

**Live Webinar**

# International Tax Arbitration in Asia

Thursday, 22 April 2021

11:00 to 14:00 GMT | 19:00 to 22:00 SGT

Brought to you by:



Supported by:



## ABOUT THE CONFERENCE

The Singapore University of Social Sciences (SUSS) School of Law and Tribute are proud to present the inaugural webinar on international tax arbitration with a focus on Asia.

With more than 3,000 Double Tax Agreements (DTAs), the system of DTAs has been the bedrock of the international tax system. For several years, Article 25 of the Model Tax Convention of the Organisation for Economic Co-operation and Development on Income and on Capital ('OECD Model Tax Convention'), and Article 25 of the United Nations Model Double Taxation Convention between Developed and Developing Countries ('UN Model Tax Convention') had relied on a negotiation-based Mutual Agreement Procedure (MAP) as the only mechanism for the resolution of disputes arising from a tax treaty. In order to improve the function of the MAP mechanism, the OECD, in 2008, and the UN Tax Committee, in 2011, introduced a binding ad hoc arbitration clause in Article 25(5) of their respective Model Tax Conventions.

Since then, mandatory arbitration has been recommended by BEPS Action 14 and adopted by a number of countries such as the US and Germany. Europe has advanced far ahead with its Arbitration Convention. In Asia, however, arbitration as a means to resolve disputes in international tax remains at the starting point. The lack of a strong coherent regional multinational grouping and institution, the wide variations of circumstance and capacities of the 40 countries across Asia and the relative lack of experience in international arbitration forums are some of the reasons cited for the paucity of international tax arbitration cases in Asia.

However, two recent arbitral awards involving the Indian government and multinationals has renewed interest in arbitration as an effective means to address cross-border tax disputes. It is with this in mind that we bring you penetrating and comparative insights from the world's leading academic, industry experts, tax professionals, tax administrators and the judiciary in this vastly important area that is a cornerstone of international tax dispute resolution in G20-OECD Base Erosion Profit Shifting project and the upcoming OECD Inclusive Framework Pillar One with a particular focus on Asia.

## ORGANISERS

### **Singapore University of Social Sciences (SUSS) School of Law and the Master of Taxation Programme**

The SUSS [School of Law](#) is Singapore's third law school, set up with a pedagogical approach that emphasises problem-solving by combining the learning of substantive law with the application of it.

The [Master of Taxation](#) programme offered by the School is the only full Masters programme in Singapore. Since the first intake in 2009, the tax courses have been continuously revised and replaced to ensure that tax professionals are provided with a comprehensive programme of study in Singapore and international taxation. With a mix of practitioners, academics and former tax administration officials, the tax courses give tax professionals a thorough grounding in both substantive tax rules and tax policy and to equip them for future practice. The tax courses aim to equip tax professionals with a framework of approach to enable them to deal with issues and challenges of the real world of taxation.

### **Tribute**

[Tribute](#) is an expertise center for international tax dispute resolution.

Tribute aims to promote and support effective approaches for alternative, out-of-court resolution of international tax disputes. These approaches include the use of binding arbitration as well as non-binding supplementary forms of dispute resolution: conciliation, mediation, facilitation, or technical advice.

Tribute has a global coverage, it is neutral and independent, and not for profit. Tribute is supported by leading international tax experts, professionals, academics, and government officials, from all parts of the world.

Tribute offers a platform to all parties, in whatever capacity or of whatever background, that are involved with or take an interest in international tax dispute resolution. Just as much as disputes are a shared concern, effective dispute resolution is a shared concern, and a shared benefit, as well.

The name 'Tribute' is an acronym of 'Tribunal of Tax Experts'. 'Tribute' shares a connotation with the Latin word for tax 'tributum'. Also, it echoes the word 'contribution' – the contribution all Tribute participants alike wish to make to global justice.

## SUPPORTING ORGANISATIONS

### **International Association of Tax Judges (IATJ)**

Since its inception in 2010, the [IATJ](#) has continued to act as a forum for judges to share information, knowledge and an exchange of their views. The IATJ shall promote the exchange of views and experiences on matters submitted to Tax Judges around the world, including information on the organisation and functioning of Tax Courts or Tribunals and the rules of law in jurisdictions worldwide. The IATJ shall collect, correlate and circulate to its members information relating to tax treaties, VAT, best practices, procedures and policies on tax justice, reports on significant case law; analyse the judicial systems and tax jurisdictions by country; develop a framework for E-justice and generally act as a forum for judges to share information, knowledge and an exchange of their views.

