**International Tax Bytes** *by Steve Towers*

**"International tax news, explained"**



## 12 March 2021

## HIGHLIGHTS

- **US passes a $1.9 trillion COVID relief package, which includes some tax changes**
- **Latest developments on digital taxation – the OECD simplifies, while Italy delays**
- **Continuation of our in-depth analysis of Pillar One – today, tax base determinations**

## HAPPY FRIDAY!

The **US Congress** runs out of zeroes; **Meghan sparkles**; while **Morgan disaPiers!**

Meanwhile, in the tax world…

**Skandia** strikes again; **Barcelona** loses; **Israeli** researchers split profits; the financial sector contributes in **Brazil**; **Cairn** looks to monetise; **Denmark** provides auxiliary advice; **Peru** is indirectly exempt; the **EU** issues a roadmap; and in the **US**, first sales look doubtful!

But at the end of the week, the most important question is this: **"Does the rest of the world really care about a feud in the British royal family?"**

**Have a great weekend!**
**Steve**

## THIS WEEK'S PODCAST

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

1. US COVID relief package
2. Digital taxation
3. Trade and other global developments
4. Pillar One: Tax base determinations (Part 1)
5. Asia Pacific
    - Hong Kong, India, Singapore
6. Europe
    - Denmark, ECJ, EU, Russia
7. Middle East & Central Asia
    - Israel, Saudi Arabia
8. Americas
    - Brazil, Peru, US
9. 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)**
- **Revenue sourcing rules (Part 2) – ITB (5 Mar 2021)**
- **Tax base determinations (Part 1) – ITB (12 Mar 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

Spencer Landsiedel
"The Principal Purpose Test's Burden of Proof: Should the OECD Commentary on Article 29(9) Specify Which Party Bears the Onus?"
World Tax Journal, IBFD, 2021 (Volume 13), No. 1 (subscription service)

Vikram Chand and Camille Vilaseca
"The UN Proposal on Automated Digital Services: Is It in the Interest of Developing Countries?"
Kluwer International Tax Blog, 5 March 2021 (freely available)

## INTERNATIONAL TAX QUIZ

### THIS WEEK'S NEW QUIZ

RCo 1, a company resident in R, owns 30% of the shares in BCo, a company incorporated in B (a tax haven).

BCo's only asset is a large parcel of land in S.

During S's 2020 tax year, RCo 1's 30% shareholding appreciated in value. RCo 1 did not dispose of any shares during that year. However, during that year, RCo 1 did grant a call option to RCo 2 (an unrelated company resident in R) in respect of all of its shares in BCo – RCo 2 paid a large fee to RCo 1 for the grant of the option.

RCo 1 had no other financial connections with S during that year.

The R / S treaty is identical to the 2014 OECD model treaty. There is no treaty between B and S, or between B and R.

Does the R / S treaty permit S to levy income tax on RCo 1?

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

### LAST WEEK'S QUESTION

XCo, a company resident in X, owns some redeemable preference shares in YCo, a company resident in Y. The shares carry a preference right to a 5% per annum dividend and a preference right to a return of the face value of the shares (in a liquidation scenario), but they do not otherwise participate in YCo's profit distributions or surplus assets.

YCo has paid-up share capital of $10 million, a share premium reserve of $90 million, and retained earnings of $50 million.

Of the $10 million of paid-up share capital, $4 million represents the par value of common shares issued to numerous shareholders (not including XCo). The remaining $6 million represents the par value of the redeemable preference shares issued to XCo.

Under Y law, withholding tax of 25% is levied on outbound dividends, interest and royalties.

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

Does the X/Y treaty permit Y to levy tax on YCo's dividends paid to XCo? If yes, at what rate?

### LAST WEEK'S ANSWER

Threshold issue: are the dividends treated as "dividends" or "interest" under Arts. 10 & 11 of the treaty? They will be "dividends" if the redeemable preference shares (RPS) are "shares" (not defined), and they will be "interest" if the RPS are "debt-claims" (not defined). Using Art. 3(2), the characterisation of the RPS under Y domestic tax law will probably determine their characterisation for treaty purposes. See also the OECD Comm. on Arts. 23A & 23B: "conflicts of qualification".

If the RPS dividends are "interest": Y may levy tax of 10% on gross: Art. 11(2).

If the RPS dividends are "dividends": Y may levy tax of 5% on gross: Art. 10(2)(a). Para. (a) applies if XCo holds directly at least 25% of the capital of YCo. According to the OECD Comm., "capital" in para. (a) means the par value of all shares (whether ordinary, preference or otherwise) – it does not include reserves. Thus, XCo holds directly 60% of YCo's capital.

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