



XIAMEN UNIVERSITY TAX SUMMER SCHOOL SPECIAL ISSUES ON TAX TREATY LAW (08/07 – 13/07/2024)

SPEAKERS:

Gustavo Weiss de Resende, Postdoctoral Teaching and Research Fellow at the Institute for Austrian and International Tax Law at WU.

Valentina Emanuele, Research and Teaching Associate from the DIBT at the Institute for Austrian and International Tax Law at WU.

Bence Komár, Research and Teaching Associate at the Institute for Austrian and International Tax Law at WU.

Severin Schragl, Research and Teaching Associate at the Institute for Austrian and International Tax Law at WU.

ZHU Yansheng (朱炎生), Professor and vice director of the Center for International Tax law and Comparative Taxation, Xiamen University School of Law.

ZHANG Zhiyong (张志勇), President of China International Taxation Research Institute.

YE Yongqing (叶永青), Senior partner of King & Wood Melletons Law Firm.

Martin Ng (吴智广), Managing partner of WTS China.

LIAO Yixin (廖益新), Professor and director of the Center for International Tax law and Comparative Taxation, Xiamen University School of Law.

PROGRAM:

Monday 08/07/2024

09:00-10:30 OPENING CEREMONY AND LECTURE

11:00-12:30 INTRODUCTION TO TAX TREATY LAW, SCOPE OF TAX TREATIES (*Valentina Emanuele*)

Structure of double tax treaties: definitions, distributive rules and methods for elimination of double taxation, interaction of domestic law and treaty law, OECD and UN Model Convention; Taxes covered, persons covered, deemed residence, center of vital interests, place of effective management

14:00-15:30 INTERPRETATION OF TAX TREATIES (*Bence Komár*)

Concept of interpretation, interpretation of international treaties, interpretation of tax treaties, role of OECD/UN Model Convention and their Commentaries, DTTs in relation to domestic law; recent case law

16:00–17:30 Session delivered by Xiamen University

Tuesday 09/07/2024

09:00-10:30 ABUSE OF TAX TREATIES – WHERE ARE THE LIMITS? (*Severin Schragl*)

Abuse in treaty law, treaty shopping, anti-abuse rules in tax treaties and under domestic law, limitation-on-benefits clause, and principal-purpose test (BEPS Action 6)

11:00-12:30 ABUSE IN INTERNATIONAL TAX LAW – BEPS (*Severin Schragl*)

Aggressive tax planning structures through examples, Overview and status of the OECD BEPS project; recent case law

14:00-15:30 BUSINESS PROFITS AND PERMANENT ESTABLISHMENTS – BASIC PRINCIPLES (*Valentina Emanuele*)

Distributive rules relevant for companies: Arts. 7, 8 and former Art. 14 OECD Model Convention, definition of PE (Art. 5 OECD Model Convention/UN Model), physical PE, construction PE, agency PE and service PE, allocation of profits between head office and PE (Art. 7 para. 2 OECD Model Convention), dealings between head office and PE, AOA (Authorized OECD Approach)

16:00–17:30 BUSINESS PROFITS AND PERMANENT ESTABLISHMENTS – RECENT DEVELOPMENTS (*Valentina Emanuele*)

Preventing the artificial avoidance of PE status (BEPS Action 7), *commissionaire* arrangements, and exceptions in Art. 5(4), developments in the UN Model; recent case law

19:00–21:00 Session delivered by Xiamen University

Wednesday 10/07/2024

09:00–10:30 TRANSFER PRICING 1 (*Valentina Emanuele*)

Associated companies (Art. 9 OECD Model Convention), OECD Transfer Pricing Guidelines, transfer pricing methods through examples, adjustments to intercompany pricing, secondary adjustments, documentation requirements

11:00–12:30 TRANSFER PRICING 2 (*Valentina Emanuele*)

Recent case law on transfer pricing issues relating to Intangibles, Intra-group Services, or Business Restructuring

14:00-15:30 TWO-PILLAR SOLUTION (*Gustavo Weiss de Resende*)

Amount A and Amount B of Pillar One; GLoBE Rules, STTR of Pillar Two

16:00-17:30 PASSIVE INCOME (*Gustavo Weiss de Resende*)

Definition of “dividends”, “interest” and “royalties”, allocation of taxing rights, withholding taxes, beneficial ownership, PE proviso and relation to Art. 7, recent case law

Thursday 11/07/2024

09:00–10:30 Immovable Property and Capital Gains (*Bence Komár*)

Art. 6: Definition of “immovable property”, allocation of taxing rights, relation to other allocation rules; Art. 13: Definition of “alienation”, alienation of immovable property, movable property, shares and other property, relation to other allocation rules; recent case law

11:00-12:30 METHODS TO AVOID DOUBLE TAXATION (*Bence Komár*)

Exemption method, exemption with progression, credit method, ordinary credit, tax sparing credit

14:00-15:30 QUALIFICATION AND ALLOCATION CONFLICTS (*Severin Schragl*)

Qualification and allocation conflicts, Partnership Report, proposed rule in Art. 1(2) (BEPS Action 2) ; recent case law

16:00–17:30 TAXATION OF EMPLOYMENT INCOME (*Severin Schragl*)

Distributive rule for income from dependent work, term of “salaries, wages and other similar remuneration”, term of “employer”, frontier workers, 183-days-rule, distributive rule for pensions, public service pensions, distributive rule for artists and sportsmen; recent case law

19:00-21:00 Session delivered by Xiamen University

Friday 12/07/2023

09:00-10:30 NON-DISCRIMINATION (*Bence Komár*)

Non-discrimination clauses in tax treaties (Art. 24 OECD Model Convention), case law on the non-discrimination clause

11:00-12:30 EXCHANGE OF INFORMATION (*Gustavo Weiss de Resende*)

Art 26 OECD Model Convention: exchange of information on request, spontaneous exchange of information, automatic exchange of information, Model Agreement on Exchange of

Information on Tax Matters (TIEA), Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Agreement on the Global Standard of Automatic Information Exchange, EU developments

14:00–15:30 DISPUTE PREVENTION AND RESOLUTION (*Gustavo Weiss de Resende*)

Current developments: ICAP, ETACA, simultaneous audit, joint audit

Mutual agreement procedure (MAP), arbitration, Pillar One proposed framework

16:00-17:30 EXAM PREPARATION (*Gustavo Weiss, Valentina Emanuele, Bencé Komar, Severin Schragl*)

Examples for exam; How to solve cases in a systematic way

Saturday 13/07/2023

09:00-10:30 EXAM (Supervision: *Gustavo Weiss, Valentina Emanuele, Bence Komár, Severin Schragl*)

10:30-12:00 Discussion of exam questions, Closing Ceremony (Explanation of cases: *Gustavo Weiss, Valentina Emanuele, Bence Komár, Severin Schragl*)

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