ITB International Tax Bytes
by Steve Towers

"International tax news, explained"

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HAPPY FRIDAY!

Glencore can't put the toothpaste back in the tube, **Indian** intermediaries are between a rock and a hard place, and **European** duty calls for **Indonesia!**

In the **US**: **Trump** saves Christmas, the **IRS** has its head in the clouds, **Altera** has lots of friends, but **France** is on its own!

Africa is worried about the GLOBE, **Australia** stops sourcing agreement, and **Germany** stops charging for solidarity!

And the **UK** shows that, although a salary might be sacrificed, **VAT** is not!

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?

IN TODAY'S VIDEO PODCAST

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

1. Digital taxation
2. US proposed regulations: cloud transactions / digital content
3. Trade & other global developments
4. Asia Pacific
   - Australia, China, India, New Zealand
5. Europe
   - Online marketplaces: VAT obligations, France, Germany, Kosovo, Lithuania, Luxembourg, UK
6. Africa
   - ICTD, Zambia, Zimbabwe
7. Middle East & Central Asia
   - Bahrain, Kyrgyzstan
8. Americas
   - US
9. Treaties
10. Worth reading

WORTH READING

Lucas de Lima Carvalho
"GLOBE and the Supranational 'Nudges' Affecting Domestic Tax Policy"
Tax Notes International, Tax Analysts, July 29, 2019 (subscription service)

Leopoldo Parada
"How the *Vodafone Magyarország* Opinion Affects EU Debate on Turnover-Based Digital Taxes"
Tax Notes International, Tax Analysts, July 29, 2019 (subscription service)

INTERNATIONAL TAX QUIZ

ACO is a company which is resident in country A. BCO is a company which is resident in country B. BCO has a fixed place of business PE in country C. ACO lends money to BCO to finance its country C PE. The interest on the loan is shown as an expense in the PE's financial statements. ACO is the beneficial owner of the interest, and it does not have a PE in either country B or country C. The A/B, A/C and B/C double tax treaties are identical to the 2014 OECD model treaty. The MLI does not apply to any of those 3 treaties. Under the domestic tax law of each of the 3 countries : (i) the corporate income tax rate is 30%, and (ii) the interest withholding tax rate is 20%. In calculating foreign tax credits, assume that ACO is not required to allocate any deductions against foreign source income. If the amount of interest which is paid by BCO to ACO is $100, what amount of tax will be levied on that $100 in each of the 3 countries?

Answer in next week's ITB email alert!

Last week's question & solution

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?

ACO: exempt in Y under Art. 8(1), X/Y treaty - reasons:

1. ACO's place of effective management is in X.
2. ACO's profits are from the operation of ships in international traffic: see definition of "international traffic" in Art. 3(1).
3. Art. 8 has precedence over Art. 7: Art. 7(4).
4. Although ACO has a PE in Y, there is no provision in Art. 8 to send the matter to Art. 7.

BCO: exempt in Y under Art. 7(1) - reasons:

1. Key issue: where does the interest arise, for purposes of Art. 11? Under Art. 11(5), sent. 1, the interest arises in X. Does Art. 11(5), sent. 2, apply to deem the interest to arise in Y? According to the OECD Commentary, the answer is no - paragraph 27: "c) The loan is contracted by the head office of the enterprise and its proceeds are used for several permanent establishments situated in different countries … Case c), however, falls outside the provisions of [Art. 11(5)]…".
2. If we follow the Commentary, then Art. 11(1) and Art. 11(2) do not apply.
3. As BCO has no PE in Y, it is exempt under Art. 7(1).

BCO's position is a surprise? Should the Commentary be followed?

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