International Fiscal Association

IFA 2025 77TH CONGRESS OF THE INTERNATIONAL FISCAL ASSOCIATION
LISBON, PORTUGAL, 5 – 9 OCTOBER 2025

77th Annual IFA Congress
Lisbon, Portugal

SEMINAR H SESSION REPORT

RECENT DEVELOPMENTS IN INTERNATIONAL TAXATION

Thursday, 9 October 2025 | 8.30 – 10.00, 10.45 – 11.45

Chair
Prof. Dr. Xaver Ditz (Germany)

Panel members
Claire Cowen (UK)
Prof. Dr. Johann Hattingh (South Africa)
Prof. Dr. Pascal Hinny (Switzerland)
Prof. Dr. Adolfo Martín Jiménez (Spain)
Kyu Dong Kim (South Korea)
Ana Carolina Monguilod (Brazil)
P.V.S.S. Prasad (India)
Prof. Dr. Diane Ring (USA)
David Watkins (Australia)

Prepared by Secretary
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1. Introduction

Seminar H was dedicated to recent developments in international taxation. Key rulings from the highest tax courts across various jurisdictions were presented and discussed.

These covered a wide range of issues in international tax law, including (1) the scope of foreign tax credits, (2) the definition of a permanent establishment, (3) withholding tax on embedded royalties, (4) arm's length methods and franchise fees, (5) the characterisation of payments for technical services, (6) cost-sharing agreements and IP valuation, (7) the treatment of cash pools, (8) the conditions for recognising advance pricing agreements, and (9) the application of safe harbour interest rates.

The discussions reflected the perspectives of academics and practitioners from Australia, Brazil, India, South Africa, South Korea, Spain, Switzerland, the United Kingdom, and the United States.

The court rulings covered during the seminar are outlined below.

2. Court Decisions

2.1. Korea: Supreme Court of Korea of 8 February 2024 (Case No 2021Du32248) on the scope of foreign tax credits

In this case, K Co., a Korean parent company, provided a payment guarantee for a loan of its Chinese subsidiary, C Co., and received a payment guarantee fee in return. C Co. treated the fee as interest income and withheld 10 % CIT. K Co. sought a foreign tax credit (FTC) in Korea. The Korean tax authorities denied the FTC claim, arguing the fee was "other income" under Art. 22 of the Korea-China DTT, taxable only by Korea.

The Supreme Court of Korea agreed, holding that payment guarantee fees are not "interest" under Art. 11 but "other income" under Art. 22 of the Korea-China DTT, for which the taxation rights are held in Korea. Taxes withheld in China, therefore, do not qualify for an FTC.

The panellists viewed this case as an interpretation difference rather than a qualification conflict and discussed applying a MAP to avoid double taxation.

2.2. India: Supreme Court of India of 24 July 2025 (Case No 9766/2025) on the definition of a permanent establishment

In 2008, Hyatt UAE entered into a 20-year Strategic Oversight Services Agreement (SOSA) with Asian Hotels Ltd. (AHL), an independent owner and operator of Hyatt-branded hotels in India. Hyatt UAE provided strategic services and exercised full control over branding, marketing, and operations from Dubai, with only occasional employee visits to India. The Indian tax authorities argued that Hyatt's activities created a permanent establishment (PE) as defined in Art. 5(1) of the India-UAE DTT. Consequently, the income from the SOSA was deemed taxable in India under Article. 7 of the India-UAE DTT.

The Supreme Court of India held that Hyatt UAE has a fixed place PE in India because it exercised pervasive and enforceable control over the hotel's strategic, operational, and financial activities, meeting the tests of stability, productivity, and dependence. The SOSA income was therefore attributable to the PE and taxable in India.

In the panel discussion, the case was contrasted with a Swiss out-of-court case in which a PE was successfully rejected, and with Brazilian law, which does not contain the PE concept.

2.3. Australia: High Court of Australia of 13 August 2025 (Case No [2025] HCA 30) on WHT on embedded royalties

In this decision, PepsiCo USA licensed trademarks to the third-party bottler Schweppes AUS under an Exclusive Bottling Agreement, whereby Schweppes AUS bought concentrate from PepsiCo AUS, which sourced it from PepsiCo SGP. Schweppes AUS paid PepsiCo AUS for the concentrate, and PepsiCo AUS paid PepsiCo SGP. However, no amount was specified for the use of the trademarks. The Australian Tax Office contended that part of the concentrate payments constituted embedded royalties for trademark use and should be subject to 5 % withholding tax or, alternatively, diverted profits tax (DPT) of 40 %.

The High Court of Australia rejected this, holding that all payments were solely for concentrate, no royalty was paid or credited to PepsiCo USA, and the DPT requirements were not met.

The panel noted differing approaches in Spain and South Korea regarding embedded royalties, potential US foreign tax credit complications, and Swiss expectations of a nominal royalty payment.

2.4. South Africa: Tax Court of South Africa of 15 April 2025 (Case No 45840) on arm's length methods and franchise fees

In this ruling, SCL, a South African food retailer, provided administrative, procurement, and know-how services on behalf of SIL, a related Mauritian party, to franchisee subsidiaries in Africa, for which it received a cost plus 3.5 % fee. SIL was contractually responsible for providing the subsidiaries with trademarks, know-how, and related IP, and received a franchise fee of 1 % of the franchisees' gross sales. The South African Revenue Service (SARS) found that, despite SIL's legal ownership of the IP, SCL performed the DEMPE functions by driving the expansion strategy, setting development standards, and drafting franchise agreements. SARS applied the CUP method and claimed SCL should have earned 4 % of gross sales. During the dispute, SARS sought to amend its assessment to alternatively apply the profit split method, supported by a new expert report. The taxpayer objected, claiming that this introduced a new factual basis.

