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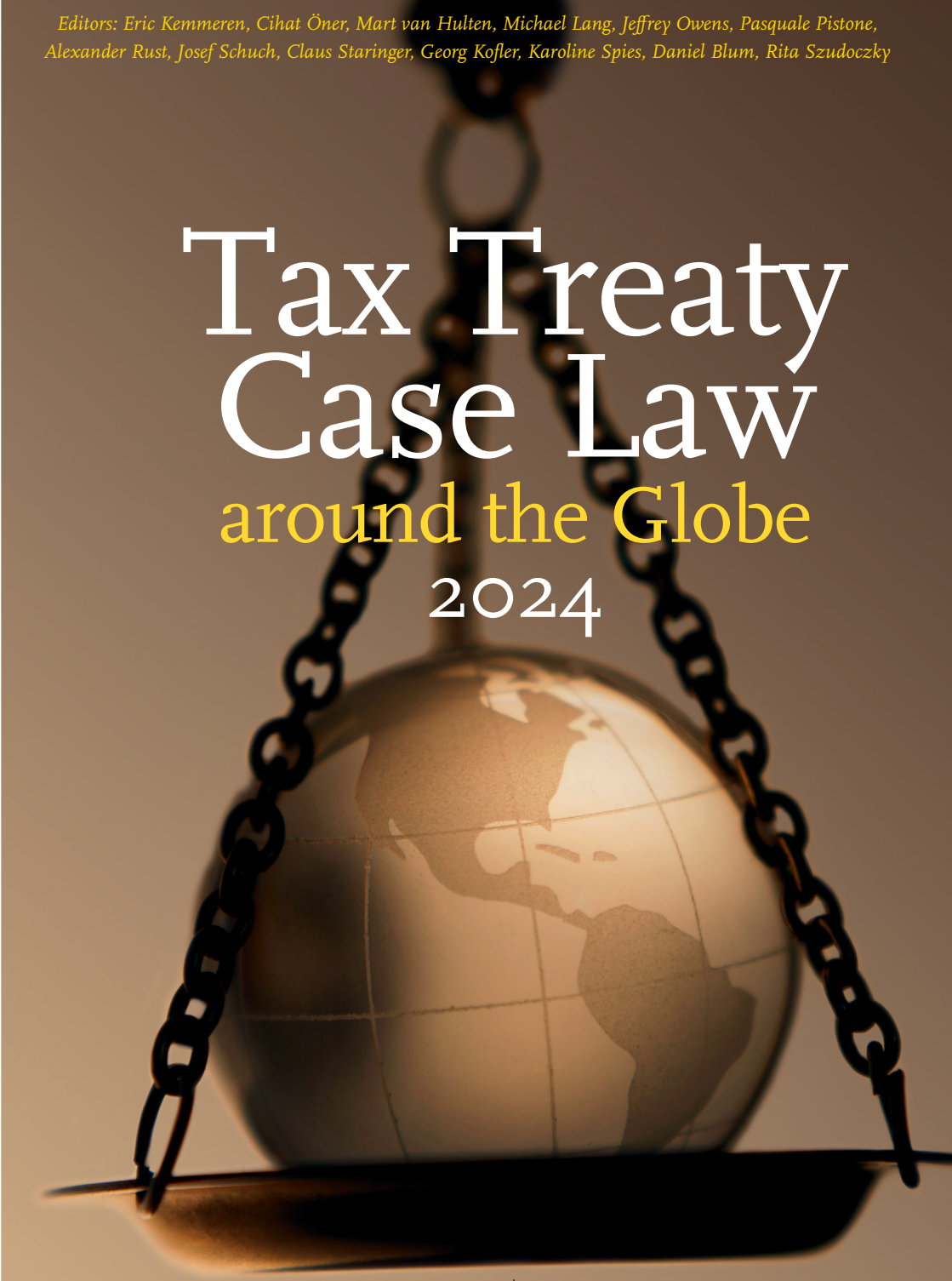
Tax Treaty Case Law around the Globe 2024



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Tax Treaty Case Law Around The Globe 2024

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With the continuously increasing importance of tax treaties, Tax Treaty Case Law around the Globe 2024 is a valuable reference tool for anyone interested in tax treaty case law, including tax practitioners, multinational businesses, policymakers, tax administrators, judges and academics.

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Preface

Both the OECD Model Tax Convention on Income and Capital (OECD Model) and the United Nations Model Double Taxation Convention (UN Model) are designed as tools for legislative harmonization and, therefore, often serve as a basis for tax treaty negotiations between different jurisdictions worldwide. However, the interpretation of a specific tax treaty provision may still vary between countries for several reasons. The risk of double/multiple (non) taxation is, therefore, not entirely removed, and this will adversely affect the international exchange of goods and services and the movement of capital, technology and persons. To facilitate a uniform interpretation of tax treaties worldwide and, hence, reduce the risk of double/multiple (non) taxation, basic knowledge is needed of how various tax treaty issues are resolved by different jurisdictions.

It is widely known that a unified approach to the interpretation and application of international tax treaty rules may benefit not only the countries/parties to a certain tax treaty but also their taxpayers, as well as international trade and investments in general. This topic is, therefore, an ongoing concern for many tax practitioners, representatives of international organizations, public officers and tax scholars.

