulgarian work agency v. National Revenue Agency
Employment income: Payroll tax regarding to wages paid by work agency.	

CHINA (*Na Li*)

(2014) huizhongfaxingzhongzi No. 1464	Andrew Ronald Macdonald-Hardie v The First Investigation Branch of Guangzhou Municipal Local Tax Bureau
Whether the appellant is subject to Chinese individual income tax for his income received from a U.S. company in relation to his non-Chinese related work, during the period the appellant worked in China for this U.S. company's Chinese subsidiary	

LUXEMBURG (*Werner Haslehner*)

Cour administrative N° 37634C	-
Concerns the taxation of flight attendants of a Belgian airline who were employed by a Luxembourg company, and resided in Belgium, Germany, France and the Netherlands, respectively. The case concerns Article 15, especially Article 15(3), and is decided on that basis	

UNITED KINGDOM (*Philip Baker*)

[2016] UKFTT 234	M.F. Fowler v HMRC
Do the activities of an employed North Sea diver fall within Art 7 or 14 of the UK-South Africa tax treaty? What is the relevance of a domestic law provision deeming the activities to constitute a trade?	

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

Hoge Raad 18-11-2016 nos.15/04977, 15/04980, and 15/04982, BNB 2017/34	
The impact of a legal fiction included in domestic tax law (the so-called 'normal wage rule') on DTCs	

13:00 – 14:00

Lunch Break

Session 7

14:00 – 16:00

Directors' fees, Artistes and Sportsmen, Students and Other Income, Methods to Avoid Double Taxation (Art 16, 17, 20, 21 and Art 23 OECD Model Convention)*Chairs:* Alexander Rust**PORTUGAL** (*Ana Paula Dourado*)

a case on IMAGE RIGHTS by sportsmen	

SWEDEN (*Bertil Wiman*)

20 June 2016. HFD 2016 ref. 57	
A change of commentaries to article 17 in OECD Model leading has not been applied on a tax treaty entered into before the change.	
12 April. HFD 2016 ref. 23.	
The commentaries to Article 17 OECD found relevant also in interpreting domestic rules when these rules were derived from the OECD Model.	

CANADA (*David Duff*)

2016 TCC 131	Societe generale valeurs mobilieres v. The Queen
elimination of double taxation – tax sparing provision in the treaty with Brazil	

NORWAY (*Eivind Furuseth*)

Appeal Court LB-2014-195584	The remittance rule case
what does “subject to tax” in that rule mean	

ISRAEL (*Ilan Benshalom*)

49525-02-14	order to reward America Inc. v Assessor Tel Aviv 4
It is about the superiority of tax treaties over domestic legislation.	

16:00 – 16:30

Coffee Break

Session 8**Non-discrimination, mutual agreement and mutual assistance**
(Art 24 – 27 OECD Model Convention)

16:30 – 18:00

Chair: *Michael Lang***INDIA** (*D.P. Sengupta*)

	Banca Sella SpA
Non-Discrimination clause. When exemption from capital gains is available to a domestic company in the event of amalgamation with a subsidiary, because of the non-discrimination clause of the treaty, the same benefits will have to be given to a foreign company as well.	

USA (*Yariv Brauner*)

	Denmark. Dileng vs. Commissioner
The government was authorized to collect Danish taxes because Denmark certified that the taxes had been “finally determined” and thus that the United States is required by the treaty to collect them, even if further procedures are available to the taxpayer	

CANADA (*David Duff*)

2016 FC 1086	CGI Holdings v. The Queen
case involves a judicial review of a failed MAP case under the Canada-US treaty	

SWITZERLAND (*Lysandre Papadopoulos/Salome Zimmermann*)

Demarcation between an acceptable group request and an unacceptable "fishing expedition"	

RUSSIA (*Danil Vinnitskiy*)

RF Supreme Court of 18 March 2016, Case No 305-KG15-14263 / No A40-87775/14	
The Russian thin capitalization Rules are equally applicable in regard to all Residents and Non-residents	

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.