



IBFD Opportunities and Challenges in Post-BEPS International Taxation – Current Issues

Quito, Ecuador

18 – 19 May 2020

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Summary

As a prelude to the IFA Latin America regional conference, we are delighted to present the third edition of the IBFD course on international tax and transfer pricing.

The IBFD courses for the IFA Latin America regional conferences, taught fully in Spanish, aim to provide a unique learning platform for Latin American tax practitioners, where they can analyse, debate and share experiences about relevant current issues in international taxation and transfer pricing.

This course, *Opportunities and Challenges in Post-BEPS International Taxation – Current Issues*, aims to analyse a selection of current issues, including the latest worldwide developments, case law on permanent establishment and transfer pricing, capital gains taxation and offshore indirect transfer of assets, withholding tax and income repatriation, and substance considerations based on anti-abuse rules.

The course will be held on 18 and 19 May in the same location as the IFA Latin America regional conference (20 to 22 May).

Overview and Learning Objectives

This two-day intermediate-level course aims to provide Latin American tax professionals with practical and comprehensive coverage of selected critical issues in international taxation and transfer pricing. A brief outline of the objectives per day is set out below:

Day 1: Monday 18 May 2020

The first session will provide a general overview of the tax policy, legislative and case law developments on the international stage, including the work of the OECD and the Inclusive Framework, and developments in selected jurisdictions. In this session, participants will have the opportunity to discuss with instructors and peers the relevance and practical impact of those developments on foreign investments and on their daily work in Latin America.

Afterwards, we will examine the trends in tax treaty policy in Latin America and the likely impact of tax treaty anti-avoidance rules that are being incorporated in tax treaties in the region based on bilateral negotiations and/or the Multilateral Convention to Implement BEPS (MLI). These developments might all result in increased disputes and litigation with tax administrations.

The taxation of capital gains and offshore indirect transfers is a relevant issue in Latin America. A full session is dedicated to the taxation of capital gains under tax treaties with a special focus on immovable property (including natural resources rights). Multinational enterprises (MNEs) often utilize offshore structures in their tax planning in respect of capital gains taxes on the sale of assets in Latin America. Thus, understanding the core issues, risks and possible outcomes concerning this topic, as well as some of the most prominent court cases, is very desirable for tax professionals from both the private and public sector.

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The concept of “permanent establishment” (PE) continues to be of great relevance to Latin American professionals. We will shed light on the PE concept and the most recent international cases on the topic. Several judgments have recently been rendered that provide food for thought for tax professionals on how to structure foreign operations involving offices, premises, warehousing, distribution centres, and promotion and sales activities.

Day 2: Tuesday 19 May 2020

We will begin with a session on profit repatriation and structures put in place for the avoidance of withholding taxes in cross-border situations. Participants will learn the impact of tax treaties and the common interpretation issues arising from treaty application. Cases involving triangular situations, beneficial ownership and the application of anti-abuse measures will also be presented.

The past two years have seen great focus on substance considerations as more and more countries revised their domestic provisions mainly in line with the recommendations of the OECD Base Erosion and Profit Shifting (BEPS) package, including minimum standards whose implementation is being overseen under the Inclusive Framework. A session aims to provide a framework for the new context of anti-abuse rules and substance requirements.

The transfer pricing policies of MNEs are under greater scrutiny, especially post BEPS and the amendment of the OECD Transfer Pricing Guidelines. Wide-ranging requirements on transparency are being implemented by most countries. We have dedicated a session to recent transfer pricing cases that are of relevance to Latin America. The instructors will discuss the leading global transfer pricing cases to examine the strategic narrative used by taxpayers or tax administrations.

The course ends with a presentation on Latin American developments to tie in some regional and domestic regulatory changes with the global international tax and transfer pricing trends already discussed.



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Field of Study

International taxation and transfer pricing

Who Should Attend?

The course is suitable for professionals, such as tax managers and directors, in-house tax and accounting specialists in commerce and industry, practitioners in tax advisory firms, and government officials who deal with international tax structuring or transfer pricing in Latin America and wish to gain a deeper technical understanding of tax treaties, transfer pricing, and relevant domestic law developments.

Course Level and Prerequisites

This is an intermediate-level course. Participants taking this course will be expected to have a good understanding of at least one national tax system, and the fundamentals of transfer pricing and tax treaties.

