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9 October 2020



## HIGHLIGHTS

- **Digital taxation: blueprint reports & Spain's DST**
- **Pillar Two detailed analysis: GloBE rules – scope**
- **Norway: withholding tax**

## HAPPY FRIDAY!

**Conley** sugarcoats; **McAfee** lacks defence; and even the fly on **Mike Pence's** head looked bored!

The tax world wonders **IF**; **Autodesk** wins a bonus; **United Biscuits** crumbles; **Newey** avoids, but is not abusive; **Vietnam** is the new **China**; **Saudi Arabia** taxes sand; **Norway** withholds; **Chile** wants everyone to report; but **Australia** goes backwards!

And at the end of the week, here's the most important question for all you conspiracy theorists: "Do you think that **President Trump** really does have **COVID-19** or did he just make fake news?"

Have a great weekend!

Steve

## THIS WEEK'S PODCAST

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

1. Digital taxation: latest developments
2. Pillar Two: GloBE Rules – Scope
3. Asia Pacific
  - Australia, India, Indonesia
4. Europe
  - Brexit, ECJ, Norway, Spain, UK
5. Middle East & Central Asia
  - Saudi Arabia
6. Americas
  - Chile, US
7. Treaties
8. Worth reading

## WORTH READING

Aaron Junge and Ege Berber Villeneuve

["Coordinating Pillar 2 With the U.S. GILTI Regime"](#)

Tax Notes Today International (5 October 2020) (subscription service)

Rick Minor

["OECD Draft Blueprint Includes a Coordinated End to DSTs"](#)

Tax Notes Today International (5 October 2020) (subscription service)

## INTERNATIONAL TAX QUIZ

In 2015, ACo, a company resident in A, formed a new subsidiary called CCo, a company resident in C.

ACo funded CCo with 100% share capital.

CCo lent those funds to BCo, a company resident in B.

The 3 companies are all members of a multinational group.

The loan from CCo to BCo carries an arm's length interest rate.

BCo is entitled to income tax deductions for the interest paid to CCo.

Under C law, CCo is entitled to a notional interest deduction (NID) in regard to its share capital. The NID has the effect of significantly reducing CCo's taxable profits.

The B/C treaty, which was signed and entered into force in 2012, is identical to the 2010 OECD model treaty, except that the rate in Art. 11(2) is 5%. Also, the MLI applies in regard to the B/C treaty, with both Art. 7(1) & Art. 7(4) (MLI) being applicable.

The A/B treaty, which was signed and entered into force in 2018, is identical to the 2017 OECD model treaty, except that the rate in Art. 11(2) is 15%.

There is no A/C treaty.

Under domestic law, B levies a withholding tax of 20% on outbound interest payments.

What rate of withholding tax is B permitted to impose on BCo's interest payments which are made in 2020?

Answer in next week's ITB email alert!

## LAST WEEK'S QUESTION

XCo, a company incorporated and resident in X, owns 100% of the shares in YCo, a company incorporated and resident in Y.

XCo makes a loan (with an arm's length interest rate) to YCo.

YCo uses the borrowed money in its business in Y.

YCo fails to deduct and remit withholding tax from the interest it pays to XCo.

As a result of the non-payment of withholding tax, the Y tax authorities (acting in accordance with the Y tax law): (i) impose penalties on XCo and YCo; and (ii) deny an income tax deduction to YCo for the interest payments.

Under Y law, no withholding tax is imposed on interest payments to resident lenders.

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

Are the actions taken by the Y tax authorities, permitted under the treaty?

## LAST WEEK'S ANSWER

XCo: Art. 24(1)

The fact that a withholding tax is levied by Y on interest paid to XCo, but not on interest paid to Y-resident lenders, does not breach Art. 24.

Specifically, Art. 24(1) is not breached, because XCo cannot be compared with Y-resident lenders, as they are not "in the same circumstances, in particular with respect to residence".

For the same reason, the penalty imposed on XCo does not breach Art. 24(1).

YCo: Art. 24(5)

I will assume that Y's withholding tax applies to interest paid to non-residents generally, and it is not limited to interest paid to a person which owns or controls the capital of the payer.

Based on that assumption, Art. 24(5) is not breached by either (i) the penalty imposed on YCo, or (ii) the denial of deductions for YCo - see OECD Comm., para. 79.

YCo: Art. 24(4)

The Y tax authorities have denied YCo deductions for interest paid to XCo, because the withholding tax was not paid. If the interest were instead paid to a Y-resident lender, it would be deductible, because there is no withholding tax imposed in that situation.

This is a breach of Art. 24(4).



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