Preface		V
List of Contri	butors	VII
Abbreviations	s and Acronyms	XV
	Part 1 Interpretation and Residence	
Chapter 1:	United States: Treaty-Based Foreign Tax Credits and Limitations  Yariv Brauner	<b>s</b> 1
1.1.	Introduction	1
1.2.	Facts of the case	1
1.3.	The Court's decision	2
1.4.	Comments on the Court's reasoning	4
1.5.	Conclusion	6
Chapter 2:	Belgium: Interpreting Article 2: A Case Study in Judicial (In)Consistency and the Belgian NAT Filip Debelva, Anne Van de Vijver and Sharon Waeytens	7
2.1.	Introduction	7
2.2.	Facts of the case	8
2.3.	The Court's decision	9
2.4.	Comments on the Court's reasoning	12
2.5.	Conclusion	16

Chapter 3:	Norway: Court of Appeal. Payment from Estonian Company to Norwegian Shareholder – Dividend or Loan? Eivind Furuseth	17
3.1.	Introduction	17
3.2.	Facts of the case	18
3.3.	The Court's decision	21
3.4. 3.4.1.	Comments on the Court's reasoning Classification of the payment for tax treaty	23
	purposes	23
3.4.1.1.	Introduction	23
3.4.1.2.	Definition of "dividends" in article 10(3)	24
3.4.1.2.1.	In general	24
3.4.1.2.2.	Dividends or loan for tax treaty purposes	25
3.4.1.3.	Article 21	29
3.4.1.4.	Reclassification of loan from company to shareholder – Norwegian Tax Act section 10 11(4)	30
3.4.1.5.	Summary – Definition of the payment for tax	
	treaty purposes	32
3.4.2.	Penalty tax	32
3.5.	Conclusion	32
Chapter 4:	Germany: Treaty Residence After Abolition of the Gift and Inheritance Tax Alexander Rust	35
4.1.	Facts of the case	35
4.2.	The Court's decision	36
4.3.	Comments on the Court's reasoning	37
4.4.	Conclusion	38

Chapter 5:	Croatia: Dual Residence Hrvoje Arbutina	39
5.1.	Introduction	39
5.2.	Facts of the case	40
5.3.	The Court's decision	42
5.4.	Comments on the Court's reasoning	42
5.5.	Conclusion	47
	Part 2 Permanent Establishment	
Chapter 6:	Germany: Wardrobe and Locker as a Permanent Establishment Alexander Rust	51
6.1.	Facts of the case	51
6.2.	The Court's decision	51
6.3.	Comments on the Court's reasoning	52
6.4.	Conclusion	53
Chapter 7:	Türkiye: Website PE Discussions Under Türkiye Netherlands Double Tax Treaty Cihat Öner	- 55
7.1.	Introduction	55
7.2.	Facts of the case	56

7.3.	The Court's decision	58
7.3.1.	Determination of the Court as to whether the	
7.3.2.	www.X.com website can be considered a PE Determination of the Court as to whether the	59
1.3.2.	X.com Support Services can be considered a PE	61
7.3.3.	Treaty article to be applied	62
7.4.	Comments on the Court's reasoning	63
7.4.1	Is there a website PE?	63
7.4.2.	Can computer hardware owned and operated by the	
	enterprise constitute a permanent establishment?	64
7.4.3.	Is X.com Türkiye a branch? Is there a "branch" in	65
7.4.4.	this case? Is there an agency PE?	65 66
7.4.5.	Is there an authority to conclude contracts?	68
7.1.5.	is there an audionty to conclude contracts.	00
7.5.	Conclusion	69
Chapter 8:	Poland: Warehouse PE	71
	Karolina Tetlak	
8.1.	Introduction	71
8.2.	Facts of the case	72
8.3.	The Court's decision	75
8.4.	Comments on the court's reasoning	76
8.5.	Conclusion	83
Chapter 9:	Italy: Commissionaire Arrangements and the Permanent Establishment Notion Guglielmo Maisto and Cesare Silvani	85
9.1.	Introduction	85
9.2.	Facts of the case	85
, . <del>_</del> .		
9.3.	The Supreme Court's decisions	88

