

INTERNATIONAL TAX LECTURE SERIES



PERMANENT ESTABLISHMENTS ON THE PREMISES OF A CLIENT OR A SUBSIDIARY

Your staff uses the facilities of your customers or your subsidiaries overseas. When can such situations trigger a PE? Trends in international case law, OECD Commentary, and the actual practice of tax authorities in the region.

INVESTMENT TREATY ARBITRATION IN TAX MATTERS

Can foreign investors start an international arbitration to protect themselves from sudden tax increases or disputed tax claims by the countries where they have invested? Analysis of actual cases, investment treaties and practical problems.

CASE STUDIES IN TAX TREATY INTERPRETATION

Four real life interpretation exercises on beneficial ownership, “instant PEs”, definition of royalties and international assignment. How to apply the Vienna Convention rules, the Commentaries and/or domestic tax law to a real situation?

LECTURER: EDWIN A. VANDERBRUGGEN

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INTRODUCTION

The International Tax Lecture Series provides an excellent opportunity for tax practitioners, lawyers, officials and other enthusiasts in the field of international taxation to get updated on a number of specialized technical questions with great practical importance. Lecturer Edwin Vanderbruggen has a talent for analyzing and explaining complicated international tax issues in a clear and entertaining manner. A practitioner himself, he approaches problems from a practical perspective but in combination with solid scholarly international research. The key objective of this International Tax Lecture Series is to deliver a well-researched, in-depth and entertaining presentation with plenty practical take-away on cross-border tax issues that are relatively specialized.

PERMANENT ESTABLISHMENTS ON THE PREMISES OF A CLIENT OR A SUBSIDIARY

21 March 2012, 2:00PM - 5:00PM

The Fullerton Hotel Singapore

INVESTMENT TREATY ARBITRATION IN TAX MATTERS

25 April 2012, 2:00PM - 5:00PM

The Fullerton Hotel Singapore

CASE STUDIES IN TAX TREATY INTERPRETATION

23 May 2012, 2:00PM - 5:00PM

The Fullerton Hotel Singapore

LECTURER

EDWIN A. VANDERBRUGGEN

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Formerly with Loyens & Loeff, Edwin has nearly 20 years experience (including 15 years in South-East Asia) as a tax lawyer, academic, author and government adviser. He taught international tax law at 6 different universities in Europe and Asia, including a number of lectures at the prestigious International Tax Center in Leyden. He has published 7 textbooks and over 50 scholarly articles, some winning scientific awards. He was an adviser to the Minister of Economy and Finance of Cambodia (2006-2007) on the conclusion of double taxation agreements. He has provided training on tax treaty issues to government officials in a number of South-East Asian countries, including Thailand, Vietnam, Laos and Cambodia and has supplied expert testimony to tax courts on tax treaty interpretation. Edwin has consulted for the World Bank and the ADB on tax policy and administration, including with respect to double taxation agreements.

As a tax partner at DFDL he advises multinational enterprises, funds and organizations on international taxation in South-East Asia, and has won recognition for his outstanding practice including “best tax law firm of the year” and “best corporate tax law firm”. He has assisted with structuring some of the largest acquisitions, investments and property deals in the region including the \$4.2B petrochemical plant of SCG Chemical in Vietnam, the \$425M Mobitel acquisition in Singapore and Cambodia, and the \$275M listed property fund JSM Indochina.

PERMANENT ESTABLISHMENTS ON THE PREMISES OF A CLIENT OR A SUBSIDIARY

21 MARCH 2012, 2:00PM - 5:00PM, THE FULLERTON HOTEL SINGAPORE

- Can local presence abroad by your employees trigger a PE when supplying consulting or management services?
- Technical assistance, supervision and management services supplied to subsidiaries: PE risks?
- Furnishing services: How long is long enough to trigger a PE?
- What are the trends in the OECD Commentary, UN Commentary and international case law?
- Temporary assignment of employees to a subsidiary: when is it a PE?
- How do tax authorities in South-East Asia interpret and apply PE provisions?
- Case studies on Vietnam, Thailand, Laos, and Indonesia.

