

Welcome (back) to Amsterdam to IFA's 60th Congress!

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Rijksmuseum, Amsterdam

After 1988, IFA again returns to its “home country”, the Netherlands, for its annual Congress. Our friends from the Dutch Organizing Committee have been working hard to make the Congress in Amsterdam from 17 through 21 September 2006 a success.

2006: 400TH BIRTHDAY OF REMBRANDT – BIRTH OF YIN!

On 15 July 2006, Amsterdam – and with it the world – celebrated the 400th birthday of Rembrandt. The whole year 2006 is, in Amsterdam, a big birthday party for this painter, with some of the special exhibitions extending through September, such as “Rembrandt in Propaganda 1940-1945” showing how Rembrandt was exploited by the occupant and highlighting his independent mind and common strength. The exhibitions are a unique opportunity for the Congress delegates and their accompanying persons to get first-hand exposure to this famous painter at the Rijksmuseum and other places.

For IFA, the Amsterdam Congress is the kick-off of YIN, Young IFA Network. In an effort to make IFA more attractive to young people – where the definition of “young” is still being debated – the Executive Committee has launched YIN and invited the national IFA branches to organize events with a special focus on younger members and to establish the foundations for a network among them.

A Meet & Greet Reception will be held on Sunday, 17 September, before the official start of the Congress for all those who participate in an IFA Congress for the first time. The purpose is to give younger IFA members a chance to meet at the beginning of the Congress and to enable them to build their own network. On Tuesday, 19 September, there will be a special seminar in the afternoon and a party in the evening, both reserved to young IFA members.

SUBJECT 1: THE TAX CONSEQUENCES OF RESTRUCTURING OF INDEBTEDNESS (DEBT WORK-OUTS)

After having reviewed 29 branch reports, the General Reporter on Subject 1, Mr Machiel Lambooi of Freshfields Bruckhaus Deringer in the Netherlands, provided an overview of the various ways jurisdictions approach the tax treatment of debt restructurings. Complications have been found to exist in some jurisdictions when a debt restructuring takes place between related parties, especially in the event of waivers. In the absence of harmonization at the international level, cross-border debt restructurings may lead to double taxation because of different rules regarding debt restructuring. While, in domestic cases, they result in a symmetrical tax treatment of the creditor and the debtor, in cross-border cases, they may lead to an

asymmetrical tax treatment. This presents a serious problem, in particular in the event of a restructuring within groups of companies.

The plenary session on Subject 1 will be chaired by Mr Lewis Steinberg of UBS Securities LLC in New York. Special emphasis will be placed on the tax treatment of different kinds of work-outs and the different substantive and procedural approaches taken. To the extent the rules or policies have changed over time, the panellists from Australia, Canada, Mexico, the United Kingdom and the United States will attempt to identify relevant trends.

Following the plenary session, there will be a break-out session on the tax consequences of restructuring indebtedness between related parties chaired by Mr Michel Taly of Landwell & Associates in France, with panellists from Canada, Germany, Japan, Spain and the United Kingdom. Special attention will be devoted to transactions that could not take place between unrelated parties (e.g. general parent's guarantees), how they are dealt with by statutory rules, and how it is possible to solve these cases by applying the arm's length principle.

SUBJECT 2: THE ATTRIBUTION OF PROFITS TO PERMANENT ESTABLISHMENTS (PEs)

On the basis of 34 branch reports, an EU report and a report on the historical development of Art. 7 of the OECD Model Tax Convention, the General Report on Subject 2 was presented by Prof. Philip Baker QC of Gray's Inn Tax Chamber and Dr Richard S. Collier of PricewaterhouseCoopers, both in the United Kingdom. The General Report could not have been more timely: the OECD has been working on this topic for more than six years and, after having published four Discussion Drafts, intends to complete its work by January 2007.

The branch reports revealed that, while there is no shortage of theories and principles operating in this area, there is little guidance from the tax authorities and there are only a few, if any, reported court decisions. The work of the OECD has met with some criticism, both from academics and business. The General Reporters recommended a more limited application of the Authorized OECD Approach (AOA). Specifically, if the AOA is to be proceeded with, its application should be restricted to banks, global trading and insurance. There should be wider consultation on the issue of dependent agent PEs (DAPEs) and further clarification, particularly of the different types of DAPEs and those circumstances (which may be limited to employees of an enterprise acting as dependent agents) where it would be appropriate to attribute profits to the DAPE over and above the arm's length payment to the agent enterprise.

The plenary session will be chaired by Prof. Kees van Raad of Loyens & Loeff in the Netherlands, with a representative of the OECD and panellists from Australia, Germany, India and Italy. The issues of adopting the AOA, particularly those relating to implementation and difficulties for particular countries, will be addressed.

