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3 April 2020



### HAPPY FRIDAY!

**Mexico** provides no relief; **WHO** hides **Taiwan**; and in many countries now, **2's a crowd** and **3's a crime!**

Meanwhile, **India** equalises and stops waiting; **Origin** loses capacity; **Norway** keeps cutting; but the **Czech Republic** looks backwards!

**Cess** is limited, but still deductible; **Russia** wastes no time; **GVC** is caught between a rock and hard place; **Zipvit** seeks a windfall; but the **UK** jumps the gun on DST!

And at the end of another **WFH** week, the most important question is this: **do you stay in your pyjamas all day?**

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. India: equalisation levy
3. Trade & other global developments
4. Asia Pacific
  - Australia, Hong Kong, India, Japan
5. Europe
  - ECJ, Luxembourg, Netherlands, UK
6. Africa
  - South Africa
7. Americas
  - Canada, US
8. Treaties
9. Worth reading

### WORTH READING

Luc De Broe  
"Role of the Preamble for the Interpretation of Old and New Tax Treaties and on the Policy of the Prevention of Treaty Abuse"  
Bulletin for International Taxation, IBFD, 2020 (Volume 74), No. 4/5 (subscription service)

Eduardo Brandt  
"Fiscally Transparent Vehicles After Mexico's Tax Reform: U.S. Investment Fund Traps"  
Tax Notes International, Tax Analysts, Volume 97, Number 13 (March 30, 2020) (subscription service)

### INTERNATIONAL TAX QUIZ

#### THIS WEEK'S NEW QUIZ

ACo, a company resident in A, manufactures and sells branded clothes.

ACo enters into a distribution agreement with BCo, a related company resident in B.

In this agreement:

- BCo is appointed, for a period of 5 years, as ACo's exclusive buy / sell distributor in B; in consideration for this appointment, BCo agrees to pay ACo a "royalty" equal to 5% of BCo's annual sales of the ACo branded clothes
- BCo is licensed to use the ACo trademark for sales and marketing purposes in B only – no consideration is assigned to this licence

The A/B treaty is identical to the 2017 UN model treaty.

Does the treaty permit B to levy tax on the "royalty" of 5% paid by BCo to ACo?

Answer in next ITB email alert on 17 April 2020!

### LAST WEEK'S QUESTION

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

The newspaper is provided to all 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 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 returns are prepared and filed by an unrelated accounting firm in Y.

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

The X/Y treaty is identical to the 2017 UN model treaty.

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

### LAST WEEK'S ANSWER

Art. 5: no PE.

Art. 12(3) "royalties":

- Subscription fees should not be "consideration for ... copyright", even if newspaper downloaded to customer's computer: para. 17.3, OECD Comm. (reproduced by UN Comm.)
- Are the subscription fees consideration "for information concerning industrial, commercial or scientific experience"?
  - i. OECD Comm. (reproduced by UN Comm.) equates "information...experience" with know-how, and then "defines" know-how transactions as involving "undivulged" information, "unrevealed to the public", and with "confidentiality" provisions
  - ii. That "definition" should not cover a newspaper, regardless of its pre-eminence and existence of a payroll
  - iii. Thus, subscription fees should not be "royalties"

Art. 12A(3) "fee for technical services" (FTS):

- 1st issue: is newspaper "managerial, technical or consultancy" in nature? Probably "technical"
- 2nd issue: is provision of newspaper a service?
  - i. Key question: to be a "service", does the newspaper need to be prepared on a customised basis for a particular customer's use?
  - ii. UN Comm. provides inconsistent answers to this question: para. 62 ("transfer of knowledge...") vs. para. 91 example
  - iii. Difficult to conclude on this question



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