ITB International Tax Bytes *by Steve Towers*

"International tax news, explained"

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## 2 August 2019

## HAPPY FRIDAY!

Insightful comments from politicians #1:
**President Trump**: "I prefer **American** wine to **French** wine – even though I don't drink wine – I just like the shape of the **bottles!**"
**France's agriculture minister**: "That's completely moronic!"

Insightful comments from politicians #2:
**US** presidential candidate **Elizabeth Warren**: "We won't enter into a trade agreement with any country that doesn't comply with a **double tax treaty** with the US!" Ah, **Elizabeth**, remember **FIRPTA**?

**Cash** is no longer king in **Australia** (but the **daigou** don't mind), the **European Commission** does a deal with the **Netherlands**, **Frank Smart** lives up to his name, and **Adidas** insures a good result!

**Austria** is relaxed with interposed **Lux Cos**, **Oman** is not sure, **Mauritius** is not amused, and **India** needs more time!

And **English** readers will be pleased to note that **Steve Smith** is a **UK** citizen!

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)***

1. Digital taxation
2. Trade and other global developments
3. Asia Pacific
    - Australia, India, Indonesia, Korea
4. Europe
    - Austria, EU, France, Germany, Moldova, Netherlands, Poland, UK
5. Africa
    - Mauritius
6. Middle East & Central Asia
    - Oman, Saudi Arabia
7. Americas
    - Brazil, Canada
8. Treaties
9. Worth reading

## WORTH READING

Jérôme Monsenego
"Does the *Achmea* Case Prevent the Resolution of Tax Treaty Disputes through Arbitration?"
Intertax, Kluwer, Volume 47, Issue 8 & 9 (subscription service)

Malcolm Gammie
"Judicial Precedent in the English Legal System"
Bulletin for International Taxation, IBFD, 2019 (Vol. 73), No. 8 (subscription service)

Emmanuelle Cortot-Boucher
"An Overview of the French Judicial System and the Rule of *Stare Decisis*"
Bulletin for International Taxation, IBFD, 2019 (Vol. 73), No. 8 (subscription service)

## INTERNATIONAL TAX QUIZ

**ACO is a company which is a resident under the country X tax law. ACO conducts a freight carriage business on a worldwide basis. For that purpose, it uses ships which it owns. Although ACO has a number of "operating centres" throughout the world, the key management and commercial decisions for its global business are made by the senior management and the directors in country X.**

**ACO has an operating centre in country Y ("Y centre"), which is registered as a branch in country Y. Y centre is one of 5 such operating centres which ACO has globally. Y centre consists of 2 floors in an office building (which are leased by ACO), and 50 employees, including some senior employees. Y centre employees enter into contracts with customers to carry freight on ACO's ships which operate in the region; they enter into contracts with suppliers (e.g., ports in the region, ship crews, etc.); and they also manage ACO's shipping operations in the region.**

**ACO's ships carry freight between 2 ports within country Y and ports in 6 other countries. Some freight is carried from one port in country Y, for unloading at the other port in country Y.**

**BCO is a company which is also a resident under the country X tax law. BCO is part of the ACO group, and it acts as the treasury company for the group. BCO lends money to ACO as working capital for all of its 5 operating centres. Country Y law requires the preparation and auditing of financial statements for the country Y branch. In those financial statements, Y centre's allocated amount of the BCO loan is shown as a liability, and its allocated amount of the interest paid to BCO is shown as an expense. BCO is the beneficial owner of the interest income, and it does not have a PE in country Y.**

**Under the X/Y treaty (which is identical to the 2014 OECD model treaty), what is the country Y tax position of (i) ACO, and (ii) BCO? Why?**

Answer in next week's ITB email alert!

Last week's question & solution

**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?**

15% : Art. 12, B/C treaty - for these reasons:

1. Prima facie, XCO is a resident of country A and also a resident of country B, under Art. 4(1) of the A/B treaty. However, under Art. 4(3) of that treaty, it is deemed to be a resident only of country B, for the purposes of the A/B treaty. [Note that Art. 4(3) has no impact on XCO's status as a resident of country A under the country A domestic tax law.]
2. The various operative provisions in the A/B treaty (e.g., Art. 7, Art. 12, Art. 21, etc.) therefore have the effect that XCO is exempt from country A tax on income from sources outside country A.
3. According to the OECD Commentary, XCO is therefore "liable to tax" in country A only in respect of income from sources in country A, and consequently XCO does not satisfy the definition of "resident of [country A]" in Art. 4(1) of the A/C treaty. Paragraph 8.2 of the 2014 Commentary : "[The second sentence of Art. 4(1) in the A/C treaty] excludes companies and other persons who are not subject to comprehensive liability to tax in a Contracting State [i.e., country A] because these persons, whilst being residents of that State under that State's tax law, are considered to be residents of another State [i.e., country B] pursuant to a treaty between these two States [i.e., the A/B treaty]."
4. XCO therefore cannot claim benefits under the A/C treaty : Art. 1.
5. However, XCO does satisfy the definition of "resident of [country B]" under Art. 4(1) of the B/C treaty.
6. Therefore, country C is permitted by Art. 12 of the B/C treaty to levy tax on the royalties, with a limit of 15% on gross. As country C's domestic law withholding tax rate on outbound royalties is 30%, country C will therefore levy a 15% tax on XCO's royalties.

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