

INVITATION

Conference

"TAX TREATY CASE LAW AROUND THE GLOBE"

WU (Vienna University of Economics and Business)
May 23-25, 2019, 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 2018 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: Passive Income (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 three 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 May 23, 2019 at 19:00 with the conference opening and cocktail reception. The working sessions will be held all day on May 24 and 25, 2019 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 1300.--. 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, 2019, 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 **Layomi Gunatilleke-Jester**, layomi.gunatilleke-jester@wu.ac.at .

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

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

Professor at the Institute for
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PROGRAMME

Conference

“TAX TREATY CASE LAW AROUND THE GLOBE”

WU (Vienna University of Economics and Business)

May 23 - 25, 2019, Vienna, Austria

Thursday, May 23, 2019

19:00

Welcome Reception

Welcome Address:

Prof. Dr. Alexander Rust (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, May 24, 2019

Session 1

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

09:00 – 10:45

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

AUSTRALIA (*C. John Taylor*)

The Federal Court of Australia, 5 February 2018, [2018] FCA 41	Resource Capital Fund IV LP v Commissioner of Taxation
The Federal Court of Australia (Full Court) 2 April 2019, [2019] FCAFC 51	Resource Capital Fund IV LP v Commissioner of Taxation
The Federal Court of Australia had to decide whether an US resident investors should have access to the US-Australia DTT when operating through a third-country (Cayman Islands) limited partnership	

GREECE (*Katerina Perrou*)

Supreme Administrative Court, 24 January 2018, case no. 153/154	
Supreme Administrative Court, 21 November 2018, case no. 2465	
The Supreme Administrative Court had to decide whether different extraordinary levies are 'substantially similar taxes' under Art. 2 of the applicable DTTs.	

BRAZIL (*Luis Eduardo Schoueri*)

Administrative Council for Tax Appeals, 3 December 2018, case no. 1301.002.817	
The case concerned a levy that is classified as a social security contribution under Brazilian domestic law. However, the decision making body concluded that the levy is substantially similar to corporate tax on income and, therefore, falls under the substantive scope of the Brazilian DTTs.	

POLAND (*Karolina Tetlak*)

Administrative Court in Rzeszow, I Sa/Rz 745/18	
The administrative court concluded that, although the Polish-US DTT applies to federal taxes in the US only, Poland nevertheless should allow a deduction domestically for state taxes paid in the U.S. by its residents.	

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

Supreme Court, 19 January 2018, 16/03321	
The court interpreted the residence of a company must be determined by the place where the core decisions relating to the activities of the entity are taken, where the final responsibility for these decisions is being borne and from where – in specific cases - appropriate instructions are given to the individuals working for the entity.	

10:45 – 11:15

Coffee Break

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

11:15 – 13:30

*Chair: Robert Risse***INDIA** (*D.P. Sengupta*)

AAR No 1573 of 2014[2018-TII-17-ARA-IT], 6 June 2018	MasterCard Asia Pacific Pte Ltd
The court had to decide on multiple PE issues, ruling that a company might have a PE in India, inter alia, through its network and client premises which are at its disposal, as well as through the subsidiary it has in the country, should the latter is not remunerated for all its functions.	
Madras High Court of 14 June 2018, 2018-TII-42-HC-MAD-INTL	Evolv Clothing Company Pvt Ltd v. ACIT
The court decided that a payment to a non-resident for procuring export orders could not be characterized as a fee for technical services (FTS).	

SWITZERLAND (*Michael Beusch*)

Bundesgericht of 23 March 2018, 2C_707/2016	
The court decided that a PE must have at least entrepreneurial activity and, hence, mere private asset management through a partnership does not suffice for triggering a PE. Methodologically it referred for the first time to the so called principle of convergence.	

LUXEMBOURG (*Werner Haslehner*)

Oberstes Verwaltungsgericht of 8 February 2018, 39274C	
The court decided that Art. 7 OECD Model has to be interpreted in a narrow sense, leaving private asset management out of its scope.	

NETHERLANDS (*C. Peters*)

Supreme Court of 6 April 2018, 16/01934	
The case dealt with the possibility of taxing profits in a later year than the one when the book profits were achieved.	

FRANCE (*Dov Milsztajn*)

Conseil d'Etat 407903 of October 12 th 2018	
Can a taxpayer deduct source taxes on business profits which have been levied not in accordance with the treaty?	

