ITB International Tax Bytes *by Steve Towers*

"International tax news, explained"

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HAPPY FRIDAY!

"When Bruno met Steven" – so what did happen in **Washington**? Meanwhile, **Poland** chickens out (the **Pence** effect?), the **Czechs** double down, and **Mexico** is still thinking!

Golden Bella is beneficial, **Indonesia** races to the bottom, the **EU** minds the gap, **Glencore** doesn't reconstruct, **Bulgaria** is the weakest link, **Mauritius** is substantive, **Romania** seeks SAF-T in numbers, **Sweden** employs the bank defence against **Russia**, and **Ireland** is unconcerned about **Friday the 13th** – but look out for **black cats!**

And, at the end of the week, everyone is wondering: would **Bitcoin** work in **Argentina**?

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. Trade & other global developments
3. Glencore case: Chevron re-examined
4. Asia Pacific
   - Australia, India, Indonesia, Malaysia
5. Europe
   - ECJ, EU, France, Ireland, Romania, Sweden, Switzerland
6. Africa
   - Mauritius, Tunisia
7. Middle East & Central Asia
   - Bahrain
8. Americas
   - Argentina, US
9. Treaties
10. Worth reading

WORTH READING

Ivan Lazarov and Sriram Govind
"Carpet-Bombing Tax Avoidance in Europe: Examining the Validity of the ATAD Under EU Law"
Intertax, Kluwer, Volume 47, Issue 10 (subscription service)

Christian Kaeser, Jeffrey Owens and Sam Sim
"Going the Way of the Polaroid: Digital Taxation and the End of the Arm's-Length Principle?"
Tax Notes Today International, Tax Analysts, August 1, 2019 (subscription service)

INTERNATIONAL TAX QUIZ

XCO is a company which is resident in country X. XCO owns 100% of the shares in YCO, which is a company resident in country Y. YCO has a "fixed place of business" PE in country Z, from which it derives profits. YCO also derives profits from its business operations in country Y. The X/Y, X/Z, and Y/Z treaties are identical to the 2014 OECD model treaty, and the MLI does not apply to those treaties. YCO pays a dividend to XCO. That dividend is subject to country Z tax, at the rate of 30% (the country Z corporate income tax rate) on a "net" basis – i.e., after subtracting allowable deductions. YCO has no collection obligations, under country Z law, in regard to that dividend; instead, XCO is required to report the dividend by filing a country Z corporate income tax return. The dividend is also subject to 20% dividend withholding tax under the country Y law. XCO is the beneficial owner of the dividend, and XCO does not have a PE in either country Y or country Z. Can the country Z tax and the country Y tax on the dividend be reduced or eliminated under a treaty?

Answer in next week's ITB email alert!

Last week's question & solution

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?

According to the OECD Commentary on Art. 1, each of the limited partners will be entitled to claim exemption under Art. 13(5) of the A/C treaty in regard to that partner's proportionate share of the gain derived on the sale of the shares in CCO:

1. Para. 6.5: "Where a partner is a resident of one State [A], the partnership is established in another State [B] and the partner shares in partnership income arising in a third State [C] then the partner may claim the benefits of the Convention between his State of residence [A] and the State of source of the income [C] to the extent that the partnership's income is allocated to him for the purposes of taxation in his State of residence [A]."
2. The Commentary also says that the character of the income does not change, even though it is derived by the partner through the partnership (see para. 6.4, 3rd sentence; and para. 6.6, 2nd sentence), thus allowing Art. 13(5) to apply.
3. The fact that country C treats BCO as a company (a taxable entity) is irrelevant: see para. 6.3.
4. Example 10 in the OECD's 1999 Partnerships Report is similar to this case study.

However, those paragraphs in the OECD Commentary on Art. 1 are not accepted by 5 OECD members (Chile, Netherlands, France, Portugal, and Mexico), absent an express provision to that effect. A similar view is taken by 6 non-members (Gabon, India, Ivory Coast, Morocco, Tunisia, and Argentina). If country C does not accept those paragraphs, then it will presumably deny treaty benefits to the limited partners.

Even if country C accepts those paragraphs in the OECD Commentary on Art. 1, the issue remains as to how to give effect to those treaty benefits, having regard to the fact that, under the country C tax law, the relevant taxpayer is BCO, not the limited partners. This issue was briefly discussed by the Australian Federal Court in the RCF IV case (April, 2019). The court expressed the view that the treaty claims could not be made in proceedings to challenge an assessment against BCO, but it could possibly be made (1) in recovery proceedings against the limited partners, and (2) in proceedings for a court declaration confirming the treaty benefits.

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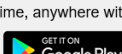

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