### **OECD Centre for Tax Policy and Administration (CTPA)**

The [Centre for Tax Policy and Administration \(CTPA\)](#), as the Secretariat responsible for the OECD's work on tax, supports the Committee on Fiscal Affairs and its subsidiary bodies. Sound tax policies are essential for efficient economies and to promote international trade and investment. Our work on avoiding double taxation through the OECD's Model Tax Convention has been a fundamental part of the international tax architecture for more than 50 years. Our in-depth analysis on the impact of tax systems on labour markets, innovation, environmental concerns and economic growth support efforts worldwide toward economic approaches that promote growth while also fostering fairness and inclusivity.

Our work covers international and domestic issues, across direct and indirect tax matters, and builds on strong relationships with OECD members and the engagement of a large number of non-OECD, G20 and developing countries as well as input from business and civil society. This inclusive approach ensures our solutions are fit for a modern, globalised and digitalised economy.

### **Singapore Chartered Tax Professionals (SCTP)**

The [Singapore Chartered Tax Professionals \(SCTP\)](#) is the national tax body bringing together tax professionals from diverse backgrounds to advance the profession. Launched in 2010, the then Singapore Institute of Accredited Tax Professionals, in 2020, transformed itself into an independent body engaged in all aspects of taxation, with members from a plethora of sectors in business, in practice and government.

With a global view, SCTP leverages the collective expertise of its members in diverse roles across the economy to achieve tax excellence across the profession in support of Singapore's vision of a value-creating economy that is open and connected to the world.

It continues to be an advocate of tax issues and is well poised to be a leading tax institute beyond the borders of Singapore with members well attuned to the business landscape and equipped to partner local and international businesses in their strategic growth from strength to strength.

### **Singapore International Arbitration Centre (SIAC)**

Since commencing operations in 1991 as an independent, not-for-profit organisation, [SIAC](#) has established a track record for providing best in class arbitration services to the global business community. SIAC arbitration awards have been enforced in many jurisdictions including Australia, China, Hong Kong SAR, India, Indonesia, Jordan, Thailand, UK, USA and Vietnam, amongst other New York Convention signatories. SIAC is a global arbitral institution providing cost-competitive and efficient case management services to parties from all over the world.

SIAC has an experienced international panel of over 500 expert arbitrators from over 40 jurisdictions. Appointments are made on the basis of our specialist knowledge of an arbitrator's expertise, experience, and track record. SIAC's panel has over 100 experienced arbitrators in the areas of Energy, Engineering, Procurement and Construction from more than 25 jurisdictions.

The SIAC Rules provide a state-of-the-art procedural framework for efficient, expert and enforceable resolution of international disputes of all sizes and complexities involving parties from diverse legal systems and cultures.

SIAC supervises and monitors the progress of the case. SIAC's scrutiny process enhances the enforceability of awards.

SIAC's administration fees are highly competitive.

### **Tax Academy of Singapore**

The [Tax Academy of Singapore](#) is a not-for-profit institution set up by the Inland Revenue Authority of Singapore in collaboration with the international accounting firms – Deloitte & Touche, Ernst & Young, KPMG and PricewaterhouseCoopers, the Institute of Singapore Chartered Accountants and the Law Society of Singapore. Tax Academy collaborates with leaders in the industry, academia and the government to develop and deliver structured tax training programmes, regular seminars and conferences that effectively raise the professional competency, knowledge and capabilities of the tax community.

### **Tax Notes / Tax Analyst, USA**

[Tax Notes](#) is the first source of essential daily news, analysis, and commentary for tax professionals whose success depends on being trusted for their expertise.

Tax Notes is a portfolio of publications offered by Tax Analysts, a non-profit tax publisher. It provides comprehensive and impartial coverage of tax news, while its commentary contributes important voices to the discussion and understanding of tax policy. It is an indispensable resource for those who teach and study tax law in academia, and for those in the non-profit sector who fight for transparency and fairness and who debate the future of tax law. It is valued by those who practice and provide in-house counsel on tax law in the legal, accounting, and corporate spaces, respectively. These entities all depend on Tax Notes to cut through the noise and focus in on what really matters, with in-depth analysis and insight to simplify complex tax topics and help tax professionals understand the implications for changes in tax policy.

The mission of Tax Analysts is to shed light on tax policy and administration through aggressive, unbiased reporting and informed commentary from the leaders in the field.