9.4. 9.4.1. 9.4.2.	Comments on the Court's reasoning Comments on the PE issue Comments on the interpretation of Italian double	89 89
	tax treaties and tax law PE notions	94
9.5.	Conclusions	94
Rusir	Part 3 ness Profits, Dividends, Interest and Capital Gains	
Dusii	icss Fronts, Dividends, interest and Capital Gains	
Chapter 10:	Luxembourg: Recognition of a Foreign Permanent Establishment Werner Haslehner	99
10.1.	Introduction	99
10.2.	Legal background	99
10.2.1.	Luxembourg law	99
10.2.2.	Tax treaty law	101
10.3.	Facts of the case	102
10.3.1.	Agreed facts	102
10.3.2.	Additional information requested and assessment	
	by the tax administration	102
10.3.3.	Taxpayer arguments	103
10.4.	The Court's decision	104
10.5.	Comments on the Court's reasoning	105
10.5.1.	General comments	105
10.5.2.	Third-party managed branch as independent agent?	106
10.5.3.	No taxation in the United States in the absence of	100
10.5.5.	effectively connected income	107
10.5.4.	The impact of paragraph 5 of section 16 of the	
	Tax Adaptation Law	108
10.6.	Conclusion	112

Chapter 11:	Japan: Holding Period Requirement Under Article 10(2)(a) of the Japan-Luxembourg Tax Convention of 1992 Yasuyuki Kawabata	115
11.1.	Introduction	115
11.2.	Facts and circumstances of the case	117
11.3.	Issues under the case	121
11.4.	Arguments of the parties	122
11.4.1.	Plaintiff/appellee	122
11.4.1.1.	Interpretation of the treaty wording	122
11.4.1.2.	Grounds for the plaintiff's arguments	122
11.4.1.2.1.	Article 31(1) of the Vienna Convention on the	
	Law of Treaties	122
11.4.1.2.2.	Ordinary meaning of the terms of the treaty	122
11.4.1.2.3.	The context in article 31(2) of the Vienna	
	Convention on the Law of Treaties	123
11.4.1.2.4.	Purpose and objective	124
11.4.1.2.5.	Plaintiff's conclusion	125
11.4.1.3.	Refutations against the defendant's arguments	126
11.4.2.	Defendant/appellant	126
11.4.2.1.	Main argument	126
11.4.2.2.	Basis for the defendant's interpretation	126
11.4.2.3.	Refutations against plaintiff's arguments	128
11.5.	Holdings of the Courts	129
11.5.1.	Tokyo District Court	129
11.5.1.1.	Vienna Convention on the Law of Treaties	129
11.5.1.2.	Regarding the meaning of the term at issue	
	under Japanese law	130
11.5.1.3.	The ordinary meaning of the term given in light	
	of their purpose and intent	130
11.5.1.3.1.	Purpose and objectives	130
11.5.1.3.1.1.	Purpose of JPN/LUX Treaty	130
11.5.1.3.1.2.	Purpose of article 10 of the Treaty	130
11.5.1.3.1.3.	Purpose of article 10(2)(a) of the Treaty	131
11.5.1.3.1.4.	Purpose of the holding period requirements	131
11.5.1.3.2.	Ordinary meaning of the term	131
11 5 1 4	Loose end	132

