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27 March 2020



HAPPY FRIDAY!

COVID-19 brings us the **Australian hairdresser rule** (hairdressers are declared an essential service, but they must keep at least 2 metres away from their customers), a new song by **The Beatles** ("I gotta wash my hands"), and calls for **Andrew Cuomo** to run for **US President!**

Meanwhile, **Russia** gets tough on dividends; the **UK** wants to raise standards; the **US Congress** runs out of zeros; but **Nicolas Cage** receives \$400,000 for an afternoon in **Dubai!**

Canada's Supreme Court delivers a suit; **Nigeria** remains consistent; **Sweden** compares; **Turkey** wasn't bluffing; **mobile phones** become more expensive in **India**; and...do you remember **Brexit?**

But at the end of a long week of trying to give **tax advice from home**, while the **US Congress** seems to be just **printing money**, do you stop and wonder: **"what is tax for, anyway?"**

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. Digital taxation
3. Other global developments
4. Asia Pacific
 - Australia, India, Taiwan
5. Europe
 - EU, France, Netherlands, Sweden, UK
6. Africa
 - Nigeria, South Africa
7. Middle East & Central Asia
 - UAE
8. Americas
 - Canada, Peru, US
9. Treaties
10. Worth reading

WORTH READING

Jochum Zutt and Bas Gunter
"European Union – VAT Fixed Establishments in 2020: A Call to Action!"
Derivatives & Financial Instruments, IBFD, 2020 (Volume 22), No. 1 (subscription service)

Reuven S. Avi-Yonah
"Constructive Dialogue: BEPS and the TCJA"
www.ssm.com (posted 20 March 2020) (free service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company resident in X, publishes an online global newspaper on business, finance and economics news. The newspaper is regarded as a pre-eminent global source for such information.

The newspaper is provided to its customers, in digital form, on a "paid subscription" basis. The newspaper is written in English. However, it is also provided in several other languages (customers can choose to read the newspaper in any of the languages).

XCo has many such customers (all individuals) who are resident in Y. The customers pay for their subscriptions by credit card – usually, a direct monthly charge to the card. The Y language is one of the languages in which the newspaper is provided.

XCo is registered for VAT purposes in Y. Its subscription fee for Y customers includes VAT, which XCo sends to the Y tax authorities. XCo's quarterly VAT return in Y is prepared and filed by an unrelated accounting firm in Y.

XCo has no employees, assets or related parties in Y.

The X/Y treaty is identical to the 2017 UN model treaty (the MLI does not apply).

Under the X/Y treaty, is Y permitted to levy income tax on XCo?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

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

ACo enters into a contract to provide legal advice to BCo (a company resident in country B) on a possible investment in country C. 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?

LAST WEEK'S ANSWER

Q1 (A/B treaty):

- Art. 12 is not relevant – ACo's fee should not fall within the definition of "royalties" in Art. 12(3).
- ACo's fee falls within the definition of "fees for technical services" (FTS) in Art. 12A(3), and it arises in B: Art. 12A(5).
- Thus, B is permitted to levy tax on the fee: Art. 12A(2).
- It appears that ACo has a contract with BCo, and ACo also has a contract with CCo, but that there is no contract between BCo and CCo.
- It is possible that, in the ACo/CCo contract, ACo's obligation to pay \$60,000 to CCo is dependent on ACo receiving at least \$60,000 from BCo. If so, then ACo is likely the beneficial owner (B/O) of only \$40,000 (UN Comm., para. 56): on \$40,000, B tax would be limited to x%; but on \$60,000, it would be unlimited!
- If that is not the case, ACo should be the B/O of \$100,000: B tax would be limited to x% of \$100,000.
- Characterising \$60,000 of ACo's fee as a reimbursement should not change the analysis: UN Comm., paras. 74-82.

Q2 (B/C treaty):

- CCo's fee satisfies the definition of FTS in Art. 12A(3), but it does not arise in B: Art. 12A(5). Even if ACo is not the B/O of \$60,000 of its fee (see above), the person paying the fee to CCo is ACo, not BCo.
- Thus, Art. 12A(1) & (2) do not apply – CCo is exempt under Art. 7(1).



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