The first break-out session, under the chair of Mr Saul Rosen of Citigroup in the United States, with a representative of the OECD and panellists from Canada, France, the Netherlands and Switzerland, will focus on selected issues for financial institutions. Particular emphasis will be placed on treaty and local law requirements and how these rules are followed in practice.

The second break-out session, under the lead of Prof. Michael Lang of the Vienna University of Economics and Business Administration in Austria, will address EC law and non-discrimination issues. Panellists not only from France, Germany, Italy and Spain but also from the United States will analyse the case law of the European Court of Justice and its implications as well as the non-discrimination provisions found in tax treaties.

SEMINARS

Seven seminars will be held on a variety of subjects.

Indirect tax aspects of cross-border services

Under the chair of Prof. René van der Paardt of Loyens & Loeff in the Netherlands, panellists from Australia, Brazil, France and Germany will discuss the general tax on consumption (GST) or value added tax (VAT) levied on cross-border services. While, in most cases, such a tax is levied only in the country where the recipient of the services is located, because of numerous exceptions, situations of double taxation or non-taxation arise.

IFA/OECD – Do enterprises mean business?

In the first part, the Chairman of OECD Working Party 1 and senior OECD officials will again provide an update of the OECD's current work. In the second part, there will be a discussion directed by Dr John F. Avery Jones, Special Commissioner of Income Tax in the United Kingdom, with OECD officials and participants from Belgium, Canada and France, on the concepts of "enterprise" and "business" as used throughout the OECD Model, in particular in Art. 7 (Business profits).

International cooperation in countering tax avoidance

Under the direction of Prof. Peter Wattel, Advocate-General, High Court, The Hague, and University of Amsterdam, high-level tax officials from France, Germany, the United Kingdom and the United States will discuss matters of concern to tax administrations, such as relations between politics and administration, taxpayer compliance and regulation of the tax adviser profession, advance disclosure rules, the Joint International Tax Service Exchange Center (JITSEC) and spontaneous international exchange of information.

The effect of regional and global trade agreements on domestic tax law and bilateral tax conventions

This seminar, chaired by Prof. Howard M. Liebman of Jones Day in Belgium and attended by representatives of the EU Council of Ministers and the WTO and panellists from Singapore and the United States, will

explore the growing importance and interplay between global and regional trade agreements and international tax law. Matters like the US Foreign Sales Corporation regime under the WTO and the application by the EC Commission of the provisions of the EC Treaty regarding state aid will be further examined. The panel will also explore the respective policy rationales and how potentially conflicting policy goals in the trade and tax areas might be usefully resolved.

Recent developments in international tax

The content of this seminar will be decided only at the last moment. For the time being, it is known that a high-level official of the State Administration of Taxation of the People's Republic of China will comment on recent international tax developments.

IFA/EU – The need and scope for coordination of tax policies in the EU

Chaired by Mr Jonathan Schwarz of 3 Temple Gardens Tax Chambers in the United Kingdom, this seminar will be attended by two representatives of the European Commission and by panellists from Belgium and Sweden. In the first part, the Commission officials will report on the current programme of the Commission in the tax field and describe the agenda for the near future. In the second part, the panel will discuss the main topics currently in the EU tax limelight and the need for coordinating tax policies in the European Union.

Tax accounting versus commercial accounting

Under the direction of Prof. Judith Freedman of Worcester College in the United Kingdom, panellists from Australia, Canada, Germany, the Slovak Republic and the United Kingdom will discuss the shifting relationship between tax accounting and commercial accounting as a result of the IFRS and financial innovation. The panel will examine the arguments for and against the alignment of tax and commercial accounting, the need for tax principles to override accounting standards, and the potential for increasing cross-border harmonization of tax bases in line with the IFRS.

ATTRACTIVE SOCIAL PROGRAMME

The Organizing Committee, led by Mr André Boekhoudt of KPMG Meijburg & Co in the Netherlands, has made a tremendous effort to ensure that the Amsterdam Congress will also be a success for its social and cultural programme. On Sunday, September 17, it will start with a canal cruise providing an introduction to "historical and cultural Amsterdam from the water". On Wednesday, September 20, the Royal Concertgebouw Orchestra will give a private performance in the concert hall bearing the same name which, since 1888, has been world-renowned for its spectacular acoustics. On Thursday, September 21, a farewell party on Amsterdam's waterside will be held on the "Ocean Diva", combining national and international entertainment, music and food with genuine Dutch hospitality.

I look forward to seeing you all in Amsterdam, young and old.