

ANNUAL JUDICIAL CONFERENCE OF THE
UNITED STATES COURT OF FEDERAL
CLAIMS
November 9, 2023

Litigation of Claims under Tax Treaties

H. David Rosenbloom
Peter H. Blessing
Jason Bergmann

I. The Purposes of [U.S.] Tax Treaties

- A. Avoid Double Taxation
- B. Prevent Fiscal Evasion
- C. Create a Dispute-Resolution Mechanism
- D. Reduce Excess Taxation
- E. Make a Foreign Policy Statement

II. U.S. Tax Treaty Policies

- A. Reduce Taxation at Source
- B. Impede Treaty Shopping
- C. Limited Benefits for U.S. Persons
- D. Very Limited Restriction of State Taxation
- E. Adhere Insofar as Possible to Well Recognized Models

III. Interpretation of U.S. Tax Treaties

- A. Individually Negotiated – Consequences?
- B. Bilateral Agreements – Consequences?
- C. Only the Senate Has a Role in Approval – Consequences?
- D. Derivation From OECD Model – Consequences?
- E. Accompanied to the Senate by Technical Explanations – Consequences?

IV. The Treaty/Code Relationship

- A. The Supremacy Clause
- B. Availability of Overrides
- C. Reality of Overrides
- D. What Is an Override?
- E. Relevance of Non-Tax Law
- F. The Peculiar Challenge of the TCJA

V. Court of Federal Claims Litigation

- A. Subject matter jurisdiction [28 U.S.C. § 1502; I.R.C. § 7422(f)(1)]
- B. Why cases are filed in this Court
- C. Notable cases
- D. Evidentiary issues – proving the treaty partner's intent

VI. Recent Developments