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International Tax Bytes *by Steve Towers*

"International tax news, explained"

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HAPPY FRIDAY!

Forget toilet paper – **Russians hoarded cash** ahead of their lockdown! Dual purpose, perhaps?

Meanwhile in the **tax world…**

The **OECD** gets pressured; **Covent Garden** loses credits; **Loblaw** banks a winner; the **UAE** sells the farm; but **Kenya** shows that it can't print money!

Hong Kong rules; **Peru** discounts value; the **IRS** rethinks backwards; the **Netherlands** makes the **Maltese** cross; **India** brings **Mauritius** in from the cold; but **tax havens** get the **cold European shoulder!**

And at the end of yet another long WFH week, the most important question is this: How does it feel to know that (despite your degrees, your titles, and your money), **you still don't provide an essential service?**

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. Asia Pacific
   - Hong Kong, India, Indonesia, Singapore, Thailand
3. Europe
   - ECJ, Denmark, EU, Estonia, France, Germany, Netherlands, Spain, Sweden, Turkey, UK
4. Africa
   - Kenya, Republic of the Congo, South Africa
5. Middle East & Central Asia
   - UAE
6. Americas
   - Canada, Peru, US
7. Worth reading

WORTH READING

Georg Kofler
"Unlimited Adjustments: Some Reflections on Transfer Pricing, General Anti-Avoidance and Controlled Foreign Company Rules, and the 'Saving Clause' "
Bulletin for International Taxation, IBFD, 2020 (Volume 74), No. 4/5 (subscription service)

Ruth Mason
"The Transformation of International Tax"
www.ssrn.com (free service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo (a company resident in A) and BCo (a company resident in B) are sister subsidiaries in the global XYZ group.

ACo carries on a mining business in A. It sells (and exports) minerals to BCo for prices which the XYZ group believes comply with the arm's length principle.

A's tax law includes transfer pricing provisions which deem the price of exported minerals according to a schedule. The scheduled prices for ACo's mineral exports exceed the price which would be determined under the arm's length principle.

The A tax authorities increase ACo's taxable profits to reflect the scheduled prices for mineral exports.

Q1: The A/B treaty is identical to the 2014 OECD model treaty. Does the A/B treaty prevent A from applying the scheduled prices to ACo's mineral exports?

Q2: Would your answer change if the A/B treaty were identical to the 2017 OECD model treaty?

Answer in next ITB email alert on 8 May 2020!

LAST WEEK'S QUESTION

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 derive any of its profits or income from sources in X. Moreover, YCo does not pay any dividends to XCo.

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

i. YCo is a CFC
ii. 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?

LAST WEEK'S ANSWER

Q1:

- There are conflicting court decisions:
  i. The Schneider case (France) and several Brazilian cases held that CFC rules conflict with a treaty and are therefore not applicable
  ii. Whereas, the Bricom case (UK) and several Japanese cases held, subject to conditions, that CFC rules do not conflict with a treaty and are therefore applicable
- The 2014 OECD Comm. dismisses "pro-conflict" arguments which are based on Art. 7(1) (i.e., that YCo's profits cannot be taxed in X, as YCo does not have a PE in X) and Art. 10(5) (i.e., if YCo's profits are derived from X). The Comm. also, in regard to Art. 1, supports the position that there is no conflict. Five OECD members have registered their disagreement or reservations.
- X's CFC rules operate by deeming a dividend paid by YCo to XCo. If Art. 23 in the X/Y treaty requires X to exempt dividends paid by YCo, the question would arise whether X's CFC rules conflict with the treaty: see para. 38, OECD Comm. on Art. 10.
- Conclusion: depends on the views of X's courts on the above issues.

Q2:

- Art. 1(3): the treaty cannot affect X's taxation of XCo (a resident of X). The 2017 OECD Comm. makes clear that Art. 1(3) applies to CFC rules.
- Conclusion: CFC rules apply.

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