

International Conference

# Tax Treaty Case Law around the Globe 2025



May 7-9, 2025 • Vienna



Institute for Austrian and  
International Tax Law **Vienna**



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The **Institute for Austrian and International Tax Law**, WU Vienna University of Economics and Business and the **Fiscal Institute Tilburg**, Tilburg University invites you to the conference "**Tax Treaty Case Law around the Globe**".

Our conference aims at presenting and discussing the most interesting tax treaty cases, which had been decided in 2024 all over the world. We are grateful that outstanding experts from 24 jurisdictions have agreed to present the most relevant decisions taken in their countries. The main topics we identified have been clustered into seven „baskets“ which will be dealt with in our nine conference sessions:

- Session 1: Treaty interpretation, application, and status of OECD Commentaries
- Session 2: Personal and Substantive Scope (Art 1, 2, 3, and 4 OECD Model)
- Session 3a-3b: Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)
- Session 4: Associated Enterprises (Art 9 OECD Model)
- Session 5: Employment Income, Directors' fees, Artistes and Sportsmen, Pensions, Students and Other Income (Art 15, 16, 17, 18, 19, 20 and 21 OECD Model Convention)
- Session 6a-6b: Passive Income (Art 10, 11, and 12 OECD Model)
- Session 7: Methods to Avoid Double Taxation (Art 23 OECD Model Convention)

In each session of the conference two to six tax treaty cases will be presented and subsequently analyzed in a critical discussion, including the possible impact of the cases on the interpretation and application of tax treaties in other countries. The detailed program is available on our conference website.

The scientific results of the conference will be published in a book by Linde in cooperation with the IBFD.

The conference starts with a welcome reception on the evening of May 7, 2025, at the Institute for Austrian and International Tax Law. The working sessions will be held all day on May 8 and 9, 2025 on-site at WU Vienna. Participants are invited to a typical Viennese Heurigen Dinner on May 8.

The participation fee for the conference is EUR 1,500. A waiver of the participation fee may be granted to (full-time) academics and other 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. The participation fee must be paid not later than April 23, 2025, and will not be refunded in the case of cancellation two weeks prior to the conference.

## **Institute for Austrian and International Tax Law, WU Vienna**

### **Prof. Georg Kofler**

Professor at the Institute for  
Austrian and International Tax Law, WU Vienna

### **Prof. Michael Lang**

Head of Institute for  
Austrian and International Tax Law, WU Vienna

### **Prof. Pasquale Pistone**

Jean Monnet ad personam Professor at the  
Institute for Austrian and International Tax Law, WU Vienna

### **Prof. Alexander Rust**

Professor at the Institute for  
Austrian and International Tax Law, WU Vienna

### **Prof. Josef Schuch**

Professor at the Institute for  
Austrian and International Tax Law, WU Vienna

### **Prof. Karoline Spies**

Professor at the Institute for  
Austrian and International Tax Law, WU Vienna

### **Prof. Claus Staringer**

Professor at the Institute for  
Austrian and International Tax Law, WU Vienna

### **Prof. Rita Szudoczky**

Associate Professor at the Institute for  
Austrian and International Tax Law, WU Vienna

## **Fiscal Institute Tilburg, Tilburg University**

### **Prof. Eric Kemmeren**

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 Hulten, LL.M.**

Assistant Professor at the Fiscal Institute Tilburg  
Tilburg University

## **CONTACT DETAILS**

If you have any questions, please contact Sandra Kroneiser and Matthias Bauer:

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## Conference

# Tax Treaty Case Law around the Globe 2025

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## Program

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### WEDNESDAY, May 7, 2025

18:30

#### **Welcome Reception**

Venue: Institute for Austrian and International Tax Law, WU  
Building D3, 2nd floor, Welthandelsplatz 1, 1020 Vienna

### THURSDAY, MAY 8, 2025

Working sessions will take place at the Campus of WU, LC Building, in **Ceremonial Hall 1, Room LC.0.001.**

08:30 – 09:00

Registration

09:00 – 11:00

#### **Session 1: Treaty Interpretation, Application, and Status of OECD Commentaries**

Chair: *Eric Kemmeren*  
*Michael Lang*

**Poland** – *Karolina Tetlak*

Case: **P. S.A.**

Court: Supreme Administrative Court

Case identifier: II FPS 1/24

Decision Date: October 28, 2024

Other treaty state(s): Sweden

Keywords: Official language of the treaty

**Chile** – *Cristóbal Pérez Jarpa*

Case: **CINTAC S.A. con SERVICIO DE IMPUESTOS INTERNOS  
DRSTGO PONIENTE**

Court: Corte de Apelaciones de Santiago (Court of Appeal of Santiago) /  
Primer Tribunal Tributario y Aduanero (Tax and Custom Court)

