

10TH ANNUAL

# TAX PLANNING STRATEGIES U.S. AND EUROPE

ODD FELLOW PALÆET • COPENHAGEN, DENMARK  
JUNE 3-4, 2010



CONFERENCE PROGRAM



## Organizer Information

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### American Bar Association Section of Taxation

740 15th Street, NW  
Washington, DC 20005, USA

**[www.abanet.org/tax](http://www.abanet.org/tax)**



As the national representative of the legal profession, the mission of the ABA Section of Taxation is to serve our members and the public through education and leadership to achieve an equitable, efficient, and workable tax system. The Tax Section puts all of the latest information on administrative and procedural developments right at your fingertips. Our publications, programs, and expert advice help you navigate the constantly changing landscape of tax law. To learn more about the Tax Section, please visit **[www.abanet.org/tax](http://www.abanet.org/tax)**.

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### IFA – USA Branch

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c/o IFA USA Branch  
2604 Elmwood Avenue, Suite 347  
Rochester, NY 14618, USA

**[www.ifausa.org](http://www.ifausa.org)**



The International Fiscal Association (IFA) was established in 1938 with its headquarters in the Netherlands. It is the only non-governmental and non-sectoral international organization dealing with fiscal matters. Its objects are the study and advancement of international and comparative law in regard to public finance, specifically international and comparative fiscal law and the financial and economic aspects of taxation. To learn more about IFA, please visit **<http://www.ifa.nl/>**.

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### Suomen Veroasiantuntijat

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### Institute for International Taxation, Inc.

c/o Richard M. Lipton  
Baker & McKenzie LLP  
130 East Randolph Drive, Suite 3900  
Chicago, IL 60601, USA



Dear Colleagues:

The global economic downturn of the last 18 months has put pressure not only on governments but also on our clients and their business operations. Governments have poured trillions into a variety of economic stimulus programs and with many of their corporate taxpayers incurring losses are searching for revenue raisers to reduce their deficits. Multinationals are facing new government international tax initiatives in the many jurisdictions in which they operate at a time when there are enormous economic stresses to their profitability. To be effective as tax professionals, we must be even more up to date on tax developments as they occur. This awareness permits us to identify the opportunities which these developments afford our clients to compete effectively and to address the current economic, tax and business realities.

The Tenth Annual Tax Planning Strategies – U.S. and Europe Conference is a unique collaboration of the ABA Section of Taxation and of IFA – USA and the Scandinavian IFA Chapters together with Advokaternes Forening for Skatteret and Suomen Veroasiantuntijat.

I would like to thank Dreyers Fond and Alter Domus as well as our law firm sponsors for their generous support of this Conference. The efforts of our organizers and the support of our sponsors has allowed us to present this Conference at a fantastic venue and to offer two full days of outstanding continuing legal education at a very affordable price. The Conference will address a wide range of developments in international tax and planning strategies with specific focus on multinational business operations which span the U.S. and Europe, including a broad range of topics from mergers and acquisitions, corporate migration, debt financing to business restructuring and realization of distress assets. We will also feature a special panel which will address the roles of the tax practitioner, the accountant and the industry executive in regard to financial reporting and transparency. We are fortunate this year to add to the Conference three sessions, one focusing on tax policy and its impact on corporate international planning, another all industry panel on transfer pricing and a third government roundtable which will address many of the controversial issues on government policies from the past 12 months.

The Conference will go beyond the typical review of current tax rules by using a case study approach to highlight the hands on experience of leading tax executives and practitioners who will describe transactions in which they themselves played a role. Each session will pose critical questions with speakers providing insights on a very high level as to the impact of the most recent legislation and judicial developments and important answers designed to build awareness and understanding of significant changes and trends, as well as a review of issues and opportunities, in international tax structuring.

The Conference offers participants not only the chance to find out what has happened in the last twelve months but also to have the views of market leaders as to what is in store for the future. I urge you to take advantage of this exceptional opportunity to participate in shaping the ideas which will provide the basis for international planning onto 2011.

