ITB International Tax Bytes by Steve Towers

"International tax news, explained"

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HAPPY FRIDAY!

The Who on **Pillar One**: "Meet the new global tax deal, same as the old global tax deal!"

Italy hopes to win the **VAT lottery**; **Australia** is 6 minutes late; and **Uber** develops a new **UK** tax planning strategy: lose your licence!

France might be impeached on Monday; **China** reinvents VAT; refunds rain in **Spain**; **South Africa** insists on use of an unreasonable method; and **Chile** gets creative with royalties!

But at the end of the week, the most important question is this: who has the best recipe for **turkey leftovers?**

Have a great weekend!
Steve

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#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. Other global developments
3. Asia Pacific
    - Australia, China, India, Indonesia, Singapore, Sri Lanka, Taiwan
4. Europe
    - EU, Guernsey, Jersey, Isle of Man, Italy, Poland, Romania, Spain, UK
5. Africa
    - South Africa
6. Americas
    - Chile, US
7. Treaties
8. Worth reading

WORTH READING

Allison Christians and Tarcisio Diniz Magalhaes
"A New Global Tax Deal for the Digital Age"
www.ssrn.com (posted 13 November 2019) (free service)

Allison Christians
"A Unified Approach to International Tax Consensus"
Tax Notes Today International, Tax Analysts, 25 November 2019 (subscription service)

Martijn Weijers
"The DAC6 Intermediary: multiplying compliance costs and creating loopholes"
Kluwer International Tax Blog (20 November 2019) (free service)

INTERNATIONAL TAX QUIZ

ACO is a company resident in country A. It conducts a television content and broadcasting business. To conduct its business in country B, ACO uses a satellite which is in a geostationary orbit over country B – in other words, the satellite is permanently positioned 37,000 kilometres above a specific geographic point in country B. ACO owns 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?

Answer in next week's ITB email alert!

Last week's question & solution

XCO is a company resident in country X. It decided that it would have a concrete container constructed at its premises in country X. The construction would be in 3 sequential phases: (1) construction of the basement, (2) construction of the walls, and (3) construction of the roof.

YCO is a construction company resident in country Y. YCO entered into a contract with XCO for the construction of Phase 1, which took 2 months to complete.

Another construction company (unrelated to YCO) performed Phase 2 of the construction, which commenced at the end of Phase 1. Phase 2 took 4 months to complete.

Towards the end of Phase 2, YCO entered into a contract with XCO for the construction of Phase 3. Phase 3 commenced at the end of Phase 2, and it took 8 months to complete.

In each of the 3 phases, there was no interruption in the construction activities.

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

Does YCO have a PE in country X, under Art. 5 of the X/Y treaty, in regard to its construction activities at XCO's premises?

Apart from the time condition, YCO would satisfy the conditions in Art. 5(1).

In regard to the time condition, Art. 5(3) sets out a special rule: "A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months." The facts indicate a building site or construction project.

The total time for the site or project is 14 months. However, YCO participated only in Phases 1 (2 months) and 3 (8 months), which aggregate to 10 months.

There are two issues: (i) is each phase a separate site or project?; and (ii) (if the 3 phases are a single site or project), are the 4 months of Phase 2 counted in regard to YCO – in other words, should only YCO's participation in the project be counted or alternatively is Phase 2 a temporary interruption (during which the time continues to run) from YCO's viewpoint?

Although the OECD Comm. on Art. 5(3) discusses both of these issues, it does not provide definitive guidance to apply to these facts.

These facts are based on a 2019 decision of the Swedish Supreme Administrative Court (No. 4135-18).

According to the Court:

i. Each phase is not a separate site or project
ii. Only YCO's participation in the project is counted; and Phase 2 is not a "temporary interruption", as it does not fall within the instances of "temporary interruptions" described in para. 55 of the OECD Comm. Thus, from YCO's viewpoint, the site or project lasts for 10 months, and it is therefore not a PE.

This case is discussed in Jerome Monsenego, "The Construction PE and Temporary Interruptions: Questions Based on a Swedish Case", Tax Notes Today International (November 21, 2019) (subscription service).

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