

IATJ
1st CONGRESS
AUGUST 28, 2010, ROME, ITALY

In attendance:

Chief Justice Gerald J. Rip (Canada); Associate Chief Justice Eugene P. Rossiter (Canada); Justice Patrick Boyle (Canada); Justice Lucie Lamarre (Canada); Justice Cameron McArthur (Canada); Kjeld Lund-Andersen (Denmark); M. Philippe Martin, Vice-President (France); Emmanuel Glaser (France); Emmanuelle Cortot-Boucher (France) ; Paul Bongaarts, Vice President (The Netherlands); Judge Willem F.G.Wijnen (The Netherlands); Judge Friederike Grube (Germany); Past President Vimal Gandhi (India); Judge Virgilijus Valancius (Lithuania); Judge Ricardas Piliciauskas (Lithuania); Judge Anatolijus Baranovas (Lithuania); Judge Romanas Klisauskas (Lithuania); Justice Olof Olsson (Finland); Justice Hannele Ranta-Lassila (Finland); The Hon. Michael C. Ryer (Canada); Justice Marjaana Helminen (Finland); Counselor João Francisco Bianco (Brazil); Eveline F. Faase, Vice President, (The Netherlands); Judge Ed A.G. Van der Ouderaa (The Netherlands); The Hon. Donald G.H. Bowman (Canada); Judge Dagmara Dominik (Poland) ; Judge Adam Baçal (Poland), Justice Clement Endresen (Norway); Justice Marshall Rothstein (Canada); Dr. Alexandre Alkmim Teixeira (Brazil); Dr. Juan Carlos Vicchi (Argentina) ; M. Pierre Collin (France); The Honourable Anthony D.J. Gafoor (Republic of Trinidad and Tobago); President Brahim Zaim (Morocco); Dr. Manuel Luciano Hallivis Pelayo (Mexico)
Chief Justice Pierre Blais (Canada)

1. Discussion took place with respect to the location and other aspects of the 2nd Congress of the IATJ as follows:
 - a. The Program: There would be a theme for the program which would be developed by the program committee;
 - b. The tentative dates are September 8 and 9 or September 9 and 10, 2011 in Paris, France.
 - c. The prospective location in Paris would be the OECD or hotels if the OECD facilities are not available.
2. Participants were invited to offer comments or make on the IATJ and how it could be helpful:

Judge Philippe Martin (France) provided an overview of the areas of taxation covered and litigation process. With respect to areas which could be further explored by the IATJ for its membership, he suggested:

- discussion of differences in treaties;

- discussion on VAT – European Court of Justice establishes basic principles, but individual European courts make the determinations;
- exchange of procedural handling of tax cases/best practices

Dr. Juan Carlos Vicchi (Argentina) discussed the incorporation of treaties by National Congress and the exchange of information on tax law generally.

President Brahim Zaim (Morocco) raised the possibility of judgments being incorporated into the IATJ web site.

Judge Joao Francisco Bianco (Brazil) suggested that as the IBFD has a very good database on tax treaty judgments/applications, that a link to that site may be of assistance.

Judge Wim Wijnen (The Netherlands) confirmed that that the IBFD database is the most extensive collective of tax treaty case law and that he will endeavour to obtain free access to the database for IATJ members.

Chairman Anthony D.J. Gafoor (Trinidad & Tobago) sought clarification of the Statutes and of the expectations of participants in the association and a general discussion ensued.

Dr. Manuel Luciano Hallivis Pelayo (Mexico) queried as to how much weight should be given to other country's case law: dynamic v. static approach.

Judge Friederike Grube (Germany) expressed her pleasure with the organization and the resulting exchange of ideas/information particularly with respect to treaties and VAT. While she would like access to a database, she did indicate that even e-mail exchanges would be beneficial.

Judge Cameron McArthur (Canada) raised the question of whether any interest had been shown from the U.S., Russia, China and the United Kingdom. **Associate Chief Justice Eugene Rossiter (Canada)** indicated that their participation will be sought, as well as that of Malaysia and Thailand. A further discussion ensued involving a variety of countries to be approached by different members. **Judge Friederike Grube (Germany)** also suggested that the European Court of Justice be contacted.

Past President Vimal Ghandi (India) indicated that while the IATJ was being formed just as he was retiring, the new members in India were very interested. There was some hesitation of the new Chief Justice as to whether active judges should be involved with the organization.

Judge Virgilijus Valancius (Lithuania) made the suggestion that specialized judicial training may be useful. In his Court, only fifteen percent of cases heard would relate to taxation.

Dr. Alexandre Alkmim Teixeira (Brazil) raised the question of what information would be exchanged electronically.

Vice President Paul Bongaarts (The Netherlands) indicated some of the potential problems with “e-justice” and suggested that an exchange of information may be helpful. **Chairman Anthony D.J. Gafoor (Trinidad & Tobago)** suggested that that in establishing the web site, publishing the relevant laws as well as cases from the different countries may be beneficial.

Judge Ed A.G. Van der Ouderaa (The Netherlands) further suggested the inclusion on the site of the application bi-lateral treaties and VAT applications. Although it may not be of interest to non-European Union countries, he felt there would be significant demand for access to same, including European Union treaties.

Judge Philippe Martin (France) indicated his belief that the organization should be worldwide, even though some European Union issues would be of little interest to others. He suggested a separate European Union mailing list; and perhaps regional meetings for the issues applicable to EU countries only. He also raised the concern that the job of amassing the information would be a major undertaking, and believes that if we are able to link to the IBFD database, it would be far more efficient than to duplicate the work the IBFD has done in compiling the information.

Chief Justice Pierre Blais (Canada) raised the issue of whether translation would be available for the exchange of case law and suggested a sub-committee be formed re: translation.

