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26 February 2021



### HIGHLIGHTS

- UK Supreme Court decision in the Uber case, concerning the employment status of Uber drivers – and what it could mean from a tax viewpoint
- EU's latest position on public CbC reporting
- Continuation of in-depth analysis of Pillar One – today: the revenue sourcing rules

### HAPPY FRIDAY!

Pokémon turns 25; Perseverance's parachute contains a secret message from NASA (42?); and China shows that it really values housework!

Meanwhile, in the tax world...

Turkey is given a yellow card; Janet speaks her mind; Thailand is comparable; Uber doesn't deliver; the EU qualifies to go public; South Africa trims and broadens; and Hong Kong starts a share price collapse!

But at the end of the week, the most important question is this: If someone tells you that Port Elizabeth has changed its name to Gqeberha, would you reply, "Well, that's easy for you to say!"?

Have a great weekend!

Steve

### THIS WEEK'S PODCAST

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

1. Uber case
2. EU: public CbC reporting
3. Other global developments
4. Pillar One: Revenue sourcing rules (Part 1)
5. Asia Pacific
  - Hong Kong, Malaysia, Thailand
6. Europe
  - EU
7. Africa
  - South Africa
8. Treaties

### ITB series on Pillar One

- Scope (Part 1) – ITB (22 Jan 2021)
- Scope (Part 2) – ITB (29 Jan 2021)
- Scope (Part 3) – ITB (5 Feb 2021)
- Nexus – ITB (19 Feb 2021)
- Revenue sourcing rules (Part 1) – ITB (26 Feb 2021)

### ITB series on Pillar Two

1. GloBE rules
  - Scope – ITB (9 Oct 2020)
  - Calculating the ETR (Part 1) – ITB (16 Oct 2020)
  - Calculating the ETR (Part 2) – ITB (23 Oct 2020)
  - Carry-forwards – ITB (30 Oct 2020)
  - Carve-out, and computation of the ETR and top-up tax – ITB (6 Nov 2020)
  - Income Inclusion Rule – ITB (13 Nov 2020)
  - Switch-Over Rule, and Undertaxed Payments Rule (Part 1) – ITB (20 Nov 2020)
  - Undertaxed Payments Rule (Part 2) – ITB (27 Nov 2020)
  - Associates, joint ventures and orphan entities; and Simplification options – ITB (4 Dec 2020)
2. Other topics
  - Subject to Tax Rule – ITB (2 Oct 2020)
  - Implementation and Rule Co-ordination – ITB (11 Dec 2020)
  - Unresolved issues, GILTI & hub jurisdictions – ITB (18 Dec 2020)

### WORTH READING

Raffaele Petruzzi and Argyro Myzithra  
"Transfer Pricing Rules Under EU Law and the CJEU Decision in *Impresa Pizzarotti*"  
Tax Notes Today International, Tax Analysts, 17 February 2021 (subscription service)

Qiang Cai, Fang Wu and Xiaorong Li  
"The New Taxing Right and its Scope Limitations: A Theoretical Reflection"  
Intertax, Kluwer, 2021 (Volume 49), Issue 3 (subscription service)

### INTERNATIONAL TAX QUIZ

#### THIS WEEK'S NEW QUIZ

XCo (a company resident in X) and YCo (an unrelated company resident in Y) are planning to form a 50/50 international joint venture.

One of the investments of the joint venture will be to acquire 100% of the shares in BCo, a (non-landrich) company resident in B.

To hold the shares in BCo, XCo and YCo are currently planning to form a 50/50 general partnership under A law. The partnership will elect to be treated as a resident company for A tax law purposes. The reason for using a partnership is to allow surplus cash to be easily paid to XCo and YCo (i.e., without the restrictions of the A corporate law).

The A/B treaty is identical to the 2014 OECD model treaty. The MLI does not apply to the A/B treaty.

Under B law: (i) a 30% dividend withholding tax is levied on outbound dividends; (ii) the A partnership is treated as transparent; and (iii) the GAAR does not apply to treaty benefits.

After applying any treaty benefits, what rate of B dividend withholding tax will apply to dividends paid by BCo?

Answer in next week's ITB email alert!

### LAST WEEK'S QUESTION

ACo, a company resident in A, conducts an international goods shipping business.

ACo's ships pick up and deliver goods at the only port in B.

ACo owns an office in B. ACo has numerous employees who are based at the office – some of these employees perform activities such as booking shipments for customers in B, while others conduct maintenance of ACo's ships when they are in B's port.

In addition to its fees for transporting goods, ACo derives 3 types of income / profits from B:

- Interest income from the short-term investment of cash balances
- Fees for maintenance services performed in regard to other companies' ships when they are in B's port
- Profit on sale of ACo's office in B (due to headcount growth, ACo moved into a new office and sold its old office)

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

Does the A/B treaty permit the B tax authorities to levy income tax on the 3 types of income / profits derived by ACo?

### LAST WEEK'S ANSWER

Interest: Art. 11(2) would allow 10% B tax. However, according to the OECD Comm., Art. 8(1) (and not other provisions) would apply to interest from the investment of cash required in a Contracting State for the carrying on of a shipping business. This would seem to cover the interest in this case. Thus, the interest should be exempt under Art. 8(1).

Maintenance service fees: According to the OECD Comm., Art. 8(1) would apply to the fees (thus, exempt). Note that Art. 7 would not apply to allow B taxation, despite the fact that ACo's office would be a PE: Art. 7(4).

Profit on sale of ACo's office: Art. 13(1) would allow unlimited B tax (note that Art. 13(2) or (3) will not apply, as the office is immovable property). Is the profit "from the operation of ships...in international traffic" (Art. 8(1))? The OECD Comm. does not address the issue of whether Art. 8(1) covers profits from the sale of fixed assets which are used in an international shipping business. In 2020, the Danish National Tax Board decided that a profit derived by an international shipping company on the sale of a house which was used by an expatriate director, was covered by Art. 13(1), and not Art. 8(1). I agree! Thus, IMHO: the profit should be taxable by B.



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