11.5.1.5.	Conclusion of the District Court	132
11.5.2.	Tokyo High Court	133
11.5.2.1.	Additional arguments of appellant/defendant	133
11.5.2.2.	Additional arguments of appellee/plaintiff	134
11.5.2.2.1.	Interpretation of the treaty wordings	134
11.5.2.3.	Tokyo High Court	134
11.5.2.3.1.	Holding affirmed judgment of the Tokyo	
	District Court	134
11.6.	Comments on the Courts' reasoning	136
11.6.1.	Corporate reorganization under the Company Act	
	and the Corporate Tax Act	136
11.6.2.	Deemed business year	137
11.6.3.	Public notice by the National Tax Agency	138
11.7.	Discussions of article 3(2) of the Japan/	
	Luxembourg Treaty and articles 31 and 32 of the	
	Vienna Convention on the Law of Treaties	141
11.7.1.	Regarding the Tokyo District Court	141
11.7.2.	Regarding the Tokyo High Court	143
11.8.	Conclusion	144
11.8.1.	Summary of the judgments of District and	
	High Courts	144
Chapter 12:	Portugal: Can Payments Under Interest	
	Rate Swaps be "Interest" After All?	145
	Dinis Tracana and Rita Medalho	
12.1.	Introduction	145
12.2.	Facts of the case	145
12.2.1.	Applicable tax framework	145
12.2.2.	Factual background	146
12.3.	The Court's decision	148
12.3.1.	The Court's decision on the inflation rate swap	
	agreement	148
12.3.2.	The Court's decision on the interest rate swap	
	agreements	149
12.4.	Comments on the Court's reasoning	151

12.4.1.	Relevance of the decision	151
12.4.2.	Ambulatory approach in the reference to domestic law	151
12.4.3.	"Other income assimilated to income from	150
	money lent" – What is the keystone after all?	152
12.5.	Conclusion	155
	Part 4	
	Beneficial Ownership	
Chapter 13:	France: Interpretation of the Law and the Concept of Beneficial Ownership  Marilyne Sadowsky	159
13.1.	Introduction	159
13.2.	Facts of the case	159
13.3.	The Court's decision	161
13.3.1.	The legal framework	161
13.3.2.	The merits of the case	162
13.4.	Comments on the Court's reasoning	162
13.4.1.	Interpretation of the notion of beneficial	
	ownership in domestic tax law	163
13.4.2.	Beneficial ownership and anti-abuse clauses	164
13.4.3.	Difference in approach adopted in international	1//
	and European tax law	166
13.5.	Conclusion	167
Chapter 14:	Canada: Husky Energy Inc. v. The King David G. Duff	169
14.1.	Introduction	169
14.2.	Facts of the case	170
14.2.1.	Appellants	170
14.2.2.	Transactions	170
14.2.3.	Tax consequences in Luxembourg and Barbados	172

14.2.4.	Assessment and the Minister's arguments	172
14.2.5.	Appellants' arguments	173
14.3.	The Court's decision	174
14.3.1.	Non-resident withholding tax	174
14.3.1.1.	HWLH and LFMI	175
14.3.1.2.	Husky	176
14.3.2.	General anti-avoidance rule	179
14.3.2.1.	Tax benefit	180
14.3.2.2.	Purpose of transactions	180
14.3.2.3.	Misuse or abuse	181
14.3.2.3.1.	Barbados Treaty	183
14.3.2.3.2.	Luxembourg Treaty	183
14.4.	Comments on the Court's reasoning	184
14.4.1.	Domestic law	184
14.4.2.	Beneficial ownership	186
14.4.3.	General anti-avoidance rule	187
14.5.	Conclusion	189
Chapter 15:	Denmark: Beneficial Ownership Søren Friis Hansen	191
15.1.	Introduction	191
15.1.1.	The Danish beneficial ownership cases	191
15.1.2.	Abuse of EU law and beneficial ownership	193
15.2.	Facts of the case	194
15.3.	The Court's decision	195
15.4.	Comments on the Court's reasoning	197
Chapter 16:	Portugal: Righting the Ship on the Concept of Beneficial Owner Dinis Tracana and Rita Medalho	199
<b>1</b> 6.1.	Introduction	199
16.2.	Facts of the case	199
16.2.1.	Applicable tax framework	199

