



WORKSHOP SERIES – 3, 10,17, 24 June and 1 July 2021

## **GLOBALIZATION AND DIGITALIZATION: INTERCONNECTIONS BETWEEN TAXATION, TRADE, AND INVESTMENT**

Recent decades have witnessed structural changes in the way production is organized. Trade and investment liberalization together with technological developments, notably in transport and communications, have substantially reduced trade and foreign investment costs and enabled global value chains, supported by global finance, to proliferate. As a result, trade, foreign investment, financial flows, and cross-border data flows grew rapidly until the financial crisis hit in 2007. In the aftermath of the crisis, trade and investment growth levelled off while growth in cross-border data flows continued unabated. Post the financial crisis the most significant economic development is the rise of the technology sector and the role of digital platforms. The Covid-19 crisis has further exacerbated the role of digital platforms in the economy.

Location of production and investment is partly driven by taxation and differences in taxation across jurisdictions. At the same time changes in trade and investment patterns raise new challenges for tax policy both in relation to tax revenue and for taxes as an instrument for social and environmental sustainability. Thus, taxes, trade, investment, finance, and data are intertwined, and the policy implications of recent developments are best understood when bringing together insights from trade, investment, finance, and tax policy analysis from an economic, legal, and political science perspective.

Against this backdrop, this workshop series will comprise four sessions in which a selected group of participants will discuss accepted sources of interpretation in public international law, services trade, and the technical issues that concern experts in each field as well as the existent judicial discussions, and the role of tax incentives for investment in the context the digitalization of the economy. The workshop series will close with a final event, where a high-level panel will dig deeper into the policy implications of the topics discussed throughout the first four sessions.

### **Participants**

This workshop series will bring together a broad range of stakeholders including academics in the tax, investment, and trade fields; regional and international organizations; government officials as well as members of civil society to discuss challenges and potential synergies as well as explore policy priorities in these three fields.

## Preliminary Agenda

### **Session 1: Importance of Domestic Law for the Interpretation of Tax, Trade and Investment Treaties – June 3 (14.00-17.00 CET)**

#### **Join Zoom Meeting**

<https://universiteitleiden.zoom.us/j/62361716570?pwd=SmlTNGerMTNodmVvUDdBTVFQSGR1UT09>

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This section will address the impact of domestic law in international agreements and the use of tax, trade and investment domestic law provisions for the application of international agreements. Some examples are for instance the use of investment law that leads to non-application of domestic provisions, the need to introduce a domestic tax provision in the framework of legality, and the introduction of a tax measure that can result in indirect expropriation under the investment agreement.

- Implications of trade and investment treaties in the application of domestic tax provisions
- Navigating reform analogies: comparative insights from the tax, trade and investment regimes
- What can we import from the WTO dispute resolution system? And the investment dispute resolution system?
- Interplay between investment, tax and dispute resolution mechanisms under EU law
- Calculation of damages in international investment claims: what role for domestic law?

Convener/Chair [Irma Mosquera Valderrama](#), Associate Professor, Leiden University and Lead Researcher, GLOBTAXGOV ERC Funded Project

- Implications trade and investment treaties in the application of domestic tax provisions. Pedro Schoueri Tax Lawyer Brazil.
- Navigating reform analogies: comparative insights from the tax, trade and investment regimes. Wolfgang Alschner Associate Professor University of Ottawa
- What can we import from the WTO dispute resolution system? Anna Marhold Assistant Professor Leiden University
- What can we import from the investment dispute resolution system? Paula Baldini PhD candidate Leiden University
- Interplay between investment, tax and dispute resolution mechanisms under EU law. Javier Garcia Olmedo Lecturer Queen Mary University of London.
- The proportionality review of fiscal measures under international law: comparative perspectives from investment, EU and WTO law. Toni Marzal, Faculty of Law, University of Glasgow & Ricardo Garcia Anton, Faculty of Law, Tilburg University