Sincerely



Elinore Richardson  
Vice Chair - International Programs,  
Professional Services Committee  
ABA Section of Taxation

## Conference Co-Chairs

**Elinore J. Richardson**  
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**Nikolaj Bjørnholm**  
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**Ossi Haapaniemi**  
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Helsinki, Finland

**Joachim M. Bjerke**  
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**Martin Nilsson**  
Mannheimer Swartling  
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## Speakers

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Van Doorne Amsterdam  
Amsterdam, The Netherlands

### **Clive Baxter**

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### **Guillermo Canalejo Lasarte**

Úría Menéndez  
Madrid, Spain

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### **Stuart Chessman**

Vivendi S.A.  
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Plesner  
Copenhagen, Denmark

### **Albert Collado**

Garrigues  
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DEHNEN.Lawyers  
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Leitner Leitner  
Linz, Austria

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Chambers of Lord Grabiner QC  
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Dewey & LeBoeuf LLP  
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Redmond, WA, USA

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### **Wilhelm Haarmann**

Haarmann  
Partnerschaftsgesellschaft  
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HM Revenue & Customs  
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### **Eric Hess**

Swiss Confederation, Federal  
Department of Finance  
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### **Julia Kouchnirenko**

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**Frederik Zimmer**  
Department of Public and  
International Law  
Oslo, Norway



## Thursday, June 3, 2010

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8:00 a.m. – 8:30 a.m.

### Registration and Networking

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8:30 a.m. – 10:30 a.m.

Plenary Session

### Recent International Tax Developments

This session will consider a number of recent international tax developments and emerging global trends from those developments which will impact planning by MNEs. Among the issues to be addressed will be the increase in legislative focus on international tax policy and steps taken by various tax administrations to on the one hand, enhance global competitiveness to attract investment while at the same time, protecting the domestic tax base. Other major considerations such as how jurisdictions will collect and exchange information and the types of taxes which jurisdictions will favor going forward will also be highlighted.

**CO-CHAIRS:** Peter Canellos, Wachtell, Lipton, Rosen & Katz, New York, NY; Elinore J. Richardson, Borden Ladner Gervais LLP, Toronto, ON, Canada

**SPEAKERS:** Malcolm Gammie, Chambers of Lord Grabiner QC, London, England; Theo Keijzer, Shell International B.V., The Hague, The Netherlands; Oleg Konnov, Herbert Smith CIS LLP, Moscow, Russia; Joshua Odintz, U.S. Department of the Treasury, Washington, DC; Frederik Zimmer, Department of Public and International Law, Oslo, Norway

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10:30 a.m. – 10:45 a.m.

### Networking Coffee Break

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10:45 a.m. – 12:45 p.m.

Workshop Session A

### Investing Into, Through and From Denmark, Norway, Finland and Sweden: What You Need to Know

This panel will present various case studies that review practical tax planning structures for investing in Denmark, Finland, Norway, Sweden, Poland and Russia. Share based acquisitions or combinations will be analyzed in situations where companies from the EU, EEA and third countries like the U.S. are involved. The panel will also consider tax-efficient repatriation mechanisms, including cross-border dividends, interest and royalties and the related thin-capitalization rules and withholding obligations. Where appropriate, the panelists will comment on whether their respective countries are useful as intermediary holding companies for countries like Russia and Poland.

**CO-CHAIRS:** Ossi Haapaniemi, Hannes Snellman, Helsinki, Finland; Sam Kaywood, Alston & Bird LLP, Atlanta, GA, USA

**SPEAKERS:** Christer Tonder Bell, TDC A/S, Copenhagen, Denmark; Lasse Esbjerg Christensen, Plesner, Copenhagen, Denmark; Julia Kouchnirenko, Marccus Partners, Moscow, Russia; Espen Nordbø, Advokatfirmaet Haavind AS, Oslo, Norway; Nils Sköld, Kilpatrick Stockton LLP, Stockholm, Sweden; Dariusz Wasylkowski, Wardynski & Partners, Warsaw, Poland

## THURSDAY, JUNE 3, 2010 (CONTINUED)

10:45 a.m. — 12:45 p.m.

