

INVITATION

Conference “Beneficial Ownership”

WU (Vienna University of Economics and Business)
May 18-19, 2012, Vienna, Austria

Organized by the Institute for Austrian and International Tax Law, WU, Vienna,
with the support of Ernst & Young Stiftung e.V., Germany

The Institute for Austrian and International Tax Law of WU (Vienna University of Economics and Business), with the support of Ernst & Young Stiftung e.V., are proud to invite you to the Conference “**Beneficial Ownership**”.

Our Conference aims at discussing recent developments of the term Beneficial Ownership by presenting the most interesting cases, which have been decided all over the world, and discussing the recently published OECD Discussion Draft on the meaning of the term Beneficial Owner. We are grateful that outstanding experts of 14 jurisdictions agreed to present the most relevant decisions from their countries. Furthermore, we will assess the meaning of the term Beneficial Owner used in European Tax Law in comparison to its meaning in Tax Treaty law. The main topics identified have been clustered into eight “baskets”, which will be dealt with in eight conference sessions:

- Session 1: Beneficial Ownership – Broad vs. Narrow I
- Session 2: Beneficial Ownership – Broad vs. Narrow II
- Session 3: Beneficial Ownership without Provision
- Session 4: Beneficial Ownership as Anti Abuse Provision
- Session 5: Beneficial Ownership and Domestic Law
- Session 6: Beneficial Ownership as Allocation of Income Rule
- Session 7 : Beneficial Ownership and EU Law
- Session 8: OECD Discussion Draft

In each session of the Conference three to six Cases will be presented and subsequently analyzed in a critical discussion, including the possible impact of the cases on the interpretation and application of tax treaties. Moreover the application of the concept of Beneficial Ownership within the scope of the OECD Model Convention will be discussed taking into account the recently published OECD Discussion Draft. For further details please refer to the programme attached.

The scientific results of the conference will be published in a book.

The Conference starts on May 17, 2012 at 19:00 with an informal "open house" at the Library of the Institute for Austrian and International Tax Law, Althanstrasse 39-45, 1090 Vienna. The working sessions will be held all day on May 18 and 19, 2012 at WU (Vienna University of Economics and Business). On May 19, the Mayor of Vienna will invite all the participants to an evening at a "Heurigen".

The participation fee for the Conference is EUR 1000.--. A waiver of the participation fee may be granted to (full-time) academics and other researchers who are employed at a university or other academic institutions (wherever located) and have been engaged in research activities related to the respective topic. The participation fee must be paid not later than April 15, 2012, and will not be refunded in the case of cancellation one week prior to the conference.

If you are interested, please send us the application form as soon as possible, stating whether you would like to register as a regular participant or apply for a waiver of the participation fee. Please send your applications via e-mail to **Renée Pestuka** (renee.pestuka@wu.ac.at)

Prof. Dr. Dr.h.c. Michael Lang
Head, Institute of
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

Prof. Dr. Josef Schuch
Professor at the Institute of
Austrian and International Tax Law
WU (Vienna University of Economics
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Prof. Dr. Alfred Storck
Professor at the Institute of
Austrian and International Tax Law
WU (Vienna University of Economics
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Prof. Dr. Pasquale Pistone
Professor at the Institute of
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

Prof. Dr. Claus Staringer
Professor at the Institute of
Austrian and International Tax Law
WU (Vienna University of Economics
and Business)

PROGRAMME

Conference

"BENEFICIAL OWNERSHIP"

WU (Vienna University of Economics and Business)
May 18-19, 2012, Vienna, Austria

Thursday, May 17, 2012

19:00 **Conference opening: "open house" reception**
Institute for Austrian and International Tax Law,
Althanstrasse 39-45, 1090 Vienna.

Friday, May 18, 2012

Session 1 **Beneficial Ownership – Broad vs. Narrow I**
08:30 – 10:30 *Chair: Michael Lang*

United Kingdom (*Phillip Baker*)

England and Wales Court of
Appeal (Civil Division) 2. 3.
2006, EWCA Civ 158

***Indofood International Finance
Ltd v JP Morgan Chase Bank
N.A. London Branch.***

Canada (*Brian Arnold, David Duff*)

Canadian Federal Court of Appeal
26. 2. 2009 FCA 57

Canada v. Prévost Car Inc.

Switzerland (*Rene Mateotti*)

Federal Tax Appeals Commission
3/3/2005, SRK 2003-159

X Holding ApS

Bundesverwaltungsgericht 10. 01. 2011, A-6053/201	
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Netherlands (*Daniel S. Smit*)

Hoge Raad 6. 4. 1994, 28.638	Royal Dutch Oil Company (market maker case)
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10:30 – 11:00

Coffee Break

Session 2

11:00 – 12:30

Beneficial Ownership – Broad vs. Narrow II

Chairs:

Denmark (*Jakob Bundgaard*)

Danish Tax Tribunal 16. 4. 2010, SKM 2010.268 LSR	
Danish Tax Tribunal SKM 2011.485 LSR	
Danish Tax Tribunal SKM 2012.26 LSR	

India (*D.P Sengupta*)