### **Session 2: Digital Taxes and Trade in Services – June 10 (14.00-17.00 CET)**

#### **Join Zoom Meeting**

<https://universiteitleiden.zoom.us/j/62361716570?pwd=SmlTNGerMTNodmVvUDdBTVFQSGR1UT09>

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International income tax rules rest on the principles that taxes are paid in the jurisdiction where the company has physical presence, taxes are based on profits, and there are profit allocation rules. These tax rules need to be updated as economic activities go digital – accelerated by the Covid-19 crisis. In the digital economy, assets are increasingly intangible and marginal costs may be close to zero resulting in scale without mass as well as a high degree of market concentration globally. The OECD hosts negotiations under the Inclusive Framework of Base Erosion and Profit Shifting (BEPS) to find solutions by the end of 2020. The discussions are yet to conclude and in the meantime several countries have introduced digital services taxes on their own.

- What should be the objective of a digital services tax?
- Which economic activities and what kind of firms could be subject to a digital services tax?
- What would be the benefits of a global agreement – and what would be the cost of unilateral action?

Convener: [Hildegunn Kyvik Nordås](#), Senior Associate, Council on Economic Policies (CEP) and Professor of Economics, Örebro University

Keynote

David Bradbury – Head of Tax Policy and Statistics Division at the Centre for Tax Policy and Administration at the OECD

Speakers

Wei Cui, Law professor at the University of British Columbia,  
Weiwei Zhang, International Trade Advisor, Sidley Austin LLP  
Mattias Bauer, researcher at the European Centre for International Political Economy

**Session 3: The Settlement of Tax and Tax Treaty Disputes by the International Courts and Tribunals– June 17 (14.00-17.00 CET)**

**Join Zoom Meeting**

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In an international context it can be said that in order for a dispute to arise, a conflict regarding the interpretation or application of a treaty needs to occur. This is most likely the case when contracting states of a treaty use treaty provisions differing from the text of the OECD or UN Model Convention. Other reasons for conflicts to occur might be a different appraisal of the facts related to the case or treaty interpretation biased by national legislation and against the principles of good faith. When examining the nature of disputes, it has to be kept in mind that the majority of disputes arise between the taxpayer and authority. Only rarely would a breach of a treaty obligation by one state lead to a dispute with the other

contracting state. There are various mechanisms of dispute resolution at the international level, both for tax and non-tax disputes. Some of the most prominent measures for settling tax disputes are those found in DTCs and the EU Arbitration Convention. With most of the recent development focusing on Tax Treaty Arbitration, Mutual Agreement Procedure (MAP) remains the key tool to reduce treaty-related disputes. However, a number of other international adjudicatory bodies (namely, WTO, ISDS, CJEU, and ICJ) have had to review the legality of tax measures in light of international treaties. This trend gives rise to a number of practices such as treaty shopping, but also give an opportunity to a greater dialogue between international courts and more precisely, between these courts and tax tribunals.

- How do international courts (WTO, ISDS, CJEU, UN ICJ) approach tax measures?
- How frequently do these adjudicatory bodies deal with tax disputes? What is the typology of tax measures reviewed by these courts?
- What are the substantive and procedural interactions between trade, investment, and tax international courts?
- How does the global push to tax the digital enterprises relate to ICJ, WTO, ISDS?
- What is the impact of these courts' decisions on tax law? How can one import terminology from other disciplines within the public international law practices (trade, tax, and investment)?

