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6 December 2019



### HAPPY FRIDAY!

For you conspiracy theorists: is **Mnuchin's Pillar One curve ball** part of a **"bait & switch"** strategy which the **US** was planning from the start of **BEPS 2.0**? And it's **Justin Trudeau** who's accused of being two-faced!

Also in the **US**: the **USTR** hits **France** out of the park; **US R&D** is saved (give **credit** to the government); and **deduction waiver** allows you to **beat BEAT** (but not economic double taxation)!

Meanwhile, **Indonesia** goes cryptic on digital; **Healius** acquires doctors and tax deductions; **China** taxes life's little luxuries; and **Italy's FTT** breaches territoriality, but not freedom!

But at the end of an eventful week, we're left with this key question: **"How do you spell CONSENSUS without the US?"**

Have a great weekend!  
**Steve**

### Curious about ITB? Watch this video!



#AskSteve



Episode 9

What big changes have you seen in international tax law over your career?

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. US regulations: BEAT and foreign tax credits
3. Trade
4. Asia Pacific
  - Australia, China, Malaysia, Papua New Guinea, Thailand
5. Europe
  - Belgium, ECJ, EU, Germany
6. Africa
  - South Africa
7. Americas
  - Canada, Colombia
8. Treaties
9. Worth reading

### WORTH READING

Brian Arnold

["The Evolution of Controlled Foreign Corporation Rules and Beyond"](#)

Bulletin for International Taxation, IBFD, 2019 (Volume 73), No. 12 (subscription service)

Robert Goulder

["Outside the Box: In Praise of Reverse Transfer Pricing"](#)

Tax Notes Today International, Tax Analysts, 26 November 2019 (subscription service)

### INTERNATIONAL TAX QUIZ

**XCO**, a company resident in country **X**, owns **24%** of the shares in **YCO**, a company resident in country **Y**. **YCO's** shares are listed on a stock exchange in country **Y**. The **X/Y** treaty is identical to the **2014 OECD** model treaty. Also, the **MLI** applies to the **X/Y** treaty – in particular, **Arts. 6(1) & 7(1)** of the **MLI** apply, but **Art. 8(1)** of the **MLI** does not apply.

Under country **Y** domestic law, a **30% dividend withholding tax (DWT)** is levied on outbound dividends.

**XCO** expects **YCO** to soon declare a large dividend. In order to reduce the rate of country **Y** **DWT**, **XCO** purchases (on the stock exchange) additional shares in **YCO** equal to **1%** of **YCO's** total shares. A few weeks later, **YCO** declares and pays a large dividend. Shortly after its dividend was received, **XCO** sells (on the stock exchange) shares equal to **1%** of **YCO's** total shares.

Under the **X/Y** treaty, what **DWT** rate should apply to the dividend paid to **XCO**? Please ignore country **Y** domestic law anti-avoidance rules.

Answer in next week's ITB email alert!

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

**ACO** is a company resident in country **A**. It conducts a television content and broadcasting business. To conduct its business in several countries, including country **B** (which straddles the equator), **ACO** uses a satellite which is in geostationary orbit directly over country **B** – in other words, the satellite is permanently positioned **35,786 kilometres** above a specific geographic point in country **B**.

**ACO** owns and operates the satellite. It uses the satellite to transmit signals to ground stations in country **B** – these ground stations are owned by country **B** television operators, which broadcast **ACO's** programs in return for fees paid to **ACO**.

The **A/B** treaty is identical to the **2014 OECD** model treaty. The **MLI** does not apply to that treaty.

Does **ACO** have a **PE** in country **B** under the **A/B** treaty?

No, for these reasons:

1. There are 2 issues: (i) is the position of the satellite in space (35,786 kilometres above country **B**, well beyond the Karman line) within the territory of country **B**?; and (ii) is there a specific geographic point in country **B** which is "at the disposal" of **ACO**?
2. Regarding (i): The satellite is "at the disposal" of **ACO**. However, there is no consensus under international law that the position of the satellite in space would be within the territory of country **B**. In fact, such a notion is contrary to the UN's "Outer Space Treaty".
3. Regarding (ii): The specific geographic point which is directly below the satellite and the ground stations to which signals are transmitted, are within the territory of country **B**. However, **ACO** has no employees or property there, and it does not control the activities there. Accordingly, those specific points are not "at the disposal" of **ACO**.
4. These views are supported by the 2017 OECD Comm. on Art. 5 (at para. 27): "The question of whether a satellite in a geostationary orbit could constitute a permanent establishment for the satellite operator relates in part to how far the territory of a State extends into space. No member country would agree that the location of these satellites can be part of the territory of a Contracting State under the applicable rules of international law and could therefore be considered to be a permanent establishment situated therein. Also, the particular area over which a satellite's signals may be received (the satellite's 'footprint') cannot be considered to be at the disposal of the operator of the satellite so as to make that area a place of business of the satellite's operator."
5. India has recorded a contrary position to para. 27.

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