PROGRAM

Conference
“TAX TREATY CASE LAW AROUND THE GLOBE 2014”

Tilburg University,
May 22 – 24, 2014, Tilburg, The Netherlands

Thursday, May 22, 2014

18:00   Conference opening and cocktail reception
Tilburg University, lobby Dante Building,
Warandelaan 2, 5037 AB, Tilburg

Friday, May 23, 2014

Session 1   Tax treaty interpretation and permanent establishment
08:30 – 10:00   Chairs: Eric Kemmeren
Michael Lang

Spain (Adolfo Martín Jiménez)
Spanish National Court of 25 April 2013 169/2010
Concept of PE (fishing vessels and company directors) under ESP/EST DTC

Italy (Guglielmo Maisto)
Supreme Court 17 January 2013  No. 1107
Italian PE of Slovenian citizen who acted as tourist intermediary for a Slovenian ski club
**Sweden** (Martin Berglund)

<table>
<thead>
<tr>
<th>Swedish Board for Advance Tax Rulings 12 June 2013; Supreme Administrative Court 6 December 2013</th>
<th>No. 125-11/D; No. 4890-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether a computer server can constitute a permanent establishment</td>
<td></td>
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**United Kingdom** (Philip Baker)

<table>
<thead>
<tr>
<th>First Tier Tribunal (Tax), 10th October 2013</th>
<th>Macklin</th>
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<tbody>
<tr>
<td>Pensions – UK national retired in UK after career in World Bank in US</td>
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10:00 – 10:30 Coffee Break

**Session 2**

**Business profits and personal independent services**

**Chairs:** Philip Baker

Alfred Storck

**France** (Alexandre Maitrot de la Motte)

<table>
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<tr>
<th>Conseil d’Etat 1 October 2013</th>
<th>351982, Sté BNP Paribas</th>
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<tbody>
<tr>
<td>Profit attribution to PE under FR/UK DTC; gain resulting from borrowing transactions and currency swap</td>
<td></td>
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**Netherlands** (Eric Kemmeren)

<table>
<thead>
<tr>
<th>Dutch Supreme Court 6 December 2013</th>
<th>12/00252</th>
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<tbody>
<tr>
<td>Income from former research under NL/UK DTC and fixed base</td>
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**Germany** (Alexander Rust)

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<tr>
<th>Bundesfinanzhof of 1 October 2012</th>
<th>I R 75/11, ISTR 2013, 109</th>
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<tbody>
<tr>
<td>Hidden profit distributions under DE/NL DTC and transfer pricing</td>
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**Canada** (David Duff)

<table>
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<tr>
<th>Tax Court of Canada 13 December 2013</th>
<th>Mckesson Canada Corp. v. The Queen, 2013 TCC 404 (TCC)</th>
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<tbody>
<tr>
<td>Limitation period for transfer pricing adjustment CAN/LUX DTC</td>
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**Denmark** (Søren Friis Hansen)

<table>
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<tr>
<th>Supreme Court 3 October 2013</th>
<th>SKM2013.699HR</th>
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<tbody>
<tr>
<td>Article 9 of the DK/ CZ DTC (Arm's length) in connection with a debt converted into share capital in a Czech company</td>
<td></td>
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**Czech Republic** (Danuše Nerudová)

<table>
<thead>
<tr>
<th>Supreme Court 28 March 2013</th>
<th>2 Afs 71/2012-87</th>
</tr>
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Thin capitalization rules comprised in CZ/UK DTC; associated enterprises

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12:30 – 14:00  Lunch Break

**Session 3**

**Dividends, beneficial ownership and capital gains**

*Chairs:* David Duff
Pasquale Pistone

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**Netherlands** (Daniël Smit)

<table>
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<tr>
<th>Dutch Supreme Court 22 March 2013</th>
<th>11/05599</th>
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</table>

Disposal of Dutch real estate under NL/LUX DTC; exit taxation

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**France** (Alexandre Maitrot de la Motte)

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<tr>
<th>Conseil d’Etat, 29 April 2013</th>
<th>357576, Mr. Picart</th>
</tr>
</thead>
</table>

Exit tax upon emigration on unrealized capital gains under Franco/CH DTC

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**Italy** (Guglielmo Maisto)

<table>
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<tr>
<th>Supreme Court 20 February 2013</th>
<th>No. 4164</th>
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</table>

Meaning of "payment" of dividend under IT/UK DTC

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**Germany** (Alexander Rust)

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<tr>
<th>Bundesfinanzhof of 22 June 2013</th>
<th>I R 48/12, IStR 2013, 881</th>
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</thead>
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US S-Corporation – income allocation under DE/US DTC

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**Mexico** (César A. Dominguez)

<table>
<thead>
<tr>
<th>First Section of the High Chamber of the Mexican Administrative Court on November 15th, 2012, compulsory after its Publication on February, 2013</th>
<th>Case 14409/11</th>
</tr>
</thead>
</table>

Benefits of DTCs are not only subject to the demonstration of residence of the taxpayer, but also the accomplishment of other circumstances such as beneficial ownership

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15:30 – 16:00  Coffee Break
### Session 4  
16:00 – 18:00