The Tax Court of South Africa stated that the tax administration rules permit SARS to include new grounds for a tax assessment, provided that they do not novate the whole of the factual or legal basis. Because transfer pricing methods do not affect the factual basis, the court allowed the amendment.

The panel discussed the application of the DEMPE concept and highlighted concerns over its retrospective application.

2.5. Brazil: Brazilian Superior Court of Justice of 14 October 2024 (Case No 2060432) on the characterisation of payments for technical services

In this case, Teracom Telemática made payments to foreign companies based in Belgium, Canada, China, Israel, Italy and Sweden for the provision of technical services, with no transfer of technology involved. The National Treasury treated these payments as royalties under Art. 12 of Brazil's tax treaties and applied withholding tax. Teracom Telemática disputed this, claiming that the payments were business profits under Art. 7, as royalties require the transfer of technology rather than the mere provision of technical expertise.

Due to conflicting precedents and the issue's broad relevance, the Superior Court of Justice decided to submit the matter to the "system of repetitive appeals" to unify Brazil's legal interpretation. Previously, the court allowed withholding tax on technical service payments treated as royalties, even without technology transfer.

The panel discussed how technical services are treated under the OECD and UN models and in various tax treaties, before concluding that Brazil's broad approach to technical services is generally inappropriate.

2.6. USA: Tax Court of the United States of America of 22 May 2025 (Case No 21959-16) on cost-sharing agreements and IP valuation

In 2010, Facebook US and Facebook IRL entered into a cost-sharing agreement (CSA) for the joint development of Facebook's online platform technology. Under the CSA, Facebook US granted Facebook IRL the right to use its existing platform, user base, and other marketing intangibles outside the US and Canada. Facebook US valued these assets at a net present value (NPV) of $6.3 billion, while the IRS determined an NPV of $19.945 billion using the income method. Facebook challenged the IRS's method, underlying inputs, and the validity of the 2009 regulations.

The Tax Court of the United States of America upheld the income method, finding that only Facebook US provided a non-routine platform contribution, but adjusted several IRS inputs, setting the intangible value at $7.786 billion. It also confirmed the validity of the 2009 regulations, rejected the requirement that cost-sharing payers must achieve a positive NPV, and accepted the IRS's perpetual forecasting approach.

The discussants highlighted the subjectivity of IP valuation and differing global practices.

2.7. Spain: Spanish Supreme Court of 15 July 2025 (Case No 985/2025) on the treatment of cash pools

In 2014 and 2015, Bunge Ibérica participated in a zero-balancing cash pool where balances were swept daily to the Dutch header, Bunge Finance. Using the CUP method, Bunge Ibérica

treated outflows as low-interest bank deposits and inflows as higher-interest short-term intra-group loans using entity-specific credit ratings. Bunge Finance retained the difference between the interest received and paid for its management services. The Spanish tax authorities rejected the asymmetry on the grounds that Bunge Finance had no personnel, assets, financial decision-making, or risk assumption, and group funds were fully mutualized.

The Spanish Supreme Court applied the 2022 OECD TP Guidelines. It held that Bunge Finance performed only administrative functions and could not be treated as a financial institution. The interest rate of the funds borrowed and lent should therefore be symmetric and based on the group rating.

The panel discussion highlighted different approaches in Germany and Switzerland and the absence of a cash pooling framework in India.

2.8. UK: Court of Appeal of England and Wales of 15 November 2024 (Case No CA-2023-002584) on the conditions for recognising advance pricing agreements

In this decision, Thomson Reuters' UK entities and HMRC entered into an APA for 2008 to 2014 covering various intra-group services. For most services, the TNMM was used with a 6 to 15 % cost-plus markup, while some were governed by the profit split method. After the APA expired, the UK introduced the Diverted Profits Tax (DPT), and HMRC issued DPT assessments for 2015 to 2018 using the profit split method. The taxpayer challenged the legality of the assessments, asserting that the APA's principles should guide the assessment of profits from services provided during its term.

The Court of Appeal of England and Wales rejected this, ruling that APAs apply only to their specified periods and cannot affect subsequent tax years, which must be assessed independently. DPT is a separate statutory framework with its own criteria and methodologies. Extending the APA's scope would undermine the legislative intent behind both APAs and DPT.

The panellists found this decision persuasive and agreed with the court.

2.9. Switzerland: Swiss Federal Supreme Court of 17 July 2024 (9C_690/2022) on the application of safe harbour interest rates

In this ruling, B AG granted loans to its Swiss subsidiary, A AG, at interest rates (2.5 % and 3 %) above the maximum safe haven rates (2 % in 2014 and 1.5 % in 2015) published in a circular of the Swiss Federal Tax Administration. Therefore, the Zurich Cantonal Tax Office estimated a market-based interest rate for both loans at 1.08 % (0.83 % average finance cost of B AG plus 0.25 % margin).

The Swiss Federal Supreme Court ruled that the Cantonal Tax Office is only bound by the safe haven interest rates if the taxpayer complies with them. If the taxpayer deviates from them and cannot prove that the applied interest rate is in line with market conditions, the tax

office can set a market-based interest rate, which may be below the maximum safe haven rate.

The panel discussion concluded that while safe harbour interest rates can simplify transfer pricing and provide certainty, their applicability is limited to compliance with procedural requirements, cross-border recognition is not guaranteed, and proper documentation is of great importance.

3. Conclusion

Seminar H provided a comprehensive overview of recent court rulings in the field of international taxation. Across jurisdictions, courts are refining the interpretation of long-standing principles and clarifying the application of new principles.

The seminar underscored the importance of monitoring international judicial developments and fostering cross-jurisdictional dialogue. This is crucial for ensuring consistency in international tax outcomes and fostering a more transnational understanding of tax law interpretation.