16.2.2.	Factual background	200
16.3.	The Court's decision	202
16.3.1.	On the concept of beneficial ownership	203
16.3.2.	Reliance on the Portugal-United Kingdom	
	Conventions for the Avoidance of Double Taxation	205
16.3.3.	Reliance on the Portugal-Hong Kong Conventions	
	for the Avoidance of Double Taxation	205
16.3.4.	Breach of the principles of legal certainty and	
	proportionality, and the right to private property	206
16.4.	Comments on the Court's reasoning	207
16.4.1.	Relevance of the decision	207
16.4.2.	The nature and scope of "beneficial ownership"	207
16.4.3.	The subject to tax requirement found in article 11	
	(2) of the Portugal-UK Convention for the	
	Avoidance of Double Taxation	209
16.4.4.	An implicit beneficial ownership requirement in	
	Conventions on the Avoidance of Double	211
16.45	Taxation?	211
16.4.5.	A look-through approach towards the beneficial	212
	owner?	213
16.5.	Conclusion	213
Chapter 17:	Beneficial Ownership and the Intermediary Status of the Person Russia: Ruling of the Russian Federation Supreme Court №305-ЭC23-3710 of 6 October 2023, Case №A40-121109/2022 XANGBO (Singapore ) & UBRIR Bank (Russia) v. Russian Tax Authorities)  Danil Vinnitsiy	215
17.1.	Introduction	215
17.2.	Facts of the case	216
17.2.1.	Key facts of the case	216
17.2.2.	Scope of tax treaty interpretation in the light of	
	the relevant facts	216
17.3.	Legal positions of the courts	217

17.4.	Comments on the Court's reasoning	218
17.5.	Conclusion	219
Inco	Part 5 ome from Immovable Property and Royalties	
Chapter 18:	United Kingdom: Royal Bank of Canada v. The Commissioners for Her Majesty's Revenue and Customs Philip Baker	223
18.1.	Introduction	223
18.2.	Facts of the case	223
18.3.	The provisions of the Convention	225
18.4.	The Court's decision	226
18.5.	Comments on the Court's reasoning	229
Chapter 19:	Australia: Unpriced Intellectual Property Rights and Article 12 of the Australia/ United States Tax Treaty Michael Dirkis	231
19.1.	Introduction	231
19.2.	Facts of the case	232
19.3.	The Court's decision	234
19.4.	Comments on the Court's reasoning	239
19.5.	Conclusion	240

Chapter 20:	Poland: Compensation For the Use of a Trademark Included in the Price of Goods Constitutes Royalties Karolina Tetlak	243
20.1.	Introduction	243
20.2.	Facts of the case	243
20.3.	The Court's decision	246
20.4.	Comments on the Court's reasoning	248
20.5.	Conclusion	251
Chapter 21:	Brazil: Motorola Case: Transfer of Technology Under Technical Services Luís Eduardo Schoueri and Jonathan Malaquias	253
21.1.	Introduction	253
21.2.	Facts of the case	254
21.3.	The Court's decision	256
21.4.	Comments on the Court's reasoning	257
21.5.	Conclusion	260
Chapter 22:	Brazil: The Engecorps Case: The Wording of Protocols on Technical Services Luís Eduardo Schoueri and Jonathan Malaquias	263
22.1.	Introduction	263
22.2.	Facts of the case	264
22.3.	The Court's decision	267
22.4.	Comments on the Court's reasoning	267
22.5.	Conclusion	269

Chapter 23:	Greece: Fees for Services Related to Software Katerina Perrou	271
23.1.	Introduction	271
23.2.	Facts of the case	273
23.3.	The Court's decision	276
23.4.	Comments on the Court's reasoning	276
23.5.	Conclusion	278
	Part 6 loyment Income, Directors' Fees, Government Services and Other Income	
Chapter 24:	Switzerland: Severance Compensation in International Football and the Role of Amendments to the OECD Commentaries Michael Beusch and Moritz Seiler	281
24.1.	Introduction	281
24.2.	Facts of the case	281
24.3.	The Court's decision	283
24.4.	Comments on the Court's reasoning	287
24.5.	Conclusion	292
Chapter 25:	Netherlands: Dutch Supreme Court on Tax Treaty Timing Issues, Interpretation of "Director", and Salary Split Mart van Hulten	295
25.1.	Introduction	295
25.2.	Facts of the case	295