Workshop Session B

**R&D Incentives for Foreign Investment in Europe and How They Work**

This workshop will focus on the special treatment accorded to R&D activity in the various represented jurisdictions including credits, capital allowances, reduced rates of tax on income, and special treatment accorded expatriates. Special emphasis will be given to the effectiveness of the incentives in light of their administration, how cross-border treatment of income from R&D activity affects the desirability of the jurisdiction as a site for R&D activity, the propensity of cross-border acquisitions to increase or decrease R&D activity and the impact of cost sharing and joint venture taxation on the location of R&D activity.

**CO-CHAIRS:** Peter Utterström, Delphi & Co., Stockholm, Sweden; Reeves C. Westbrook, Covington & Burling LLP, Washington, DC, USA

**SPEAKERS:** Albert Collado, Garrigues, Barcelona, Spain; Jacques-Henry de Bourmont, Marcuss Partners, Paris, France; Sylvia Dikmans, Houthoff Buruma, Amsterdam, The Netherlands; Johannes Frey, Shearman & Sterling LLP, Frankfurt am Main, Germany; Narcis Robles, Sanofi-Aventis, Barcelona, Spain; Jean Schaffner, Allen & Overy LLP, Luxembourg, Luxembourg

10:45 a.m. — 12:45 p.m.

Workshop Session C

**Cross Border Financing: The Basics and the New Landscape**

Financing strategies play an integral role in any cross-border acquisitive transaction. Financing strategies can enhance the success of an acquisition by maximizing deductible amounts, minimizing withholding taxes, and reducing the overall tax burden of the acquiring party. This session will initially address basic financing strategies by referring to recent financing transactions by European and U.S. corporations. In addition, the session will discuss new and more exotic techniques that have developed in the current market place, including covered bonds based on guaranteed loans, hybrid instruments, total return swaps/derivatives and other ways to finance acquisitions in a tight credit environment. Guarantee transactions, particularly as they are treated under U.S. IRC section 956, will also be addressed.

**CO-CHAIRS:** Kevin M. Keyes, Fried, Frank, Harris, Shriver & Jacobson LLP, Washington, DC, USA; Ståle R. Kristiansen, Thommessen, Oslo, Norway

**SPEAKERS:** Kimberly S. Blanchard, Weil, Gotshal & Manges LLP, New York, NY, USA, Patrick Mears, Allen & Overy LLP, London, England; Thomas Meister, Walder Wyss & Partners, Zürich, Switzerland; Stefano Petrecca, Di Tanno E Associati Studio Legale Tributario, Rome, Italy; Andreas Risi, UBS AG, Zürich, Switzerland; Clemens Philipp Schindler, Wolf Theiss, Vienna, Austria

12:45 p.m. — 1:45 p.m.

**Networking Lunch**

1:45 p.m. — 3:45 p.m.

Concurrent Session A

**Transfer Pricing: An MNE Perspective**

This panel will provide a review by multinational companies of key recent transfer pricing developments. The speakers will link these developments to changes in national legislation and international guidance and draw implications for the continued use of transfer pricing structures that involve the centralization of IP, finance or risk-bearing by MNEs. The industry experts will also address the impact of more aggressive attitudes by tax administrations on their organizations.



**CO-CHAIRS:** Daniel Beeton, Freshfields Bruckhaus Deringer LLP, London, England; Joachim M. Bjerke, Bugge, Arentz-Hansen & Rasmussen, Oslo, Norway; Richard L. Slowinski, Baker & McKenzie LLP, Washington, DC

**SPEAKERS:** Per Degerman, NASDAQ OMX, Stockholm, Sweden; Stefan Keil, Bombardier Transportation GmbH, Berlin, Germany; Robert Risse, Henkel AG & Co. KGaA, Düsseldorf, Germany; Anne-Ma Tostrup Smith, Statoil ASA, Oslo, Norway; Michael M. Sufrin, Rolls-Royce PLC, Derby, England; Dirk Van Unnik, GE International, Inc., Oisterwijk, The Netherlands

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1:45 p.m. – 3:45 p.m.

