ITB International Tax Bytes by Steve Towers

"International tax news, explained"

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HAPPY FRIDAY!

France promises to **reimburse DST** when a global solution is implemented (but without interest!). But what would you call the outcome if a global solution is never agreed? **A French victory!**

Australia applies a double hypothetical, **China** digs a hole, **Indonesia** loses interest, **Nigeria** adds value to its revenue base, **India** stops taxing angels, **Colombia** relies on the banks, **US States** catch the next Wayfair wave, and **Explanation 1** goes AWOL in **Calcutta!**

And the **European Court of Justice** will soon tell us whether **lawyers** carry out any economic activity!

Have a great weekend!
Steve

#AskSteve

Episode 6
How do you deal with difficult clients?

Episode 5
What type of education is required to be an 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. China / US trade war
3. Asia Pacific
   - Australia, China, India, Indonesia, Singapore, Taiwan
4. Europe
   - EU, Italy
5. Africa
   - Nigeria
6. Americas
   - Chile, Colombia, US
7. Treaties
8. Worth reading

WORTH READING

Gonzalo Suffiotti and Carolina Masihy
"Recent Developments in the Taxation of Indirect Share Transfers in South America: Lessons and Challenges from Chile, Colombia, Peru and Uruguay"
Bulletin for International Taxation, IBFD, 2019 (Volume 73), No. 9 (subscription service)

Jonathan Schwarz
"Indirect transfers: What is an indirect interest in immoveable property in the natural resource sector, and what is it worth?"
Kluwer International Tax Blog, August 1, 2019 (free service)

INTERNATIONAL TAX QUIZ

BCO is a limited partnership formed under country B law. It has a general partner (XCO) which is a company incorporated and resident in country B. It also has 100 limited partners, who are individuals resident in country A. BCO owns 100% of the shares of CCO, which is a company resident in country C. CCO's assets do not consist of land in country C. The A/C double tax treaty is identical to the 2014 OECD model treaty. The MLI does not apply to that treaty. Country B has not entered into any double tax treaties. BCO does not have a PE in country C. Under the country A and country B tax laws, BCO is treated as a transparent partnership. Under the country C tax law, BCO is treated as a non-resident company. BCO sells all of the shares in CCO for a significant profit. Under the country C tax law, BCO is taxable on that profit. What impact (if any) does the A/C treaty have on the country C tax position?

Answer in next week's ITB email alert!

Last week's question & solution

XCO is a company which is resident in country X. XCO has a "fixed place of business" PE in country Y. The PE carries on an IP licensing business – it licenses IP to customers in various countries, in return for royalties. One of those customers is ZCO, which is a company resident in country Z. XCO is the beneficial owner of the royalties, and it does not have a PE in country Z. The X/Y, X/Z and Y/Z double tax treaties are identical to the 2014 OECD model treaty (with Art. 23B), except that the source country tax on royalties is limited by Art. 12 in each of the 3 treaties to: 15% (X/Y); 5% (X/Z); and 10% (Y/Z). 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%; (ii) the worldwide income of residents, and the domestic source income of non-residents, is taxed; (iii) a foreign tax credit regime applies, but only to residents; and (iv) the royalty withholding tax rate is 20%. In calculating foreign tax credits in each of the 3 countries, please disregard the allocation of deductions or (notional expenses) against foreign source income. If $100 of royalties are paid by ZCO to the PE, what amount of tax will be levied on that $100 in each of the 3 countries?

Z tax: $5: Art. 12, X/Z treaty.
Y tax:

1. Prima facie tax, before applying Art. 24(3), would be $30: Art. 7(1), 2nd sentence, X/Y treaty.
2. Art. 24(3), X/Y treaty, requires that: "The taxation on a [PE] which an enterprise of [X] has in [Y] shall not be less favourably levied in [Y] than the taxation on enterprises of [Y] carrying on the same activities".
3. Imagine a hypothetical enterprise of Y ("YCO") which carries on the same activities as the PE. YCO would be subject to 30% corporate income tax on its profits from those activities (same as the PE), and it would be entitled to a credit for the Z tax under Y domestic law and under Art. 23B(1) of the Y/Z treaty (not the same as the PE: the non-residence status of the PE means that it does not satisfy the conditions for credit under Y domestic law and that it does not satisfy the residence condition in Art. 1 of the Y/Z treaty). YCO's credit would reflect the 10% tax rate on royalties under the Y/Z treaty, not the actual 5% tax imposed under the X/Z treaty. Thus, hypothetically, the Y tax levied on YCO in regard to the royalties paid by ZCO would be $30 - $10 = $20.
4. Thus, the Y tax levied on the PE would be $20.
5. Apart from the issue of credit for Z tax, consider whether the taxable profits of the PE (determined under the Y domestic law and Art. 7(2), X/Y treaty) and the taxable profits of the hypothetical YCO (determined under Y domestic law) would be calculated as the same amount. To the extent that the taxable profits of the PE would be greater than the taxable profits of YCO, the resulting amount of excess Y tax would also generally (with some exceptions) trigger Art. 24(3), causing a reduction in the Y tax on the PE. This issue is not further considered here.

X tax:

1. X must grant a credit of $5 under Art. 23B(1) of X/Z treaty, and a credit of $20 under Art. 23B(1) of X/Y treaty.
2. Thus, X tax = $30 - $5 - $20 = $5

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