Logically, companies try to avoid a taxable presence in countries where they have only a temporary activity. The objective is to carry out projects overseas with as few taxes and tax registration obligations as possible. The tax treaty rules on permanent establishments (PE) often play a crucial part in this regard. When the company itself has no place of business overseas, that is one thing. But how about the common situation where staff uses the facilities of its customers or its subsidiary abroad? When can such situations trigger a PE?

This in-depth lecture discusses both the theory and the practice of PEs where premises of the client or of a subsidiary are involved. Some of the key topics covered:

- How long is long enough? The general/physical PE applied to service projects in the light of recent OECD developments
- The UN Model “furnishing of services”-rule: key interpretation questions
- PE questions when the client’s facilities are the object of the service (painting, repairing, etc.)
- What kind of disposal does the service provider have over the client’s facilities: access, right to use, and use for what?
- Parent company supervision at the subsidiary’s site: where is the line between auxiliary activity and a PE?
- Examples from international case law: how have foreign courts decided these questions?



INVESTMENT TREATY ARBITRATION IN TAX MATTERS

25 APRIL 2012, 2:00PM - 5:00PM, THE FULLERTON HOTEL SINGAPORE

Can foreign investors start an international arbitration to protect themselves from sudden tax increases or disputed tax claims by the countries where they have invested? Recent years have seen a dramatic increase in investment arbitration claims, both based on treaties and on investment contracts, where investors take issue with unforeseen taxes imposed on their investments. There have been arbitration cases on discretionary or arbitrary tax audits, tax refund claims, cancelling of tax holidays, new taxes, tax increases that might be contrary to investment contracts or concessions with the government, and other situations.

This lecture explores the growing body of international case law on the subject of tax-related investment arbitration claims in order to find some answers to the following questions:

- What kind of tax claims fall within the scope of Bilateral Investment Treaties and FTAs?
- How can investment treaties and arbitration clauses help the investor in relation to a tax dispute with a foreign government?
- Which unforeseen tax assessments may be a violation of international law or investment contracts?
- What does international law provide on unreasonable tax audits or audits without due process or transparency?
- How practical is this tool in South-East Asia? Costs and timing
- Special issues for mining, oil & gas, energy, construction, gaming and land use.

The main topics covered:



- Do bilateral investment treaties, the ASEAN investment convention, FTAs apply to tax issues?
- Fair & equitable treatment, discriminatory tax assessments, due process in tax procedures
- When is a tax claim an “indirect expropriation”?
- Analysis of recent tax related arbitration cases, including:
 - Feldman v. Mexico on arbitrary and unreasonable tax audits
 - Encana v. Ecuador on failure to refund VAT
 - Occidental v. Ecuador on vague changes in the tax rules and VAT refund
 - Tza Yup Sum v. Peru on disputed tax collection measures
 - Enron v. Argentina on new sales taxes imposed on an existing investment
 - Duke Energy v. Peru on a tax reassessment in a corporate restructuring
 - Link Trading v. Moldova on changes to customs duty and VAT exemptions
 - Goetz v. Burundi on cancelling a tax holiday

CASE STUDIES IN TAX TREATY INTERPRETATION

23 MAY 2012, 2:00PM - 5:00PM, THE FULLERTON HOTEL SINGAPORE

Interpreting tax treaties can be notoriously daunting. The Vienna Convention, the OECD Commentary, the UN Commentary and references to domestic law all play some role in the process. But which rule comes first? Studying the theories on tax treaty interpretation is useful, but applying these theories to real life cases is quite another thing. No set of rules is a match for a case that is rich in facts. How can we somehow use all the interpretation rules and sources and come out with a conclusion that actually works? That is an exercise which can best be done usefully with real life cases, hence this lecture.

