Use of foreign case law: The Netherlands

Helsinki, October 2017 Ange F.M.Q. Beukers-van Dooren Dutch Supreme Court

Civil law vs common law

Civil law (based on ancient Roman law) = codified:

- judicial decisions framed by codified set of laws
- judges task: establish facts of a case
 - apply the provisions of the apliccable code

Common law (based on British middle aged system) = not or less codified

- based om precedent judicial decisions
- judges task: determining relevant precedents
 - determining appropriate sentence

Netherlands: civil law

Legislative supremacy of the parliament, so

- judge decides on basis of legal codes and jurisprudence based on those codes. Foreign court ruling are none of these.
- Dutch constitution prohibits a judicial review of laws and treaties against the Constitution (article 120)

however:

 treaty above law: laws are to be reviewed against international treaties (art. 94 Constitition)

Foreign court decisions: problems

- Diversity in tax systems: hardly ever for domestic cases
- Insufficient knowlegde of foreign legal systems and case law
- Finding comparable cases
- Language problems
- Ex officio?

"Domestic" case. European Patent Office

- High court The Hague on invalidity allowence (September 23, 2015, ECLI:NL:GHDHA:2015:152)
- State secretary rests his case because Bundesfinanzhof decided accordingly (November 11, 2015, nr. I R 28/14)
- Supreme court on partial compensation for pensioners(February 10, 2017, ECLI:NL:HR:2017:204)
- Identical: Bundesfinanzhof July 7, 2015 (nr. I R 38/14). Case pending before Bundesverfassungsgericht.

International: treaties

- Art 31-33 Vienna convention on the law of treaties
- Common interpretation OECD model tax convention
- Prevention of conflict of qualification.
- Legal certainty for companies and civilians
- Tax treaty case law database IBDF

Netherlands Supreme Court (ECLI:NL:HR:1999:ZC3702)

• Tax treaty Netherlands-Germany, art. 10:

Taxation by residence state if the employee stays "temporarily in total not more than 183 days in the working state".

- Supreme Court: temporarily has independent meaning
- Non temporarily for instance: short stay before or after a substantial stay in working state – or otherwise (see OECD Commentary 1992: 183 days in any twelve month periode).
- Not mentioned: Bundesfinanzhof (July 10 1996, nr. I R 4/96): temporarily/vorübergehend has no independent meaning.

Netherlands Supreme Court II (ECLI:NL:HR:2004:AF7812)

- Ontslagvergoeding/severance payment at termination international employment (Netherlands/Belgium/Luxemburg)
- Supreme Court: Allocation to various countries based on reference period of history of employment (termination year plus 4 preceding years).
- Condition for taxability in other country: part referring to other country is charged to former ex-employer in that country.
- Bundesfinanzhof: no employment income but loss of source of income: restarticle, taxable in state of residence.

List of countries represented in the Tax Tre	aty Case	Law Da	tabase
Argentina			
Australia			
Austria			
Belgium			
Bermuda			
Bolivia			
Botswana			
Brazil			
Canada			
Cayman Islands			
China			
Cyprus			
Czech Republic			
Denmark			
Estonia			
Fiji			
Finland			
France			
Germany			
Greece			
Hungary			
India			
Indonesia			
Ireland			
Israel			

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Italy				
Japan				
Jersey				
Kazakhstan				
Korea (Rep.)				
Liechtenstein				
Luxembourg				
Malaysia				
Mexico				
Netherlands				
New Zealand				
Norway				
Philippines				
Poland	¢			
Portugal				
Romania				
Russia			¥	
Singapore				
Slovak Republic				
Solomon Islands				
<mark>Spain</mark>				
Sweden				
Switzerland				

Thailand Turkey

United Kingdom

Unites States

Uruguay

Zimbabwe

International Case Law - Taxation

Subscription Resources Free Resources

Australia

New Zealand

Europe (EU)

• European Court of Justice

United Kingdom

• United Kingdom, Northern Ireland, England and Wales, Scotland, Ireland and Europe (Court of Justice of the European Communities & European Court of Human Rights)

United States

- US Supreme Court
- FindLaw
- Google Scholar

Canada

- Supreme Court of Canada
- Federal Court of Canada
- Federal Court of Appeal
- Tax Court of Canada
- CanLII (English)

India

• Supreme Court of India

Japan (in English)

