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22 November 2019



HAPPY FRIDAY!

A tale of 2 associates: **Gordon Sondland** knew ("everyone knew!"), but **Prince Andrew** did not ("no idea!").

Meanwhile, in **Paris**, a "one-stop shop" emerges for **Pillar One**; the **Czech Republic** presses on with **DST**; **Australia** rejects **GILTI**; and **China** incentivises e-commerce!

India shows there are term limits; **Spain's** ship comes in, but **Italy** keeps sailing; **Singapore** falls in love with digital payment tokens (does anyone accept **Bitcoin** for tax advice?); **Kazakhstan** gets cold feet; **Brazil** is phased by tax reform; but **Ecuador's** tax reform is tossed out!

And at the end of the week, the most important question is this: how long before **Rudy** is thrown under a bus?

Have a great weekend!

Steve

Curious about ITB? Watch this video!



#AskSteve



Episode 9

To be released on 27 November 2019

Episode 8

What are your favorite topics in international tax?

IN TODAY'S VIDEO PODCAST

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

1. Digital taxation
2. Asia Pacific
 - Australia, China, India, Singapore
3. Europe
 - ECJ, EU, Netherlands, Switzerland, UK
4. Africa
 - Kenya, Nigeria, Zimbabwe
5. Middle East & Central Asia
 - Kazakhstan
6. Americas
 - Brazil, Ecuador, US
7. Treaties
8. Worth reading

WORTH READING

Lily Zechner

["How to Treat the Ride-Hailing Company Uber for VAT Purposes"](#)

International VAT Monitor, IBFD, 2019 (Volume 30), No. 6 (subscription service)

Danielle E. Rolfes, Guy A. Bracuti, Jesse F. Eggert, Joshua S. Kaplan, and Seevun Kozar

["BEAT: An Overview of the Statute and Proposed Regulations"](#)

Tax Management International Journal, Bloomberg BNA, 48 TMIJ Issue No. 11 (November 8, 2019) (subscription service)

Raul-Angelo Papotti and Martha Caziero

["Analyzing the Italian Digital Services Tax Through European Glasses"](#)

Tax Notes Today International, Tax Analysts, November 20, 2019 (subscription service)

INTERNATIONAL TAX QUIZ

XCO is a company resident in country X. It decided that it would have a concrete container constructed at its premises in country X. The construction would be in 3 phases: (1) construction of the basement, (2) construction of the walls, and (3) construction of the roof.

YCO is a construction company resident in country Y. YCO entered into a contract with XCO for the construction of phase 1, which took 2 months to complete.

Other construction companies (unrelated to YCO) performed phase 2 of the construction, which took 4 months to complete.

Halfway through phase 2, YCO entered into a contract with XCO for the construction of phase 3. Phase 3 commenced at the end of phase 2, and it took 8 months to complete.

In each of the 3 phases, there was no interruption in the construction activities.

The X/Y double tax treaty is identical to the 2014 OECD model treaty, except that the period mentioned in Art. 5(3) is 12 months. The MLI does not apply to the X/Y treaty.

Does YCO have a PE in country X, under Art. 5 of the X/Y treaty, in regard to its construction activities at XCO's premises?

Answer in next week's ITB email alert!

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

ACO, a company resident in country A, carries on a video streaming business. In return for monthly subscription fees, customers are able to watch videos online, and are able to download copies of videos on to their mobile devices in order to watch the videos offline (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 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.

ACO is registered for VAT in country B, and has appointed an unrelated accounting firm (BCO) in country B to act as its VAT agent. In accordance with country B law, ACO charges VAT on its invoices to country B customers.

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?

(i) PE status:

1. ACO does not have a PE in B as defined in Art. 5 of the A/B treaty: (a) BCO's activities do not cause an agency PE for ACO; and (b) ACO's VAT registration does not cause a PE for ACO (see para. 5 of 2017 OECD Comm. on Art. 5; India has registered a contrary position).

(ii) Royalties:

1. Art. 12(3) defines "royalties" to mean "payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, ...".
2. Watching the videos online does not involve the use of copyright by the customer.
3. Downloading the videos on to the customer's mobile device in order for the customer to watch them offline would not be considered, in many countries, as a relevant use of copyright, for the purpose of the definition of "royalties" in Art. 12(3). This view is reflected in paras. 17.1 to 17.4 of the OECD Comm. on Art. 12; those paragraphs are reproduced in the 2011 and 2017 UN Comm. on Art. 12. Contrary views have been registered by some OECD members (Mexico, Portugal, Spain and Greece) and some non-OECD members (Brazil, India and Colombia)..
4. If the OECD Comm. view on customer downloading is accepted in B, then Art. 12 will not apply. If B takes the opposite view, then Art. 12 would allow B to impose tax on the payments, subject to the limit expressed in Art. 12(2) – if B law actually imposes such a tax, collection by customer withholding would be problematic.

(iii) Business profits:

1. If Art. 12(2) does not allow B tax, the payments would be exempt from B tax under Art. 7(1).

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