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1 November 2019



HAPPY FRIDAY!

New York City bans **foie gras** (which some restaurateurs find hard to swallow); **Barack Obama** might not be asleep, but he's not **woke**; and **Pascal Saint-Amans** tells us that **consensus** does not mean **unanimity**!

France and **Luxembourg** disguise an **exemption** as a **credit**; **Turkey** retaliates against the **US** with a **DST**; and **Australia** learns not to **discriminate**!

Voltas waits patiently for its shares; the **WTO** shows that the **US** should have more faith in multilateral institutions; but **Colombia** needs to follow the correct procedures!

And at the end of the week, we're left with this thought... there are **2 types of people** in this world: those who can extrapolate from limited information and

Have a great weekend!
Steve

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#AskSteve



Episode 8
What are your favorite topics in international tax?

Episode 7
Why did you stay at Deloitte for the whole of 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. Trade & other global developments
3. Asia Pacific
 - Australia, China, India, Singapore
4. Europe
 - Denmark, Germany, Italy
5. Americas
 - Argentina, Brazil, Colombia, Ecuador, US
6. Treaties

INTERNATIONAL TAX QUIZ

ACO, a company which is resident in country **A**, owns the global copyright to a film.

ACO sells that global copyright to **BCO**, a company which is resident in country **B**.

The sale contract states that the consideration has 2 components: (i) a lump sum of \$10 million (payable upfront), and (ii) a royalty of 3% of annual revenue which is derived by **BCO** from commercial exploitation of the copyright (payable annually for 10 years).

2 years later, **BCO** discovers that **ACO** is deriving revenue from the copyright from third parties in country **A**. **BCO** sues **ACO**, in a country **A** court, for breach of copyright. The court awards damages to **BCO** of \$2 million.

The **A/B** treaty is identical to the 2011 UN model treaty, and it is not covered by the MLI.

What is the treatment, under the treaty, for the 3 payments?

Answer in next week's ITB email alert!

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

ACO is a company which is resident in country **A**. It is an accredited internet domain name registrar authorised by Internet Corporation for Assigned Names and Numbers (ICANN).

BCO is a company which is resident in country **B**.

BCO pays a fee to **ACO** to register its internet domain name.

Is the fee a royalty, as defined in Art. 12 of the **A/B** double tax treaty?

Please provide separate answers for: (i) assuming the **A/B** treaty is identical to the 2011 UN model treaty; and (ii) assuming the **A/B** treaty is identical to the 1996 US model treaty.

(i) **A/B** treaty is identical to 2011 UN model treaty:

1. The relevant part of "royalties" definition in Art. 12(3) is: "...use of, or the right to use, ... any...trademark...".
2. The term, "trademark", is not defined in the treaty. It is also not defined in either the UN Commentary or the OECD Commentary on Art. 12. Therefore, it should probably take its meaning from the domestic law of the source country (B): Art. 3(2).
3. Under the law of most countries, an internet domain name is not a form of trademark, although it can be legally protected in a similar way to a trademark – see (ii) below.
4. If the B domestic law is as described in 3. above, then the fee paid to **ACO** will not fall within the "royalties" definition.

(ii) **A/B** treaty is identical to 1996 US model treaty:

- a. The relevant part of the "royalties" definition in Art. 12(2) is: "...consideration for the use of, or the right to use, ...any...trademark, ...or other like property or right...".
- b. The terms, "trademark" and "other like property or right", are not defined in the treaty. They are also not defined in the US Technical Explanation on Art. 12. Therefore, those terms should probably take their meaning from the domestic law of the source country (B): Art. 3(2).
- c. Under the law of most countries, an internet domain name is not a form of trademark, although it can be legally protected in a similar way to a trademark – for example, an action for passing off (common law).
- d. If the B domestic law is as described in c. above, then the fee paid to **ACO** should fall within the "other like property or right" part of the "royalties" definition – subject to one qualification.
- e. That qualification is whether part of the fee is consideration for the use of, or the right to use, the domain name (i.e., registration of the name), and the remainder of the fee is for **BCO**'s related services. Payments for services do not fall within the "royalties" definition. If the total fee can be split between the 2 components, then only the first component would be "royalties". Otherwise, the whole of the fee would probably fall within the definition of "royalties", on the basis that the principal purpose of the contract is the registration: see the discussion of "mixed contracts" in the OECD Commentary on Art. 12.

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