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**HAPPY FRIDAY!**

The **G20** finance leaders show confidence in the **OECD**; but is **Pillar One** really as easy as **ABC**?

Meanwhile, the **Czechs** get cold feet; **France** wants to dance "**step-by-step**"; and the **US** wants everyone to feel **GILTI**!

**CITIRA** gets nearer; **Nigeria** reinvents **TNMM**; **Trudeau** strikes out in **Alberta**; **Saudi Arabia** wants to hear **whistles**; **Stanley** loses his **bet**; but **AURES** leaves its **losses** behind!

And, at the end of a turbulent week of hand sanitisers, masks and stock market crashes, everyone seems to be asking this question: will **Bob Iger** now run for **US president**, or is that just **Fantasyland**?

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
- Trade & other global developments
- Asia Pacific
  - Australia, Hong Kong, India, Malaysia, New Zealand, Philippines, Sri Lanka
- Europe
  - Belgium, ECJ, Germany, Netherlands, Russia, UK, Ukraine
- Africa
  - Nigeria, South Africa
- Middle East & Central Asia
  - Saudi Arabia
- Americas
  - Canada, Chile, US
- Treaties
- Worth reading

**WORTH READING**

Frans Vanistendael  
"Tax Abuse in Europe: The CJEU's N Luxembourg 1 and T Danmark Judgments"  
Tax Notes Today International, Tax Analysts, 25 February 2020 (subscription service)

Nikolaj Bjornholm  
"Denmark – High Court Ruling in the Adecco Transfer Pricing Matter with Respect to Trademark Licence Agreement"  
International Transfer Pricing Journal, IBFD, 2020 (Volume 27), No. 2 (subscription service)

Vikram Chand  
"Impact of Pillar 1 on Centralized Consumer Facing (Goods) Business Models: An Initial Assessment Through an Illustration"  
Kluwer International Tax Blog (27 February 2020) (free service)

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

ACo, a company resident in country A, manufactures consumer goods. It owns a warehouse in country B. The warehouse is operated by country B employees of ACo.

BCo is a company resident in B and it is a 100% subsidiary of ACo. BCo is the exclusive distributor of ACo's goods in B. BCo takes relatively little risk; it does not take any market or physical inventory risk. This is achieved by the use of a "flash title" model: the goods are sold by ACo to BCo only when, and to the extent, that BCo has contracts to sell the goods to its customers; and the price is set by reference to the price charged by BCo to its customers, giving BCo a guaranteed gross margin.

Thus:

- Step 1: ACo physically moves the goods from A to the warehouse in B. Importation is subject to customs duty and VAT. ACo is the importer of record.
- Step 2 (days or weeks after step 1): ACo sells some goods to BCo. This sale contract is concluded between BCo and ACo's employees in A. ACo's employees at the B warehouse play no role with regard to the conclusion of the contract. Under the contract, title in the goods passes to BCo when possession of the goods is given to BCo or its agent.
- Step 3 (at same time as step 2): BCo enters into sale contracts with customers. ACo's head office gives instructions to ACo's warehouse employees to release the required amount and type of goods to BCo's third party logistics company (XCo). Acting upon BCo's instructions, XCo picks up the goods at ACo's warehouse (title in the goods passes to BCo at this point), and delivers them to the customers.

The A/B treaty is identical to the 2011 UN model treaty. The MLI does not apply to the treaty.

Does ACo have a PE in B under the treaty? If so, how would you determine the profits attributable to the PE?

Answer in next week's ITB email alert!

**LAST WEEK'S QUESTION**

XCo, a company resident in country X, operates a number of large retail stores in X and other countries. XCo establishes, and maintains for a period of 2 years, an office in country Y for the purposes of researching the local market and lobbying the government for law changes which would allow XCo to establish stores in Y.

During that period: (i) the office has 10 employees; (ii) the office manager routinely enters into various types of contracts (on behalf of XCo) such as employment contracts, office lease contract, office cleaning contract, contracts for utilities, contracts for office stationery, and contracts for supply of economic and business information on the local market; and (iii) the office manager and other senior employees frequently entertain senior government officials at football games, restaurants, karaoke bars, etc. That entertainment is illegal in Y, under "anti-corruption" laws.

The X/Y treaty is identical to the 2017 OECD model treaty. Does XCo have a PE in Y under that treaty?

**LAST WEEK'S ANSWER**

Art. 5(1):

- The tests in Art. 5(1) should be satisfied in regard to the office: (i) specific geographical place; (ii) at the disposal of XCo; (iii) for a sufficiently long period of time; (iv) and through which the business of XCo is wholly or partly carried on.
- In regard to test (iv): XCo should be considered as carrying on its business partly through the office, even though the office does not assist in generating any revenue for XCo – see 2017 OECD Comm. para. 7 in regard to "productive character".
- The reference to "office" in Art. 5(2) is irrelevant: see 2017 OECD Comm. para 45.
- The illegality of the entertainment activities is irrelevant.

Art. 5(4):

- The "preparatory or auxiliary character" exception in Art. 5(4)(f) should apply.
- The facts are taken from Example 2 in para. 68 of the 2017 OECD Comm, which states that:  
 "[para.] f) applies to the activities performed through the office (since [paras.] d) and e) would apply to the purchasing, researching and lobbying activities if each of these was the only activity performed at the office) and the overall activity of the office has a preparatory character".
- The only material difference in the facts is that our case expressly indicates that the contracts concluded by the office manager include contracts for the supply of services, which are not covered by Art. 5(4)(d). However, that activity should fall within Art. 5(4)(e), and thus there should be no impact on the conclusion.

Art. 5(5):

- This should not apply, as all the contracts relate to internal operations: see 2017 OECD Comm. para 97.

Conclusion: No PE.



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