Concurrent Session B

### **Migrating Corporations Across Borders**

This panel will focus on a variety of cross-border corporate migration transactions and inversions. Discussion will address key business and tax motivations for these transactions and relevant local law rules designed to address perceived abuses. These rules (including the U.S. inversion rules) will highlight issues at both the shareholder and corporate levels.

**CO-CHAIRS:** Hal Hicks, Skadden, Arps, Slate, Meagher & Flom LLP, Washington, DC, USA; Nikolaj Bjørnholm, Bech-Bruun, Copenhagen, Denmark

**SPEAKERS:** Ewout van Asbeck, Van Doorne N.V., Amsterdam, The Netherlands; Thierry Boitelle, Altenburger, Geneva, Switzerland; Joseph Duffy, Matheson Ormsby Prentice, Dublin, Ireland; Fred R. Gander, Dewey & LeBoeuf LLP, London, England; Thierry Lesage, Arendt & Medernach, Luxembourg, Luxembourg; Neil Sharman, Brit Insurance Holdings N.V., London, England

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3:45 p.m. – 4:00 p.m.

### **Networking Coffee Break**

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4:00 p.m. – 6:30 p.m.

Plenary Session

### **Cross Border Mergers & Acquisitions: How Is It Done During a Global Economic Downturn?**

This panel will review recent trends in cross-border M&A, using various deals of the past 18 months as examples, whereby the various speakers will try to identify current trends. While there has been a noticeable drop in both deal size and number of deals, the crisis has also resulted in new issues and opportunities for tax practitioners advising on M&A transactions.

**CO-CHAIRS:** Paul Sleurink, De Brauw Blackstone Westbroek, Amsterdam, The Netherlands; Willard Taylor, Sullivan & Cromwell, LLP, New York, NY, USA

**SPEAKERS:** Stephen Edge, Slaughter and May, London, England; Gabe Gartner, Microsoft Corporation, Redmond, WA, USA; Wilhelm Haarmann, Haarmann Partnerschaftsgesellschaft, Frankfurt am Main, Germany; Emine Lundkvist, Setterwalls, Stockholm, Sweden; Guglielmo Maisto, Maisto e Associati, Milan, Italy; Edouard Milhac, CMS Bureau Francis Lefebvre, Paris, France; Ole Schmidt, Accura Advokataktieselskab, Hellerup, Denmark

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6:00 p.m. – 8:00 p.m.

### **Conference Cocktail Reception**

**Friday, June 4, 2010**

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**8:00 a.m. — 8:30 a.m.****Registration and Networking**

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**8:30 a.m. — 10:30 a.m.****Plenary Session****Government Roundtable**

Tax administrators and policy makers will address recent developments in the area of information gathering by governments, new treaties and TIEAs, and other information exchange mechanisms; legislative changes, unilateral government practices and their limits; tax haven transparency; and national measures and joint government initiatives with respect to transfer pricing and corporate tax avoidance.

**CO-CHAIRS:** Marcus Desax, Walder Wyss & Partners, Zürich, Switzerland; Pamela Olson, Skadden, Arps, Slate, Meagher & Flom LLP, Washington, DC, USA

**SPEAKERS:** Marco Felder, Fiscal Authority, Principality of Liechtenstein, Vaduz, Liechtenstein; Dave Hartnett, HM Revenue & Customs, London, England; Eric Hess, Swiss Confederation, Federal Department of Finance, Berne, Switzerland; Peter Loft, Skatteministeriet, Copenhagen, Denmark; Joshua Odintz, U.S. Department of the Treasury, Washington, DC

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**10:30 a.m. — 10:45 a.m.****Networking Coffee Break**

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**10:45 a.m. — 12:45 p.m.****Workshop Session A****Transfer/Reallocation/Restructuring of Business Functions within a MNE Group**

This panel will explore the various issues involved in cross-border restructuring of business functions and will include subjects such as intangibles migration along with function and risk allocation among various jurisdictions. Examples of restructuring a distributor to a commissionaire or limited risk distributor will be examined.