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Day 1

09.00 - 09.20

Welcome and IBFD Introduction

09.20 - 10.45

Latest developments in International Taxation and Transfer Pricing from around the Globe – Impact on Latin American Inbound and Outbound Investments

- ▶ Inclusive Framework and BEPS Minimum Standards implementation
- ▶ Work progress of the OECD Task Force on Digital Economy (Pillars 1 and 2)
- ▶ Unilateral BEPS-motivated domestic law measures
- ▶ Selected jurisdictions (Australia, Canada, European Union, Netherlands, Spain, United Kingdom, United States and Uruguay)

10.45 - 11.15

Break – Refreshments

11.15 - 12.45

Trends in Tax Treaty Policy in Latin America: Impact of Treaty Anti-Avoidance Rules

- ▶ The Multilateral Instrument and its practical impact
- ▶ 2017 UN Model Double Taxation Convention and its regional influence
- ▶ Treaty anti-avoidance rules in Latin America (including *Decisión 578* of the Andean Community) and their likely impact
- ▶ New treaty PE provisions in tax treaties from the region

12.45 - 13.45

Lunch

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13.45 - 15.30

Taxation of Capital Gains and Offshore Indirect Asset Transfers: What is the Current State of Play?

- ▶ Treatment of capital gains under the OECD and UN Models
- ▶ The issues of the offshore indirect transfer of assets
- ▶ Impact of BEPS measures, the Multilateral Instrument and the 2017 update to the OECD/UN Models
- ▶ Discussion draft of the Platform for Collaboration on Tax (IMF, OECD, UN, World Bank Group)

15.30 - 16.00

Break – Refreshments

16.00 - 17.00

Current Case Law on Selected Permanent Establishments from around the Globe: Lessons for Latin America

- ▶ Recent international case law on:
 - ▶ fixed place of business PEs
 - ▶ sales and marketing activities, and activities of other entities or through agents
 - ▶ e-commerce, digital economy and IT servers
 - ▶ preparatory and auxiliary activities
 - ▶ construction PE
 - ▶ fragmented activities
 - ▶ service PE

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Day 2

09.00 - 10.45

Withholding Tax and Effective Repatriation of Income in Latin America

- ▶ Domestic practices and anti-abuse rules
- ▶ Treaty treatment: beneficial ownership, new provisions of the Multilateral Convention and of tax treaties from the regions
- ▶ Other considerations
 - ▶ transfer pricing
 - ▶ thin capitalization and earning stripping rules
 - ▶ anti-hybrids

10.45 - 11.15

Break – Refreshments

11.15 - 12.45

Substance Considerations and Anti-abuse Measures: Getting It Right

- ▶ General considerations
 - ▶ substance
 - ▶ case law
 - ▶ EU approach – listing of non-cooperative jurisdictions
- ▶ Substance and tax treaties
- ▶ Substance and harmful tax competition

12.45 - 13.45

Lunch

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13.45 - 15.30 **Selected Transfer Pricing Case Law from around the Globe: Lessons for Latin America**

- ▶ Intra-group financing
- ▶ Intangibles
- ▶ Intra-group services
- ▶ Economic substance
- ▶ Case law from Australia, Canada, European Union, Netherlands, United Kingdom, United States, etc.

15.30 - 16.00 Break – Refreshments

16.00 - 17.00 **Latin American Tax Highlights – Some Attention Points for Cross-Border Business Activities in Latin America**

Venue

[Swissôtel Quito](#)

Av.12 de Octubre 1820 y Luis Cordero, P.O. Box, 1721565 Quito, Ecuador

Telephone : +593 2 256 7600

ventas@swissuio.com or Vanessa Cantos vcantos@swissuio.com

Descuento del hotel para los participantes del curso:

A single room costs USD 155,25 each night. A double room costs USD 167,45. Both prices includes taxes and buffet breakfast in our Café Quito Restaurant.

You can make the reservation by yourself using this link. <http://swissotel.com/reservations/check-availability/?pc=NIFA&hc=SQU>.

Questions regarding registration:

info@ibfd.org

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Instructors:



Carlos Gutiérrez is a Principal Research Associate at IBFD Tax Services. Mr Gutiérrez is involved in client research, government consultancy projects, and in the development and teaching of training programmes for tax authorities and advisory firms as well as of regular course programmes given in Amsterdam. Mr Gutiérrez has represented IBFD at various seminars and conferences. He has taught regularly for IBFD International Tax Training, and for universities in Latin America and the Netherlands. He currently lectures in the advanced master's programme in international tax law (LLM) jointly offered by the University of Amsterdam (UvA) and IBFD. Mr Gutiérrez obtained his law degree at the University of Chile and a master's degree (LLM) at Queen Mary College, the University of London. Prior to joining IBFD, Mr Gutiérrez was a legal adviser with the international legislation department of the Chilean tax administration (Servicio de Impuestos Internos, SII), which is responsible for tax treaty negotiation and interpretation, and for drafting direct tax legislation.