Case identifier: Rol CA 197-2021 / TTA Ruc 17-9-0000170-3 Rit  
GR-15-00010-2017

Decision Date: July 4, 2024

Other treaty state(s): Spain

Keywords: OECD Commentaries static vs dynamic approach

Case: **INVERSIONES CAPITAL GLOBAL S.A. con SERVICIO  
DE IMPUESTOS INTERNOS DRSTGO ORIENTE**

Court: Corte de Apelaciones de Santiago (Court of Appeal of Santiago) /  
Primer Tribunal Tributario y Aduanero (Tax and Custom Court)

Case identifier: Rol CA 197-2021 / TTA Ruc 17-9-0000170-3 Rit  
GR-15-00010-2017

Decision Date: April 14, 2024

Other treaty state(s): Spain

Keywords: Interpretation of indirect transfers of shares clause

**Argentina** – *Mirna Screpante*

Case: **Lutz Juan Jacobo c/DGI**

Court: Federal Administrative Court

Case identifier: 3532/2023

Decision Date: October 3, 2024

Other treaty state(s): Austria

Keywords: VCLT, interpretation and abuse

**Slovakia** – *Thomas Balco*

Case: **Slovensky Plynarensky Priemysel a.s. vs. Financial  
Directorate of the Slovak Republic**

Court: Supreme Administrative Court of the Slovak Republic

Case identifier: 8SzfK/54/2017

Decision Date: End of 2024

Other treaty state(s): Netherlands, France, Germany

Keywords: Interpretation, abuse and status of OECD Commentaries

**Switzerland** – *Michael Beusch & Moritz Seiler*

Case: **A vs. Swiss Federal Tax Administration**

Court: Swiss Federal Supreme Court

Case identifier: 9C\_635/2023

Decision Date: October 3, 2024

Other treaty state(s): Denmark

Keywords: Interpretation, abuse and status of OECD Commentaries

### **Italy – Guglielmo Maisto**

#### **Case: Italtaxitalia**

Court: Corte di Cassazione (Italian Supreme Court)

Case identifier: 26432/2024

Decision Date: October 10, 2024

Other treaty state(s): NA

Keywords: Transfer pricing methods, hierarchy

11:00 – 11:30

Coffee Break

11:30 – 12:15

### **Session 2: Personal and Substantive Scope (Arts 1 - 4 OECD Model)**

Chair: *Rita Szudoczky*

### **Poland – Karolina Tetlak**

#### **Case: X. S.A.**

Court: Naczelny Sad Administracyjny (Supreme Administrative Court)

Case identifier: III FSK 268/23

Decision Date: October 11, 2024

Other treaty state(s): Romania

Keywords: Tax covered

### **Austria – Claus Staringer**

#### **Case: Certificate of residence as a requirement for tax treaty entitlement**

Court: Supreme Administrative Court

Case identifier: Ra 2023/15/0066

Decision Date: October 9, 2024

Other treaty state(s): Switzerland

Keywords: Certificate of residence

12:15 – 13:00

### **Session 3a: Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)**

Chair: *Raffaele Petruzzi*

### **Brazil – Luís Eduardo Schoueri**

#### **Case: PRIMEIROPAY and TH Brasil v. Federal Union**

Court: Federal Court of 3rd Region

Case identifier: 0010000-14.2016.4.03.6100

Decision Date: October 24, 2024

Other treaty state(s): Luxembourg

Keywords: Digital permanent establishment and agency functions

**India – Ashrita Prasad Kotha & Nigam Nuggehalli**

**Case: Hyatt International Southwest Asia Ltd vs Additional Director Of Income Tax**

Court: New Delhi High Court

Case identifier: 2024:DHC:7149-FB

Decision Date: September 19, 2024

Other treaty state(s): United Arab Emirates

Keywords: Profit attribution to a permanent establishment

13:00 – 14:00

Lunch Break

14:00 – 15:30

**Session 3b: Business Profits (Art 6, 7 and Art 14 OECD Model) and Permanent Establishments (Art 5 OECD Model)**

Chair: *Claus Staringer*

**Ukraine – Natalia Blazhivska**

**Case: LUNDBECK EXPORT A/S**

Court: Supreme Court

Case identifier: 640/35881/21

Decision Date: February 15, 2024

Other treaty state(s): Denmark

Keywords: Beneficial owner, international shipping and air transport

**Case: Raftan Holding Limited**

Court: Supreme Court

Case identifier: 320/44934/23

Decision Date: October 29, 2024

Other treaty state(s): Cyprus

Keywords: Permanent establishment, dividends payment

**Kenya – Tracy Johnson & Graeme Saggars**

**Case: Commissioner of Domestic Taxes v Total Kenya Limited**

Court: Kenya High Court

Case identifier: [2024] KEHC 8194 (KLR)

