

# INVITATION

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## Conference

## **TAX TREATY CASE LAW AROUND THE GLOBE 2018**

Tilburg University,  
May 24 – 26, 2018, 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 2018**.

Our Conference aims at presenting and discussing the most interesting Tax Treaty Cases which had been decided in 2017 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 34 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, interpretation, tax treaty abuse and residence
- Session 2: Permanent establishment
- Session 3: Business profits and capital gains
- Session 4: Labour income, pensions, sportsmen, students and other payments
- Session 5: Royalties
- Session 6: Relief from double taxation-LOB and subject-to-tax requirement
- Session 7: Non-discrimination, exchange of information and MAP

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 24, 2018 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 25 and Saturday May 26, 2018, in room DZ 1 of the Dante Building. On May 25, 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.--. Registration is open up to and including **23-04-2018**. The participation fee must be paid not later than **27-04-2018**, 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  
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**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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Conference

## TAX TREATY CASE LAW AROUND THE GLOBE 2018

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May 24 – 26, 2018, Tilburg, the Netherlands

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### Thursday, May 24, 2018

18:00

#### Conference opening and cocktail reception

Tilburg University, lobby Dante Building,  
Warandelaan 2, 5037 AB, Tilburg

### Friday, May 25, 2018

#### Session 1

08:30 – 10:45

#### Scope, interpretation, tax treaty abuse and residence

*Chairs:* Eric Kemmeren  
Christoph Marchgraber

##### 1. Greece (Katerina Perrou)

Supreme Administrative Court (Symvoulío tis Epikrateias), 15 February 2017	Number: 435/2017
Scope of application of the treaty in case of income from unknown sources	

##### 2. France (Marilyne Sadowsky)

The Supreme Court (Conseil d'État), 25 October 2017	n°396954, Société Partinverd
Abuse of a tax treaty	

##### 3. Slovakia (Tomas Balco)

Regional Court, 3 May 2017	Case number: 6S 34/2016
Beneficial owner; beneficial owner of dividends; GAAR	

##### 4. Israel (Tsilly Dagan)

The Supreme Court, 22 February 2017	C.A. 3328/15 Ploni v. Pkid Shuma Ashkelon
Residency and interpretation	

## 5. Luxembourg (Werner Haslehner)

Supreme Administrative Court, 2 March 2017	n°38088C
Double residency and double taxation on income and qualification conflict concerning income type	

## 6. Belgium (Anne Van de Vijver)

Supreme Administrative Court (Hof van Cassatie), 16 June 2017	n° F.15.0102.N.
Foreign tax credit and the interaction between treaty law and domestic law	

10:45 – 11:15

Coffee Break

### **Session 2**

11:15 – 13:00

### **Permanent establishment**

*Chairs:* Daniel Smit  
Yariv Brauner

#### 1. India (D.P. Sengupta)

Supreme Court of India, 24 April 2017	Civil Appeal No 3849 of 2017-2017-TII-17-SC-INTL
Is there a PE? (Formula One World Championship Ltd.)	

#### 2. Portugal (João F. P. Nogueira)

Arbitration Center ("Centro de Arbitragem Administrativa"), 14 July 2017	Proc. 375/2016-T
Is there an agent PE?	

#### 3. Italy (Guglielmo Maisto – Paolo Arginelli)

Supreme Court (Corte di Cassazione), 24 November 2017	Decision No. 28059
Relationship between general definition of a PE and a building site PE	

#### 4. Italy (Guglielmo Maisto – Paolo Arginelli)

Supreme Court (Corte di Cassazione), 22 February 2017	Decision No. 4576
Permanent establishment / Availability of one (or more) fixed place of business	

## 5. Greece (Katerina Perrou)

Supreme Administrative Court (Symvoulío tis Epikrateias), 10 May 2017	Number: 1290/2017
Attribution of profits to PE and limitations of deductible expenses under domestic law	

13:00 – 14:30

Lunch Break

### **Session 3**

14:30 – 15:30

## **Business profits and capital gains**

*Chairs:* Ton Stevens  
Philip Baker

### **1. Germany (Roland Ismer)**

The Federal Fiscal Court (BFH), 19 January 2017	IV R 50/14
Commercial activities and the losses - negative progression provisio	

### **2. Denmark (Søren Friis Hansen)**

Supreme Court, 16 August 2017	SKM2017.506HR
Compensation for damages in tort from a business partner be treated as a capital gain for tax purposes	

### **3. Turkey (Cihat Öner)**

Supreme Administrative Court, 3 <sup>rd</sup> Chamber, 15 June 2017	E. 2013/754; K. 2017/5407
Taxation of CFC earnings before and after the distribution of dividends	

15:30 – 16:00

Coffee Break

## **Session 4**

16:00 – 18:00

## **Labour income, pensions, sportsmen, students and other payments**

*Chairs:* Peter Essers  
Guglielmo Maisto

### **1. Austria (Christoph Marchgraber)**

Supreme Administrative Court (VwGH), 22 February 2017	Ra 2014/13/0011
The "Economic" Employer Concept	

### **2. Switzerland (Michael Beusch)**

Federal Supreme Court, 10 February 2017	(2C_628/2016 / 2C_629/2016, [= ATF 143 II 257])
Distinction between income from employment and other income	

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

The Supreme Court, 14 July 2017 and The Supreme Court, 24 November 2017	No. 17/01256, BNB 2017/186 and No. 17/00515, V-N 2017/58.6
Exit taxation on pensions: tax treaty override?	

