

## "International tax news, explained"

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### HAPPY FRIDAY!

First, **Lux Leaks**. Then, **Panama Papers**. And now, **Mauritius Leaks!** The ICIJ has uncovered all of those **double tax treaties** between **Mauritius** and **African countries** – treaties which were **hidden in plain sight!** What a tax avoidance **rort!** Or could they simply be a deliberate strategy to encourage foreign investment into **African countries**? What a **beat-up!**

**Japan** is beating up **Korea** again, **Hong Kong** takes to the streets (but the government still issues tax rulings!), and **"Inventive Tax Strategies (in liquidation)"** says it all!

We learn that the 4 months operation of the **UK's bank payroll tax** (remember?) was carefully **selected**, but it wasn't **selective!**

**IF** gives a "pass" grade to **11 NOON jurisdictions**, **Altera** is pursuing **11 judges**, and (50 years ago) **Apollo 11** landed on the moon!

And 50 years after **John Lennon** formed the **Plastic Ono Band**, the **UK** announces a **plastic packaging tax!**

But the sun is shining in **Greece** (a bit too brightly this week!): **austerity is over!**

Have a great weekend!  
**Steve**

### #AskSteve



**Episode 5**  
What type of education is required to be an international tax advisor?

**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)

- Digital taxation
- Trade and other global developments
- Asia Pacific
  - Australia, Hong Kong, Indonesia, Vietnam
- Europe
  - ECJ, EEA/EFTA, EU, France, Greece, Ireland, Portugal, UK
- Africa
  - South Africa
- Middle East & Central Asia
  - Uzbekistan
- Americas
  - Brazil, US
- Treaties
- Worth reading

### WORTH READING

Milton González Malla and Pablo Godoy

["Argentina Updates its Transfer Pricing Rules"](#)

Daily Tax Report: International, Bloomberg BNA, July 15, 2019 (subscription service)

### INTERNATIONAL TAX QUIZ

**XCO** is a company which is incorporated in country **A**, but which has its central management and control in country **B**. It is a resident under country **A** tax law, and it is a resident under country **B** tax law. **XCO's** place of effective management is in country **B**. **XCO** licenses (for arm's length royalties) a patent to **YCO**, which is a company resident in country **C**. The **A/B**, **A/C** and **B/C** double tax treaties are all identical to the 2014 OECD model treaty, with the exception of the source country tax rate under Art. 12 – the rates are 5% (**A/B**), 10% (**A/C**), and 15% (**B/C**). The **MLI** does not apply to any of the 3 treaties. **XCO** is the beneficial owner of the royalties, and **XCO** does not have a **PE** in country **C**. Country **C's** domestic law withholding tax rate on outbound royalties is 30%. What tax rate is country **C** permitted to levy on the royalties paid by **YCO** to **XCO**? Why?

Answer in next week's ITB email alert!

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

**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?

No: Art. 7(1), first sentence.

Art. 7(6) gives preference to Art. 11, if the interest is "dealt with" by Art. 11. However, that is not the case, for the following reasons:

- The phrase, "interest arising in a Contracting State", is defined in Art. 11(5). Under the first sentence, the interest arises in country **A**. However, under the second sentence, the interest arises in country **B**. The second sentence "trumps" the first, as shown by the introductory words, "Where, however", in the second sentence.
- Art. 11(1) therefore does not apply: the interest arises in the same Contracting State as the residence of the recipient.
- Art. 11(2) therefore does not apply, as shown by the words, "such interest" (referring to the interest described in Art. 11(1)), at the start of Art. 11(2).
- Thus, taxing rights are not allocated by Art. 11, and accordingly, the interest is not "dealt with" by Art. 11.

Art. 21(3) should not apply, for the following reasons:

- It's possible that the "arising" condition in Art. 21(3) is not determined by Art. 11(5), even though that provision does not state that it is limited to Art. 11. Paragraph 9 of the 2017 UN Commentary indicates that the "arising" condition will be determined under the domestic laws of the Contracting States. Therefore, if country **A** law says that the interest is sourced in country **A**, that might allow the "arising" condition in Art. 21(3) to be satisfied.
- However, Art. 21 should not apply if the interest is "dealt with" by Art. 7. This raises the issue: which provision is applied first – Art. 7 or Art. 21? In my view, despite Art. 7(6), Art. 21 should not be interpreted as applying before Art. 7, as that would render the Art. 7(1) exemption (if there is no **PE** in the source country) irrelevant – a bizarre result! However, the existence of Art. 21(2) suggests the opposite result.

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