

"International tax news, explained"

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19 July 2019



HAPPY FRIDAY!

The **G7 finance leaders** show good, old-fashioned deal-making in **France**: you support my proposal and I'll support yours. And **Steven Mnuchin** is far too polite to aggressively attack his host on the **DST** – or maybe he was just worried that something might be slipped into his soup!

Uber gets caught out by the draftsman's pen in **Australia**, **IKEA** has a bad year in **Spain**, and **couriers** are being scrutinised in **Slovenia** (no, it's not what you think!).

Rackspace keeps control, **Mr Faizal** wins by a triumph of form over substance, **Japan** helps **Belgium**, a **drilling rig** is stationary in **Nigeria**, but a **diary** is not stationary in the **UK**!

And full marks for **imagination** go to **Dr Retfalvi** who argued that **Art. 26A** of the **Canada / US treaty** is **unconstitutional**!

Have a great weekend!
Steve

#AskSteve



Episode 5
To be released on
24 July 2019

Episode 4
What big changes have you seen in international tax practice over your career?

Episode 3
Is foreign experience important for an international tax career?

Episode 2
How do you become a successful international tax advisor?

IN TODAY'S VIDEO PODCAST

(For ITB video subscribers, please log in to access the video and documents/reports)

1. Digital taxation
2. Other global developments
3. Asia Pacific
 - Australia, Bangladesh, India, Indonesia
4. Europe
 - Belgium, EU, France, Germany, Ireland, Netherlands, Slovenia, Spain, Switzerland, UK
5. Africa
 - Nigeria
6. Americas
 - CIAT, Brazil, US
7. Treaties
8. Worth reading

WORTH READING

Antonio Barba de Alba and Diego Arribas

["The Wider Spanish Tax Exemption on Interest through the Danish Filter"](#)

Kluwer International Tax Blog, July 12, 2019 (free service)

Francisco Lisboa Moreira and Ana Paula Saunders

["The Importance of the Marcopolo Cases for Understanding the Application of the Brazilian Transfer Pricing Rules"](#)

Kluwer International Tax Blog, July 10, 2019 (free service)

INTERNATIONAL TAX QUIZ

ACO is a resident of country A. ACO has a PE in country B. ACO borrows money from BCO, a bank which is resident in country B. ACO borrows the money for the purposes of its PE in country B, and the interest on that borrowing is borne by that PE. BCO does not have a PE in country A. BCO is the beneficial owner of the interest. The A/B double tax treaty is identical to the UN model treaty. Is country A permitted (by the A/B treaty) to impose tax on the interest paid to BCO by ACO? Why?

Answer in next week's ITB email alert!

[Last week's question & solution](#)

Article 5(2) of the OECD model double tax treaty commences: "The term 'permanent establishment' includes especially:", and then it sets out 6 paragraphs, (a) to (f). Paragraph (c) is "an office".

RCO (resident of country R) owns an office in country S.

Does RCO have a "permanent establishment" in country S under the R / S treaty (identical to the OECD model treaty) – yes, no, or possibly? Why?

Possibly.

Preliminary point: According to the OECD Commentary, Article 5(2) is merely a list of examples which might constitute a PE, but only if the conditions in Article 5(1) are satisfied. [Disagreement registered by Greece (member) and India (non-member).]

The insufficient facts contain 3 unresolved issues.

Firstly, are all the conditions in Article 5(1) satisfied? Possibly. It is unclear whether the office is at the disposal of RCO and whether RCO is wholly or partly carrying on its business through the office. For example, RCO might lease the office to a tenant – in which case, according to the OECD Commentary, the office would not be at RCO's disposal. [Disagreement registered by Argentina (non-member) and India (non-member).]

Secondly, even if Article 5(1) is satisfied, does one of the paragraphs in Article 5(4) apply? Possibly. If the office were used by RCO solely for activities of a preparatory or auxiliary character, then Article 5(4) (prima facie) would apply to provide an exception to PE status.

Thirdly, if Article 5(4) prima facie applies, does Article 5(4.1) (the anti-fragmentation rule) apply to prevent such application of Article 5(4)? Possibly.

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