### **4. Germany (Roland Ismer)**

Fiscal Court Köln (FG), 24 May 2016	1 K 1796/13
Pensions paid for former government services	

### **5. Portugal (João F. P. Nogueira)**

Arbitration Center ("Centro de Arbitragem Administrativa"), 6 April 2017	Proc. 346/2016-T
Taxation of sportspersons: i) image rights; ii) economic rights not related with performance	

### **6. United States (Yariv Brauner)**

United States Tax Court, 2 October 2017	149 T.C. No. 14; Pei Fang Guo V. Commissioner
Treatment of payments to graduate students	

19:00

Dinner at Faculty Club of Tilburg University

**Session 5**

8:30 – 10:30

**Royalties**

*Chairs:* Cees Peters  
Werner Haslehner

**1. Spain (Ricardo García Antón)**

Judgement of National Court ('Audiencia Nacional'), 26 June 2017	Rec. 492/2015
Concept of 'equipment' in the royalty definition	

**2. Poland (Karolina Tetlak)**

<b>Supreme Administrative Court, 18 May 2017</b>	<b>II FSK 1204/15</b>
Definition of 'industrial equipment' with regard to royalty	

**3. India (D.P. Sengupta)**

Supreme Court of India, 17 February 2017	Civil Appeal No 8040 of 2015-2017-TII-08-SC-INTL
Fee for technical services	

**4. Poland (Karolina Tetlak)**

<b>Supreme Administrative Court, 2 August 2017</b>	<b>II FSK 1961/15</b>
Scope of the definition of royalties	

**5. Turkey (Cihat Öner)**

Istanbul District Administrative Court, 4 <sup>th</sup> Chamber, 29 June 2017	E. 2016/3086; K. 2017/2643
Payment for a right to use of a software program is royalty	

10:30 – 11:00

Coffee Break

## **Session 6**

11:00 – 12:30

### **Relief from double taxation, LOB and subject-to-tax requirement**

*Chairs:* Cees Peters  
David Duff

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

The High Court of Justice Queen's Bench Division Administrative Court, 14 November 2017	Case No: CO/610/2017; Neutral Citation No: [2017] EWHC 2881 (Admin)
Double taxation relief – Limitation on benefits	

#### **2. Austria (Christoph Marchgraber)**

Supreme Administrative Court (VwGH), 23 February 2017	Ro 2014/15/0050
Subject-to-Tax Clause: Indemnity and Bonus Payments Received by a Former Resident Employee	

#### **3. New Zealand (Craig Elliffe)**

High Court of New Zealand, 12 May 2017	CIV-2015-404-2267 [2017] NZHC 969 Judgment of Thomas J
Should the tax payable by a company be allowed as a credit when the income is attributed to shareholders under CFC rules?	

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

The Supreme Court (Conseil d'État), 7 June 2017	n°386579, LVMH
Loss making company and deduction of taxes paid abroad	

12:30 – 14:00

Lunch Break

## **Session 7**

14:00 – 15:45

### **Non-discrimination, exchange of information and MAP**

*Chairs:* Cihat Öner  
Christoph Marchgraber

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

National Supreme Court, 9 May 2017	TF 24.943-1; Fallos 360:644
Non-Discrimination	



## 2. The Netherlands (Daniel Smit)

The Supreme Court, 15 December 2017	No. 16/02919
No tax consolidation between Dutch sister companies held by Israeli parent / no infringement of DTC non-discrimination clause	

## 3. Switzerland (Lysandre Papadopoulos)

Federal Supreme Court, 16 February 2017 and 17 March 2017	2C_893/2015, [= ATF 143 II 202] and 2C_1000/2015, [= ATF 143 II 224]
Administrative assistance / Exchange of information	

## 4. Spain (Ricardo García Antón)

Judgement of National Court ('Audiencia Nacional'), 28 March 2017	Rec. 175/2015
Access to MAP in cases of fraud or avoidance / transfer pricing adjustment	

## 5. Canada (David Duff)

Tax Court of Canada [General Procedure], 10 March 2017	Sifto Canada Corp. v. R., 2017 CarswellNat 758, 2017 TCC 37, 2017 D.T.C. 1020, [2017] 4 C.T.C. 2043
Mutual Agreement Procedure	

**Closure 15:45 – 16:00**

Sessions will take place in Room **DZ 1** at Dante Building at Tilburg University Campus (Warandelaan 2, 5037 AB, Tilburg).