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17 April 2020



HAPPY FRIDAY!

Cuomo tells Trump that he's not a king, but he declares war on WHO anyway; but it's Captain Tom Moore who shows that he's a man for all seasons!

Meanwhile, in the tax world... **Indonesia follows India; Japan and New Zealand look backwards; Sri Lanka likes foreign currency; but for the OECD, COVID-19 is the new digital taxation!**

Finland ignores conduct; the Netherlands gets tough on multinationals; Kenya credits; South Africa bifurcates; and the UAE focuses on substance!

But at the end of another depressing week, I've identified **the major weakness with WFH: noisy neighbours!**

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. Other global developments
3. Asia Pacific
 - Australia, Indonesia, Japan, Nepal, New Zealand, Sri Lanka, Vietnam
4. Europe
 - Estonia, EU, Finland, Germany, Hungary, Ireland, Netherlands, Russia, Switzerland, UK
5. Africa
 - Kenya, South Africa
6. Middle East & Central Asia
 - Bahrain, UAE
7. Americas
 - Brazil, US
8. Treaties
9. Worth reading

WORTH READING

Ken Brewer
"Global Tax Planning for Strange Days"
Tax Notes Today International, Tax Analysts, 6 April 2020 (subscription service)

Professionals from Baker McKenzie
Series of 7 articles on impact of COVID-19 on transfer pricing
Tax Management International Journal, Bloomberg BNA, Volume 49, Issue No. 4 (10 April, 2020) (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company resident in X, owns 100% of the shares in YCo, a company resident in Y.

YCo derives a significant amount of profits, but it does not pay any Y tax on those profits (as it is in a tax holiday period in Y). YCo does not pay any dividends to XCo.

The X tax law includes CFC rules. Under those rules:

- YCo is a CFC
- YCo's total amount of profits is deemed to be paid as a dividend to XCo on the last day of the current tax year, and therefore that amount is included in XCo's taxable profits for that year.

Q1: The X/Y treaty is identical to the 2014 OECD model treaty. Does the treaty prevent X from applying its CFC rules in regard to YCo's profits?

Q2: Would your answer be different if the X/Y treaty were identical to the 2017 OECD model treaty?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

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 the agreement:

- BCo is appointed, for a period of 5 years, as ACo's exclusive buy / sell distributor in B; in consideration of this appointment, BCo agrees to pay ACo a "royalty" equal to 5% of BCo's annual sales of 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?

LAST WEEK'S ANSWER

Art. 5 PE:

- BCo is a buy/sell distributor for ACo – i.e., BCo buys goods from ACo and sells them to BCo's customers
- ACo should not have a PE in B under either Art. 5(1) or Art. 5(5) (see para. 96, 2017 OECD Comm. on Art. 5(5))

Art. 12 royalties:

- The 5% "royalty", being consideration for appointment as exclusive distributor in B, should not fall within the definition of "royalties" in Art. 12(3): see para. 10.1, 2017 OECD Comm. (contrary views recorded by 5 countries)
- But should some or all of the 5% be re-allocated to the trademark licence?
 - Art. 12(3) "royalties" definition requires identification of contractual consideration – it thus does not allow re-allocation of consideration.
 - Such re-allocation might be possible under domestic law TP rules, in accordance with Art. 9(1), on the basis of separate TP analysis of the 2 contractual provisions: see para. 3.9 et. seq., 2017 OECD TPG.
 - However, it is likely that the arm's length royalty for the trademark licence, in the situation where BCo is permitted to use the trademark only to market goods purchased from ACo, is nil: see Example 12, Annex to Chapter VI, 2017 OECD TPG.

Conclusion: no B tax.



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