



Supported by

FONDAZIONE
MAISTO *

INVITATION

Hybrid Conference **TAX TREATY CASE LAW AROUND THE GLOBE 2024**

Tilburg University
13 – 15 May 2024

Organized by the Fiscal Institute Tilburg in a joint venture with the Institute for Austrian and International Tax Law.

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 Hybrid Conference **TAX TREATY CASE LAW AROUND THE GLOBE 2024**.

Our Conference aims at presenting and discussing the most interesting tax treaty cases in a hybrid way, which were decided in or published not earlier than in 2023 all over the world. We are grateful that outstanding experts of 27 jurisdictions coming from five continents agreed to present the most relevant decisions taken in their countries. The Conference covers 37 tax treaty cases. The main topics we identified have been clustered into eight "baskets" which will be dealt with in our eight conference sessions:

- Session 1: Interpretation and Residence
- Session 2: Permanent Establishment
- Session 3: Business Profits, Dividends, Interest and Capital Gains
- Session 4: Beneficial Ownership
- Session 5: Income from Immovable Property and Royalties
- Session 6: Employment Income, Directors' Fees, Government Services and Other Income
- Session 7: Relief from Double Taxation
- Session 8: Assistance in Tax Collection and Abuse of Tax Treaties

* The Foundation is a nonprofit organization which promotes the study of international tax law and supports research projects undertaken by young talents.

In each session of the hybrid 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 join the discussions actively. The scientific results of the conference will be published in a book by the IBFD in cooperation with Linde. Please, see the program for further details.

The opening of the hybrid session of the Conference is on **Tuesday, 14 May, 2024, at 9:00**. The conference opening and welcoming take place **at 9:15**. All time slots are Central European Time (CET).

The conference fee for the Conference on campus is **EUR 1300**, and online is **EUR 650**. 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 155** for on campus; **EUR 25** for online participation. The fee for the students is **EUR 25** for both on campus and online participation. Registration for on-campus participants is open up to and including **22-04-2024**. Online participants can register up to and including **10-05-2024**. The participation fee must be paid not later than **10-05-2024** and will not be refunded in the case of cancellation one week prior to the Conference. If you register ultimately on **31-03-2024**, you are entitled to an **early bird discount of 25%** on the regular congress fees. You will pay **EUR 975** for on-campus participation and **EUR 487.50** for online participation.

Register here if you are interested in participating in the Conference. If you have any questions, mail to frw.fit.secretariaat@uvt.nl.

Prof. Dr. Eric Kemmeren

Professor at the Fiscal Institute Tilburg
(Tilburg University)

Prof. Dr. Peter Essers

Professor at the Fiscal Institute Tilburg
(Tilburg University)

Dr. Cihat Öner, LL.M.

Associate Professor at the Fiscal Institute Tilburg
(Tilburg University)

Dr. Mart van Hulsten, LL.M.

Assistant Professor at the Fiscal Institute Tilburg
(Tilburg University)

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

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

Prof. DDr. Georg Kofler

Professor at the Institute for 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)

Prof. Dr. Josef Schuch

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

Prof. Dr. Claus Staringer

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

Prof. Dr. Karoline Spies

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

Prof. Dr. Daniel Blum

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

Prof. Dr. Rita Szudoczky

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

PROGRAM

Hybrid Conference

TAX TREATY CASE LAW AROUND THE GLOBE 2024

Tilburg University

13 – 15 May 2024

Monday, 13 May 2024

18:00 – 19:30 **Conference welcoming and cocktail reception**
Tilburg University, Grand Café Esplanade, (in front of D Building)
Warandelaan 2, 5037 AB, Tilburg

Tuesday, 14 May 2024

Location Tilburg University, Cobbenhagen (C) Building, Room C186
Warandelaan 2, 5037 AB, Tilburg