Supreme Court of Japan

SAFLII

• Botswana, East Africa, Lesotho, Malawi, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe WORLDLII

• Hong Kong, Australasia, UK & Ireland, England and Wales, Ireland, Northern Ireland, Scotland, International bodies (including ICJ, WTO, UN Committees, NAFTA), Pacific Islands, South Africa

COMMONLII

• Commonwealth countries (including Singapore and Malaysia)

Subscription Resources

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International
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International Tax Law Reports (Lexis Nexis AU)

Australian

Australian Tax Cases (CCH)

<u>Australian Tax Reports</u> (Thomson Reuters)

US

WestLaw Thomson Reuters (in general for searchable US Case law including tax cases)

UK

WestLaw UK (in general for searchable UK Case law including tax cases - go to CASES tab)

Free Resources

Australia

AustLII

AustLII Advanced search (http://www.austlii.edu.au/forms/search1.html)



[Home] [Databases] [Search] [WorldLII] [Feedback] [Help]

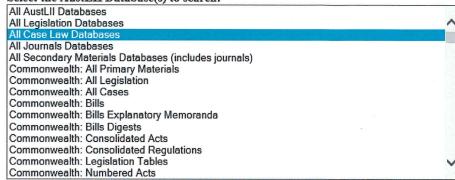
Advanced Search

ou are here: AustLII >> Advanced Search

search for legal material not on AustLII use WorldLII.

			Enter search query:				
Find	this phrase	~	double taxation	×	Search	Reset	
			[Help] [Search operators]				

Select the AustLII Database(s) to search:



Federal Court of Australia (http://www.fedcourt.gov.au/digital-law-library/judgments/search)

Construct search: e.g. double taxation in CATCHWORDS

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Digital Law Library	You are here: Home > .	Digital Law Libi	ary > Judgments > Sea	rch ·	e e
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Judges' Speeches	Judge	eg. Kea	ne Edmonds Perram	2	
Annual Reports	Reported Citation	eg. 195	FCR 260	. 2	
Library	File number	eg. NS	O 1788 of 2011	3	
Videos	NPA (FCA 2016-)	All		× ?	
Seminars	+ Full Text & Pr	oximity			
Glossary	+ Date				
	- Legislation, Ca	ases Cited	& Catchwords		
	Legislation	eg. fair	work act OR fair work 134	?	
	Cases Cited	eg. Roa	dshow iiNet	3	
	Catchwords	double	taxation	3	

New Zealand

NZLII

Advanced search (eg FIND: THIS PHRASE: double taxation - [select] ALL CASE LAW DATABASES) http://www.nzlii.org/form/search/search1.html



[NZLII] [Databases] [WorldLII] [Feedback] [Help]

Search NZLII

You are here: NZLII >> Search NZLII

To search for legal material not on NZLII use WorldLII.

	Enter search query:		
Find this phrase	✓ double taxation	Search	Reset
	[Help] [Search operators]		24

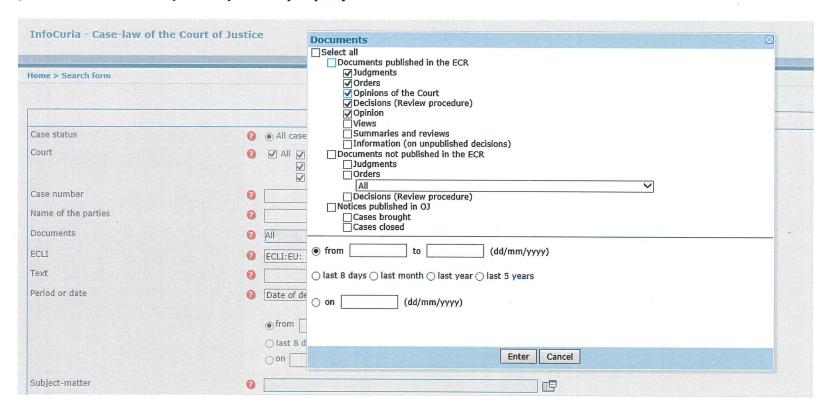
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All NZLII Databases	
All Legislation Databases	^
All Case Law Databases	
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Europe

<u>European Court of Justice</u> (http://curia.europa.eu/juris/recherche.jsf?cid=527046) [NOTE: This site works better using Firefox browser than Explorer]