CANADA (*David Duff*)

2018 TCC 84, 2018 D.T.C. 1081, [2018] 6 C.T.C. 2120 (TCC)	Wolf v. The Queen
whether a U.S. resident was subject to Canadian tax on the basis that he carried on business in Canada through a services permanent establishment under Article 5(9)(a) of the Canada-US Tax Treaty	

13:30 – 15:00

Lunch Break

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

15:00 – 15:45

*Chair: Eric C.C.M. Kemmeren***SOUTH AFRICA** (*Jennifer Roeleveld*)

High Court of Malawi of 27 July 2018, case no. 43/2016	Ex-parte Eastern Produce Malawi Ltd vs the State and the Commissioner General of Malawi Revenue Authority
The court concluded that OECD TP Guidelines are not law in Malawi. Where the tax authorities reject the transfer pricing method that was used, they must guide the taxpayer in choosing another method.	

NETHERLANDS (*C. Peters*)

Supreme Court of Netherlands, case no. 17/03918	
The case concerned an adjustment made pursuant to Art. 9 of the DTT between the Netherlands and Ireland	

HUNGARY (*Rita Szudoczky / Balazs Karolyi*)

Budapest Capital Administration and Labour Court, case no. 14.K.32.030/2016/30	
The case deals with the proper determination of transfer pricing for intra-group financing transactions, analyzing the OECD Transfer Pricing Guidelines and domestic legislation as well.	

15:45 – 16:15

Coffee Break

Session 4**Passive income** (Art 10, Art 11, Art 12, and Art 13 OECD Model)

16:15 – 18:15

Chair: Alexander Rust

AUSTRALIA (*C. John Taylor*)

The Federal Court of Australia (Full Court) of 11 October 2018, [2018] FCAFC 172	Satyam Computer Services Limited v Commissioner of Taxation
The disputed issue in this case is whether a DTT provision, which allocates the source of a particular item of income between the Member States, can be relied on, if the domestic law otherwise would not recognize such item of income as sourced in the country at hand	

ITALY (*Mario Tenore*)

Supreme Court of 11 October 2018, case no. 25219	Eco-bat
The court confirmed that the provisions limiting source taxation, encompassed in Italian DTTs, also apply where the Residence State does not actually tax the relevant item of income.	

INDIA (*D.P. Sengupta*)

Authority for Advance Ruling of 21 May 2018, 2018-TII-12-ARA-IT	Societe de promotion et le participation pour la cooperation economique
The AAR ruled that while commitment fee, cancellation fee, amendment fee and monitoring fee was directly related to the debt claims and fall under the definition of interest, front end fee being in the nature of appraisal fee, was not interest	

BULGARIA (*Ivan Lazarov*)

Supreme Administrative Court of 21 June 2018, 9214/2017	A1 Bulgaria v National Revenue Agency
The court decided that Art 11 of the MC contains an implicit BO requirement even if the DTT in question contains no explicit BO provision.	

POLAND (*Karolina Tetlak*)

Supreme Administrative Court of 27 April 2018, II FSK 1370/16	
The case concerned a DTT with disparity in its language versions – while in the Polish one there was no BO requirement, there was such in the other two authentic languages (Swedish and English). The court also interpreted the content of the BO rule.	

RUSSIA (*Danil Vinnitskiy*)

Supreme Court of 3 December 2018, 304-KГ18-19526/ A27-27287-2016	OAO "Shakhta Polosukhinskaya"
The case concerned the test regarding the BO requirement under Art10.	

CANADA (*David Duff*)

2018 TCC 152, 2018 D.T.C. 1120 (TCC) [on appeal to FCA]	Alta Energy Luxembourg S.A.R.L. v. The Queen
exemption from Canadian tax on capital gain from the sale of a Canadian company under Article 13(5) of the Canada-Luxembourg Tax Treaty, relying on the excluded property exception in Article 13(4) of the Treaty	

20:00

Evening at typical Austrian "Heurigen" (wine tavern)

Saturday, May 25, 2019

Session 5

Employment Income (Art 15, 18 and 19 OECD Model)

09:00 – 10:00

Chair: *Kasper Dziurdz*

DENMARK (*Søren Friis Hansen*)

Supreme Court SKM2018.60.HR
of January 4th 2018

Is a offshore vessel built for oil extraction in "international traffic"?