**CO-CHAIRS:** Nicholas J. DeNovio, Latham & Watkins LLP, Washington, DC, USA; Arne Møllin Ottosen, Kromann Reumert, Copenhagen, Denmark

**SPEAKERS:** Peter H.M. Flipsen, Simmons & Simmons, Rotterdam, The Netherlands; Peter Maher, A&L Goodbody, Dublin, Ireland; Paul Morton, Reed Elsevier Group PLC, London, England; Vesa Rasinaho, Roschier, Helsinki, Finland; Wolf-Georg Von Rechenberg, CMS Hasche Sigle, Berlin, Germany; Lucie Vorlíčková, Leitner Leitner, Prague, Czech Republic

10:45 a.m. – 12:45 p.m.

Workshop Session B

The Global Assault on Banks and Financial Managers

This panel will address several ways in which governments are reacting to the worldwide financial crisis. Among the first topics to be reviewed will be in the U.K. proposed bank payroll tax. The panel will discuss why the U.K. is making this policy choice and why certain other governments have opted not to follow suit. Other issues to be addressed are FIN 48 in the context of hedge and investment funds (although this is a U.S. GAAP requirement, it nonetheless has an impact outside the U.S.), the erosion of bank secrecy through new reporting obligations such as the FATCA provisions in the U.S., and the new proposals and rules concerning financial managers. The impact of these developments on the way in which financial and investment managers will operate going forward will be considered.

**CO-CHAIRS:** Janne Juusela, Borenius & Kemppinen Ltd., Helsinki, Finland; Carol P. Tello, Sutherland Asbill & Brennan LLP, Washington, DC, USA

**SPEAKERS:** Francesco Capitta, Di Tanno e Associati, Rome, Italy; Frederic Feyten, Oostvogels Pfister Feyten, Luxembourg, Luxembourg; Nairy Merheje, Nairy der Arakelian-Merheje Law Office, Nicosia, Cyprus; Chris Spooner, HSBC Holdings plc, London, England; Dominic Stuttford, Norton Rose LLP, London, England; Sonia Velasco Menal, Cuatrecasas, Gonçalves Pereira, Barcelona, Spain

10:45 a.m. – 12:45 p.m.

Workshop Session C

Treaties and the Challenge to Group Holding/Finance Entities

This panel will explore the approaches that various countries and the EU are taking (under domestic tax laws, EU law and by treaty) with respect to utilization of intermediate holding, financing and licensing entities. The discussion will cover the evolving approaches to “substance” as well as “limitation of benefits” restrictions imposed under tax treaties and unilaterally. The panel will present practical case studies on how to work with these regimes in establishing tax-efficient cross-border structures.

**CO-CHAIRS:** Seth J. Entin, Greenberg Traurig, P.A., Miami, FL, USA; Martin Nilsson, Mannheimer Swartling, Stockholm, Sweden

**SPEAKERS:** Guillermo Canalejo Lasarte, Uría Menéndez, Madrid, Spain; Jean-Blaise Eckert, Lenz & Staehelin, Geneva, Switzerland; Michael Glover, KPMG LLP, Budapest, Hungary; Remko van Roekel, Citco Nederland B.V., Amsterdam, The Netherlands; Marc Sanders, VMW Taxand, Amsterdam, The Netherlands; Klaus Sieker, Flick Gocke Schaumburg, Frankfurt am Main, Germany

12:45 p.m. – 2:00 p.m.

Luncheon and Keynote Address

**INTRODUCTION:** Alter Domus, Luxembourg

**KEYNOTE:** Clive Baxter, A.P. Møller - Mærsk A/S, Copenhagen, Denmark

## FRIDAY, JUNE 4, 2010 (CONTINUED)

2:00 p.m. – 4:30 p.m.

Concurrent Session A

**Governments and Information Gathering: Impact on MNE Planning**

Viewing service providers and financial institutions as gatekeepers of information, governments are demanding detailed information on taxpayers and transactions. It begins with mandated due diligence and reporting at the beginning of a potential client relationship, continues to financial statement disclosure of uncertain tax positions in the course of an engagement, which may be accompanied by mandated transparency in the tax return preparation process, and finishes with government-to-government information exchanges. This panel will examine rules in selected countries and will explain how MNEs and their advisers are responding.

