

MINUTES OF THE MEETING OF THE  
EXECUTIVE OF IATJ – February 24, 2014  
8:30 am (Ottawa time) BY TELEPHONE CONFERENCE CALL

In attendance:

Associate Chief Justice Eugene P. Rossiter, Tax Court of Canada;  
M. Philippe Martin, Conseil d'État, France;  
Friederike Grube, Richter in am Bundesfinanzhof, Germany;  
Judge Willem F.G.Wijnen, Court of Appeal of 's-Hertogenbosch, The Netherlands;

Regrets:

Judge Bernard Peeters, Belgium,

1. Agenda:

The agenda proposed was approved as circulated.

2. Minutes of Meetings:

The Minutes of the meeting of the Board of Directors of January 20, 2014 were approved as circulated.

3. Financial Report:

a) ACJ Rossiter reviewed in detail the budget for the actual year ending December 31, 2013 as completed on January 22, 2014. It was noted that amendments had been made to the actual year end reflecting the concerns of Judge Wim Wijnen with respect to expenditures and revenue matters associated with the 4<sup>th</sup> Assembly. All were in agreement that the budget for the actual year ending December 31, 2013 was approved.

b) Budget for year ending December 31, 2014: ACJ Rossiter reviewed the budget information for the year ended December 31, 2014 as of February 19, 2014. He noted that this is a rolling budget and that it is adjusted on a monthly basis depending upon what new items may arise in terms of revenue and expenses. He reviewed each item explaining which items were cash items and which items were offset. It was generally agreed

that this was a fair reflection for the budget for the year ending December 31, 2014.

c) Financial status as at January 31, 2014: ACJ Rossiter reviewed the bank balance as at January 31, 2014, explained that all expenses have been paid with no accounts outstanding.

4. Membership:

It was noted that individual memberships have been pursued and been successful in terms of Indonesia. It also appears that individual members are going to join from Columbia, India, the Netherlands as well as the Czech courts. Most of these possible members are the result of the efforts of Judge Wim Wijnen. Judge Wijnen advised he is going to be in Portugal in the near future and hopes to have a couple of new members from that particular Court.

Court memberships: There was a discussion with respect to court memberships and whether or not we would maintain the status quo or possibly reconsider the quantum of court memberships at a later date. It was decided to maintain the status quo. It was noted that for the Netherlands Supreme Court, there was an issue because the cost of joining the IATJ over-lapped their costs with respect to the IBFD membership. This will be a matter of ongoing concern but Judge Wim Wijnen is confident that there will be four or five judges from the Netherlands Supreme Court joining the IATJ.

5. Court links to the website:

It was noted that we have responses from both France and Germany with respect to having links to the website for their Courts. These links will be put on the website as soon as possible and there is to be a follow up note to IATJ members in each country to ask them to pursue the links for their respective courts to the IATJ website.

6. Reports on Tax Treaty Jurisprudence:

It was noted that we are still awaiting summaries. The TCC's is complete and will be on the website. Germany is updating their summary as is Australia. It was noted that the summaries would be in the English language only with the appropriate citations referred to therein. It was noted that anyone who wanted to access the decision could access the decision in the language in which it was rendered.

It was also noted that a note would go to the member with respect to the follow-up on the tax treaty jurisprudence in each jurisdiction.

7. IATJ 5<sup>th</sup> Assembly Update:

ACJ Rossiter gave a detailed and comprehensive report with respect to the following arrangements for the Washington 5<sup>th</sup> Assembly:

- a. Logistics;
- b. Facilities and electronics;
- c. Accommodations;
- d. Opening reception;
- e. Closing reception;
- f. Program:
  - i. In terms of the program, the prospective programs were discussed. It is suggested that there might be additional topics to be considered from the tax practitioner point of view as opposed to the judicial point of view, that is:
    - a. Role of and history of tax treaty interpretation;
    - b. Relationship between court decisions and mutual agreements;
    - c. How to obtain information from foreign jurisdictions;
    - d. Form over substance;
    - e. CSC legislation in common-law and civil jurisdictions.
  - ii. It was suggested that we change the one topic which was originally discussed by the program committee and remove the Rules of Evidence and add Form over

Substance. As a result, the topics for consideration for the 5<sup>th</sup> Assembly was amended per the attached:

- a. U.S. Tax Court and a comparative look at judicial decision making;
- b. Recusal of judges;
- c. Media influence and handling;
- d. Protection of taxpayers' rights;
- e. Tax haven jurisdiction;
- f. Static v. dynamic approach and interpretation;
- g. Double non-taxation;
- h. Form over substance.

iii. In terms of chairpersons or panelists for the time being with respect to these particular panels, it was discussed as follows:

1. The United States Tax Court – a comparative look at judicial decision making: Chair: U.S. Judge; panelists: to be determined.
2. Recusal of judges: Chair: Australian Judge; panelists: to be determined.
3. Media influence and handling: Chair: U.S. Judge; panelists: Peter Darak, Hungary, NJI from Canada;
4. Protection of taxpayers' rights: Chair: Canadian Judge; panelists: Annette Kugelmüller-Pugh and others to be determined.
5. Tax Haven jurisdiction: Chair: Philippe Martin, France; panelists: to be determined.
6. Static v. dynamic approach and interpretation: Chairman: Manuel Hallivis Pelayo; panelists: Michael Beusch and others to be determined.
7. Double non-taxation: Chair: Kees van Raad; panelists: and others to be determined.
8. Form over substance: Chair: Bernard Peeters, Belgium; panelists: to be determined.

There being no further business, the meeting was duly adjourned.