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12 June 2020



HAPPY FRIDAY!

The **US** sees **DSTs** growing everywhere, but they actually shrink in the **Czech Republic**; **India** relies on **Vodafone**; **Mauritius** levies, but **Senegal** gives it a **red card**; **Nigeria** makes its **significant presence** felt; but **poor documentation** melts the **Danish ice cream!**

Brazil exempts the **French**; **duties** rise and fall in the **Middle East**; **Norway** is **cost-conscious**; the **Netherlands** gets tough on **tax havens** (but only in **2024**); **Thailand** finally bills **Netflix**; but **Malaysia** gives you a holiday for **15 years!**

And...football is back!!!

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
- Other global developments
- Asia Pacific
 - Australia, China, India, Japan, Malaysia, Taiwan, Thailand
- Europe
 - Belgium, Cyprus, Denmark, ECJ, EU, Germany, Italy, Netherlands, Norway, Poland, Slovenia, Spain
- Africa
 - Kenya, Mauritius, Namibia, Nigeria, South Africa
- Middle East & Central Asia
 - Bahrain, Isarel, Saudi Arabia
- Americas
 - Brazil, Canada, Colombia, US
- Treaties
- Worth reading

WORTH READING

Mukesh Butani and Tarun Jain

"Most Favored Nation Clauses in India's Tax Treaties"

Tax Notes Today International, Tax Analysts, 4 June 2020 (subscription service)

Anton Joseph

"Australia – Changes to Hybrid Mismatch Rules"

Finance and Capital Markets (formerly Derivatives & Financial Instruments), IBFD, 2020 (Volume 22), No. 1 (subscription service)

Nicolás José Muñiz Arias

"Taxation of Cross-Border Services: A Latin American Perspective"

Tax Notes Today International, Tax Analysts, 3 June 2020 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company resident in A, in 2019 licensed a patent to BCo, a company resident in B, in return for annual royalties.

Under B domestic law, outbound royalties are subject to a final withholding tax of 20% on gross.

Under the A/B treaty, which entered into force in 2005, the source country tax on outbound royalties is limited by Art. 12 to 15% on gross.

A 2005 protocol to the A/B treaty contains this provision:

"In respect of Article 12, if under any convention or protocol signed after 1 May 2005 between [B] and a third State which is a member of the OECD, [B] limits its taxation at source on royalties to a rate lower than the rate provided for in [the A/B treaty], the same rate as provided for in that convention or protocol on royalties shall also apply under [the A/B treaty], with effect from the date on which [the A/B treaty] entered into force or that convention or protocol enters into force, whichever enters into force later."

That protocol also entered into force in 2005.

Under the B/C treaty, which was signed in 2007 and entered into force in 2008, the source country tax on outbound royalties is limited to 10% on gross.

C became a member of the OECD in 2017.

Q1: For royalties paid by BCo to ACo in 2020, what tax rate does the A/B treaty permit B to impose?

Q2: Would your answer change if the provision in the protocol instead said this:

"In respect of Article 12, if after the entry into force of [the A/B treaty], any convention or protocol between [B] and a third State which is a member of the OECD limits the taxation at source on royalties to a rate lower than the rate provided for in [the A/B treaty], the same rate as provided for in that convention or protocol shall also apply under [the A/B treaty]."

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

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 filming and 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 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 Art. 5.

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

LAST WEEK'S ANSWER

Threshold issue #1: to what extent are Ms X's activities those of an entertainer, and are therefore potentially covered by Art. 17? See OECD Comm., para. 3 et. seq.:

- Producing videos: yes, entertainer activities
- Event attendance: OECD Comm. says that "a model performing as such" is not acting as an entertainer (but several OECD and non-member jurisdictions have noted their disagreement). Is Ms X acting as a model when she attends events, at which she is paid to wear specific clothes?

Threshold issue #2: does Y domestic tax law attribute XCo's income to Ms X?

Situation (i):

- If entertainer activities: income which is referable to filming / events which occurred in Y is permitted to be taxed by Y, with XCo (Art. 17(2)) or Ms X (Art. 17(1)) as taxpayer
- If non-entertainer activities: Art. 17 is not applicable; the income is exempt under Art. 7(1) or 21(1), regardless of the taxpayer
- In both cases, Ms X's salary is exempt (Art. 15(2))

Situations (ii) & (iii):

- Art. 17 is not applicable
- Income is exempt under Art. 7(1) or 21(1), regardless of the taxpayer
- Ms X's salary is exempt (Art. 15(2))



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