

Conference

Tax Treaty Case Law around the Globe 2023

April 26-28, 2023

Program

WEDNESDAY, APRIL 26, 2023

- 18.30 Meeting point / boarding bus for **departure** at Bassena hotel
- 19.30 **Typical Viennese Heurigen Dinner at "s'Pfiff"**
by invitation of the Mayor of Vienna
- 22.45 Boarding bus - return to Bassena hotel

THURSDAY, APRIL 27, 2023

The working sessions will take place on the campus of WU (Vienna University of Economics and Business), Welthandelsplatz 1, 1020 Vienna, LC building, in **Ceremony Hall 1, room LC.0.001**.

- 08.30 – 09.00 Registration
- 09.00 – 10.15 **Session 1: Treaty Interpretation, Application, and Status of OECD Commentaries**

Chair: *Alexander Rust*
Eric Kemmeren

Netherlands (Eric Kemmeren)

[X] v. State Secretary of Finance	
Court:	Hoge Raad (Tax Chamber)
Case identifier:	ECLI:NL:HR:2022:1436
Decision Date:	October 14, 2022
Other treaty state(s):	Germany

Keywords:	Employment income - Role of (amended) OECD Models and Commentaries
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Italy (Giulio Maisto & Cesare Silvani)

Dependent agent PE	
Court:	Corte Suprema Di Cassazione
Case identifier:	36679/2022
Decision Date:	December 14, 2022
Other treaty state(s):	Switzerland
Keywords:	Dependent agency PE (status of OECD Commentaries)

United Kingdom (Philip Baker)

Burlington Loan Management DAC v. HMRC	
Court:	First-Tier Tribunal (Tax Chamber)
Case identifier:	[2022] UKFTT 00290 (TC)
Decision Date:	August 22, 2022
Other treaty state(s):	Ireland
Keywords:	Application of PPT (iro Interest article)

10.15 – 10.45 Coffee Break

11.30 – 13.00 **Session 2: Personal and Substantive Scope (Arts 1 - 4 OECD Model)**

Chair: *Rita Szudoczky*

Germany (Alexander Rust)

Triangular Constellations (Frontier worker)	
Court:	Bundesfinanzhof (BFH)
Case identifier:	I R 30/18
Decision Date:	June 1, 2022
Other treaty state(s):	France, Switzerland
Keywords:	Frontier worker clause

United Kingdom (Philip Baker)

Jonathan Oppenheimer v HMRC	
Court:	First Tribunal (Tax Chamber)
Case identifier:	[2022] UKFTT 00112 (TC)
Decision Date:	March 24, 2022
Other treaty state(s):	South Africa
Keywords:	Resident (individual)

France (Emmanuel Joannard-Lardant)

OBEA	
Court:	Conseil d'État
Case identifier:	ECLI:FR:CECHR:2022:443018.20220202
Decision Date:	February 2, 2022
Other treaty state(s):	Tunisia
Keywords:	Resident (corporation)

Belgium (Edoardo Traversa)

Corporate residence (Letterbox company)	
Court:	Court of Appeal – Ghent – 5 th Chamber
Case identifier:	Roll no. 2021/AR/46
Decision Date:	March 29, 2022
Other treaty state(s):	Hong Kong
Keywords:	Resident (corporation)

Wealth tax	Case 1	Case 2
Court:	Court of Cassation	Court of Cassation
Case identifier:	ECLI:BE:CASS:2022:AR R.20220325.1F.5	ECLI:BE:CASS:20 22:ARR.20220421 .1N.11
Decision Date:	March 25, 2022	April 21, 2022
Other treaty state(s):	Luxembourg	Netherlands
Keywords:	Taxes covered	Taxes covered

12.45 – 14.15 Lunch Break

14.15 – 15.30 **Session 3: Non-Discrimination, Mutual Agreement and Mutual Assistance (Arts 24 – 27 OECD Model Convention)**

Chair: *Ricardo García Antón*

Canada (David Duff)