## PROGRAMME

Time	Programme
10:45 GMT / 18:45 SGT	<b>Opening of Webinar Channel and Admission of Participants</b>
11:00 GMT / 19:00 SGT	<b>Opening Address by Dean of SUSS School of Law, Professor Leslie Chew, Senior Counsel</b>  Introduction by Conference Chair Sam Sim
11:10 GMT / 19:10 SGT	<b>Introduction to International Tax Arbitration by Tribute Founder and Chair Hans Mooij</b>
11:35 GMT / 19:35 SGT	<b>Special Address by Chief Justice Eugene P. Rossiter, Tax Court of Canada</b>
12:00 GMT / 20:00 SGT	<b>OECD Perspective on International Tax Arbitration in the post-BEPS world, the Role of Arbitration in Pillars 1 &amp; 2 and Getting Asia to Adopt Arbitration in Tax</b>  Speaker: Lee Harley
12:35 GMT / 20:35 SGT	<b>Frontiers of International Tax Arbitration</b> <i>This panel explores international tax arbitration around the world drawing upon trends that hold lessons for Asia.</i> <ul style="list-style-type: none"> <li>• Global trends</li> <li>• Modalities (baseball vs last best offer, mandatory arbitration under the MLI etc.)</li> <li>• Comparative perspectives: (i) US and Latin America and potential lessons for Asia and (ii) arbitration under Competent Authority vs under Bilateral Investment Treaties for tax disputes</li> </ul> Introduction by Conference Chair Sam Sim Speakers: H. David Rosenbloom and Jorge Espinosa
13:15 GMT / 21:15 SGT	<b>Tax Arbitration – Alternative Dispute Resolution Whose Time Has Come for Asia?</b> <i>This panel discussion aims to discuss regional developments of arbitration as an alternative dispute resolution (ADR) for Asia.</i> <ul style="list-style-type: none"> <li>• The state of tax arbitration in Asia, is it still nascent and what is the potential?</li> <li>• Resistance in giving up sovereignty and other potential issues</li> <li>• Perspectives from India (Vodafone and Cairn Energy), Philippines, Singapore</li> </ul> Moderator: Associate Professor Darren Koh Speakers: Tribute Experts Kim S. Jacinto-Henares and Mukesh Butani, and Professor Yansheng Zhu
14:00 GMT / 22:00 SGT	<b>Closing Remarks</b>

## Opening Address by

**Professor Leslie Chew, Senior Counsel**

**Dean, School of Law, Singapore University of Social Sciences**



**Professor Leslie Chew, Senior Counsel**, is the founding and current Dean of the School of Law at the Singapore University of Social Sciences. He has practised law in one form or another for over 4 decades. He was appointed Senior Counsel in 2000. In 2007 he was appointed a judge in the State Courts where he remained until his retirement in 2014. At the State Courts he was the Senior District Judge leading the Civil Justice Division. He retired from the judiciary in 2014. Upon his retirement from the Singapore Legal Service, he returned to law practice. Currently, he is a Senior Consultant at RHT

Law Asia LLP. He has an active practice as an arbitrator in International Commercial Arbitrations.

## Special Guest of Honour

**Chief Justice Eugene P. Rossiter, Tax Court of Canada**



**The Honourable Chief Justice Eugene P. Rossiter** was educated at St. Francis Xavier University (BBA 1974) and Dalhousie University (LLB 1978). He was called to the Bar of Prince Edward Island in 1978 and appointed Queen's Counsel in 1991. From 1978 to 2006, he was Senior Partner at Stewart McKelvey (formerly Stewart McKelvey Stirling Scales, Scales Jenkins McQuaid). Mr Rossiter was appointed Judge of the Tax Court of Canada in 2006, Associate Chief Justice of the Tax Court of Canada in 2008 and Chief Justice of the Tax Court of Canada in 2014. He became a founding Director and Secretary General of the International Association of Tax

Judges (IATJ) in 2010 and has been President of the IATJ since 2011.

## Conference Chair



**Sam Sim**, LL.M (NYU LL.M), MA (Cantab), is board member of Tax Analysts, member of International Association of Tax Judges and Tribute Arbitration expert panel member. He was former Regional Vice-President (EMEA, Asia and Latin America) and Asia President of the Tax Executive Institute and Chair of the Capital Markets Tax Committee TP Sub-Committee.