09:00 **Hybrid session opens**

09:15 **Opening/Welcoming by Eric Kemmeren and Michael Lang**

Session 1 Interpretation and Residence

09:30 – 11:30 *Chairs:* Eric Kemmeren
 Michael Lang

1. USA (Yariv Brauner) (On Campus)

Christensen v. United States, US Court of Federal Claims, 13 September 2023	Case No: 1:20-cv-00935-MBH
Art. 2, Art. 23, Treaty Interpretation	

2. Belgium (Anne Van de Vijver) (Online)

Brussel (NI.) (burg.) (6Ne k.) nr. 2017/AF/174, 25 April 2023	Case No: (rolnr:) 2017/AF/174
Whether the Belgian annual tax is considered a wealth tax under Article 2 of the tax treaty	

3. The Netherlands (Eric Kemmeren – Carla De Pietro) (On Campus – On Campus)

Supreme Court (Hoge Raad), 23 June 2023	Case No: 22/00716
Interpretation of the term 'international traffic' and pilot under NL-UK DTT	

4. Norway (Eivind Furusest) (On Campus)

Borgarting Court of Appeal, 30 August 2023	Case No: LB-2023-83819 - UTV-2023-1263
Classification of a payment from Estonia to Norway – was it a dividend payment or a loan?	

5. Germany (Alexander Rust) (Online)

The Federal Fiscal Court (Bundesfinanzhof), 24 May 2023	Case No: I R 27/20, IStR 2023, 792
Art. 4 OECD MC concerning the term "resident"	

6. Croatia (Hrvoje Arbutina) (Online)

Croatian High Administrative Court, 13 September 2023	Case No: Usž-1647/23-2
Dual Resident: whether the appellant is a resident of Croatia or Belgium	

Session 2

Permanent Establishment

11:45 – 13:05

Chairs: Ton Stevens
Yariv Brauner

7. Germany (Alexander Rust) (Online)

The Federal Fiscal Court (Bundesfinanzhof), 7 June 2023	Case No: I R 47/20, IStR 2023, 655
The definition of a Permanent Establishment / Fixed Base	

8. Türkiye (Cihat Öner) (On Campus)

Regional Administrative Court, Istanbul 3rd Tax Court Chamber, 31 January 2023	Case No: 2022/4805 Decision No: 2023/396
Website is a Permanent Establishment and "-...dotcom Support Services Ltd. Şti. (... Türkiye)'s permanent representative in accordance with the terms of the TR- NL DTT	

9. Poland (Karolina Tetlak) (Online)

Judgments of the Supreme Administrative Court, 16 February 2023	Case No(s): II FSK 1864/20
A warehouse rented from an external entity to be considered a PE of a German company in Poland	

10. Italy (Guglielmo Maisto - Cesare Silvani) (On Campus – On Campus)

Italian Supreme Court, 27 January 2023 and 19 January 2023	Case No(s): 2597, 1709 and 1648
Interpretation of Article 5 of the Italy – Switzerland DTT in a situation involving a commissionaire arrangement	

13:05 – 14:30

Lunch Break

Session 3

Business Profits, Dividends, Interest and Capital Gains

14:30 – 15:30

Chairs: Carla De Pietro
David Duff

11. Luxembourg (Werner Haslehner) (On Campus)

Judgement of Trib. Admin., 16 May 2023 (Public hearing of 30 January 2024)	Case No: 45030
Under what circumstances assets and income will be attributable to a foreign (US) PE	

12. Japan (Yasuyuki Kawabata) (On Campus - TBC)

Tokyo High Tax Court, 16 February 2023	Case No: 2022(Gyo-Ko) 72
The interpretation of the wording of Luxembourg - Japan DTT, about the holding period of corporate shares under Art.10(2) with Art.3(2) of the Treaty, and VCLT Arts.31 and 32.	

