



PROGRAM

Conference

TAX TREATY CASE LAW AROUND THE GLOBE 2016

Tilburg University,
May 19 – 21, 2016, Tilburg, The Netherlands

Organized by the European Tax College of the Fiscal Institute Tilburg, in joint venture with the Institute for Austrian and International Tax Law.

The European Tax College of the Fiscal Institute Tilburg (Tilburg University) and the Institute for Austrian and International Tax Law WU (Vienna University of Economics and Business) are proud to invite you to the Conference **TAX TREATY CASE LAW AROUND THE GLOBE 2016**.

Our Conference aims at presenting and discussing the most interesting Tax Treaty Cases which had been decided in 2015 all over the world. We are grateful that outstanding experts of more than 20 jurisdictions coming from five continents agreed to present the most relevant decisions taken in their countries. The conference covers 36 tax treaty cases. The main topics we identified have been clustered into seven "baskets" which will be dealt with in our seven conference sessions:

- Session 1: Scope, tax treaty interpretation and residence
- Session 2: Permanent establishment
- Session 3: Business profits and transfer pricing
- Session 4: Labour income
- Session 5: Beneficial ownership, royalties and capital gains
- Session 6: Relief for double taxation and LOB
- Session 7: Non-discrimination, exchange of information and recovery

In each session of the Conference, Tax Treaty Cases will be presented and subsequently analyzed in a critical discussion. This discussion includes the possible impact of the cases on the interpretation and application of tax treaties in other countries. Participants are invited to actively join the discussions. Please, see for further details the program.

The scientific results of the conference will be published in a book.

The Conference starts on Thursday May 19, 2016 at 18.00 with the Conference Opening and Cocktail.

Reception in the lobby of the Dante building on the campus of Tilburg University. The working sessions will be held all day on Friday May 20 and Saturday May 21, 2016, in room DZ 2 of the Dante Building. On May 20 all participants are invited for dinner at the university's Faculty Club.

The participation fee for the Conference is EUR 1000.--. A partial waiver of the participation fee may be granted to full-time academics and other full-time 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. These academics only pay EUR 140.--. A partial waiver of the participation is also applicable for alumni of one of the bachelor or master programs of the Fiscal Institute Tilburg of Tilburg University. These alumni pay EUR 900.--. Registration is open up to and including **13-05-2016**. The participation fee must be paid not later than **18-05-2016**, and will not be refunded in the case of cancellation one week prior to the conference.

[**Register now!**](#)

Prof. Dr. Eric Kemmeren

Director of European Tax College,
Professor at the Fiscal Institute Tilburg
(Tilburg University)

Prof. Dr. Peter Essers

Director of European Tax College,
Professor at the Fiscal Institute Tilburg
(Tilburg University)

Prof. Dr. Daniel Smit

Research associate at the Fiscal Institute Tilburg
(Tilburg University)

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

Head, Institute of
Austrian and International Tax Law
WU (Vienna University of Economics and Business)

Prof. Dr. Jeffrey Owens

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

Prof. Dr. Pasquale Pistone

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

Prof. Dr. Alexander Rust

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

Thursday, May 19, 2016

18:00

Conference opening and cocktail reception

Tilburg University, lobby Dante Building,
Warandelaan 2, 5037 AB, Tilburg

Friday, May 20, 2016

Session 1

08:30 – 10:30

Scope, tax treaty interpretation and residence

Chairs: Eric Kemmeren
Michael Lang

New Zealand (Craig Elliffe)

High Court of New Zealand, 1 September 2015.	[2015] NZHC 2099 Chatfield and Co Ltd. V. Commissioner of Inland Revenue
Tax treaty interpretation and dynamic use of the OECD commentary	

Argentina (Axel Verstraeten)

National Tax Court 20 April 2015	[2015] Italtel SPA Sucursal Argentina s/ apelación impuesto a las ganancias
Tax treaty interpretation and (dynamic) use OECD commentaries and OECD Reports on PE profit attribution	

Spain (Alejandro García)

National High Court 10 July 2015	No. 281/2012 ING Direct case
Status of OECD Commentary (2008) and OECD Reports on PE profit attribution	

South Africa (Craig West / Jennifer Roeleveld)

Constitutional Court 18 June 2015	South African Reserve Bank and Another v Shuttleworth and Another (CCT194/14, CCT199/14) [2015] ZACC 17
Elements that must be present in determining whether a levy or charge is a tax in South Africa	

Poland (Karolina Tetlak)

Supreme Administrative Court 15 May 2015	No. II FSK 964/13
Center of vital interests	

France (Daniel Gutmann)

Conseil d'Etat 9 November 2015	370054, 371132
Company exempt by virtue of its status or activities: liable to tax?	

Portugal (João Félix Pinto Nogueira)

Central Administrative Court South, 2 nd section, 10 September 2015	Case 07898/14
Tax residence for treaty purposes and burden of proof	

10:30 – 11:00

Coffee Break

Session 2

11:00 – 12:30

Permanent establishment

Chairs: Philip Baker
Pasquale Pistone

Italy (Guglielmo Maisto)

Supreme Court 20 March 2015	No. 5649
Is there a PE?	

