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HAPPY FRIDAY!

Conspiracy theories abound in the **US**: **#epsteindidntkillhimself**, why did **David Holmes** wait so long to tell **Bill Taylor**?, and was **Paul** really dead 50 years ago?

Meanwhile, **Greta** hitches a ride; **China** tells us how to improve our **social credit** scores; **Belize** is believed; and **PayPal** is volunteered for government service!

With a **15%** minimum tax rate used in the **Pillar Two examples** ("don't draw any inferences!"), **Ireland** gets nervous; most **Danish** employees are **auxiliary**; **Altera** strikes out; **Chile** hands out tax carrots; **Canadian** pension funds are in the money; and **India** forgets to argue **Art. 21(3)**!

But at the end of the week, the question on everyone's mind is this: how good is **David Holmes's hearing**?

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)

- Digital taxation: Pillar Two
- Trade & other global developments
- Asia Pacific
 - China, India, New Zealand, Singapore
- Europe
 - Denmark, ECJ, EU, Malta
- Africa
 - Nigeria
- Americas
 - Chile, US
- Treaties
- Worth reading

WORTH READING

Alissa Fedi

"[Transfer Pricing Aspects of Transactions with Marketing Intangibles in a Post-BEPS World](#)"
International Transfer Pricing Journal, IBFD, 2019 (Volume 26), No. 6 (subscription service)

Philip Baker

"[Bulgarian Data Hack Provides a Timely Warning of Data Breaches to Come](#)"
Intertax, Kluwer, Volume 47, Issue 11 (subscription service)

INTERNATIONAL TAX QUIZ

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The A/B treaty is identical to the 2011 UN model treaty, and the MLI does not apply to the A/B treaty.

What country B income tax treatment of ACO does the A/B treaty allow?

Answer in next week's ITB email alert!

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

XCO is a company resident in country X. It owns a small parcel of shares in YCO, a company resident in country Y. YCO's shares are listed on the country Y stock exchange.

YCO declares a dividend, and issues dividend vouchers to its shareholders. The dividend vouchers are transferrable. YCO will redeem the dividend vouchers, for cash, on presentation after 30 days.

XCO sells its dividend vouchers to ZCO, a company resident in country Z, for a price equal to 95% of the face value of the vouchers. The sale is unconditional – in particular, XCO does not guarantee that YCO will redeem the vouchers for face value or indemnify ZCO if YCO does not. No shares in YCO are sold by XCO to ZCO. At the end of the 30 days, ZCO receives cash from YCO for the vouchers.

The X/Y treaty and the Y/Z treaty are identical to the 2014 OECD model treaty, except that the tax limit in Art. 10(2)(b) is 20% (X/Y treaty) and 10% (Y/Z treaty). Under domestic law, country Y levies a withholding tax of 30% on outbound dividends.

In regard to the vouchers which are issued to XCO and then sold to ZCO, and assuming the MLI does not apply to the 2 treaties, what rate of country Y tax will apply?

Would your answer be different if the MLI did apply to both treaties?

(i) Assuming MLI does not apply to both treaties:

- The first issue to determine is whether, under the Y domestic tax law, the taxing point is the issue of the vouchers to XCO or ZCO's receipt of cash from YCO on redemption of the vouchers. That will determine who the relevant taxpayer is and thus which treaty is relevant.
- If the taxing point is the issue of vouchers to XCO, then the X/Y treaty applies. The issue of vouchers would fall within the definition of "dividends" in Art. 10(3). XCO would clearly be the beneficial owner of the dividends. The word, "paid", in Art. 10(1) & (2) "has a very wide meaning" (OECD Comm.). Art. 10(2)(b) would allow Y tax up to a limit of 20%.
- If the taxing point is ZCO's receipt of cash from YCO on redemption of the vouchers, such that ZCO is the relevant taxpayer, the Y/Z treaty applies. The cash would probably fall within the definition of "dividends", on the basis that there is a sufficient connection with the shares to be "income from shares", even though ZCO does not own the shares to which the redeemed vouchers relate (and possibly owns no shares in YCO). ZCO would probably be the beneficial owner of the "dividends": see Royal Dutch Shell case (Hoge Raad, Netherlands, 6 April 1994). Art. 10(2)(b) would allow Y tax up to a limit of 10%.

(ii) Assuming MLI applies to both treaties:

- If the X/Y treaty applies, the MLI would not change the analysis.
- If the Y/Z treaty applies, Art. 7(1) of the MLI (the principal purposes test, PPT) would be relevant. The facts in this question are based on Example A in para. 182 of the OECD Comm. on Art. 29(9). In the absence of other facts, it is likely that the PPT would apply to deny the treaty benefit to ZCO – which would mean that the domestic tax rate of 30% would apply.

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