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20 September 2019



### HAPPY FRIDAY!

In India, what's the definition of panic? **2 press conferences in 6 days** to announce different corporate tax reductions to boost the economy!

And an effective tax rate of **17.01%**? Of course! There are **no straight lines in India!**

**China** and the **US** trade peace offerings (and a few goods), **Hitachi's** liaison office does way too much liaising, **Labuan** is spared, **Margrethe Vestager** starts her 39 steps, and **South Africa** shows that it's not only tax advisors who can derive income from tax services!

**Belgium** takes care of grandfathers, **Austria** gets its hands dirty with fibre-optic cables, tax begins at home in **Denmark**, 7.2% becomes 7.5% in **Nigeria**, and the **Netherlands** decides on 21.7% (watching too many **Bollywood** movies)!

And two things to look forward to next week: the **European General Court's State aid** decisions regarding **Starbucks** and **Fiat** (see you next Tuesday!), and **Japan** signing lots of international agreements (the **Rugby World Cup "bump"**)!

Have a great weekend!

**Steve**

### #AskSteve



**Episode 7**  
To be released on  
25 September 2019

**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)*

- Digital taxation, trade and other global developments
- Asia Pacific
  - Australia, India, Malaysia, Philippines, Sri Lanka
- Europe
  - Austria, Belgium, Denmark, ECJ, EGC, EU, France, Italy, Netherlands, Portugal
- Africa
  - Nigeria, South Africa
- Middle East & Central Asia
  - UAE
- Americas
  - Mexico, Peru, US
- Treaties
- Worth reading

### WORTH READING

Konstantin Karaianov

["Notional Interest Deduction Regimes in Europe: Through the Prism of ATAD 2 and Domestic Anti-Hybrid Mismatch Rules"](#)

European Taxation, IBFD, 2019 (Volume 59), No. 10

Andrea Riccardi, Andrés González, Diana Calderón Manrique, Felipe Guevara Leandro, Francisco Sepúlveda, Gabriela Rodríguez Arguijo, Guillermo O. Teijeiro, Juan Manuel Vázquez, Luciano Yáñez, and Vanessa Arruda Ferreira

["Swimming against the Current? Taxation of the Digitalized Economy in Latin America"](#)

Bulletin for International Taxation, IBFD, 2019 (Volume 73), No. 10

### INTERNATIONAL TAX QUIZ

**XCO is a company which is resident in country A. XCO is a partner in a partnership which is formed under country B law.**

**The partnership conducts a trading business from a leased building in country B – its major assets are inventory, debtors and goodwill.**

**Under country B law, the partnership is viewed as fiscally transparent. In contrast, under country A law, the partnership is viewed as a taxable entity (a company), and XCO's interest in the partnership is viewed as shares in the company.**

**XCO sells its interest in the partnership for a profit.**

**What is the treatment of that profit under the A/B treaty (which is identical to the 2014 OECD model treaty, with Art. 23B)? The MLI does not apply to the A/B treaty.**

Answer in next week's ITB email alert!

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

**XCO is a resident of country A. XCO owns a building in country B. The building contains 10 residential apartments, all of which are leased to tenants who are unrelated to XCO. A real estate agent in country B (YCO) manages the building for XCO.**

**XCO financed its purchase of the building by borrowing money from ZCO, which is an unrelated bank resident in country C. The loan is secured by a mortgage on the building.**

**The A/B, A/C, and B/C double tax treaties are identical to the 2014 OECD model treaty, with Art. 23A. The MLI does not apply to any of those treaties.**

**ZCO is the beneficial owner of the interest which is paid by XCO on the loan, and ZCO does not have a PE in country A or country B.**

**In regard to (i) rent paid to XCO, and (ii) interest paid to ZCO, what is the treatment under each of the A/B, A/C, and B/C treaties?**

Rent paid to XCO:

- Country B may tax the rent, without rate limitation: Art. 6, A/B treaty. The issue of whether or not country B tax is imposed on a gross basis or a net basis (i.e., after allowing deductions for interest and other expenses) is determined under country B law – Art. 6 does not require a net basis of taxation.
- Country A must exempt the rent: Art. 23A, A/B treaty.

Interest paid to ZCO:

- A/C treaty:
  - The interest satisfies the definition of "interest" in Art. 11(3), despite the mortgage.
  - The interest arises in country A: Art. 11(5), first sentence. The second sentence does not apply, because (a) XCO does not have a PE (see below), and (b) in any event, country B is not a Contracting State.
  - Art. 11(2) allows country A to impose tax of 10% on gross.
  - Country C must allow a credit for the country A tax: Art. 23A(2).
- B/C treaty:
  - The building would not be a "fixed place of business" PE under Art. 5(1), as the building would not be "at the disposal" of XCO.
  - YCO would not cause a contract-concluding agency PE under Art. 5(5), even assuming it concludes contracts on behalf of XCO (which is not clear on the facts) – it would be an agent of independent status, acting in the ordinary course of its business: Art. 5(6).
  - Thus, the interest would not arise in country B under Art. 11(5).
  - Thus, Art. 11(1) & (2) would not apply.
  - Thus, Art. 7(1) would exempt ZCO from country B tax.

Conclusion – differential tax treatment of rent and interest:

- Rent taxable in country B, but exempt in country A
- Interest taxable in country A, but exempt in country B

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