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

**Scope, tax treaty interpretation and residence**

**08:30 – 10:30**

**Chairs:** Eric Kemmeren
Michael Lang

<table>
<thead>
<tr>
<th><strong>New Zealand</strong> (Craig Elliffe)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>High Court of New Zealand, 1 September 2015.</td>
<td>[2015] NZHC 2099 Chatfield and Co Ltd. v. Commissioner of Inland Revenue</td>
<td></td>
</tr>
<tr>
<td>Tax treaty interpretation and dynamic use of the OECD commentary</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Argentina</strong> (Axel Verstraeten)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>National Tax Court 20 April 2015</td>
<td>[2015] Italtel SPA Sucursal Argentina s/ apelación impuesto a las ganancias</td>
<td></td>
</tr>
<tr>
<td>Tax treaty interpretation and (dynamic) use OECD commentaries and OECD Reports on PE profit attribution</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Spain</strong> (Alejandro García)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>National High Court 10 July 2015</td>
<td>No. 281/2012 ING Direct case</td>
<td></td>
</tr>
<tr>
<td>Status of OECD Commentary (2008) and OECD Reports on PE profit attribution</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>South Africa</strong> (Craig West / Jennifer Roeleveld)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitutional Court 18 June 2015</td>
<td>South African Reserve Bank and Another v Shuttleworth and Another (CCT194/14, CCT199/14) [2015] ZACC 17</td>
<td></td>
</tr>
<tr>
<td>Elements that must be present in determining whether a levy or charge is a tax in South Africa</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Poland</strong> (Karolina Tetlak)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Administrative Court 15 May 2015</td>
<td>No. II FSK 964/13</td>
<td></td>
</tr>
<tr>
<td>Center of vital interests</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>France</strong> (Daniel Gutmann)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Conseil d’Etat 9 November 2015</td>
<td>370054, 371132</td>
<td></td>
</tr>
<tr>
<td>Company exempt by virtue of its status or activities: liable to tax?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Portugal</strong> (João Félix Pinto Nogueira)</th>
<th>____</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Administrative Court South, 2nd section, 10 September 2015</td>
<td>Case 07898/14</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Tax residence for treaty purposes and burden of proof</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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
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 27 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**
**Labour income**
16:30 – 18:00  
*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
**Saturday, May 21, 2016**

**Session 5**  
8:30 – 10:30  
**Beneficial ownership, royalties and capital gains**  
*Chairs:* Alexander Rust  
Yariv Brauner

<table>
<thead>
<tr>
<th>Country</th>
<th>Court/Case Details</th>
</tr>
</thead>
</table>
| **Poland**       | Supreme Administrative Court 11  
June 2015  
Beneficial ownership |
| **Bolivia**      | Bolivian Supreme Court  
September 2014 (March 2015)  
Treaty Shopping and pacta sunt servanda |
| **Switzerland**  | Federal Supreme Court  
5 May 2015  
“SWAP-case” and beneficial ownership |
| **Argentina**    | Federal Court of Appeals  
19 February 2015  
[2015] Rovafarm Argentina SA y otro c/ DGI y otro s/ recurso directo de organism externo |
| **Australia**    | Federal Court of Australia,  
7 October 2015  
Tech Mahindra Ltd v Commissioner of Taxation |
| **The Netherlands** | Supreme Court 16 January 2015  
No. 13/05247, BNB 2015/64  
Exit taxation: tax treaty override? |

10:30 – 11:00  
**Coffee Break**

**Session 6**  
11:00 – 12:30  
**Relief for double taxation and LOB**  
*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

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
Non-discrimination, exchange of information and recovery
14:00 – 15:30
Chairs: Daniel Smit
Alexander Rust

Portugal (João Félix Pinto Nogueira)
Central Administrative Court South, 2nd 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).