ITB International Tax Bytes by Steve Towers

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HAPPY FRIDAY!

Bezos bets on **India**; **Ukraine** is full of **bugs**; and **Elizabeth Warren** favours a **hot mic** (and I don't mean **Pence**!)

Meanwhile, **Bruno** and **Steven** are still talking; **Norway** wants to join the club; and **Pascal** pours cold water on the **safe harbour**!

Singapore is flexible; **Mexico** gives platform guidance; **Labuan** is eased; **MTN** is off the hook; but the **Netherlands** experiences **substance abuse!**

But the most important thing we've learnt this week is that, in **Russia**, even **lowly tax officials** can grow up to be **prime minister!**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

1. Digital taxation
2. Trade
3. Asia Pacific
    - India, Korea, Malaysia, Singapore, Taiwan
4. Europe
    - EU, Netherlands, Norway, UK
5. Africa
    - Nigeria, Uganda
6. Middle East & Central Asia
    - UAE
7. Americas
    - Bermuda, Ecuador, Mexico, US
8. Treaties
9. Worth reading

WORTH READING

Frederik Mulder and Yves Cattel
"Abuse of Law under EU Directives"
Derivatives & Financial Instruments, IBFD, 2019 (Volume 21), No. 6 (subscription service)

Dina Scornos
"Cloud Computing: Difficulties in Applying Current and Proposed Nexus and Profit Allocation Rules in a Cross-Border Scenario"
Bulletin for International Taxation, IBFD, 2020 (Volume 74), No. 2 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

In year Z, XCo, a company resident in country X, purchased a 5% shareholding in YCo, a publicly listed company resident in country Y, for $1 million. At the time of that purchase, YCo's assets did not mainly consist of immovable property in country Y.

In year Z + 5, X and Y entered into their first double tax treaty. That first X/Y treaty was identical to the 1997 OECD model treaty.

In year Z + 15, X and Y replaced that treaty with a second treaty. The second X/Y treaty is identical to the 2014 OECD model treaty.

In year Z + 17, XCo sold its shares in YCo, for $20 million. At the time of the sale, YCo's assets were mainly immovable property in country Y.

XCo's profit of $19 million is taxable under country Y domestic law. What is the impact of the X/Y treaties?

Answer in next ITB email alert on 31 January 2020!

LAST WEEK'S QUESTION

ACo, a company resident in country A, carries on a real estate investment business.

ACo pays $10,000 to CCo (an unrelated company resident in country C), in consideration for CCo granting ACo an option to purchase some land in country B. CCo is the owner of that land. At a later time, ACo sells the option to DCo (an unrelated company resident in country D), for a price of $1 million.

ACo therefore derives a profit of $990,000 from the acquisition and sale of the option. That profit is taxable under the income tax laws of countries A & B.

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

What is the treatment of ACo's profit under the A/B treaty?

LAST WEEK'S ANSWER

Art. 13(1) allows country B to tax the profit, if the option is immovable property situated in country B. If Art. 13(1) does not so allow, Art. 13(5) will prevent country B taxation (note that, from the question, it appears that ACo does not have a PE in country B).

Two issues arise under Art. 13(1): (i) is the option "immovable property"?; and (ii) if so, is it "situated in" country B?

Issue (i):

- Art. 13(1) uses the definition in Art. 6(2) – the first sentence adopts the country B general law meaning.
- The option is an "in the money" (ITM) call option at both acquisition and sale. It would need to be determined whether the country B general law treats such an ITM call option over immovable property as itself immovable property.
- The OECD Commentary notes that Israel, Latvia & Lithuania have amended the Art. 6 definition in their treaties to expressly include call options over immovable property.

Issue (ii):

- It is likely that contracts / consideration for the 2 transactions were signed / paid (and received) outside country B.
- Although this is not stated by the OECD model treaty or Commentary, the context would likely require that the "situation" of immovable property is also determined under the country B general law.

If Art. 13(1) applies, country A must allow relief under Art. 23A / 23B.

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AskSteve

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