Convener/Chair: [Julien Chaisse](#), School of Law, City University of Hong Kong & President, Asia Pacific FDI Forum

#### **Investor State Dispute Settlement and Tax Matters**

- Speaker (20 min): [Prabhash Ranjan](#), South Asian University, New Delhi
- Lead Discussants (5-10 min each): [Blazej Kuzniacki](#), Deputy Director, Strategic Tax Advice & Dispute Resolution (PwC Poland) & [Noam Zamir](#), Catholic University of Lyon
- QAs (10-15 min)

#### **The Settlement of Tax Disputes by WTO**

- Speaker (20 min): [Luca Rubini](#), School of Law, Birmingham University
- Lead Discussants (5-10 min each): [Peter Van den Bossche](#), Director, World Trade Institute & [James Nedumpara](#), Centre for International Trade and Investment Law, Indian Institute of Foreign Trade, New Delhi
- QAs (10-15 min)

#### **The Settlement of Tax Treaty Disputes by the European Court of Justice**

- Speaker (20 min): [Juliane Kokott](#), Advocate General, Court of Justice of the European Union
- Lead Discussants (5-10 min each): [Matteo Vaccaro-Incisa](#) (European University Institute) & [Vasyl Chornyj](#), Global Trade Advisory, Deloitte Netherlands
- QAs (10-15 min)

#### **The Settlement of Tax Treaty Disputes by the International Court of Justice**

- Speaker (20 min): [Celine Braumann](#), Faculty of Law, University of Vienna

- Lead Discussants (5-10 min each): [Leila Choukroune](#), School of Law, Portsmouth University & [Michael F. Motala](#), University of Toronto
- QAs (10-15 min)

## General discussion and QAs (20 min)

### Session 4: Tax Incentives for Investment. Old and New Challenges for International Trade – June 24 (14.00-17.00 CET)

#### Join Zoom Meeting

<https://universiteitleiden.zoom.us/j/62361716570?pwd=SmlTNGrMTNodmVvUDDBTWFQSGR1UT09>

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Despite their stated goals including attracting FDI, creating employment and boosting R&D and innovation, tax incentives for investment are often ineffective. Indeed, several provisions are redundant and hence end-up triggering costly windfall gains. They can also trigger negative spillover effects on third countries, e.g. when it comes to international trade through and the use of tax incentives as harmful tax practices. The digitalization of the economy has exacerbated some of the existing challenges with respect to the use of tax incentives and their impact on international trade. For instance, certain vulnerabilities in the international tax arena such as the allocation of taxing rights on the basis of physical presence have been intensified with the disruption of digitalization.

- Tax incentives and inter-nation equity at the global level
- The use of tax incentives as trade barriers
- Tax incentives and FDI. How should tax incentives for investment be designed?
- Tax incentives for investment in a digitalized economy

Convener: [Agustin Redonda](#), Senior Fellow, Council on Economic Policies (CEP)

#### Speakers

**Simon J. Evenett**, Professor of International Trade and Economic Development, University of St. Gallen

**Hania Kronfol**, Private Sector Specialist, Macroeconomics, Trade and Investment Global Practice, World Bank Group

**Pasquale Pistone**, Academic Chairman, International Bureau of Fiscal Documentation (IBFD)

**Alexandra Redhead**, Lead, Tax and Extractives, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development

**Lise Johnson**, Head of Investment Law and Policy, Columbia Center on Sustainable Investment.

### Session 5 (All): Discussion Panel – July 1 (14.00-17.00 CET)

**Join Zoom Meeting**

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Moderator: [Nana Ama Sarfo](#), Contributing editor to Tax Notes International and tax contributor to Forbes

Speakers

Marion Jansen – Director Trade and Agriculture Directorate – OECD

Howard Mann – Expert International Investment Law and Arbitration

Michael Lennard –Chief, International Tax Cooperation Section, Financing for Sustainable Development Office (FSDO), United Nations.

Cory Hillier – Senior Counsel (Tax Law) / International Monetary Fund

**In case you want to share this program with other possible participants please ask them to register for one or more sessions of the workshop by using the following link:** <https://fd24.formdesk.com/universiteitleiden/registration-trade-tax-investment/>

If you have any question or if you would like to withdraw your registration, please send an e-mail to [globtaxgov@law.leidenuniv.nl](mailto:globtaxgov@law.leidenuniv.nl).