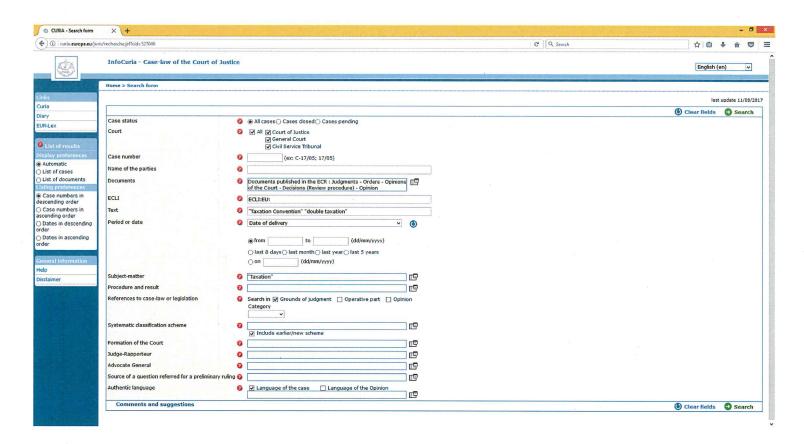
Construct search: Example

Documents = Documents published in the ECR : Judgments - Orders - Opinions of the Court - Decisions (Review procedure) — Opinion [Documents must be chose from a defined list of subjects]



Text = "Taxation Convention" "double taxation"

Subject-matter = "Taxation" [subject must be chose from a defined list of subjects]



United Kingdom

BAILII (http://www.bailii.org/form/search_cases.html)

Jurisdictions: United Kingdom, Northern Ireland, England and Wales, Scotland, Ireland and Europe (Court of Justice of the European Communities & European Court of Human Rights)

Construct search:

(e.g. Exact phrase: double taxation; All of these words: convention) (select courts)



[Home] [Databases] [World Law] [Multidatabase Search] [Help] [Feedback]

Case Law Search

You are here: BAILII >> Case Law Search URL: http://www.bailii.org/form/search_cases.html Basic Search | Legislation Search | Other Materials Search | Advanced Search | Multidatabase Search Citation: e.g. [2000] 1 AC 360 Search Case name: e.g. barber v somerset All of these words: convention e.g. breach fiduciary duty Exact phrase: double taxation e.g. parliamentary sovereignty Any of these words: e.g. waste pollution radiation Advanced query: [Help] e.g. pollut* and (nuclear or radioactiv*) Optional dates: To Enter as yyyy, yyyymm, or yyyymmdd Sort results by: ODate O Jurisdiction O Title @ Relevance ● Yes ○ No Highlight search terms in result: To limit jurisdictions, use tick-boxes below: United Kingdom: Courts ☐ England and Wales: Courts Scotland: Courts ☐ House of Lords ☐ House of Lords ☐ House of Lords ✓ Supreme Court Supreme Court Supreme Court Privy Council Privy Council Privy Council United Kingdom: Tribunals Court of Appeal Scottish Court of Session Scottish High Court of Justiciary Asylum and Immigration Tribunal ✓ Court of Appeal (Civil Division) Scottish Sheriff Court Court of Appeal (Criminal Division) ☐ Immigration and Asylum (AIT/IAC) Unreported Judgments Scottish Information Commissioner Upper Tribunal (Administrative Appeals Chamber) ☐ High Court ☐ Scottish Sheriff Appeal Court (Criminal Division) Upper Tribunal (Tax and Chancery Chamber) Administrative Court Scottish Sheriff Appeal Court (Civil Division) Upper Tribunal (Immigration and Asylum Chamber) Admiralty Division

United States

US Supreme Court

Advanced search (https://www.supremecourt.gov/search_center.aspx)

Construct search:

(eg "double taxation")



FindLaw (http://caselaw.findlaw.com/)

(Free searchable database of appellate decisions for (at least) the last 15 years. Back to 1760 for Supreme Court decisions) Select Court and search each individually

US Courts of Appeals - Opinions & Resources

- United States Supreme Court
- U.S. 1st Circuit Court of Appeals
- U.S. 2nd Circuit Court of Appeals
- U.S. 3rd Circuit Court of Appeals
- U.S. 4th Circuit Court of Appeals
- U.S. 5th Circuit Court of Appeals
- U.S. 6th Circuit Court of Appeals
- U.S. 7th Circuit Court of Appeals
- U.S. 8th Circuit Court of Appeals
- U.S. 9th Circuit Court of Appeals
- U.S. 10th Circuit Court of Appeals
- U.S. 11th Circuit Court of Appeals
- U.S. D.C. Circuit Court of Appeals
- U.S. Federal Circuit Court of Appeals

Google Scholar (http://scholar.google.com/advanced scholar search)

Google Scholar provides a US case law search facility. From the Advanced Search Screen, you can limit your search to a particular court.

