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3 July 2020



**HAPPY FRIDAY!**

**Pillar One** is like the **Tokyo Olympics**: let's try for next year!

**Straddle holding periods** are big **Down Under**; **Dell** maps an advantage; **Thailand** is sick of plastic; **Adecco** plays a 1-all draw; **Blackrock** manages to lose; **Europcar** is in the driving seat; **Kenya** wasn't kidding; **Canada** can't restructure; **Chile** gives intangible benefits; and no-one signs treaties!

But at the end of a long virtual week, the most important question is this: "Do you say goodbye at the end of a Zoom call by: (a) waving, (b) saluting, (c) giving a thumbs-up, (d) winking, (e) smiling, or (f) none of the above?"

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
- Trade and other global developments
- Asia Pacific
  - Australia, China, India, Japan, Korea, New Zealand, Singapore, Thailand
- Europe
  - Austria, Denmark, ECJ, EU, Finland, Switzerland, UK
- Africa
  - Kenya, South Africa
- Middle East & Central Asia
  - UAE
- Americas
  - Canada, Chile, US
- Treaties
- Review of tax cases in 1st half of 2020 - VAT cases
- Worth reading

**WORTH READING**

Mark Bonekamp and Neil Schaatsbergen  
"Transfer Pricing of Financial Transactions and the Impact of COVID-19"  
International Transfer Pricing Journal, IBFD, 2020 (Volume 27), No. 4 (subscription service)

Thierry Lesage, Sophie Richard and Frank Salentiny  
"Implementation of ATAD 2 in Luxembourg and Implications for Alternative Investment Funds"  
Tax Notes Today International, Tax Analysts, 24 June 2020 (subscription service)

Sean Foley, Mark Martin, Tom Zollo, Thomas Sites, Jack O'Meara, Saurabh Dhanuka, Aaron Vaughan, Thomas Bettge and Tom Greenaway  
"Practical Implications of Denial of Review in Altera v. Commissioner"  
Tax Management International Journal, Bloomberg BNA, 2020 (Volume 49), Issue No. 7 (subscription service)

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

XCo, a company resident in X, is the parent company of a global group.

One of its subsidiaries is YCo, a company resident in Y. YCo carries on a manufacturing business in Y.

XCo opens a liaison office ("L.O.") in Y. The L.O. has its own leased office, and has one employee (Ms A, a national of X, but resident in Y).

Ms A's role is to:

- Identify possible business opportunities for XCo in Y and nearby countries, and communicate these to XCo
- Promote technical cooperation between XCo and its subsidiaries in Y and nearby countries, and also between such subsidiaries themselves
- Act as communication channel between XCo and its subsidiaries in Y and nearby countries

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

Does the treaty permit Y to levy income tax on XCo?

**Answer in next week's ITB email alert!**

**LAST WEEK'S QUESTION**

ACo, a company resident in A, owns 100% of the shares in BCo, a company resident in B.

The A/B treaty is identical to the 2017 OECD model treaty.

BCo operates a business in B. It is registered for VAT purposes in B.

In response to the COVID-19 economic crisis, the B law has been amended to allow taxpayer payments of VAT to the tax authorities to be deferred for 6 months. However, companies which are themselves, or which are subsidiaries of, companies resident in "low-tax jurisdictions" are excluded from the deferral. A falls within the definition of "low-tax jurisdiction".

Can BCo qualify for the VAT deferral?

**LAST WEEK'S ANSWER**

It can be accepted that VAT is not a tax to which the A/B treaty applies, under Art. 2.

However, Art. 24 is not limited by Art. 2, but instead applies "to taxes of every kind and description" (Art. 24(6)) – which phrase would include VAT. [Note that 3 OECD members and 14 non-members have indicated that they "reserve the right to restrict the application of [Art. 24] to the taxes covered by the Convention".]

Would BCo's inability to qualify for VAT payment deferral, because it is a subsidiary of a company resident in A, breach Art. 24(5)?

- The key issue is identifying the "other similar enterprises of the first-mentioned State" – in other words, which hypothetical enterprises should BCo be compared with?
- One view would be to compare BCo with enterprises of B which are not wholly or partly owned or controlled, directly or indirectly, by one or more residents of a "low-tax jurisdiction". On this view, Art. 24(5) would be triggered.
- Another view would be to compare BCo with enterprises of B which are wholly or partly owned or controlled, directly or indirectly, by one or more residents of a "low-tax jurisdiction", but not including A. On this second view, Art. 24(5) would not be triggered.
- Which view is correct? On balance, I think Art. 24(5) would likely be triggered.

If Art. 24(5) is not triggered, then BCo has no legal basis to object.

However, if Art. 24(5) is triggered, another issue arises – the extent to which the A/B treaty has been given legal effect in B.

- If the A/B treaty were given full domestic legal effect in B, with paramount force over any inconsistent B domestic law, then BCo should qualify for the VAT deferral, by virtue of Art. 24(5).
- However, some countries in B's position do not give full domestic legal effect to double tax treaties. Instead, such countries give double tax treaties domestic legal effect only for the purposes of specific taxes – and such specific taxes never (IMHO) include VAT. In such countries, although the denial of the VAT deferral to BCo might be a breach of Art. 24(5), BCo would have no legal right to enforce that breach against the B tax authorities.



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