



WORKSHOP SERIES

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 closed 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 (open for the public), 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.

June 17 (14.00-17.00 CET)

The Settlement of Tax and Tax Treaty Disputes by the International Courts and Tribunals

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)?

June 17 (14.00-17.00 CET)

The Settlement of Tax and Tax Treaty Disputes by the International Courts and Tribunals

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 Chorny](#), 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)