13. Portugal (Dinis Tracana) (On Campus)

Supreme Administrative Court, 8 February 2023	Case No: 0937/13.7BESNT
Regarding interest rate swap contracts and considering the DDTs	

15:30 – 15:45

Coffee Break

Session 4

Beneficial Ownership

15:45 – 17:25

Chairs: Cees Peters
Philip Baker

14. France (Marilyne Sadowsky) (Online)

French Supreme Court (Conseil d'Etat) (CE, Plén.), 8 December 2023	Case No: 472587
Interpretation of the law and the concept of beneficial owner	

15. Canada (David Duff) (On Campus)

Tax Court of Canada, Husky Energy Ltd., 13 December 2023	Case No: 2023 TCC 167
A securities lending arrangement, which resulted in dividends being paid by a Canadian company to Luxembourg companies rather than Barbados companies	

16. Denmark (Søren Friis Hansen) (On Campus)

Eastern High Court, 08 December 2023	Case No: UfR 2023.4403H
The intermediary holding company was an artificial arrangement; the company constituted a 'conduit company', which was not the beneficial owner	

17. Portugal (Dinis Tracana) (On Campus)

Arbitration Court, 21 July 2023	Case No: 538/2022-T
Lack of economic substance and abuse with qualification of beneficial ownership	

18. (Russia) Danil D. Vinnitskiy (On Campus)

RF Supreme Court (№305-ЭС23-371), 6 October 2023	Case No: A40-121109/2022
The intermediary status of the person who receives the passive income means that the respective person is not a beneficial owner	

Wednesday, 15 May 2024

Location Tilburg University, Cobbenhagen (C) Building, Room C186
Warandelaan 2, 5037 AB, Tilburg

08:45 Hybrid session opens

Session 5 Income from Immovable Property and Royalties

09:00 –10:40 *Chairs:* Mart van Hulten
Guglielmo Maisto (or Cesare Silvani)

19. UK (Philip Baker) (On Campus)

Royal Bank of Canada v. Revenue and Customs Commissioners, 21 June 2023	Case No: [2023] EWCA Civ 695
Whether payments 'for the working of, or the right to work, mineral deposits, sources and other natural resources' – Whether 'immoveable property'	

20. Australia (Michael Dirkis) (On Campus)

Pepsi Co. Inc v Commissioner of Taxation, 30 November 2023	Case No: [2023] FCA 1490
Embedded royalties and Art. 12 of the Australia - United States DTT	

21. Poland (Karolina Tetlak) (Online)

Supreme Administrative Court, 7 March 2023	Case No: II FSK 2034/20
Whether the remuneration for the use of the trademark included in the price of the goods purchased will be subject to withholding tax in Poland	

22. Brazil (Luís Eduardo Schoueri) (Online)

Superior Court of Justice, 17 October 2023 and Federal Court of 3rd Region, 10 October 2023	Case No(s): Special Appeal No. 1753262 and Appeal No. 0003473-92.2012.4.03.6130
No indication that the application of Art. 12 would vary in cases of technical services, whether or not involving the transfer of technology and activities related to consultancy, involving various tasks such as technical studies, planning, and engineering projects	

23. Greece (Katerina Perrou) (On Campus)

The Council of State, 10 May 2023	Case No: StE 822/2023
Fees collected by a company for its services to another company for the implementation of a specific project are not rights	

10:40 – 10:55

Coffee Break

Session 6

Employment Income, Directors' Fees, Government Services and Other Income

10:55 – 12:15

Chairs: Cihat Öner
Søren Friis Hansen

24. Switzerland (Michael Beusch - Moritz Seiler) (Online - On Campus)

Federal Supreme Court, 23 June 2023	Case No: 9C_682/2022
Compensation obtained by a football player for premature termination of contract – whether 2014 changes to OECD Commentary on Art. 15 can be relied upon for interpretation of 2011 Switzerland-UAE DTT – nexus between work performed in source state and compensation	

25. The Netherlands (Mart van Hulsten) (On Campus)

Supreme Court (Hoge Raad), 21 April 2023	Case No: 21/05170
No relief from double tax for Brazilian K-bonus. Interpretation of term 'member of the board of directors' (lid van de raad van beheer)	