SOUTH AFRICA (*Jennifer Roeleveld*)

Tax Court Western Cape 14218
of March 9th 2018

Where is an employment exercised if a seconded employee performs some tasks in a third state?

BELGIUM (*Edoardo Traversa*)

Supreme Court of Belgium of 16
April 2018, case no.
F.16.0062.N

The case concerned the tax treatment of the pension of a retired school teacher and the social security benefits for work incapacity.

10:00 – 10:30

Coffee Break

Session 6

Directors' fees, Artistes and Sportsmen, Students and Other Income, Methods to Avoid Double Taxation (Art 16, 17, 20 and 21 OECD Model Convention)

10:30 – 12:00

Chair: *Kasper Dziurdz*

GERMANY (*Alexander Rust*)

Bundesfinanzhof I R 98/15 of
December 20th 2017

Is a soccer referee a "sportsperson"?

Bundesfinanzhof I R 59/15 of
April 25th 2018

Does a company organizing concerts fall within the ambit of Art 17 with all its activities?.

ITALY (*Mario Tenore*)

Supreme Court 21865/2018

Are the activities of a fashion model covered by Art 17?

PORTUGAL (*Dinis Tracana*)

Arbitration Court (CAAD)
597/2017-T of June 15th 2018

Is a corporation owning the image rights of professional soccer players a "star company"?

BELGIUM (*Edoardo Traversa*)

Court of Appeal, Ghent
(Belgium) of 15 May 2018, case
no. 2017/AR/589

The case concerned the tax treatment of a lump sum payment for the exploitation of the image rights of a professional football player.

12:30 – 13:30

Lunch Break

Session 7

13:30 – 14:45

Methods to avoid double taxation (Art 23 OECD Model Convention)

Chair: Alexander Rust

SPAIN (*Alfredo Garcia*)

National Audience JT/2018/812 of June 29 th 2018	Servired Spanish Society of Means of Payment SA
The case deals with a right to deduction to avoid international double taxation in relation with dividends and participation in profits. The DTC Spain-UK allows to apply the deduction but 100% may only be deducted if the dividends or profit sharing come from entities in which the percentage of direct or indirect participation is equal to or greater than five percent. The main question is whether this percentage established by the internal law refers only to participation in the share capital or if the economic and political rights can be taken into account.	

USA (*Yariv Brauner*)

Court of Appeals 17-5238 of December 7 th 2018	Starr International Company Inc v United States of America
Does a tax refund claim based on the denial of discretionary relief raise a non-judicial political question?	

GREECE (*Katerina Perrou*)

Supreme Administrative Court 1527 [2018] of June 28 th 2018	
The residence state only credited source taxes after tax has been calculated – after calculation no tax was due and the source tax remained unrelieved.	

14:45 – 15:15

Coffee Break

Session 8

15:15 – 17:00

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

Chair: Michael Lang

CHINA (*Li Na*)

Middle Court of Yantai City (2016) LU 06 XING ZHONG No. 324 of XX XX 2016	ILLVA Saronno Holding SpA v the State Tax Bureau in Zhixia District
A special tax treatment for corporate re-organizations was denied to an Italian company.	

JAPAN (*Yuri Matsubara*)

Supreme Court XXX of July 6 th 2018	Melco Holdings Inc
Suspension of a request regarding exchange of information due to infringement of taxpayer's rights (privacy).	

SWITZERLAND (*Lysandre Papadopoulos*)

Bundesgericht 2C_695/2017 of October 29 th 2018	
A request for administrative assistance is admissible even if the taxpayer could be identified only by his bank account number.	
Bundesgericht 2C_28/2017 of April 16 th 2018	
A request for administrative assistance is admissible even if the taxpayer already concluded a final settlement with the tax authorities.	

HUNGARY (*Rita Szudoczky / Balazs Karolyi*)

Constitutional Court, case no. 31/2017. (XII.6.)	Telecom
This case deals with the Act XXII of 2014 on Advertisement Tax and its potential breach of Article 24 (1) and (5) of the Double Tax Convention between Hungary and Ireland.	

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

We would like to inform you that this event will be photographed. Should you not wish to be photographed, we kindly ask you to avoid the camera and/or inform Ms. Layomi Gunatilleke-Jester: layomi.gunatilleke-jester@wu.ac.at. Photos will be used to inform the public about the activities of the Institute.