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20 March 2020



HAPPY FRIDAY!

COVID-19 has brought out the best, and the worst, in human nature.

It has also given us some new terminology: **infodemic**, **shelter in place**, **self-isolation**, **social distancing**. And it has made **Zoom** boom!

Meanwhile, in the **tax world**...

The **OECD** is working "**full steam**"; **Greig** speculates and loses; **India** defers; **Taiwan** penalises; **Thailand** incentivises; but it's **Denmark** which retains goodwill!

BlackRock is not apportioned; **Spain** branches into suspect conclusions; **Sweden** becomes less cooperative; **Altera** has lots of friends; but in **Switzerland**, two-thirds is just not enough!

And, at the end of another depressing week, it's time to dig out those **2008 files on loss utilisation strategies!**

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. COVID-19
2. Asia Pacific
 - Australia, India, Taiwan, Thailand
3. Europe
 - Denmark, ECJ, France, Germany, Norway, Spain, Sweden, Switzerland, UK
4. Africa
 - South Africa
5. Americas
 - US
6. Worth reading

WORTH READING

Mindy Herzfeld

"Global Crises and Loss Planning"

Tax Notes Today International, Tax Analysts, 16 March 2020 (subscription service)

South Africa: Rui Carvalho, Imran Daniels, Mike Dewa, Waleed Sahabodien

Canada: Ian Attema, Jacob Heyka, Oleg Stratiev, Daniel Stysis

"The Role of Foreign Court Decisions towards Global Convergence in the Interpretation of Tax Treaties"

IBFD website (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company resident in A, is a provider of professional legal services.

ACo enters into a contract to provide legal advice to BCo (a company resident in B) on a possible investment in C. The advice covers both A and C law. The contract states that ACo will engage CCo (a company resident in C and a provider of professional legal services) to provide it with advice on C law.

ACo's advice (which includes the advice provided by CCo) is transmitted to BCo via the internet. None of ACo's employees, and none of CCo's employees, visit B.

ACo issues an invoice to BCo in the amount of \$100,000. CCo issues an invoice to ACo in the amount of \$60,000.

The A/B and B/C treaties are identical to the 2017 UN model treaty (the MLI does not apply).

Q1: Under the A/B treaty, is B permitted to levy tax on ACo? If so, does the treaty permit the tax to be levied on \$100,000 or \$40,000 or another amount?

Q2: Under the B/C treaty, is B permitted to levy tax on CCo?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

XCo, a company resident in X, acts as toll manufacturer (TM) for related party YCo, a company resident in Y. XCo has no activities other than acting as TM for YCo.

Under the TM agreement:

- YCo owns manufacturing moulds, which are transferred to XCo's premises in X for use in the TM process
- XCo receives, directly from third party suppliers, materials which have been sold by those suppliers to YCo (XCo concludes the purchase contracts on behalf of YCo)
- XCo uses the materials to manufacture finished goods (FG), in accordance with patents which are owned by YCo and licensed to XCo (royalty-free) solely for the purposes of the agreement
- At all stages of manufacture, the goods are owned by YCo
- At the end of the manufacturing process, the FG are stored by XCo for an average of 10 days, and are then transferred to destinations outside X, as directed by YCo
- YCo pays a fee to XCo for its services

The transfer of the materials from the suppliers to XCo, and the transfer of the FG from XCo to destinations outside X, are performed by third party logistics companies, as a service for YCo.

None of YCo's employees ever visit XCo's premises.

The X/Y treaty is identical to the 2014 OECD model treaty. The MLI does not apply to that treaty.

Does YCo have a PE in X?

LAST WEEK'S ANSWER

Art. 5(1):

- Key issue: are XCo's premises "at the disposal" of YCo?:
 - i. Due to the TM activities? No: 2017 OECD Comm., para. 67
 - ii. Due to post-manufacture storage of FG? No: 2017 OECD Comm., para. 65
 - iii. Due to presence of YCo's moulds? No – similar to leasing of equipment: 2017 OECD Comm., para. 36
 - iv. Due to XCo's purchasing activities? No: 2017 OECD Comm., para. 118
- Thus, no Art. 5(1) PE

Art. 5(5):

- First part (habitually exercises authority to conclude contracts in YCo's name): satisfied
- Second part (exception – notional application of Art. 5(4) – is "combination of activities" in subpara. (f) satisfied?):
 - i. Maintenance of YCo's materials for TM purposes? Yes: subpara. (c)
 - ii. Post-manufacture storage of FG? Yes: subpara. (a)(b)
 - iii. Presence of YCo's moulds, for TM purposes? Likely yes: subpara. (e)
 - iv. XCo's purchasing activities? Yes: subpara. (d)
 - v. However, actual TM activity (cf. maintenance of materials for TM purposes) is not covered in Art. 5(4), but it is an activity which XCo undertakes for YCo
 - vi. On balance, I think that Art. 5(4)(f) is not satisfied
- Thus, Art. 5(5) PE



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