25.3.	The Court's decision	297
25.4. 25.4.1. 25.4.2. 25.4.3.	Comments on the Court's reasoning Timing issue of tax treaties Interpretation: "member of the board of directors" Salary split	299 299 302 304
25.5.	Conclusion	305
Chapter 26:	Austria: Pensions of Public Employees and of Their Dependents Under the DTC Austria- Switzerland in Recent Case Law Michael Lang	307
26.1.	Facts of the different cases	307
26.2.	The applicability of article 19 of the Double Taxation Convention of Austria-Switzerland	307
26.2.1.	Payment by "Old Age and Survivors' Insurance"	307
26.2.2.	The division between article 18 and article 19 of the Double Taxation Convention	309
26.2.3.	Widows' pensions and article 19 of the Double Taxation Convention	309
26.3.	Questions of Double Taxation Convention interpretation	312
26.3.1.	"Qualification chaining"?	312
26.3.2.	Relevance of mutual agreements	313
26.3.3.	Subsequent practice	316
26.4.	Summary	318
Chapter 27:	Spain: Inheritance Acquisition of Real Estate by a Non-Resident Foundation: Capital Gain or Other Income? Ricardo García Antón	319
27.1.	Introduction	319
27.2.	Facts of the case and tax authorities' position	320
27.3.	The Court's decision	321

	27.4. 27.4.1.	Comments on the Court's reasoning The Role of the OECD Commentaries	322
	27.4.1.	Inheritance acquisition of real estate and article 13	322
	27.4.2	of the OECD Model Convention	323
	27.4.3.	A necessary reform of article 21 of the OECD Model Convention for real estate acquisitions	325
	27.5.	Conclusions	327
		Part 7	
		Relief from Double Taxation	
CI	napter 28:	Italy: Treaty Tax Credit against the Italian Regional Tax on Productive Activities Supreme Court, Case no. 21047 of 18 July 2023 Guglielmo Maisto and Cesare Silvani	331
	28.1.	Introduction	331
	28.2.	Facts of the case	332
	28.2.1.	A brief description of IRAP	332
	28.2.2.	The case examined by the Supreme Court	333
	28.3.	The Supreme Court's decision	335
	28.4.	Comments on the Court's reasoning	337
	28.4.1.	Comments on the Court's legal reasoning	337
	28.4.2.	The importance of the decision in practice	340
	28.5.	Conclusions	342
CI	napter 29:	Belgium: Judge-Made International Tax Loopholes Sharon Waeytens, Tarcísio Diniz Magalhães and Anne Van de Vijver	343
	29.1.	Introduction	343
	29.2.	Facts of the case	344
	29.3.	The Court's decisions	345

2	29.4.	Comments on the Court's reasoning	347
2	29.5.	Conclusion	350
Chapter 30:		Sweden: Credit for Tax: Questions of Same Income, Application of Different Treaty Articles and Timing Mismatches Katia Cejie	351
3	30.1.	Introduction	351
3	30.2.	Facts of the case	352
3	30.3.	The Court's decision	353
3	30.4.	Comments on the Court's reasoning	355
3	30.5.	Conclusion	356
Cha	pter 31:	India: Interpretation of "Incentive for Promotion of Economic Development" for granting tax sparing credit D. P. Sengupta	359
3	31.1.	Introduction	359
3	31.2.	The treaty provision	361
3	31.3. 31.3.1. 31.3.2.	Facts of the case Taxation of dividends under Omani domestic law The interpretation of the provision by the Revenue Authority	362 363 364
3	31.3.3.	Arguments	366
3 3 3	31.4. 31.4.1. 31.4.2. 31.4.2.1. 31.4.2.2.	The Court's decision Income tax appellate tribunal The High Court Arguments High Court decision The Supreme Court	367 367 368 368 370 372
3	31.4.3.1. 31.4.3.2	Arguments The Supreme Court decision	372 373

