



# INVITATION

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## Online Conference

## TAX TREATY CASE LAW AROUND THE GLOBE 2020

Tilburg University  
May 15 – 16, 2020

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 Online Conference **TAX TREATY CASE LAW AROUND THE GLOBE 2020**.

Our Conference aims at presenting and discussing the most interesting Tax Treaty Cases online, which had been decided in 2019 all over the world. We are grateful that outstanding experts of more than 22 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 eight "baskets" which will be dealt with in our eight conference sessions:

- Session 1: Taxes Covered, Interpretation and Residence
- Session 2: Permanent Establishment
- Session 3: Business Profits and MFN Clauses
- Session 4: Beneficial Ownership
- Session 5: Royalties
- Session 6: Labour Income
- Session 7: Relief from Double Taxation
- Session 8: Exchange of Information and MAP

In each session of the online 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. Please, see for further details the program.

The scientific results of the conference will be published in a book by the [IBFD](#).



The opening of the online session of the Conference is on Friday, May 15, 2020, at 9:30. The conference opening and welcoming take place at 9:45. All time slots are Central European Time (CET).

The participation fee for the Conference is EUR 350.--. 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 25.--. Registration is open up to and including **14-05-2020**. The participation fee must be paid not later than **14-05-2020**, and will not be refunded in the case of cancellation one week prior to the conference.

Register here if you are interested in participating in the conference. If you have any questions, mail to [fit-congress@tilburguniversity.edu](mailto:fit-congress@tilburguniversity.edu).

**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 LL.M.**

Professor at the Fiscal Institute Tilburg  
(Tilburg University)

**Dr. Cihat Öner LL.M.**

Associate 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. 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. Alfred Storck**

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

# PROGRAM

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Online Conference

## TAX TREATY CASE LAW AROUND THE GLOBE 2020

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May 15 – 16, 2020

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**Friday, May 15, 2020**

**09:30 Online session opens**

**09:45 Opening/Welcoming by Eric Kemmeren and Alexander Rust**

**Session 1 Taxes Covered, Interpretation and Residence**

10:00 – 11:00 *Chairs:* Eric Kemmeren  
Alexander Rust

### **1. Peru (Mirna Solange Screpante)**

Tax Court, 20 February 2019	Case No: 13256-2014
Taxes covered	

### **2. Australia (Michael Dirkis)**

Pike v. Commissioner of Taxation, 24 December 2019.	Case No: [2019] FCA 2185
Permanent home	

### **3. Canada (David Duff)**

Landbouwbedrijf BackX BV v. Canada, 12 December 2019	Case No: 2019 FCA 2019
Residence	

11:00 – 11:15 Coffee Break

## **Session 2**

### **Permanent Establishment**

11:15 – 12:30

*Chairs:* Daniel Smit  
Kasper Dziurdz

#### **4. UK (Philip Baker)**

Court of Appeal, Fowler v Revenue and Customs Commissioners, 15 November 2018	Case No: [2018] EWCA Civ 2544
Effect of domestic deeming provision on treaty – Whether income constituting business profits	

#### **5. India (D.P. Sengupta)**

Authority for Advance Ruling, Nippon Steel Engineering Company Ltd., 16 October 2019	Case No: AAR – 1303 - 2012
Dependent agent PE - Fees for technical services	

#### **6. Belgium (Anne Van de Vijver)**

Court of appeals of Antwerp, 12 and 19 February 2019	Case No: 2017/AR/1301, 2017/AR/1184
Can IT Consultants qualify as PE?	

#### **7. Sweden (Martin Berglund)**

Supreme Administrative Court, 28 June 2019	Case No: HFD 2019 ref. 36.
Construction PE	

12:30 – 13:30

Lunch Break

## **Session 3 Business Profits and MFN Clauses**

13:30 – 15:30

*Chairs:* Ton Stevens  
Philip Baker

#### **8. France (Marilyne Sadowsky)**

CAA Paris, 25 April 2019	Case No: 17PA03065, Sté Google
Does commercial advice and assistance service to advertisers constitute a PE?	

CE, 18 October 2018	Case No: 405468 Aravis Business Retreats Ltd
Principle of territoriality of Corporate tax versus PE	

### **9. The Netherlands (Eric Kemmeren)**

Supreme Court (Hoge Raad), 19 July 2019	Case No: 18/03647
Profit division agreement at arm's length – permanent representative	

### **10. Germany (Alexander Rust)**

Bundesfinanzhof, (Supreme Administrative Court), 27 February 2019	Case No: I R73/16, ECLI:DE:BFH:2019:U.270219.IR73.16.0
Loans at arm's length	

### **11. South Africa (Craig West)**

Cape Town Tax Court, 12 June 2019	Case No: 14287
Dividends and most favoured nation clause	

### **12. The Netherlands (Daniel Smit)**

Supreme Court (Hoge Raad), 18 January 2019	Case No: 17/04584
Most favoured nation clause	

### **13. Luxembourg (Katerina Pantazatou)**

Administrative Court, 9 July 2019	Case No: 41873C1
Treaty qualification of liquidation proceeds	

15:30 – 15:45

Coffee Break

## **Session 4**

## **Beneficial Ownership**

15:45 – 16:45

*Chairs:* Stan Stevens  
Anne Van de Vijver

### **14. India (D.P. Sengupta)**

Becton Dickinson (Mauritius) Ltd, Authority for Advance Ruling-NCR Bench, 11 September 2019	Case No: AAR - 1306 - 2012
Beneficial Ownership - Treaty Shopping	

