

"International tax news, explained"

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15 November 2019



tell Bill Taylor?, and was Paul really dead 50 years ago?

HAPPY FRIDAY!

Conspiracy theories abound in the US:

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!

#epsteindidntkillhimself, why did David Holmes wait so long to

("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**?

With a 15% minimum tax rate used in the Pillar Two examples

Steve

IN TODAY'S VIDEO PODCAST

Have a great weekend!

Curious about ITB?

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#AskSteve

Episode 7 Why did you stay at Deloitte for the whole of

your career?

Episode 8

What are your favorite topics

in international tax?

(For ITB video subscribers, please log in to access the video and documents/reports)

Trade & other global developments 3. Asia Pacific

China, India, New Zealand, Singapore

Denmark, ECJ, EU, Malta Africa

Digital taxation: Pillar Two

- Nigeria Americas
- Treaties

Europe

Worth reading

Chile, US

- **WORTH READING**
- Alissa Fedi "Transfer Pricing Aspects of Transactions with Marketing Intangibles in a Post-BEPS World"

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

INTERNATIONAL TAX QUIZ

Answer in next week's ITB email alert!

presentation after 30 days.

relevant.

A/B treaty.

exchange.

Philip Baker

ACO, a company resident in country A, carries on a video streaming business. In return

download copies of videos on to their smartphone in order to watch the videos offline

subscription contracts with ACO on ACO's website. Monthly subscription payments are

made to ACO by the charging of customers' credit cards (evidenced by invoices which

ACO sends to customers' email addresses). ACO has no physical presence in country B.

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

for monthly subscription fees, customers are able to watch videos online, and are able to

International Transfer Pricing Journal, IBFD, 2019 (Volume 26), No. 6 (subscription service)

(for a limited period). ACO is the owner or licensee of the copyright in its library of videos. ACO has many individual customers in country B. The individual customers enter into

Last week's question & solution XCO is a company resident in country X. It owns a small parcel of shares in YCO, a

YCO declares a dividend, and issues dividend vouchers to its shareholders. The dividend

company resident in country Y. YCO's shares are listed on the country Y stock

vouchers are transferrable. YCO will redeem the dividend vouchers, for cash, on

country Y levies a withholding tax of 30% on outbound dividends.

days, ZCO receives cash from YCO for the vouchers.

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

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

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,

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: 1. 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

2. If the taxing point is the issue of vouchers to XCO, then the X/Y treaty applies. The issue

wide meaning" (OECD Comm.). Art. 10(2)(b) would allow Y tax up to a limit of 20%.

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

- 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 Y/Z treaty applies, Art. 7(1) of the MLI (the principal purposes test, PPT) would be

If the X/Y treaty applies, the MLI would not change the analysis.

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

please forward it to them.

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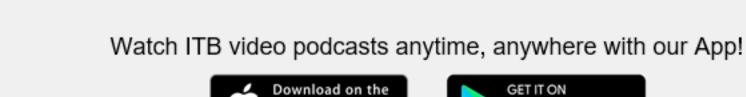
b.

to deny the treaty benefit to ZCO – which would mean that the domestic tax rate of 30% would apply. Tax Quiz Archives | E-mail Alert Archives | AskSteve | Referral Program

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