Luis Nouel is a Principal Research Associate in IBFD's Knowledge Centre in Amsterdam. Prior to joining IBFD he worked for the International Tax Services group of Ernst & Young in the Netherlands and in Venezuela focusing on corporate taxation and international tax planning for multinational corporations. He also worked for the Venezuelan tax authorities, where he was responsible for tax treaty negotiations as well as for drafting direct and indirect tax legislation, and provided legal support to the National Audit Office. Mr Nouel has a law degree and a specialization in Tax Law from the Catholic University Andrés Bello, and an advanced LLM in International Taxation from the University of Leiden, the Netherlands.



Juan David Velasco is a partner at Posse Herrera Ruiz, where he co-heads the transactional tax practice. He has advised numerous public and private companies as well as private equity and venture capital firms on multi-jurisdictional tax-related aspects of investment, project finance, mergers and acquisitions, and dispositions of business interests. He works with high-net-worth individuals in private wealth management and tax-efficient estate planning strategies. As Vice President of the Colombian Branch Assembly and the Global YIN Committee (under 40-year-old international tax lawyers) of the International Fiscal Association (IFA), active member of the International Bar Association (IBA) and the Colombian Tax Institute (ICDT), Mr Velasco is frequently invited to discuss on innovative cross-border tax matters in national and international academic events. Mr Velasco has a JD degree, with excellence in honor thesis, and Diploma in Tax Law from Universidad de Los Andes (Colombia), an LLM in Taxation from Boston University School of Law (United States), an LLM in International Law from The Fletcher School of Law and Diplomacy (United States), and a Program on Negotiation certificate from Harvard Law School (United States). He also lectures at the advanced seminar on Taxation of International Transactions at Universidad de Los Andes and Universidad EAFIT.

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Prof. Dr Betty Andrade Rodríguez is Managing Editor of the Global Tax Treaty Commentaries (GTTC) and Scientific Coordinator of the Observatory on the Protection of Taxpayers' Rights (OPTR). She obtained her law degree summa cum laude from Andrés Bello Catholic University, in Caracas, and holds an LLM and a PhD in Law from the Central University of Venezuela. From 2016-2017, she was a postdoctoral research fellow at IBFD. Prior to joining IBFD, Prof. Dr Andrade was an associate of Macleod Dixon (currently Norton Rose Fulbright) and of another major law firm in Caracas. In the field of public administration, she was Reporter of the Civil Chamber of the Venezuelan Supreme Court of Justice and an advocate in the Venezuelan Antitrust Agency.

Prof. Dr Andrade is a tenured associate professor in the department of Financial Law (Budgetary and Tax Law) and professor of Human Rights and Taxation in the MSc in Constitutional Law at Andrés Bello Catholic University. She has lectured in the advanced LLM programme International Tax Law: Principles, Policy and Practice, a joint project of IBFD and the UvA and has taught Municipal Taxation in the LLM in Tax Law at the Central University of Venezuela, Tax Procedural Law at the Metropolitan University and postgraduate courses at the Institute of Professional Development of Chartered Accountants of Miranda State, also in Venezuela. Prof. Dr Andrade is a member of the Latin American Tax Law Institute (ILADT), the Panamanian Financial and Tax Law Association (APADEFT) and the Venezuelan Tax Law Association (AVDT) and was a member of the editorial board of the Venezuelan Tax Law Journal from 2007-2009. She has lectured extensively at conferences in Venezuela and abroad and has been National Technical Communicator or National Reporter for Venezuela, as well as a speaker in a number of seminars, at multiple ILADT Conferences since 2010.

Prof. Dr Andrade has authored several published papers and book chapters on tax law, constitutional tax law, tax procedural law, and human Rights and taxation. Her doctoral thesis, on human rights and taxation, received an outstanding qualification by the jury and was awarded an Honourable Mention for the 2016 Annual Award of the Academy of Political and Social Sciences of Venezuela, the most important legal research award in the country. She received the Marco Ramírez Murzi Award, granted by the Venezuelan Association of Tax Law for excellence in academic research in tax law, in 2005 and the Roberto Goldschmidt Award, granted by the Academy of Political and Social Sciences for academic excellence, in 1996.

Prof. Dr Andrade is fluent in Spanish and English, and she has an intermediate knowledge of Portuguese and Italian.