Sam is passionate in digital taxation having served as an expert to the United Nations on digital taxation Pillar 1 and a consultant to the Asia Development bank. He has also taught transfer pricing and digital taxation at SUSS School of Law Master of Taxation programme for 10 years and serves as a senior advisor to the Vienna University Global Tax Policy Centre and a research fellow at the SMU Centre for Artificial Intelligence and Data Governance. He brings industry experience to bear in his academic pursuits having led global and regional teams at a Forbes 50 US IT multinational enterprise and a FTSE 100 financial institution.

## Tribute Executive Chair



**Hans Mooij** is an independent tax counsel specialising in international tax compliance and controversy. He assists corporate clients as well as governments. As tax treaty consultant he has worked for various international organisations including OECD, United Nations, and IMF.

He is visiting Professor at the International Tax Centre (ITC) Leiden, and at the University of Amsterdam School of Law, in the Advanced LL.M International Tax Law program it organises jointly with IBFD.

Before entering private practice, he, for many years, served the Netherlands Government as tax treaty negotiator, as Competent Authority in tax treaty matters, as prime litigator in tax treaty and EU law cases before the Dutch Supreme Court and the Court of Justice of the European Union, and as delegate to the OECD Working Party No 1 on the Model Tax Convention and member of its Steering Group.

He chairs the TRIBUTE organisation, an independent, global initiative of leading experts in international taxation, which seeks to spread awareness of tax arbitration and tax mediation among the global tax community and avails experts for appointment as arbitrator, mediator or technical advisor in disputes on tax treaty or cross-border tax issues.

## OECD Perspective on International Tax Arbitration in the post-BEPS world, the Role of Arbitration in Pillars 1 & 2 and Getting Asia to Adopt Arbitration in Tax

### Speaker



**Lee Harley** is the Acting Head of the Tax Treaty Unit, within the OECD's Centre for Tax Policy and Administration. Prior to joining the OECD in 2018, Lee spent five years as a tax treaty negotiator for the United Kingdom, also serving as a delegate to Working Party 1 and an observer at the UN Tax Committee. As a treaty negotiator and competent authority, Lee oversaw the resolution of disputes under the mutual agreement procedure outside the transfer pricing sphere. Between 2011 and 2013 Lee served as the UK delegate to JITSIC, based in Washington DC, and prior to that he held a number of policy roles in Her Majesty's Revenue & Customs, advising HM Treasury ministers on domestic and international tax matters and delivering legislative products such as the Diverted Profits Tax. In his current role, Lee is closely involved in the development of the Pillar One and Two solutions to the tax challenges arising from digitalisation and the ongoing implementation of the treaty-related BEPS measures, including via the MLI.

## Frontiers of International Tax Arbitration

### Speakers



**H. David Rosenbloom** became the director of the International Tax Program in 2002. He is a member of Caplin & Drysdale, Chartered, a firm he re-joined in 1981 after serving as International Tax Counsel and Director, Office of International Tax Affairs, in the US Treasury Department from 1978 to 1981. He has also served as tax policy adviser for the US Treasury, the OECD, AID, and the World Bank in Eastern Europe, the former Soviet Union, Senegal, Malawi, and South Africa. Rosenbloom's major areas of practice include international tax controversies, transfer pricing planning and disputes, advance pricing agreements, the foreign tax credit, tax treaties, financial products and financial institutions, and international aspects of corporate and individual tax planning. He is the author of numerous articles on international tax issues.



**Jorge Espinosa** is Managing Partner at EGB Abogados, Director of the Board WTS Global, member of the Board of Lataxnet and professor at the Universidad Católica de Chile. He is an Attorney at Law and expert on international tax. Mr. Espinosa studied his degree and LLM in tax law in the Universidad de Chile, and an International Tax Program (ITP) at Harvard Law School. He is a PhD candidate at UCL Louvain, Belgium. Founder and former member of the board of IFA Chile, and former member of the board of the Chilean Institute of Tax Law. He worked for the Chilean government as head of the cabinet and was a legal advisor at the Labor

Ministry. Nominee as one of the final candidates for Director of the Internal Revenue Service of Chile.

## Tax Arbitration – Alternative Dispute Resolution Whose Time Has Come for Asia?

### Moderator



**Associate Professor Darren Koh** graduated top of his Bachelor of Law class at the University of Buckingham, winning the Maxwell Law Prize for his year, and was called to the Bar in England & Wales in 1989. He is also a Chartered Accountant (England and Wales) and a Chartered Tax Adviser (United Kingdom). He embarked on a tax career in public practice with PricewaterhouseCoopers in London and KPMG in Hong Kong, and in industry with Procter & Gamble. He has also spent 2 years in International Law with a branch of the Security Council of United Nations known as the

United Nations Compensation Commission, advising Commissioners on the verification and valuation of war reparation claims filed against Iraq after the first Gulf War. He returned to Procter & Gamble after his stint at the UN, and finally left Procter & Gamble as Associate Director for the ASEAN/Australasia/India region to pursue a career in academia. His career has taken him around the world from London to Hong Kong, to Kobe, to Geneva, to Singapore, to Cincinnati, Ohio and back again to Singapore.