Judge Wim Wijnen (The Netherlands) indicated that on the IBFD database, on all cases reported he provides a brief summary in English. He also confirmed that the sheer volume of material prohibits the translation of all cases. He also indicated that translations are not always comprehensible and that the summaries are found to be more effective. **Dr. Juan Carlos Vicchi (Argentina)** expressed that he saw no difficulty in the exchange of information provided brief summaries of the applicable relevancies are provided.

Judge Olof Olsson (Finland) suggested that some information could be gathered from different databases which might possibly then be made available to the members through the IATJ web site.

Associate Chief Justice Eugene Rossiter (Canada) reviewed the financial status of the IATJ as at August 19, 2010. He then proceeded with the following motions:

1. Motion that that the Statutes adopted by the founding directors of the IATJ, as of January 1, 2010, be confirmed by the 1st Assembly of the IATJ. Judge Martin seconded the motion; motion carried.
2. Motion that the name “Congress” be changed to “Assembly”; Judge Martin moved that the matter should be revisited at the next Board meeting, as well the function of the officers of the Association should be reviewed. Motion seconded: motion carried.
3. Motion to amend Article 9 of the Statutes regarding the composition of the Board. It was moved that the Board shall be composed of 15 members rather than the current 13 including 10 at large members rather than the current 8. Judge Gafoor seconded the motion; motion carried.
4. Motion that the directors of the IATJ may hold any and all directors’ meetings as and when they, in their absolute discretion, determine including meetings in person, by video-conference and by telephone conference call. Justice Boyle seconded the motion; motion carried.
5. Motion that the 2nd Assembly of the IATJ be held in Paris, France on September 8 and 9, 2011 or September 9 and 10, 2011 or such other date as may be convenient to hold such an Assembly in Paris, France. Attempts will be made to obtain the use of the OECD facilities to minimize venue costs. It was also confirmed that the IFA Congress is scheduled for September 11-15, 2011 in Paris, France. Judge Martin seconded the motion; motion carried.
6. Motion that the directors of the IATJ take all appropriate action as necessary to establish, and maintain, a website for the IATJ before March 31, 2011. Judge Wim Wijnen seconded the motion; motion carried.
7. Motion that the directors of the IATJ shall establish a communications committee on or before November 30, 2010. Justice McArthur seconded the motion; motion carried.
8. Motion that that the interim directorate of the IATJ be and continue to be with the Tax Court of Canada, 200 Kent Street, Ottawa, Ontario Canada K1A 0M1 from January 1, 2010 to and including March 31, 2012, or earlier if deemed appropriate by the Directors of the IATJ; and that the permanent directorate of the IATJ be in Amsterdam, The Netherlands, and that the physical location and operations of the IATJ be conducted at and about the facilities of the IBFD. Judge Martin seconded the motion; motion carried.
9. Motion that the directors shall establish a nomination committee for the IATJ on or before March 30, 2011. Judge Martin seconded the motion; motion carried.
10. Motion that the following be appointed as directors of the IATJ for the stated terms:

President	Gerald Rip	3 years
1 st Vice-President	Philippe Martin	2 years
2 nd Vice-President	Olof Olsson	1 year
Secretary-General	Eugene Rossiter	2 years

Treasurer Wim Wijnen 3 years

The board will be made up of the following: Friederike Grube (Bundesfinanzhof, Germany – 3 years), Virgilijus Valancius (Supreme Administrative Court of Lithuania – 2 years), Joao Francisco Bianco (Administrative Council of Fiscal Appeals, Brazil – 3 years), Dagmara Dominik (Supreme Administrative Court, Poland – 2 years), Kjeld Lund-Andersen (Landsskatteretten Retsformand, Denmark – 1 year), Richard Edmonds (Federal Court of Australia – 1 year), P.V. Reddi (Authority for Advance Rulings, India – 1 year), Peter Panuthos (U.S. Tax Court – 2 years), John Avery-Jones (Upper Tribunal, U.K. – 1 year)

Motion carried.

No further business was brought forth. The Business meeting was duly adjourned to a date to be fixed by the Directors.

Certified as a true copy of the Minutes, this 29th day of November, 2010.

“E.P. Rossiter”
Secretary-General

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EDUCATIONAL SESSION

1. **Tour de Table : Domestic Procedural Outlines**

Speakers from countries representative of differing approaches to tax disputes:

Vimal Ghandi, India
Philippe Martin, France
Olof Olsson, Finland
Ricarda Piliciauskas, Lithuania
Joao Francisco Bianco, Brazil
Eugene Rossiter, Canada

Civil Law versus Common Law
Full trial versus judicial review versus legal principles only

Speakers addressed how their country's régime deals with:

administrative objections with the tax authorities
court appeals
 procedures
 restrictions
 time and other constraints on judges
 how unrepresented taxpayers are
 provided for
 large versus small amounts in dispute
 role of lawyers / accountants / agents
 expert witnesses
 relying on foreign court decisions
 income tax versus VAT/commodity taxes

2. **Significant Recent Developments in International Tax Law**

Willem Wijnen, Court of Appeal, Netherlands,
The Interpretation of Tax Treaties

Emmanuel Glaser, Conseil d'État (France): ***Commissionaire Companies***
as Permanent Establishments PEs – the Zimmer decision

Friederike Grube, Bundesfinanzhof (Germany): Significant Value Added Tax VAT Decisions

Clement Endresen, Supreme Court of Norway: The Influence of the European Charter on Human Rights ECHR on Procedures in Tax Law Disputes

Patrick Boyle, Tax Court of Canada: Significant OECD Developments -- Business Profits, Artistes & Athletes, Revised Transfer Pricing Guidelines, Mutual Agreement Procedures, Partnerships and FTEs