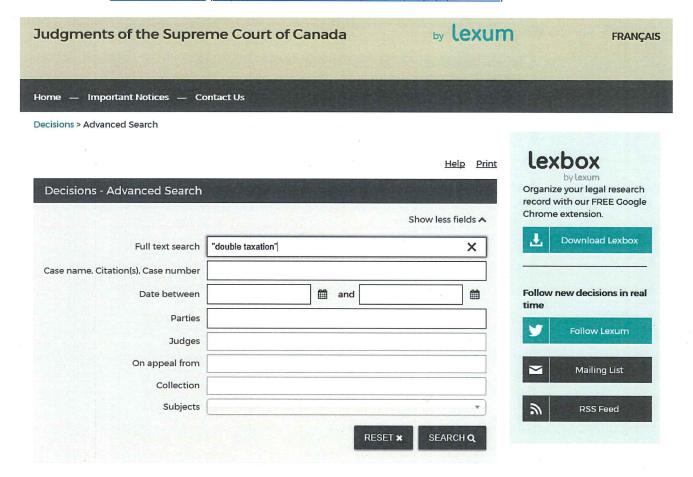


"double taxation"	Q
○ Articles (☐ include patents) ● Case law	
New! Query suggestions for detailed queries	
Stand on the shoulders of giants	

<u>Canada</u>

Supreme Court of Canada

• Advanced Search (https://scc-csc.lexum.com/scc-csc/en/d/s/index.do)



Federal Court of Canada

• Advanced Search (http://decisions.fct-cf.gc.ca/fc-cf/en/d/s/index.do?col=54)

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Federal Court of Appeal

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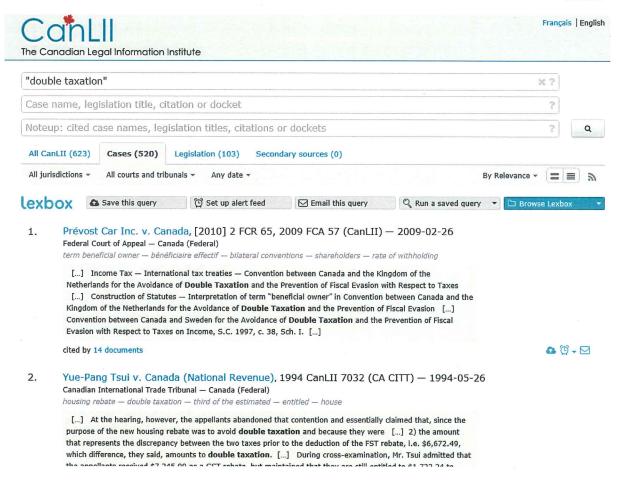
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Legal Profession			
Self-Represented			

Tax Court of Canada

• Advanced Search (http://decision.tcc-cci.gc.ca/tcc-cci/en/d/s/index.do?col=52)

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CanLII (English) [Contains decisions from all of the above Courts of Canada and others – see list on Scope link below graphic]

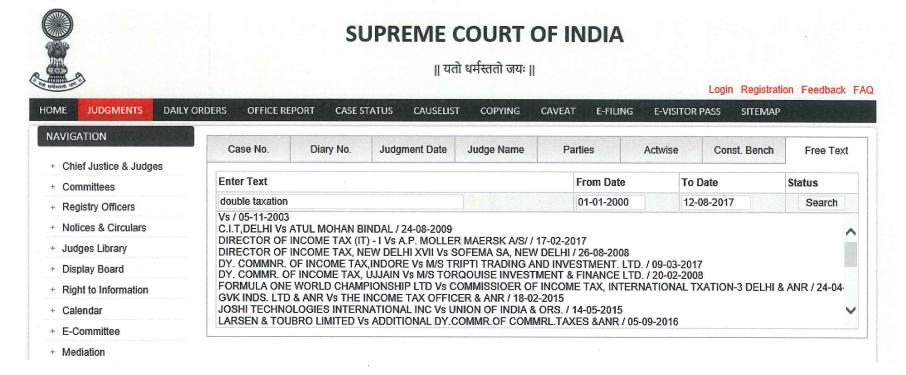


For Scope of Databases (see https://www.canlii.org/en/databases.html)