Decision Date: July 24, 2024

Other treaty state(s): France

Keywords: Qualification of income, Art 7 vs Art 21

### **The Netherlands – Mart van Hulten**

Case: **[X] S.E. tegen de Staatssecretaris van Financiën**

Court: Dutch Supreme Court

Case identifier: ECLI:NL:HR:2024:706

Decision Date: May 17, 2024

Other treaty state(s): France

Keywords: Profit attribution to a permanent establishment

### **Slovakia – Renáta Bláhová, Matej Kačaljak & Dominik Nagy**

Case: **Booking.com B.V. v Financial Directorate of the Slovak Republic**

Court: Supreme Administrative Court

Case identifier: 3Sfk/17/2023

Decision Date: April 25, 2024

Other treaty state(s): Netherlands

Keywords: Platform and digital permanent establishment

15:30 – 16:00 Coffee Break

16:00 – 17:30 **Session 4: Associated Enterprises (Art 9 OECD Model)**

Chair: *Mart van Hulten*

### **Bulgaria – Ivan Lazarov**

Case: **Decision No 5580**

Court: Supreme Administrative Court

Case identifier: No 5580/2024

Decision Date: May 8, 2024

Other treaty state(s): Netherlands

Keywords: Arm's length conditions, beneficial owner **Romania – Ioana-Felicia Rosca**

Case: **Company A and DGAMC**

Court: High Court of Romania

Case identifier: 403/2024

Decision Date: January 9, 2024

Other treaty state(s): NA

Keywords: Transfer pricing methods

### **Israel – Shay Menuchin**

#### **Case: Western Digital Israel Ltd v. Assessing Officer Tel Aviv 3**

Court: District Court - Tel Aviv

Case identifier: Tax Appeal 46032-01-23, 2678-01-22, 52537-01-21,  
49933-03-20

Decision Date: June 30, 2024

Other treaty state(s): United States, Ireland

Keywords: IP evaluation

#### **Case: The Central Company for the Production of Soft Drinks Ltd v. Gush Dan Assessing Officer**

Court: District Court - Tel Aviv

Case identifier: Tax Appeal 26284-04-24, 45407-1-22, 47016-1-21,  
73162-01-20, 8148-02-18, 16567-07-17

Decision Date: August 29, 2024

Other treaty state(s): United States

Keywords: Transfer pricing methods, royalties

18:15 Meeting Point / Boarding Coach for **Departure** at Spark by Hilton

19:00 **Typical Viennese Heurigen Dinner**  
on invitation of the Mayor of Vienna

22:00 Boarding Coach - Return to Bassena Hotel

### **FRIDAY, May 9, 2025**

09:00 – 10:30 **Session 5: Employment Income, Directors' Fees, Artists and  
Sportspersons, Pensions, Students and Other Income (Art 15,  
16, 17, 18, 19, 20 and 21 OECD Model Convention)**

Chair: *Karoline Spies*

### **Belgium – Jean-Philippe Van West**

#### **Case: ÉTAT BELGE / H. A.**

Court: Court of Cassation

Case identifier: Cass. (1e k.) AR F.21.0033.F

Decision Date: January 19, 2024

Other treaty state(s): Germany

Keywords: Government Service, Pensions



**Case: B.P. et al./Belgische Staat**

Court: Court of appeal  
Case identifier: 2023/AR/48  
Decision Date: May 7, 2024  
Other treaty state(s): The Netherlands  
Keywords: Bridging allowance qualification

**Germany – Alexander Rust**

**Case: Right of taxation of a severance payment**

Court: Federal Fiscal Court  
Case identifier: VI R 23/22  
Decision Date: August 1, 2024  
Other treaty state(s): Switzerland  
Keywords: Severance Payment

**Poland – Karolina Tetlak**

**Case: J.B.**

Court: Naczelny Sąd Administracyjny (Supreme Administrative Court)  
Case identifier: II FSK 1237/21  
Decision Date: June 25, 2024  
Other treaty state(s): France  
Keywords: Military pension/annuity, dual citizenship

**Portugal – Ana Paula Dourado**

**Case: Fátima**

Court: Centre for Administrative Arbitration  
Case identifier: 507/2023-T  
Decision Date: March 8, 2024  
Other treaty state(s): Denmark  
Keywords: Employment income

10:30 – 11:00 Coffee Break

11:00 – 12:30 **Session 6a: Passive Income (Art 10, 11, 12 OECD Model)**

Chair: *Daniel Blum*

**Australia – Michael Dirkis & Kerrie Sadiq**

**Case: PepsiCo, Inc. v Commissioner of Taxation**

Court: Full Federal Court  
Case identifier: [2024] FCAFC 86  
Decision Date: June 26, 2024  
Other treaty state(s): United States  
Keywords: Royalties, implicit contract provision