**Royalties**

*Chairs:* Cees Peters  
Danuše Nerudová

| **Kazachstan** (Tomas Balco) |  
| --- | ---  
| Supreme Court |  
| Royalty payments - beneficial ownership |  

| **Turkey** (Billur Yalti) |  
| --- | ---  
| 3rd Chamber of the Supreme Administrative Court, 10 February 2013 | E.2011/1367, K. 2013/1281  
| Aircrafts leasing – qualification of leasing payments under TUR/US DTC |  

| **Spain** (Adolfo Martín Jiménez) |  
| --- | ---  
| Spanish Administrative Central Court of 30 October 2013 |  
| Recharacterization of part of the price for paid for goods as royalties and use of secret comparables to calculate what part of the price was paid for the use of a trade mark. |  

| **India** (D.P. Sengupta) |  
| --- | ---  
| Kolkata Tribunal decision, April 12, 2013 | Right Florist Pvt Ltd: 2013-TII-ITAT-KOL-INTL  
| Advertisement revenues of search engines not royalty - Effect of reservations |  

| **India** (D.P. Sengupta) |  
| --- | ---  
| Madras High Court decision, November 7, 2013 | Verizon Communications Singapore Pte Ltd: 2013-TII-48-HC-MAD-INTL  
| Provision of bandwidth service outside India is royalty |  

| **India** (D.P. Sengupta) |  
| --- | ---  
| Mumbai Tribunal decision, February 12, 2013 | Siemens Ltd: 2013-TII-34-ITAT-MUM-INTL  
| Services rendered without human intervention not fee for technical services |  

19:30  
Dinner at Faculty Club of Tilburg University
**Saturday, May 24, 2014**

**Session 5**  
08:30 – 10:30  
**Labour income**  
*Chairs:* Alexander Rust  
Michael Lang

**Austria** (Kasper Dziurdź)  
Austrian Supreme Administrative Court 22 May 2013  
No. 2009/13/0031  
Definition of “employer” under AUT/SK DTC

**Finland** (Marjaana Helminen)  
Supreme Administrative Court 16 May 2013  
KHO 2013/1704(93)  
Employment option benefits

**Israel** (Yariv Brauner)  
The Tel Aviv District Court Agudat Macabbi Rishon le’tzion  
Relation between employment article and sportsmen article

**United States** (Yariv Brauner)  
The United States Tax Court Garcia  
Allocation of payments a professional golfer received for royalties and personal services under an endorsement contract

10:00 – 10:30  
**Coffee Break**

**Session 6**  
10300 – 12:30  
**Other income, avoidance of double taxation and non-discrimination**  
*Chairs:* Yariv Brauner  
Eric Kemmeren

**Sweden** (Martin Berglund)  
Supreme Administrative Court 6 June 2013  
HFD 2013 ref. 23  
Fictitious income
Belgium (Luc De Broe)
Supreme Court 15 March 2013  F.11.0137.N
Interpretation of the foreign tax credit clause of the BE/US treaty
due to a subsequent change in domestic law

Sweden (Martin Berglund)
Supreme Administrative Court 7 May 2013  HFD 2013 ref. 34
Mitigation of double taxation and disparities

Portugal (João Nogueira)
Arbitration 26 November 2013  154/2013-T
Access by PT operating PE of a Brazilian company to the
domestic mechanism for the elimination of economic taxation

Russia (Danil Vinnitskiy)
Federal Commercial Court of the North-West Region 18 September 2013
United-Bakers Pskov LLC/ Kellogg Group", A52-4072/2012
Thin capitalization rules between sister companies under RU/LUX
DTC

12:30 – 14:00  Lunch Break

Session 7
retroactivity

Exchange of information, legal protection and
14:00 – 16:30

Chairs: Daniël Smit
        Jacques Sasseville

Switzerland (Michael Beusch) Stefano Bernasconi
Federal Supreme Court, 5 July 2013  Credit Suisse
BGE 139 II 404
Group request DTC CH/USA

Luxembourg (Werner Haslehner)
Cour Administrative 24 September 2013  CA 33118C
Clarification regarding ‘forseeable relevance’ of requested
information

Liechtenstein (Martin Wenz)
Constitutional Court 3 September 2013  2012/106
Fishing expedition
### Luxembourg (Werner Haslehner)

<table>
<thead>
<tr>
<th>Cour Administrative 2 May 2013</th>
<th>CA 32184C</th>
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<tbody>
<tr>
<td>Taxpayer’s right to be informed of exchange of information request, relevance of OECD Commentary</td>
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### Liechtenstein (Martin Wenz)

| Constitutional Court 23 November 2012 | 2012/166 and VGH 2012/099 |
| Supreme Administrative Court 20 September 2012 |
| Legal protection in requested state |

### Portugal (João Nogueira)

| Supreme Administrative Court 23 October 2013 | 01361/13 |
| Right to be notified in the requested state |

### Australia (João Nogueira)

| Federal Court of Australia 8 October 2013 | Hua Wang Bank (No 7) [2013] FCA 1020 |
| The ability to use information collected from the Cayman Islands |

### Canada (David Duff)

| Judicial review of a taxpayer’s request for competent authority assistance under the CAN/US DTC |

### Switzerland (Michael Beusch) Salome Zimmerman

| Federal Administrative Court 17 December 2013 | A/4232-2013 |
| Exchange of information; retroactivity under CH/INDIA DTC |

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