The Tax Treaty Case Law Around the Globe 2024 Conference was held by Tilburg University on 13-15 May 2024 in a hybrid way. This international event took place for the thirteenth time and was jointly organized by the European Tax College of Tilburg University and the Institute for Austrian and International Tax Law of WU. The conference was dedicated to the analysis of the most important cases on international tax treaty law decided in 2023 in different tax jurisdictions worldwide. Thirty-six cases were presented by tax experts from more than 20 different countries. Each presentation was followed by an intensive and fruitful discussion. Participants in the conference compared the interpretation approaches existing in both OECD and non-OECD member countries and produced comprehensive conclusions and suggestions. This book contains the key scientific outcomes of the conference.

Each report in this book is dedicated to a court case or a number of cases relating to a particular article of the tax treaty at issue (often based on the OECD or UN Model) that was decided in a certain jurisdiction in 2023. Each report is structured in a similar way, presenting the facts of the case, the decision and reasoning of the court, and the observations and conclusions of

the authors, including the possible impact of the decision on international tax law development in the respective country and other jurisdictions.

This clear and concise structure enables a solid and accessible overview of the global case law on tax treaty application in 2023. The systematic structure of each report allows different tax treaty cases to be studied and compared in a comprehensive and efficient way.

The editors believe that the reports presented in this book are of high value and will, therefore, be of particular interest to tax consultants, public officers, academics and all those interested in international tax law. The fact that many domestic decisions are otherwise available only in the national language makes the material contained in this book even more valuable.

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Tilburg, January 2025

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Abbreviations and Acronyms

AHV	*Alters- und Hinterlassenenversicherung*
AN	Normative Act
AN	*Audencia Nacional*
AO	assessing officer
ATAD	Anti-Tax Avoidance Directive
ATO	Australian Taxation Office
AY	assessment year
BEPS	base erosion and profit shifing
BFG	*Bundesfinanzgericht*
BOIP	Benelux Office for Intellectual Property
BRA-ESP	Brazil-Spain
BTP	Book of Tax Procedures
CAAD	Portuguese Arbitration Court
CAS	Court of Arbitration for Sport
CDT	Convention for the Avoidance of Double Taxation
CFA	Committee on Fiscal Affairs
CIT	corporate income tax
CITA	Corporate Income Tax Act
CITL	Corporate Income Tax Law
CJEU	Court of Justice of the European Union
CRA	Canada Revenue Agency
DGT	Spanish Tax Directorate
DPT	diverted profits tax
DTA	Double Taxation Agreement
DTAA	Double Taxation Avoidance Agreement
DTC	Double Tax Convention
DTT	Double Taxation Treaty
EBA	exclusive bottling agreement
EBIT	earnings before interest and taxes
ECHR	European Convention on Human Rights
ECI	effectively connected income
ECJ	European Court of Justice

EU	European Union
FBF	*Fédération bancaire française*
FCA	Federal Court of Appeal
FCA	Federal Court of Australia
FCFCA	Full Court of the Federal Court of Australia
FTC	French Tax Code
FY	fiscal year
GAAR	general anti-avoidance rule
HC	High Court
HK	Hong Kong
HMRC	Her Majesty's Revenue and Customs
ICJ	International Court of Justice
IDA	Interpretive Declaratory Act
ILC	International Law Commission
ILOR	*imposta locale sui redditi*
INPI	National Institute of Industrial Property
IRAP	Italian Regional Tax on Productive Activities
IRC	Internal Revenue Code
IRD	Interest & Royalties Directive
IRES	*imposta sul reddito della società*
IRPEF	*imposta sul reddito delle persone fisiche*
IRPEG	*imposta sul reddito delle persone giuridiche*
IRS	Internal Revenue Service
ISP	Internet service provider
IT	information technology
ITAA	Income Tax Assessment Act
ITAT	Income Tax Appellate Tribunal
ITC	Income Tax Code
ITL	Income Tax Law
JPN/LUX	Japan/Luxembourg
LIR	Law on Income Tax
LOB	limitation on benefits
LPF	French Tax Procedure Code
MAP	mutual agreement procedure

MBT	municipal business tax
MC	Model Convention
MLI	Multilateral Convention to implement tax treaty related measures to prevent base erosion and profit shifting
MNE	multinational enterprise
NAT	net asset tax
NDA	Normative Declaratory Act
NIIT	net investment income tax
NTA	Norwegian Tax Act
NTA	National Tax Agency
OECD	Organization for Economic Co-operation and Development
PCIT	Principal Commissioner of Income Tax
PE	permanent establishment
PIT	personal income tax
PL-CH	Poland-Switzerland
PL-LUX	Poland-Luxembourg
PPT	Principles Purpose Test
PSD	Parent-Subsidiary Directive
PTA	Portuguese Tax Authorities
RBC	Royal Bank of Canada
RF	Russian Federation
RTF	Tax Court Resolution
SAC	Supreme Administrative Court
SCC	Supreme Court of Canada
SCI	Supreme Court of India
SCJ	Superior Court of Justice
SICAV	*Société d'investissement à Capital Variable*
SNRL	Spanish Non-Resident Law
StAnpG	Tax Adaptation Law
TCC	Tax Court of Canada
TIAS	Treaties and Other International Acts Series
TPL	Tax Procedure Law
UAE	United Arab Emirates

UCIs	undertakings for collective investment
UK	United Kingdom
UN	United Nations
US	United States
VAT	value added tax
VCLT	Vienna Convention on the Law of Treaties
VfGH	*Verfassungsgerichtshof*
VwGH	*Verwaltungsgerichtshof*

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