He obtained his Master of Laws (awarded with Merit) from the University of London, and joined the School of Business of SIM University (now the Singapore University of Social Sciences) as firstly as Head of Area – Taxation and Business Law, and is now the Vice-Dean of the School of Law as well as the Head of Programme – Master of Taxation.

## Speakers



**Kim S. Jacinto-Henares**, from the Philippines, is an International Consultant providing tax, legal and management consultancy for various entities, domestic and international. Concurrently, she is a Senior Adviser with Albright Stonebridge Group. She is one of the founders and Director of RegTek, Inc., a Filipino-Estonian joint venture company focused on establishing sustainable digital identity systems to national as well as to corporate clients to make any digital transaction secure and trusted and offering full range of competency on digitalisation and cybersecurity. She is one

of the Commissioner in the Independent Commissioner for the Reform of International Corporate Taxation or better known as ICRICT. ICRICT is a group of leaders from around the world that believes there is an urgent need and an unprecedented opportunity to bring about significant reform of the international corporate taxation, and aims to promote the reform debate through a wider and more inclusive discussion of internal tax rules than is possible through any other existing forum; to consider reforms from a perspective of global public interest rather than national advantage; and to seek fair, effective and sustainable tax solutions for development. She is also a member of the Board TRIBUTE Foundation for International Tax Dispute Resolution, an expertise center for international tax dispute resolution which aims to promote and support effective approaches for alternative, out-of-court resolution of international tax disputes. She was a member of the UNESCAP Eminent Expert Group on Tax Policy and Public Expenditure Management and was a member of the UN Committee of Experts on International Cooperation in Tax Matters. Until recently, she served as the Commissioner of the Philippines Bureau of Internal Revenue. She, as a representative of her country, had been an active participant in OECD Global Forum's Transparency and Exchange of Information and OECD Global Forum's Base Erosion and Profit Shifting.



**Mukesh Butani** is Managing Partner at BMR Legal and an acknowledged expert on international tax and transfer pricing. He is a former international tax partner of "big four" accounting firms and a board member of Taxand, an international network of leading tax firms. Mr Butani served as a member of the OECD's business restructuring advisory group, and is presently Vice-Chairman of the International Chamber of Commerce (ICC) Taxation Commission, member of the United Nations Sub-Committee of Tax Experts on Transfer Pricing and Tax Dispute Resolution, member of the Tax Bureau of the OECD-BIAC. He is a member of the International Fiscal Association's

Permanent Scientific Committee (2010 to 2016). Mr Butani is author of the acclaimed treatise "Transfer Pricing - An Indian Perspective", and has co-authored IBFD's "Transfer Pricing & Customs Valuation" and "Transfer Pricing & Business Restructuring".

## Speakers



**Yansheng Zhu** is a professor at the Law School of Xiamen University (XMU), the associate director of the Centre for International Tax Law and Comparative Taxation in XMU. His academic expertise is in the tax law and commercial law, specialising in international tax law, international investment law and Chinese company law and trust law. He published many articles, books within or outside China, such as *Principle of Permanent Establishment in Tax Treaties* (Law Press, China, 2006), *International Tax Law* (co-authored and co-edited, a textbook for undergraduate students, High Education Press, China, 2008), *Europe-China Tax Treaties* (Co-authored, Kluwer

Law International, 2010), *The Impact of Bilateral Investment Treaties on Taxation*, (Co-authored, IBFD, 2017) and *Implementing Key BEPS Action: Where Do We Stand?*(Co-authored, IBFD, 2019). He was a visiting scholar at Boston University Law School in 2003-2004, a visiting professor at the National Taiwan University Law School from April to June in 2009, and a Fulbright Scholar at Georgetown University Law Centre in 2011-2012. He served as a member of the Subcommittee on Tax Treatment of Services of the UN Committee of Experts on International Cooperation in Tax Matters in 2014-2016. He received his LLB, LLM, and JSD from Xiamen University. Currently, he is vice-chairman of the Society of Fiscal Law in Fujian Province of China, and a member of the Standing Council of China's Society of Fiscal Law.