Authority for Advance Rulings 23. 8. 1995, P No. 13 of 1995	ABC
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Indonesia (*Denny Septriadi*)

Indonesian Supreme Court 22. 10. 2008, Put-15719/PP/M.VIII/13/2008	Telekomsel
Indonesian Supreme Court 27.4.2010 PUT-223288/PP/M.II/13/2010	Indosat

12:30 – 14:00

Lunch Break

Session 3

14:00 – 15:30

Beneficial Ownership without Provision

Chairs:

USA (*Yariv Brauner*)

Aiken Industries, Inc. v. Commissioner of Internal Revenue, 56 T.C. 925 (1971)	Aiken Industries
<i>Northern Indiana Public Service Company v Commissioner of Internal Revenue</i> 105 tc 341 (1995).	Northern Indiana Public Service
<i>Del Commercial Properties Inc v Commissioner of Internal Revenue</i> tc Memo 411 (1999)	Del Commercial Properties

France (*Daniel Gutmann*)

Tribunal administratif de Paris, 23.6.2009, Case No. 05-8263 Innovation et Gestion financiere, RJF 5/10 No. 511	
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15:30 – 16:00

Coffee Break

Session 4

16:00 – 18:00

Beneficial Ownership as Anti Abuse Provision*Chairs:***France** (*Daniel Gutmann*)

Cour Administrative d'Appel de Paris 23. 5. 2005, 01PA04068, <i>Bank of Scotland</i> ; Conseil d'Etat 29. 12. 2006, N° 283314, <i>Ministre de l'Economie, des Fincances et de l'Industrie v Société Bank of Scotland.</i>	Royal Bank of Scotland
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Conseil des Etat 13.10.1999, Case No. 191191	SA Diebold
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Spain (*Adolfo Martin Jeminez*)

Audiencia Nacional Case Nr. 1110/2003	Real Madrid
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Netherlands (*Daniel S.Smit*)

Hoge Raad 28. 6. 1989, 25.451	X NV
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Hoge Raad, 18.5.1994, BNB 1994/253	
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Hoge Raad, 18.5. 1994, BNB 1994/252	
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Italy (*Pasquale Pistone*)

Lower Court of Reggio Emilia CTP RE 242-1-10	
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Indonesia (*Denny Septriadi*)

Indonesian Supreme Court 2006	PT. Indah Kiat Pulp & Paper Tbk v. U.S. Bank National Association et. al
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18:15

Inaugural Lecture by Tracy Kaye

Saturday, May 19, 2012

Session 5

08:30 – 10:30

Beneficial Ownership and Domestic Law

Chairs: Porus Kaka

New Zealand (*Eliffe Craig*)

Junior Farms Ltd v CIR (2011) BTH High Court , Auckland (CIV- 2009-404-2870)	
Russell v Commissioner of Inland Revenue (2010) 24 NZTC 24,463	

India (*D.P. Sengupta*)

Authority for Advance Rulings 22. 12. 1995, P-9 of 1995	XYZ
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UK (*Phillip Baker*)

Court of Appeal, J Sainsbury plc v O'Connor (Inspector of Taxes) STC 318, [1991] 1 WLR 963.	Sainsbury plc.
Ayrest (Inspector of Taxes) v C & K (Construction) Ltd [1979] AC 167, [1975] STC 345.	Ayrest

10:30 – 11:00

Coffee Break

Session 6

11:00 – 12:30

Beneficial Ownership as Allocation of Income Rule

Chairs: Alfred Storck

Germany (*Ekkehard Reimer*)

BFH 20. 08. 2008, I R 39/07	
FG Köln, 16. 02. 2006, 2 K 2100/03	
FG Köln 24.10. 1996, 2 K 3358/93	

Spain (*Adolfo Martín Jiménez*)

Tribunal Economico Administrativo Central, 22. 09. 2000, Case RG 6294/1996	
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Italy (*Pasquale Pistone*)

Corte di Cassazione 2009/4600	
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12:30 – 14:00

Lunch Break

Session 7
14:00 – 15:30

Beneficial Ownership and EU Law
Chairs:

European Commission (n.a.)

The Concept of Beneficial Ownership in the European Law

Denmark (*Jakob Bundgaard*)

Danish Tax Tribunal 17. 11. 2010, SKM 2010.729 LSR	
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Danish Tax Tribunal 27. 1. 2011, SKM 2011.57 LSR	
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Switzerland (*Rene Mateotti*)

Federal Tax Appeals Commission 28. 2. 2001, VPB 65.86	
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Luxemburg Holding

15:30 – 16:00

Coffee Break

Session 8
16:00 – 18:00

OECD Discussion Draft
Chair: Jaques Sasseville/ Michael Lang

Commentators: Daniel Gutmann
John F. Avery Jones
Brian Arnold
Ekkehard Reimer

Richard Vann

The OECD Discussion Draft on the meaning of Beneficial Owner
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20:00

Evening at typical Austrian "Heurigen" (wine tavern)

Sessions will take place at the main building (UZA 1, Augasse 2-6, 1090 Vienna) of the WU (Vienna University of Economics and Business) in the ceremony hall ("Festsaal"), 1st floor.