### **Italy – Cesare Silvani**

#### **Case: Terex Italia vs Agenzia delle Entrate**

Court: Corte di Cassazione (Italian Supreme Court)

Case identifier: 2465/2024

Decision Date: January 25, 2024

Other treaty state(s): United States

Keywords: Royalties, right of usufruct

### **Czech Republic – Ondrej Malek**

#### **Case: Czech Airlines v. Appellate Financial Directorate**

Court: Supreme Administrative Court

Case identifier: 10 Afs 27/2023-76

Decision Date: December 7, 2023

Other treaty state(s): Korea

Keywords: Royalties, international shipping and air transport

### **Belgium – Jean-Philippe Van West**

#### **Case: S.E. bv / Belgische Staat**

Court: Court of first instance

Case identifier: 21/942/A

Decision Date: October 27, 2023

Other treaty state(s): The Netherlands

Keywords: Beneficial owner, Interest and Royalties Directive

### **Denmark – Søren Friis Hansen**

#### **Case: Cook Denmark International Holdings ApS**

Court: Supreme Court

Case identifier: UfR.2024.5235H

Decision Date: September 16, 2024

Other treaty state(s): Sweden, United States

Keywords: Beneficial owner, conduit companies

12:30 – 13:30

Lunch Break

13:30 – 15:00

**Session 6b: Passive Income (Art 10, 11, 12 OECD Model)**

Chair: *David Duff*  
*Alexander Rust*

**The Netherlands – Eric Kemmeren**

Case: **[X] B.V. tegen de Staatssecretaris van Financiën**

Court: Dutch Supreme Court

Case identifier: ECLI:NL:HR:2024:49

Decision Date: January 19, 2024

Other treaty state(s): United Kingdom

Keywords: Beneficial owner, dividends

**United Kingdom – Philip Baker**

Case: **HM Revenue and Customs Commissioners v Burlington  
Loan Management DAC**

Court: Upper Tribunal (Tax and Chancery Chamber)

Case identifier: [2024] UKUT 00152 (TCC)

Decision Date: May 31, 2024

Other treaty state(s): Ireland

Keywords: Interest payments and treaty abuse

**Turkey – Billur Yalti**

Case: **NA**

Court: Supreme Administrative Court

Case identifier: K.2024/3170

Decision Date: May 21, 2024

Other treaty state(s): Ireland

Keywords: Beneficial owner

**India – Ashrita Prasad Kotha & Nigam Nuggehalli**

Case: **Tiger Global International III Holdings Vs. The Authority  
for Advance Rulings (Income-Tax) and Ors.**

Court: Delhi High Court

Case identifier: 2024:DHC:6473-DB

Decision Date: August 28, 2024

Other treaty state(s): Mauritius

Keywords: Capital gains and treaty abuse

**Colombia – Natalia Quiñones**

Case: **Omar Cabrera v. Dian**

Court: Council of State, Tax Section

Case identifier: 25411

Decision Date: April 4, 2024

Other treaty state(s): Chile, Switzerland, Spain

Keywords: Technical services and MFN clause

15:00 – 15:30 Coffee Break

15:30 – 17:00 **Session 7: Methods to Avoid Double Taxation (Art 23 OECD Model Convention)**

Chair: *Michael Lang*  
*Cihat Öner*

**Norway – Eivind Furuseth**

Case: **National Oilwell Varco Norway AS and the Norwegian tax authorities**

Court: Oslo tingrett (First Instance Court)

Case identifier: UTV-2023-1458

Decision Date: November 13, 2023

Other treaty state(s): United States

Keywords: Foreign tax credit entitlement, transparent entities

**France – Marilyne Sadowsky**

Case: **Ministre c/ Sté Somfy**

Court: Conseil d'Etat

Case identifier: 469407

Decision Date: February 19, 2024

Other treaty state(s): Tunisia

Keywords: Foreign tax credit limitations

**Portugal – Ana Paula Dourado**

Case: **A NIF e B NIF**

Court: Centre for Administrative Arbitration

Case identifier: 201/2023-T

Decision Date: February 22, 2024

Other treaty state(s): Spain

Keywords: Foreign tax credit, legal basis and calculation



**United States – Yariv Brauner**

Case: **Paul Bruyea**

Court: Court of Federal Claims

Case identifier: 23-766T

Decision Date: December 5, 2024

Other treaty state(s): Canada

Keywords: Foreign tax credit, conflict between the treaty and domestic Law

**Germany – Alexander Rust**

Case: **Taxation of internationally active freelance partnerships**

Court: Federal Fiscal Court

Case identifier: I R 42/20

Decision Date: December 12, 2023

Other treaty state(s): United States

Keywords: Foreign tax credit, partnership