### **15. Italy (Guglielmo Maisto – Paolo Arginelli)**

Supreme Court (Corte di Cassazione), 30 September 2019	Decision No: 24287 (and 24288, 24289, 24290, 24291)
Beneficial owner with reference to situations involving asset management companies	

### **16. Russia (Danil Vinnitskiy)**

Court of Appeal, Moscommerzbank OJSC Case, 1 November 2019	Case No: N A40-8065/2018
Beneficial owner concept, interest, back-to-back loans	

**Saturday, May 16, 2020**

**08:45 Online session opens**

**Session 5 Royalties**

09:00 – 10:45 *Chairs:* Cihat Öner  
Guglielmo Maisto

**17. Spain (Ricardo García Antón)**

Judgement of the Spanish National Court (Audiencia Nacional) 20 March 2019	Case No: 1075/2019
Lease of camera installed in helicopters	

**18. Poland (Karolina Tetlak)**

Supreme Administrative Court, 9 April 2019	Case No: II FSK 1120/17
Datacenter renting fees are not royalties for the use of industrial, commercial or scientific device	

Supreme Administrative Court, 7 March 2019	Case No: II FSK 490/17
Payment of compensation for unlawful violation of design rights is license fee	

**19. Portugal (Dinis Tracana)**

South Administrative Central Court (Tribunal Central Administrativo Sul), 28 November 2019	Case No: 150/08.5BELRS
Consideration for the coordination and management support services is not royalty	

**20. Brazil (Luís Eduardo Schoueri)**

Administrative Council for Tax Appeals (CARF), 15 May 2019	Case No: 1302-003.572
Definition of royalties in Brazil – Japan DTT	

10:45 – 11:00

Coffee Break

## **Session 6**

## **Labour Income**

11:00 – 12:45

*Chairs:* Cees Peters  
Marilyne Sadowsky

### **21. Austria (Kasper Dziurdz)**

Supreme Administrative Court (VwGH), 30 April 2019	Ra 2019/15/0038
Racing days or training days?	

### **22. Canada (David Duff)**

Reyes v. Canada, 10 January 2019	Case No: 2019 FCA 7
Can Canada tax residents on pension income derived from the other country?	

### **23. Germany (Alexander Rust)**

Bundesfinanzhof, (Supreme Administrative Court), 11 July 2019	Case No: I R 44/16, ECLI:DE:BFH:2018:U.110718.IR44.16.0
The meaning of the term 'entertainer'	

### **24. Sweden (Martin Berglund)**

Supreme Administrative Court, 27 March 2019	Case No: HFD 2019 ref. 13.
Payments to, and/or from, a certain pension considered as either employment income or pension	

### **25. Turkey (Cihat Öner)**

Supreme Administrative Court, 4 <sup>rd</sup> Chamber, 28 March 2019	Case No: E.2015/6821 K.2019/2379
Taxation rights on the independent personal services – procedural rules for taxation at source	

12:45 – 13:45

Lunch Break



## **Session 7**

## **Relief from Double Taxation**

13:45 – 15:00

*Chairs:* Mart van Hulten  
David Duff

### **26. Italy (Guglielmo Maisto – Paolo Arginelli)**

Supreme Court (Corte di Cassazione), 14 November 2019, 20 November 2019, 21 November 2019	Case No: 29635, 30140, 30347
Rules governing the taxation of intra-group dividends paid by a subsidiary company to an Italian parent company – exempted dividends?	

### **27. Australia (Michael Dirkis)**

Burton v Commissioner of Taxation, 22 August 2019	Case No: [2019] FCAFC 141
The mechanism for the computation of Australian taxation	

### **28. Belgium (Anne Van de Vijver)**

Supreme Court, 21 June 2019	Case No: F.15.0067.N
Domestic FTC conditions were not applicable but are overruled by the treaty FTC provisions – supremacy	

### **29. Bolivia (Alvaro Villegas Aldazosa)**

Supreme Court, IASA Vs. Bolivian Tax Administration (SIN) 19 November 2018 (notified in May 2019)	Case No: 426/2018
Tax treaty benefits granted as long as the tax exempted at source was effectively paid in the country of residence.	

15:00 – 15:15

Coffee Break

## **Session 8**

## **Exchange of Information and MAP**

15:15 – 17:00

*Chairs:* Peter Essers  
Alexander Rust

### **30. Luxembourg (Katerina Pantazatou)**

Administrative Court, 14 November 2019	Case No: 43406C, 43407C, 43408C, 43409C, 43410C, 43411C, 43412C, 43413C, 43414C, 43415C
Forseeable relevant information	

### **31. Switzerland (Lysandre Papadopoulos)**

The Federal Supreme Court, 1 February 2019, 22 July 2019, 7 June 2019	Case No: 2C_625/2018, 2C_1053/2018, 2C_764/2018
Forseeable relevant information	

The Federal Supreme Court, 26 July 2019	Case No: 2C_653/2018
40.000 Bank Account information is not a group request and fishing expedition	

### **32. Spain (Ricardo García Antón)**

Judgement of National Court ('Audiencia Nacional'), 22 April 2019	Rec. 1885/2019
MAP procedure in case of tax fraud	

### **33. The UK (Philip Baker)**

McCabe v Revenue and Customs Commissioners, 20 May 2019	Case No:[2019] UKFTT 317 (TC)
Application by the taxpayer for disclosure of documents exchanged during MAP	

**17:00 – 17:15**

**Closure**