

INVITATION

Conference

“TAX TREATY CASE LAW AROUND THE GLOBE”

WU (Vienna University of Economics and Business)
May 19-21, 2011, 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 K.U. Leuven and 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 2010 all over the world. We are grateful that outstanding experts of 30 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 (Art 7 OECD Model)
- Session 4: Transfer Pricing (Art 9 OECD Model)
- Session 5: Dividend, interest, royalties, capital gains (Art 10, 11, 12 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 : Methods to avoid double taxation (Art 23 OECD Model)
- Session 8: Non-discrimination, mutual agreement and mutual assistance (Art 24, 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 19, 2011 at 18.15 with the Conference Opening and Cocktail Reception at the Institute for Austrian and International Tax Law. The working sessions will be held all day on May 20 and 21, 2011 at WU (Vienna University of Economics and Business). On May 20, 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, 2010, 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 of
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

Prof. Dr. Josef Schuch
Professor at the Institute of
Austrian and International Tax Law
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Prof. Dr. Pasquale Pistone
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Prof. Dr. Claus Staringer
Professor at the Institute of
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Prof. Dr. Alfred Storck
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Prof. Dr. Luc De Broe
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(K.U. Leuven)

Prof. Dr. Peter Essers
Director of European Tax College,
Professor at the Fiscal Institute Tilburg
(Tilburg University)

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

Prof. Dr. Frans Vanistendael
Director of European Tax College,
Professor Emeritus at the Institute of Tax
Law (K.U. Leuven)

PROGRAMME

Conference

“TAX TREATY CASE LAW AROUND THE GLOBE”

WU (Vienna University of Economics and Business)

May 19-21, 2011, Vienna, Austria

Thursday, May 19, 2011

18:15

Conference opening and cocktail reception

Institute for Austrian and International Tax Law,
Althanstrasse 39-45, 1090 Vienna.

(joint event with the Wolfgang Gassner Gedächtnisvorlesung
participants)

Friday, May 20, 2011

Session 1

08:30 – 10:30

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

*Chairs: Michael Lang
Jacques Sasseville*

Canada (*David Duff*)

[210] 5 CTC 2426, 2010 DTC
3208 (TCC)

TD Securities (USA) LLC v. The
Queen

Elimination of double taxation and a hybrid entity

Romania (*Aurelian Opre, Romana Schuster*)

Romanian Supreme Court
11.2.2010, 749

SC"OR"SRL v RATA

Tax residency certificate issued by Delaware state

Hungary (*Daniel Deák*)

Supreme Court of the Republic of Hungary in Kvf.I.35.222/2008/5, Kvf.V.35.288/2009/10, Kvf.I.35.229/2005/5	
Does the Hungarian local trade tax fall within the scope of the Germany-Hungary double tax treaty?	

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

Hoge Raad (Dutch Supreme Court) 3. 12. 2010, 09/01401	published in Vakstudie-Nieuws (V-N) V-N 2010/63.27
How to prove residence of other contracting state for tax treaty purposes?	

Portugal (*Gustavo Lopes Courinha*)

Supremo Tribunal Administrativo (Supreme Administrative Court) 8.9.2010 (0461/10) / 27.10.2010 (0462/10) / 12.1.2011 (0882/10)	Concept of Residence for DTC purposes – article 4 (1)
The domestic tax law concept of residence in the context of households	

10:30 – 11:00

Coffee Break

Session 2

11:00 – 12:30

Permanent Establishments (Art 5 OECD Model)

*Chairs: J. Clifton Fleming, Jr.
Eric C.C.M. Kemmeren*

France (*Stéphane Gelin*)

Conseil d'Etat (French Administrative Supreme Court) 31.3.2010, 304715 and 308525	Zimmer Limited
A commissionaire does not constitute a PE	

Italy (*Pasquale Pistone*)

Corte di Cassazione, Tax Chamber, decision 9.4.2010, 8488/2010	Corte di Cassazione
Construction PEs under the Italy-Switzerland DTC	

South Africa (*Jennifer Roeleveld*)

[2009] 72 SATC 1 (reported January 2010)	Grundlingh v CSARS
Could a single Partner have a PE? – Nature of crossborder partnerships	

Turkey (*Billur Yalti*)

Supreme Administrative Court, 2010/3276	Sun Cruises Ltd
Travel agency or the yacht: Which one is the PE?	

12:30 – 14:00

Lunch Break

Session 3

14:00 – 16:00

Business profits (Art 7 OECD Model)

*Chairs: Claus Staringer
Philip Baker*

Brazil (*Luís Eduardo Schoueri*)

Judgment no. 2004.50.01.001354-5 of the 2nd Region Federal Court	Veracel Celulose S.A. v. National Treasury
The qualification of income derived from the render of technical services without technology transfer (Art 7 vs Art 21)	

China (*Wei Cui*)

n/a	n/a.....
The interpretation of international transportation income	

Germany (*Steffen Lampert*)

BFH 28.4.2010, I R 81/09	(Anonymous)
Qualification of income derived through a partnership whose general partner is a limited corporation (relevance of national tax law for the interpretation of DTCs)	

Greece (*Katerina Perrou*)

Greek Supreme Administrative Court 917/2010	(Name of the party not available)
The accounting method is not the only acceptable method for the calculation of the profits that are attributable to a PE	

Turkey (*Billur Yalti*)

Supreme Administrative Court, 4th Chamber, 2010/2979	Starwood Hotel Inc.
Hotel management service fees as business profits or professional services?	

