

# TAX HAVEN JURISDICTION

IATJ

Washington DC, October 2014

# OUTLINE

- Q&A
- Anthony D. Gafoor: Tax havens in the Caribbean
- Jennifer Davies: Case on bank information
- Joao Francisco Bianco: Case on simulation, CFC, transfer pricing
- Peter Wattel: Case on interest deduction
- Philippe Martin: Case on CFC, tax avoidance purpose

# Q&A

- Do you use a general definition of tax havens (legislative or court-made) or a list of tax havens that would be legally binding?
- Can anti-tax haven provisions be challenged in court ?
  - Relying on the Constitution (unequal treatment, lack of proportionality, necessity of « safe harbor » clauses...)?
  - Relying on treaties?
  - Relying on EU law? ECJ cases 1 April 2014 Felixstowe C-80/12 and 5 June 2014 X BV and TBG Limited C-24/12 and C-27/12

# Q&A

- Is there a heavy burden of proof on a taxpayer who uses a tax haven? If taxpayer bears the burden of proof, do courts require more justifications from him than usual evidential requirements?
- Is there a morality issue specific to tax havens, that would go beyond general anti-abuse rules?