Spain (Alejandro García)

National High Court 8 June 2015	No.182/2012 Dell case
Commissionaire agreement and PE	

India (D.P. Sengupta)

Income Tax Appellate Tribunal, 'L' Bench, Mumbai 16 December 2015	I.T.A. No 7994/Mum/2011 and ITA No. 7631/Mum/2012 NGC Network Asia LLC Vs Joint Director of Income Tax [2015-TII-205-ITAT-MUM-INTL]
Agency PE	

South Africa (Craig West / Jennifer Roeleveld)

Tax Court 15 May 2015	No. 13276 [2015] ZATC 2 AB LLC and BD Holdings LLC v Commissioner of the South African Revenue Services
Technical services and PE concept	

12:30 – 14:00

Lunch Break

Session 3

14:00 – 16:00

Business profits and transfer pricing

Chairs: Cees Peters
Michael Lang

Czech Republic (Danuše Nerudová)

Supreme Administrative Court 5 February 2015	No. 2 Afs 8/2014 - 174
Attribution of profits to a PE	

Italy (Guglielmo Maisto)

Supreme Court 17 July 2015	No. 15005
Transfer pricing	

Luxembourg (Werner Haslehner)

Supreme Administrative Court of Luxembourg 22 July 2015	Case 34 190
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Profit adjustment for interest-free loan to subsidiary based on Article 9, no need to prove "abuse"

Australia (Graeme Cooper)

Federal Court of Australia, 26 November 2015	Chevron Australia Holdings Pty Ltd v. Commissioner of Taxation (No 5)
Transfer pricing	

United States (Yariv Brauner)

U.S. Tax Court 27 July 2015	Nos 6253-12, 9963-12 Altera Corp. et al. v. Commissioner
Transfer pricing	

Germany (Alexander Rust)

Bundesfinanzhof of 20 May 2015,	I R 75/14, IStR 2015, 883
Timing issues in case of termination of PE	

16:00 – 16:30

Coffee Break

Session 4

16:30 – 18:00

Labour income

Chairs: Daniel Smit
Graeme Cooper

Germany (Alexander Rust)

Bundesfinanzhof of 10 June 2015,	I R 79/13, IStR 2015, 785
Taxing right for a golden handshake and effect of a mutual agreement between the competent tax authorities	

Austria (Michael Lang)

Austrian Supreme Administrative Court on 26 February 2015	No. 2012/15/0128
Termination payments	

Luxembourg (Werner Haslehner)

Supreme Administrative Court of Luxembourg 30 April 2015	Case 35 483C
Fees earned by a "Commissaire" falling under Article 16?	

Austria (Michael Lang)

Austrian Supreme Administrative Court on 30 June 2015	No. 2013/15/0266
Artiste performance with advertising function	

Belgium (Luc De Broe)

Supreme Court 9 January 2015	VZW Altsien, No. F.12.0112.N)
Supreme Court 21 May 2015	S.A.D.S., No. F.140143F
Taxation in the State of performance of fees earned by artistes through their companies, one under the B/Ireland and one under the B/Canada treaty	

18:30 Cultural event in the Black Box, Esplanade, Tilburg University

20:00 Dinner at the Faculty Club of Tilburg University

Saturday, May 21, 2016

Session 5 Beneficial ownership, royalties and capital gains

8:30 – 10:30
Chairs: Alexander Rust
 Yariv Brauner

Poland (Karolina Tetlak)

Supreme Administrative Court 11 June 2015	No. II FSK 1518/13
Beneficial ownership	

Bolivia (Alvaro Villegas Aldazosa)

Bolivian Supreme Court September 2014 (March 2015)	No. 311/2014 (AMOCO Case)
Treaty Shopping and pacta sunt servanda	

Switzerland (Michael Beusch)

Federal Supreme Court 5 May 2015	No. 2C_364/2012
"SWAP-case" and beneficial ownership	

Argentina (Axel Verstraeten)

Federal Court of Appeals 19 February 2015	[2015] Rovafarm Argentina SA y otro c/ DGI y otro s/ recurso directo de organism externo
Income from technical services: business income or royalty?	

Australia (Graeme Cooper)

Federal Court of Australia, 7 October 2015	Tech Mahindra Ltd v Commissioner of Taxation
Interaction between Article 7 and Article 12	

The Netherlands (Eric Kemmeren)

Supreme Court 16 January 2015	No. 13/05247, BNB 2015/64
Exit taxation: tax treaty override?	

10:30 – 11:00 Coffee Break

Session 6 Relief for double taxation and LOB

11:00 – 12:30
Chairs: Eric Kemmeren
 David Duff

Denmark (Søren Friis Hansen)

Supreme Court 9 January 2015	SKM2015.24HR
Subject to tax requirement	

Hungary (Daniel Deak)

Supreme Court 26 February 2015	No. Kfv.V.35.806/2013
Losses arising from swap contracts: limitation on foreign tax credit?	

United States (Yariv Brauner)

U.S. District Court for the District of Columbia, 18 September 2015	No. 1:14-cv-01593 Starr International Co. Inc. v. United States
LOB	

The Netherlands (Daniel Smit)

Supreme Court 27 February 2015	No. 13/05185, BNB 2015/126
Carve-out Netherlands/Maltese tax treaty	

12:30 – 14:00

Lunch Break

Session 7

14:00 – 15:30

Non-discrimination, exchange of information and recovery

Chairs: Daniel Smit
Alexander Rust

Portugal (João Félix Pinto Nogueira)

Central Administrative Court South, 2 nd section, 4 June 2015	Case 05768/12
Tax treatment of the pensions paid by Norway to a disabled retired woman (of Norwegian nationality) resident in Portugal	

Canada (David Duff)

Federal Court 16 September 2015	2015 FC 1082 (Federal Court Hillis v. Canada)
Intergovernmental Agreement providing for enhanced tax information exchange between Canada and the United States	

Switzerland (Michael Beusch)

Federal Supreme Court 24 September 2015	No. 2C_963/2014
Notion of persons involved in the EoL procedure	

Australia (Graeme Cooper)

Federal Court of Australia, 28 August 2015	Deputy Commissioner of Taxation v. McManus
Cross-border enforcement of tax claims	

Sessions will take place in Room **DZ 2** at the Dante Building at the Tilburg University Campus (Warandelaan 2, 5037 AB, Tilburg).