Remillard v. Canada	
Court:	Federal Court
Case identifier:	2022 FC 338
Decision Date:	April 7, 2022
Other treaty state(s):	USA, Switzerland, Barbados
Keywords:	Exchange of information

Portugal (Ana Paula Dourado)

Dual resident information	
Court:	Centro de Arbitragem Administrativa
Case identifier:	394/2021-T
Decision Date:	March 21, 2022
Other treaty state(s):	Spain
Keywords:	Exchange of information

Israel (Shay Menuchin)

Dekel Foreign Employees and others vs. The State of Israel and others	
Court:	Supreme Court
Case identifier:	Civil Appeals 3687/20 3926/20
Decision Date:	
Other treaty state(s):	
Keywords:	Non-discrimination

15.30 – 16.00 Coffee Break

16.00 – 16.45 **Session 4: Associated Enterprises (Art 9 OECD Model)**

Chair: *Claus Staringer*

Australia (Kerrie Sadiq & Richard Krever)

Singapore Telecom Australia Investments Pty Ltd ("Singtel") v Commissioner of Taxation	
Court:	Federal Court
Case identifier:	[2021] FCA 1597
Decision Date:	December 17, 2021
Other treaty state(s):	Singapore
Keywords:	Associated Enterprises (Transfer pricing)

Israel (Shay Menuchin)

Madingo vs. Afula Assessing Officer	
Court:	Tel Aviv District Court
Case identifier:	Income Tax Appeal 53528-01-16
Decision Date:	May 9, 2022
Other treaty state(s):	
Keywords:	Associated Enterprises (Transfer pricing)

16.45 – 17.15 Break

- 17.15 **Honorary Lecture Prof. Avi-Yonah**
"A Multilateral Tax Treaty: Historical Origins and Future Prospects"
- 18.30 **Cocktail Reception**
at the Forum

FRIDAY, APRIL 28, 2023

- 09.00 – 10.00 **Session 5: Employment Income, Directors' Fees, Artistes and Sportsmen, Pensions, Students and Other Income (Art 15, 16, 17, 18, 19, 20 and 21 OECD Model Convention)**

Chair: *Daniel Blum*

China (Hong Kong) (Na Li)

Commissioner of Inland Revenue v. Lo Wa Ming Patrick	
Court:	High Court of Hong Kong (Court of Appeal)
Case identifier:	[2022] HKCA 710
Decision Date:	May 17, 2022
Other treaty state(s):	China (mainland)
Keywords:	Employment income, days of work

Germany (Alexander Rust)

Truckdriver	
Court:	Bundesfinanzhof (BFH)
Case identifier:	I R 45/18
Decision Date:	June 1, 2022
Other treaty state(s):	Netherlands
Keywords:	Employment income, days allocation

Switzerland (Michael Beusch & Moritz Seiler)

Student v Zurich Tax Administration	
Court:	Bundesgericht/ Tribunal federal
Case identifier:	2C_879/2021
Decision Date:	July 8, 2022
Other treaty state(s):	Netherlands
Keywords:	Student income

- 10.00 – 10.30 Coffee Break

10.30 – 12.30 **Session 6: Passive Income (Art 10, 11, 12 OECD Model)**

Chair: *Josef Schuch*
Cihat Öner

India (Kejriwal Jariwala Seema)

Google	
Court:	Income Tax Appellate Tribunal
Case identifier:	1513 to 1516 (BANG.) of 2013
Decision Date:	October 19, 2022
Other treaty state(s):	Ireland
Keywords:	Royalty or fees for technical services

Denmark (Søren Friis Hansen)

Danish beneficial ownership follow-up cases	
Court:	Højesteret (Supreme Court)
Case identifier:	Cases 69/2021, 79/2021 and 70/2021
Decision Date:	January 9, 2023
Other treaty state(s):	Cyprus, Luxembourg, USA
Keywords:	Dividends (beneficial ownership)

France (Emmanuel Joannard-Lardant)