CASE STUDIES

EMPLOYMENT AND INTERNATIONAL ASSIGNMENT

A technical consultant is assigned to work in Vietnam for 5 months. He is paid from outside Vietnam. He has a serviced apartment in Vietnam for this period, but his family remains in his home state. Two problems arise. First of all, the Vietnam tax authorities deem that the consultant is a resident of Vietnam based on their interpretation of the tax treaty's tie break rule on residence. When interpreting the tax treaty, which state gets to define "center of vital interest", or should we just follow the OECD Commentary? Is it important whether the state in question has made a "Non-Member Country Position" to the OECD tax treaty on this issue? Secondly, he is deemed to be an employee under Art. 15 of the tax treaty rather than an independent service provider under art. 14. Does it matter that consultants are often taxed as employees in Vietnam tax law, which is the source state? Is there "context" in this case that requires another interpretation? Are the terms of the consulting agreement more determinative?

MOVING OR INSTANT PERMANENT ESTABLISHMENTS

An oilfield service provider carries out short geophysical studies in foreign waters through its vessels, e.g. in Australia, India and Thailand. Typically the vessel stays only a few days or weeks in the country concerned. Gathered data is afterwards collated and interpreted at the head office. How relevant is the short stay to conclude to the absence of a PE? What is the impact of source taxation rules in domestic law of each state to interpret the treaty? Can the OECD or UN Commentary support a different interpretation? Does it matter whether the other state is an OECD member? Is the 6 months rule more or less binding if there is no period mentioned? Is there a "special meaning" in the sense of the Vienna Convention? Which arguments and sources from tax treaty interpretation support there is, or there is no, PE?

BENEFICIAL OWNERSHIP

A Singapore holding company sells its 49% stake in a Vietnam company with a substantial gain. The Singapore Holding is 100% owned by a Cayman Island shareholder. Although a certificate of residence from Singapore is produced, the Vietnam authorities refuse to exempt the Vietnam capital gain tax as is provided under the DTA, arguing that the beneficial owner of the gain is not a Singapore resident. How must the DTA be interpreted in this case? Should we use Vietnam tax law and corporate law to explain who really realizes the capital gain? Do the UN and OECD Commentary matter? Is it important what Singapore tax law says about this issue? Or should we use the recent international case law on beneficial ownership as a guidance?

COPYRIGHT ROYALTIES

An international pop-artist is engaged by a music distribution company to record an album and perform at a promotional tour and in a video. Royalties are payable from all the regional subsidiaries of the music distributor, including from Indonesia and Thailand. When the royalties are paid, questions arise on the DTA characterization of the income. Is the income a fee for services? Are these royalties? Or are these copyright royalties? The IP laws of countries in the region, e.g. Thailand, might provide a different legal framework for the situation. Does that legal treatment decide what kind of DTA income we have? Or should we look to the UN and OECD Commentary? Does the Vienna Convention require that other international agreements such as TRIPS are taken into account? Which measure of interpretation leads to which result?



REGISTRATION FORM

Places are limited. We recommend that you confirm your attendance as soon as possible by email to: Joanna.Estember@dfdlmekong.com. For more enquiries please call Ms. Fung Ling Hu by Mobile at +65 9754 2511.

REGISTRATION DATE _____

DELEGATE ONE

COMPANY _____

ADDRESS _____

NAME _____

POSITION _____

EMAIL _____

MOBILE _____

TELEPHONE _____

DELEGATE TWO

NAME _____

POSITION _____

EMAIL _____

MOBILE _____

AMCHAM MEMBERSHIP NO. _____

REGISTRATION FEES

Please select the lecture you will be attending:

SGD200 per half day Lecture

SGD150 per half day Lecture for members of
The American Chamber of Commerce in Singapore

(Our fees are net of taxes, bank charges must
be paid by Delegate)

Permanent Establishments on the Premises of a Client or a Subsidiary
The Fullerton Hotel Singapore, 1 Fullerton Square Singapore 049178
21 March 2012, 2:00PM - 5:00PM

Investment Treaty Arbitration in Tax Matters
The Fullerton Hotel Singapore, 1 Fullerton Square Singapore 049178
25 April 2012, 2:00PM - 5:00PM

Case Studies in Tax Treaty Interpretation
The Fullerton Hotel Singapore, 1 Fullerton Square Singapore 049178
23 May 2012, 2:00PM - 5:00PM

TO REGISTER

Please complete this form and send it to us and we will send you a proforma invoice with payment details. Joanna.Estember@dfdlmekong.com or call to Ms. Fung Ling Hu at +65 9754 2511

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