31.5.	Comments on the Court's reasoning	374	
31.6.	Conclusion	375	
Part 8 Assistance in Tax Collection and Abuse of Tax Treaties			
Chapter 32:	United States: Application of Exchange of Information Provisions to Non-Residents <i>Yariv Brauner</i>	379	
32.1.	Introduction	379	
32.2.	Facts of the case	379	
32.3.	The Court's decision	381	
32.4.	Comments on the Court's reasoning	382	
32.5.	Conclusion	382	
Chapter 33:	France: Abuse of Rights, Abnormal Acts of Management and Qualification of Income under the Franco-German Treaty Marilyne Sadowsky	383	
33.1.	Introduction	383	
33.2.	Facts of the case	383	
33.3. 33.3.1. 33.3.2.	The Court's decision Censure of the appeal judges' reasoning Settlement of the case on the merits	385 385 386	
33.4. 33.4.1.	Comments on the Court's reasoning Distinction between abuse of rights and artificial arrangements	387 388	
33.4.2. 33.4.3.	On the assessment of abnormal management acts The hybrid nature of the sale-leaseback contract	389 390	
33.5.	Conclusion	391	

Chapter 34:	Argentina: Navigating Treaty Abuse: <i>Praxair</i> SRL v. DGI – Exploring General Anti-Abuse Rules and Holding Company Dynamics Mirna Solange	393
34.1.	Introduction	393
34.2.	Facts of the case	394
34.3.	Arguments of the tax authorities	395
34.4.	Arguments of the taxpayer	396
34.5.	The Court's decision	396
34.6.1. 34.6.2. 34.6.3.	Comments on the Court's reasoning The importance of Supreme Court jurisprudence General anti-abuse rules in tax treaty context The new Argentina-Spain tax treaty (2013)	399 399 400 401
34.7.	Conclusion	403
Chapter 35:	Peru: Applying BEPS Anti-Avoidance Rules and Principles to a Relocation for Share Sales in a Pre-BEPS Context Esteban A. Montenegro Guillinta	405
35.1.	Introduction	405
35.2.	Facts of the case	406
35.3.	The Court's decision	409
35.4.	Comments on the Court's reasoning	410
35.5.	Conclusion	420

Chapter 36:	Spain: Anti-Avoidance Rules and Mutual Agreement Procedure: "Carbon Holding" Revisited by Supreme Court in <i>Iniciativas</i>	423
	Adolfo Martín Jiménez	423
36.1.	Introduction	423
36.2.	The facts	425
36.3.	The judgment of the Audiencia Nacional appealed in cassation	425
36.4.	The judgement of the Supreme Court in cassation in Iniciativas Culturales	427
36.4.1.	The order of the Supreme Court admitting the appeal	427
36.4.2.	The position of Spain and the taxpayer	427
36.4.3.	The Supreme Court judgment in <i>Iniciativas</i>	
	Culturales	429
36.5.	Commentary on the Supreme Court decision	431
36.5.1.	Introduction	431
36.5.2.	Will <i>Iniciativas Culturales</i> also apply after the reform of the domestic MAP Regulation of 2021	
	to adapt it to BEPS Action 14?	431
36.5.2.	The re-interpretation of Carbon Holding in	
	Iniciativas Culturales: a breach of international	
	law?	433
36.5.3.	The problems of <i>Iniciativas Culturales</i> from the	
	perspective of the evolution of the Commentaries	126
	to the OECD Model Convention	436
36.6.	Final conclusion	437