Planet	
Court:	Conseil d'État
Case identifier:	ECLI:FR:CECHR:2022:444451.20220520
Decision Date:	May 20, 2022
Other treaty state(s):	Belgium, New Zealand
Keywords:	Royalties (beneficial owner)

Norway (Eivind Furuseth)

Royalty or service	
Court:	Tax Appeals Board, Large Department
Case identifier:	SKNS1-2022-9
Decision Date:	January 27, 2022
Other treaty state(s):	China
Keywords:	Royalty or services rendered

Spain (Ricardo García Antón)

Nintendo	
Court:	Supreme Court
Case identifier:	840/2022
Decision Date:	June 24, 2022
Other treaty state(s):	Germany
Keywords:	Royalty or capital gain (tax treaty interpretation)

Austria (Claus Staringer)

Dividends cum-ex	
Court:	Supreme Administrative Court (VwGH)
Case identifier:	Ro 2022/13/0002
Decision Date:	June 28, 2022
Other treaty state(s):	United Arab Emirates
Keywords:	Dividends (beneficial owner)

12.30 – 13.45 Lunch Break

13.45 – 15.30 **Session 7: Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)**

Chair: *Mart van Hulten*

Poland (Karolina Tetlak)

Home Office	
Court:	Wojewódzki Sąd Administracyjny w Gliwicach
Case identifier:	I SA/GI 1340/21
Decision Date:	January 31, 2022
Other treaty state(s):	Denmark
Keywords:	Permanent establishment

Hungary (Rita Szudoczky & Balázs Károlyi)

Server rental	
Court:	Kúria (Supreme Court)
Case identifier:	Kfv.V.35.285/2022/8
Decision Date:	September 29, 2022
Other treaty state(s):	Ireland, Netherlands
Keywords:	Permanent establishment

Turkey (Billur Yalti)

Website PE	
Court:	Supreme Administrative Court, 4 th Section
Case identifier:	E. 2022/3877, K. 2022/6396
Decision Date:	November 10, 2022
Other treaty state(s):	
Keywords:	Permanent establishment

Argentina (Mirna Screpante)

SOLVAY INDUPA S.A.I.C. s/apelación-Impuesto a las Ganancias	
Court:	Tribunal Fiscal de la Nation
Case identifier:	NLEG-2022-50779994-APN-VOC
Decision Date:	May 20, 2022
Other treaty state(s):	Belgium
Keywords:	Permanent establishment

Brazil (Luis Eduardo Schoueri)

Renner	
Court:	Tribunal Regional Federal da 3 ^a Região 3 ^a Turma
Case identifier:	5001546-65.2019.4.03.6128
Decision Date:	November 8, 2022
Other treaty state(s):	Chile, Mexico, Italy
Keywords:	CFC rules

15.30 – 16.00 Coffee Break

16.00 – 17.30 **Session 8: Methods to Avoid Double Taxation (Art 23 OECD Model Convention)**

Chair: *Michael Lang*
Cihat Öner

Portugal (Ana Paula Dourado)

Capital gain	
Court:	Centro de Arbitragem Administrativa
Case identifier:	684/2020-T
Decision Date:	March 28, 2022
Other treaty state(s):	USA, France
Keywords:	Capital gain

Canada (David Duff)

Antoine Marin v. The Queen	
Court:	Tax Court of Canada
Case identifier:	2022 TCC 49
Decision Date:	May 13, 2022
Other treaty state(s):	France
Keywords:	Foreign tax credit (tax treaty interpretation)

Italy (Guglielmo Maisto & Cesare Silvani)

Flat tax credit	
Court:	Corte Suprema Di Cassazione
Case identifier:	25698/2022
Decision Date:	September 1, 2022
Other treaty state(s):	USA
Keywords:	Obligation to grant credit (mismatch)

Netherlands (Mart van Hulsten)

[X] v. State Secretary of Finance	
Court:	Hoge Raad
Case identifier:	ECLI:NL:HR:2022:974 ECLI:NL:HR:2022:973 ECLI:NL:HR:2022:976
Decision Date:	July 1, 2022
Other treaty state(s):	Malta
Keywords:	Remittance provision