**CO-CHAIRS:** Eirik Jensen, Kluge, Oslo, Norway; Stanley C. Ruchelman, The Ruchelman Law Firm, New York, NY, USA

**SPEAKERS:** Mark van Casteren, Loyens & Loeff N.V., Amsterdam, The Netherlands; Stuart Chessman, Vivendi S.A., New York, NY, USA; Peter H. Dehnen, DEHNEN.Lawyers, Düsseldorf, Germany; Gerald Gahleitner, Leitner Leitner, Linz, Austria; Michael T. McGowan, Sullivan & Cromwell LLP, London, England; Henk Verstraete, Liedekerke Wolters Waelbroeck Kirkpatrick, Brussels, Belgium

2:00 p.m. – 4:30 p.m.

Concurrent Session B

**Distressed Asset Sales and Loss Utilization**

This session will survey the relevant rules, many of which are quite complex, in a number of jurisdictions which govern corporations in financial distress, including the consequences of debt for equity exchanges, cancellation of indebtedness, the ability to use net operating losses and other tax attributes subsequent to debt restructurings and the tax treatment of costs incurred in financing and restructuring transactions. These issues will be discussed in the context of major global restructuring transactions which have occurred during the past several months.

**CO-CHAIRS:** Christian Athanasoulas, KPMG LLP, Philadelphia, PA, USA; Maarten De Bruin, Stibbe, Amsterdam, The Netherlands

**SPEAKERS:** Daniel Friel, Latham & Watkins LLP, London, England; Friedrich E.F. Hey, Debevoise & Plimpton, Frankfurt am Main, Germany; Sari Laaksonen, Castren & Snellman, Helsinki, Finland; Mattias Schomer, Vinge, Stockholm, Sweden; Preben Jøker Thorsen, A.P. Møller - Mærsk A/S, Copenhagen, Denmark; Christian Wimpissinger, Binder Grösswang, Vienna, Austria



## General Information

Venue Location: **Odd Fellow Palæet**  
Bredgade 28  
1260 Copenhagen  
Denmark  
<http://www.oddfellowpalæet.dk/>

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### Registration

Registration will be available beginning at the Odd Fellow Palæet at 8:00 a.m. on Thursday, June 3. All individuals attending any part of the Conference must register and pay the registration fee. Shared registrations are not permitted. The registration fee includes one set of meeting materials on USB and permits registrants to attend all panel sessions. Payment may be made by check or credit card. American Express, MasterCard and VISA are accepted.

### Social Activities and Tours

Wednesday, June 2

4:30 p.m. – 6:00 p.m. (*limited availability*)

#### Guided Tour of the State Museum of Art

Saturday, June 5

10:00 a.m. departure\*; 3:30 p.m. approximate arrival back to Copenhagen (*limited availability*)

#### Tour of Louisiana Museum of Modern Art

A bus will transport attendees from Copenhagen to the Louisiana Museum of Modern Art.

*\*Includes transportation to and from museum and lunch.*

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### Dress Code

The dress code for the Conference is business casual. Business casual is defined as a collared shirt and slacks for men and appropriate attire for women.



# NOTES

# FUTURE MEETINGS / CLE CALENDAR



## ABA SECTION OF TAXATION CLE CALENDAR

[www.abanet.org/tax/calendar](http://www.abanet.org/tax/calendar)

202.662.8670

DATE	PROGRAM	LOCATION
September 23-25, 2010	Joint Fall CLE Meeting Co-sponsored by the ABA Section of Real Property, Trust, and Estate Law	Sheraton Toronto Toronto, ON, Canada
January 20-22, 2011	Midyear Meeting	Boca Raton Resort & Club Boca Raton, FL, USA

## IFA USA BRANCH CALENDAR

[www.ifausa.org](http://www.ifausa.org)

866.298.9464

DATE	PROGRAM	LOCATION
February 24-25, 2011	2011 IFA USA Branch Annual Meeting	Intercontinental Buckhead Atlanta Hotel Atlanta, GA, USA
September 30- October 4, 2012	2012 IFA International Congress	Boston, MA, USA

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