India

<u>Supreme Court of India</u> (http://supremecourtofindia.nic.in/judgments)

Construct search: (Free Text search of Judgments - e.g. double taxation)



Japan (in English)

Supreme Court of Japan (http://www.courts.go.jp/app/hanrei_en/search)

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Case Number	Year Code Number	The Legal Training and Research Institute of Japan
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Key Word	double taxation	Supreme Court Library
Original Court	court branch	Links
All of the translations of judgment accuracy of the translations. Top of Page Back to Supreme Court of Japan	SEARCH ats on this website are unofficial. The Supreme Court of Japan assumes no responsible	ility for the

Southern African nations

SAFLII (http://www.saflii.org/cgi-bin/search.pl)

Jurisdictions: Botswana, East Africa, Lesotho, Malawi, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe [Select jurisdiction (hold down CONTROL KEY to select multiple jurisdictions) and construct search]



Home About SAFLII Databases Search Terms of Use RSS Feeds

Select the SAFLII Database(s) to search:

Search SAFLII Databases

Enter search query: double taxation x and all [Help][Boolean operators]	sing autosearch his Boolean query ny of these words II of these words his phrase his case name his legislation title	SAFLII: All Databases Angola: Angola Numbered Acts Botswana: Court of Appeal Botswana: High Court Botswana: Industrial Court East Africa: Court of Appeal Less the Court of Appeal Less the Court of Appeal Lesotho: Court of Appeal Lesotho: High Court Lesotho: Labour Court Note: You can search multiple databases at once by holding down the Ctrl key on your keyboard (on an Apple computer, use the Apple key instead) and then click the database name for each database you want to include in your search. (Unix users beware: multiple selections occur by default).	Search Reset
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Other multi jurisdictions

WORLDLII (http://www.worldlii.org/forms/search1.html)

Jurisdictions: Hong Kong, Australasia, UK & Ireland, England and Wales, Ireland, Northern Ireland, Scotland, International bodies (including ICJ, WTO, UN Committees, NAFTA), Pacific Islands, South Africa

Advanced Search

[e.g. FIND: THIS PHRASE: double taxation]

[Select ALL CASE LAW, or ALL SUPERIOR COURTS, or ALL NATIONAL HIGHEST COURTS]



'ou are here: WorldLII >> Advanced Search

[WorldLII] [Databases] [Feedback] [Help]

Advanced Search

Enter search query: Find this phrase double taxation Search Reset Help Boolean operators Select the WorldLII Database(s) to search: WorldLII: All Databases WorldLII: All Legislation Databases WorldLII: All Case Law Databases WorldLII: All National Highest Courts WorldLII: All Superior Courts WorldLII: All Journals Databases WorldLII: All Treaties Databases WorldLII: All Law Reform Databases WorldLII: All Domain Name Decisions Databases WorldLII: All Other Secondary Materials Databases WorldLII: All Privacy & FOI Databases WorldLII: Africa: All Databases WorldLII: Asia: All Databases WorldLII: Australasia: All Databases WorldLII: Europe: All Databases WorldLII: Pacific Islands: All Databases WorldLII: North America: All Databases Africa: South Africa: All Databases Africa: South Africa: All Legislation Africa: South Africa: All Cases

COMMONLII (http://www.commonlii.org/form/search/search1.html)

Jurisdictions: Commonwealth countries (including Singapore and Malaysia)



[Home] [Databases] [Search] [Feedback] [Help]

Search CommonLII Databases

Select the CommonLII Database(s) to sear
CommonLII: All Databases
CommonLII: All Legislation Databases

CommonLii: All Case Law Databases
CommonLii: All Highest Courts

CommonLII: All Journals Databases CommonLII: All Law Reform Databases

Jurisdictions include in COMMONLII listed (http://www.commonlii.org/)