16:00 – 16:30

Coffee Break

Session 4

16:30 – 18:00

Transfer Pricing (Art 9 OECD Model)

*Chairs: Alfred Storck
J. Clifton Fleming, Jr.*

Australia (*Richard Krever*)

SNF Australia [2010] FCA 635	SNF
Comparable arm's length price - Transfer Pricing Provisions in the domestic law	

Finland (*Marjaana Helminen*)

KHO 3092/2010 (73)	A Oy
Intra-group arm's length interest rate	

Russia (Elena Variychuk)

The Thirteenth Arbitration Court of Appeal, 15.12.2010 A56-94331/2009	The Royal Bank of Scotland
Intra-group Services and Cost-Sharing Arrangements: can they work in Russia?	

USA (Yariv Brauner)

Nos 06-74246 & 06-74269 (9th Cir. 22 Mar. 2010)	Xilinx
Stock options and arm's length standard	

20:00

Evening at typical Austrian "Heurigen" (wine tavern)

Saturday, May 21, 2011**Session 5**

08:30 – 10:30

Dividend, interest, royalties, capital gains (Art 10, 11, 12 and 13 OECD Model)Chairs: *Eric C.C.M. Kemmeren*
*Yariv Brauner***Czech Rep. (Danuše Nerudová)**

27.5.2010, 5 Afs 106/2009-112	n.a.
Right to claim dividends vs owner of the share	

Estonia (Helen Pahapill)

Tallinn Administrative Court, 10. 2. 2010, 3-10-25	ImmoEast Beteiligungs GmbH
Taxation of liquidation proceeds of a company deriving most of its income from immovable property	

India (D.P. Sengupta)

2010-TII-13-HC-MUM-INTL	Vodafone
Transfer of One Share of an upstream overseas company to another overseas company- do taxable capital gains arise in India?	

Poland (Hanna Litwińczuk)

Judgment of Supreme Administrative Court II FSK 1182/08	PKO Bank Polski S.A. v Minister of Finance
The right to use computer programs: scope of the term "royalties" in domestic and international law	

Sweden (Bertil Wiman)

Supreme Administrative Court (Högsta Förvaltningsdomstolen) 14.12.2010, 283-10	n.a.
The precedence of tax treaties	

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, 21 OECD Model Convention)

11:00 – 12:30

Chairs: Pasquale Pistone
Philip Baker**Denmark** (*Søren Friis Hansen*)Western High Court,
SKM.2010.626VLR

Definition of "hired worker" – Legal effect of new application of the definition

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

Hoge Raad 7.5.2010, 08/02054

published in Beslissingen in
belastingzaken Nederlandse
Belastingrechtspraak (BNB)
2010/245

Transfer fee received by a professional football player

India (*D.P. Sengupta*)

2010-TII-176-ITAT-MUM-INTL

Wizcraft International

Taxability of commission paid to agent who arranged tours as part of remuneration of artistes.

Spain (*Adolfo Martín Jiménez*)

Audiencia Nacional 28.2.2010

U2

U2 Concerts in Spain: taxation of payments to involved companies

12:30 – 14:00

Lunch Break

Session 7

14:00 – 16:00

Methods to avoid double taxation (Art 23 OECD Model)Chairs: Josef Schuch
Luís Eduardo Schoueri**Austria** (*Michael Lang*)

VwGH 29.7.2010, 2010/15/0021

Legal basis and tax treaty limits of exemption with progression

Belgium (*Bernard Peeters*)Belgian Supreme Court
22.1.2010

ING Lease Belgium

Characterization of income for treaty purposes vs. domestic tax law purposes

Germany (*Steffen Lampert*)BFH 3.2.2010, I R 23/09; BFH
9.6.2010, I R 107/09; BFH
9.6.2010, I R 100/09

n.a.

Treatment of losses resulting from a foreign PE under the exemption method

Romania (*Aurelian Opre, Romana Schuster*)Craiova Court of Appeal
26. 1. 2010, 12/2010

Banca Comerciala Romana

WHT on payments of executed promissory notes: could credit method work when the original notes holders discounts them to co-nationals?

USA (Jacques Sasseville)

UNITED STATES Tax Court 6.10.2010	Savary
A flight attendant between France and the US	

USA (Yariv Brauner)

Case no. 1:08-cv-00608, (S.D. Ohio, 6 July 2010)	The Procter & Gamble Company and Subsidiaries v. U.S.
Procter & Gamble: Did the taxpayer exhaust all remedies?	

16:00 – 16:30

Coffee Break

Session 8**Non-discrimination, mutual agreement and mutual assistance**
(Art 24, 25, 26 and 27 OECD Model)

16:30 – 18:00

Chair: *Michael Lang*
*D.P. Sengupta***Great Britain (Philip Baker)**

(2010) 12 ITLR 962; [2010] UKFTT 136 (TC)	FCE Bank plc v Revenue and Customs Commissioners
The 'ownership non-discrimination provision' – Art 24(5) OECD Model	

Italy (Pasquale Pistone)

Corte di Cassazione, Tax Chamber, decision 23.2.2010, 4272/2010	Corte di Cassazione
The deduction non-discrimination clause and the limits to deduction under a domestic anti-avoidance provision	

New Zealand (Shelley Griffiths)

[2010] NZCA 183	Avowal Administrative Attorneys v District Court at North Shore
Information sharing between competent authorities	

Switzerland (Michael Beusch)

21.1.2010, A-7789/2009	anonymous
UBS: administrative assistance	

Kazakhstan (Tomas Balco)

4 - 206 - 10 (2010), Supreme Court of RK	ATF Bank JSC vs. Tax Committee of Almaty City
Non-discrimination clause, Thin-capitalization rules, Beneficial Ownership	

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.