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HAPPY FRIDAY!

Iowa can't count and **Mitt Romney** is on his own!

The **safe harbour** is kicked down the street; the **Unified Approach** is now a matter of **IF**; **GloBE** stands still; but another **multilateral convention** is on its way!

Margaret Hodge streams again, just as **Brexit Part 2** starts; **French** partnerships tax **Kuwait**; **Indonesia** signs up **Singapore**; **Austria** annoys **Germany**; the **ECJ** forces **Belgium** to carry the burden; **Sweden** refuses refunds; and **India** poisons **DDT**!

But with the **financial transactions TPG chapter** due to be released next week, the most important question is: **will a high level of interest be guaranteed?**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

- Digital taxation
- Other global developments
- Asia Pacific
 - Hong Kong, India, Indonesia
- Europe
 - Brexit, ECJ, EU, France, Greece, Russia, Sweden
- Africa
 - Botswana, Cameroon
- Treaties
- Worth reading

WORTH READING

Francisco E. Alvarez

["The ATAD CFC – All Roads Lead to Cadbury Schweppes"](#)

Kluwer International Tax Blog, 31 January 2020 (free service)

Laura Kurth Marques Carvalho

["Taxation of Offshore Indirect Transfers in Brazil in Need of Reform"](#)

Bulletin for International Taxation, IBFD, 2020 (Volume 74), No. 3 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

In year 1, XCo, a company resident in country X, formed a branch in country Y to act as a procurement office (PO) for it. The PO occupies leased premises and has 10 employees. The PO's employees (acting with XCo's express authority) identify potential suppliers of goods in Y, conduct due diligence on those potential suppliers, negotiate purchase contracts with the suppliers, and conclude those purchase contracts. All of the contracts require the suppliers to arrange, and pay for, insurance and freight of the goods to XCo in X. The PO's employees perform no activities in regard to payment of the suppliers.

For years 1 to 5, the PO performs the above-mentioned activities solely for XCo.

In year 6, in addition to the activities performed for XCo, the PO starts to also perform the same activities for XSub, which is a company resident in country X and is a 100% subsidiary of XCo.

The X/Y treaty is identical to the 2008 OECD model treaty. The MLI covers the X/Y treaty; however, Arts. 12-15 of the MLI don't apply.

Questions: (i) In year 5, does the X/Y treaty allow Y to tax XCo? (ii) In year 6, does the X/Y treaty allow Y to tax XCo and/or XSub?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

ACo, a company resident in country A, conducts a business of selling its goods through its website. Under the sales contracts, ACo is required to deliver the goods to its customers' addresses. A critical success factor for ACo's business is its ability to deliver the goods to the customers, within a relatively short time period after the sale contract is made.

ACo has customers in several countries, including country B. To enable it to quickly deliver goods to customers in country B, ACo owns and operates a warehouse in country B. The warehouse contains stocks of ACo's goods. When a contract is made, ACo's head office in country A instructs ACo's employees who are based at the warehouse to select the relevant goods and deliver them to the customer's address in country B. Title in the goods passes to the customer upon delivery.

ACo's warehouse employees play no role in the marketing process or in concluding the sale contracts.

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

Does ACo have a PE in country B, under Art. 5 of the A/B treaty?

LAST WEEK'S ANSWER

ACo's warehouse satisfies Art. 5(1).

But does an exception under Art. 5(4)(a) or (b) apply?

According to the 2017 OECD Comm., the words, "storage, display or delivery", should be interpreted as applying to any combination of storage, display and delivery. As ACo uses the warehouse solely for the purpose of storage and (arguably) delivery, and as title in the goods passes to the customers only upon delivery to the customers, the express words of Art. 5(4)(a) & (b) are satisfied.

But is there an implicit "preparatory or auxiliary character" (POAC) condition in the 2014 version of Art. 5(4)(a) & (b)? Due to the fact that quick delivery is a critical success factor for ACo's business, the use of the warehouse is probably not of a POAC.

The 2014 version of Art. 5(4) (in which POAC is mentioned only in paras. (e) & (f)) strongly suggests that such a condition is not implicit in paras. (a) & (b). The 2014 & 2017 versions of the OECD Comm. do not directly address this issue (but see para. 21 in 2014 version). However, some OECD member countries take the view that that condition is implicit in paras. (a) – (d).

This issue is addressed by Jacques Sasseville in chapter 1 of "New Trends in the Definition of Permanent Establishment" (IBFD, 2019). Based on the history of Art. 5(4), he concludes that the POAC condition is not implicit in paras. (a) – (d), prior to the 2017 changes. I agree!

Therefore, in my view, ACo does not have a PE in B.


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