26. Austria (Michael Lang) (On Campus)

Federal Tax Court, 18 December 2023	Case No: GZ RV/1100347/2002
The widow of a civil servant employed by the Swiss government – whether widow pension is exempt from Austrian taxation according to Art.19 of Austria – Switzerland DTT	

27. Spain (Adolfo Martín Jiménez – Ricardo Garcia) (Online – On Campus)

Judgment National Court (Audiencia Nacional) – 998/2023, 23 February 2023	Case No: rec. 466/2019
Acquisition mortis causa of plots of land in Mallorca by a foundation resident in Switzerland - whether it is a capital gain or other income (Art. 21) of the Spain-Switzerland DTT	

12:15 – 13:45 Lunch Break

Session 7

Relief from Double Taxation

13:45 – 15:05

Chairs: Ricardo Garcia
Michael Dirkis

28. Italy (Guglielmo Maisto - Cesare Silvani) (On Campus – On Campus)

Supreme Court, 18 July 2023	Case No: 21047
Obligation to grant foreign tax credit against IRAP (a regional tax) under the treaty even if the domestic legislation does not have any rule on foreign tax credit	

29. Belgium (Anne Van de Vijver) (Online)

Antwerpen (burg.) (B6Me k.) nr. 2022/AR/86, 21 March 2023	Case No: (rolnr:) 2022/AR/86
The specific income in the Netherlands was subject to the tax regime ordinarily applicable to it and Belgium should exempt this income with a progression reserve	

30. Sweden (Katia Cejie) (On Campus)

Supreme Administrative Court, 28 August 2023	Case No:642-23 (REF 37)
Whether there is a right to credit the tax for the Italian tax paid concerning contributions to occupational pension insurance during the taxation of the payments	

31.India (D. P. Sengupta) (On Campus - TBC)

P.CIT v Krishak Bharti- Supreme Court of India, 15 September 2023	Case No: (Civil Appeal No.) 836 of 2018
Tax sparing credit: Whether the Indian taxpayer was entitled to claim tax sparing credit in terms of Art.25 of the India-Oman DTT	

15:05 – 15:20 Coffee Break

Session 8 Assistance in Tax Collection and Abuse of Tax Treaties

15:20 – 17:00 *Chairs:* Peter Essers
Michael Lang

32. USA (Yariv Brauner) (On Campus)

US District Court, Southern District of Florida, Rabassa v. United States, 27 June 2023	Case No: (No.) 1:22-cv-20456 (S.D. Fla.)
The residence is not a requirement for assistance in collection - the summons issued in good faith, which is the domestic law requirement	

33. France (Marilyne Sadowsky) (Online)

French Supreme Court (Conseil d'Etat) 3rd and 8th ch. (Sté BNP Paribas), 3 May 2023	Case No: 434441
Abuse of rights, abnormal act of management and qualification of income under the Franco-German treaty	

34. Argentina (Mirna Solange) (Online)

Praxair SRL vs DGI, Court of Appeal, Chamber III, 21 September 2023	Case No: (Expte. nro.) 23439/2022
Application of the "substance over form" principle, derived from domestic General Anti-Avoidance Rules (GAAR) in Argentine law	

35. Peru (Esteban Montenegro) (Online)

Peruvian Tax Court, 07 December 2022 (Notified and published in 2023)	Case No: Ruling N° 08835-12-2022
Application of Art. 13.6 of Peru - Canada DTT, which follows Art. 13.5 of the OECD MC	

36. Spain (Adolfo Martín Jiménez – Ricardo Garcia) (Online – On Campus)

Judgement Supreme Court – 655/2023, (Iniciativas culturales de España), 22 May 2023	Case No: rec. 6762-2021
The application of the Spanish GAAR jointly constituted (i) “a domestic law issue” and (ii) “the taxpayer is seeking to avoid taxation in one of the contracting states” Art. 8 Spanish MAP Regulation	

17:00 – 17:10 Closure Eric Kemmeren