

Want to learn more about ITB? Sign up for a free trial by emailing us

[Free Trial](#)

Check out our suite of subscription plans: individual (standard), student, university faculty, young professional, and enterprise

[Subscribe](#)

29 May 2020



HAPPY FRIDAY!

The **OECD** bets on a different horse; **Australia** mischaracterises; **China** cuts; the **Philippines** orchestrates; and although **Malaysia** knows its place, it's keen on forbearance!

India sets the fees; the **EU** goes for turnover; **Denmark** works at home; **Finland** exits; **Kenya** cracks a nut; **Turkey** increases tax a BITT; **Ukraine** discovers the BEPS project; and **Paraguay** hesitates, but **Chile** and **Mexico** press on!

And at the end of another long week, the most important question is this: "Have your tweets been fact-checked?"

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
- Asia Pacific
 - Australia, China, India, Malaysia, Philippines, Singapore
- Europe
 - Austria, Denmark, ECJ, EU, Finland, Greece, Norway, Turkey, Ukraine
- Africa
 - Algeria, Kenya
- Americas
 - Chile, Mexico, Paraguay
- Worth reading

WORTH READING

Martijn de Lange and Aris Wong
"Insurance of Tax Risks: The Current State of Play in Asia"
Asia-Pacific Tax Bulletin, IBFD, 2020 (Volume 26), No. 2 (subscription service)

Savvas Kostikidis
"Influencer Income and Tax Treaties"
Bulletin for International Taxation, IBFD, 2020 (Volume 74), No. 6 (subscription service)

Isabel Garcia Calich da Fonseca
"Taxation of Capital Gains on Indirect Sales of Shares of Brazilian Companies by Non-Residents: The Allocation of Taxing Rights or Tax Avoidance Schemes?"
Bulletin for International Taxation, IBFD, 2020 (Volume 74), No. 6 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

Ms X, a resident of X, is an influencer on several social media platforms. She owns 100% of the shares in XCo, a company resident in X. Ms X is employed by XCo.

XCo produces videos in which Ms X advertises various goods. For such advertisements, XCo is paid fees ("advertising fees") by the manufacturers of those goods ("advertisers").

Prior to COVID-19, Ms X also attended public events at which XCo was paid fees ("appearance fees"), by fashion companies, for Ms X to wear specific clothes at the event.

Some of the video filming and public events occurred in Y and other countries outside X. Also, some of the advertisers and fashion companies are resident in Y. Ms X has a large and loyal fan base in Y.

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

XCo does not have a PE in Y under the Art. 5 definition.

Under the X/Y treaty, is Y permitted to levy income tax on the advertising fees and the appearance fees which are received by XCo? Please separately consider 3 situations: (i) the video filming and public events occurred in Y, but the advertisers and fashion companies are not resident in Y (and do not have PEs in Y); (ii) the video filming and public events did not occur in Y, but the advertisers and fashion companies are resident in Y; and (iii) the video filming and public events did not occur in Y, and the advertisers and fashion companies are not resident in Y (and do not have PEs in Y).

Answer in next ITB email alert on 12 June 2020!

LAST WEEK'S QUESTION

XCo, a company resident in X, carries on a business of manufacturing and selling goods. XCo is considering establishing a manufacturing plant in a developing country in order to benefit from lower manufacturing costs.

XCo identifies possible locations in 3 countries, all of which provide a 10-year tax holiday and impose 20% withholding tax on outbound dividends (DWT).

The only material difference between the 3 countries is that Y has entered into a double tax treaty with X, and the other 2 countries have not. The X/Y treaty is identical to the 2017 OECD model treaty.

Based on that difference, XCo decides that Y will be the location. XCo forms a 100% Y-resident subsidiary (YCo) and it subscribes for significant share capital in YCo (due to the tax holiday in Y, XCo structures its funding in the form of 100% equity). YCo has no other funding. YCo builds and operates the plant. Some years later, YCo pays dividends to XCo. Under X domestic law, resident companies are taxable on global profits; however, dividends received from YCo are exempt under a participation exemption.

Q1: Under the X/Y treaty, what rate of DWT is Y permitted to levy on YCo's dividends?

Q2: Does the X/Y treaty permit the X tax authorities to deny the exemption for XCo's dividend income?

LAST WEEK'S ANSWER

Q1:

- 5%: Art. 10(2)(a).
- Art. 29(9) (PPT) should not apply to deny the benefit of Art. 10(2)(a), because:
 - Example C in the OECD Comm., para. 182 (on which this question is based) indicates that the PPT should not apply.
 - The PPT's second limb (i.e., "unless it is established...") should be satisfied, due to the construction and operation of the manufacturing plant in Y. (Despite the statement in OECD Comm., para. 182, it is arguable that the PPT's first limb is also satisfied.)
 - As a practical matter, it would be surprising if the Y tax authorities were to assert the PPT in this case (which involves a substantial inbound investment into Y).

Q2:

- Art. 23A or 23B requires X to grant a credit to XCo for Y DWT. The credit is limited to the amount of X tax on the dividend income from YCo – thus, if the domestic law participation exemption applies, the credit will be nil.
- YCo is "thickly capitalised" – it has no debt. It is possible that the X tax authorities would use the X transfer pricing rules or anti-avoidance rules to recharacterize part of YCo's equity as an interest-bearing loan. The X/Y treaty would not prevent such action: Art. 1(3).
- If the X tax authorities impute interest income to XCo, it should obtain a credit for the DWT under Art. 23A or 23B, subject to the limitation described above.



[Tax Quiz Archives](#)

[Email Alert Archives](#)

[AskSteve](#)

[Referral Program](#)

[What is ITB?](#)

If you have a friend or colleague who you think might find this email alert interesting, please forward it to them.

Watch ITB video podcasts anytime, anywhere with our App!

