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15 May 2020



HAPPY FRIDAY!

Denmark bets the house, but its ship comes in; **Kenya** goes digital; **Labuan** substantially loosens; **Israel** looks for minor benefits; but **Saudi Arabia** goes for broke!

The **US** finally decides on character; **Vietnam** values letters of credit; **Luxembourg** learns to be both horizontal and vertical; **Switzerland** decides not to participate; and although the **European Commission** wants to defer, will it be given deference?

But at the end of a long week, the most important question is this: "Isn't it about time that the **Canadian government re-wrote their hapless GAAR?**"

Have a great weekend!
Steve

THIS WEEK'S PODCAST

(For ITB video subscribers, please log in to access the video and documents/reports)

1. OECD / Inclusive Framework
2. Asia Pacific
 - India, Malaysia, Singapore, Vietnam
3. Europe
 - Belgium, Czech Republic, Denmark, EU, Poland, Sweden, Switzerland
4. Africa
 - Algeria, Kenya
5. Middle East & Central Asia
 - Israel, Saudi Arabia, UAE
6. Americas
 - Canada, Peru, US
7. Treaties
8. Worth reading

WORTH READING

Peter Reinartz
"Federal Supreme Court Denies Beneficial Owner Capacity of a Borrower of Swiss Shares Over a Dividend Payment Date"
Kluwer International Tax Blog (8 May 2020) (free service)

Pritin Kumar, Vishal Palwe and Heta Jhaveri
"Equalization Levy: India's Unilateral Measure to Tax the Digital Economy"
Tax Management International Journal, Bloomberg BNA, Volume 49, Issue No. 5 (8 May 2020) (subscription 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 is the group's in-house finance company and BCo carries on a manufacturing business.

ACo lends money to BCo at an interest rate of 4% per annum.

The B tax authorities determine that the arm's length interest rate is 3% p.a. (please assume that that is the correct determination).

Under B domestic law, a final withholding tax of 20% (on gross) is levied on outbound payments of dividends, interest and royalties. The corporate income tax rate in B is 25%.

The A/B treaty is identical to the 2014 OECD model treaty.

What actions does the treaty permit the B tax authorities to take in regard to the 1% of excessive interest?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

XCo, a company incorporated in X, conducts its business through a branch in Y. XCo has no assets, operations or employees in X. XCo's senior management and board of directors are based in Y.

Under X tax law, XCo is a resident (based on incorporation). Under Y tax law, XCo is a resident (based on central management and control). Under both countries' tax laws, resident companies are subject to income tax on global profits.

XCo lends money to ACo, an unrelated company resident in X.

The corporate income tax rate in both X and Y is 30%.

X levies an interest withholding tax of 20% (on gross) on outbound interest payments.

The X/Y treaty is identical to the 2017 OECD model treaty, with Art. 23B.

What rates of X and Y tax does the treaty allow to be imposed on the interest paid by ACo to XCo?

LAST WEEK'S ANSWER

XCo's residence status under Art. 4(3) requires competent authority (CA) agreement. If the CAs fail to agree, XCo will generally not be entitled to treaty benefits.

If XCo is resident in X (under Art. 4(3)):

- Y would probably be permitted to tax the interest under Art. 7(1) (on the basis that the interest is part of the profits attributable to XCo's PE in Y). Note that Art. 1(3) would not apply in regard to Y, as XCo is not Y resident under the treaty.
- Y might be required to provide credit for 10% X tax, under Art. 24(3) (notional application of Art. 11(2)).
- X may also tax the interest, but would be required to provide credit for Y tax: Art. 23B.

If XCo is resident in Y (under Art. 4(3)):

- X may tax the interest, subject to 10% limit: Art. 11(2). Note that Art. 1(3) would not apply in regard to X, as XCo is not X resident under the treaty.
- Y may also tax the interest, but would be required to provide credit for X tax: Art. 23B.



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AskSteve

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