

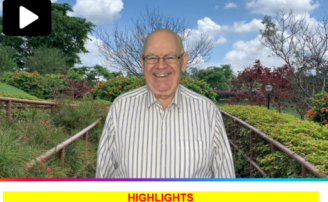
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23 April 2021



HIGHLIGHTS

- **Digital taxation: Pascal updates expected timetable, and Ireland's not happy**
- **Canada presents 2021 Budget**
- **UN tax committee approves Art. 12B (automated digital services) – how significant?**
- **Continuation of in-depth analysis of Pillar One – today: methods to eliminate double taxation, and examples**

HAPPY FRIDAY!

The world turns green; NASA's ingenuity takes flight; but the European Super League is relegated!

Meanwhile, in the tax world...

Ireland really likes 12.5%; Canada finally reads the BEPS reports; the UN thinks it has the answer to digital taxation; Australia imports guidance; France characterizes Delaware; Greece slices; and Saudi Arabia is forced to attract!

But this week's "best comment" award goes to Thomas Hayes (in response to the 400 point drop on the New York Stock Exchange on news of President Biden's proposed tax increases on the wealthiest Americans): "If it had a chance of passing, we'd be down 2,000 points!"

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
2. Canada: Budget
3. Other global developments
4. Pillar One: Elimination of double taxation (Part 2)
5. Asia Pacific
 - Australia
6. Europe
 - France, Greece
7. Middle East & Central Asia
 - Saudi Arabia
8. Americas
 - Colombia, Mexico

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)**
- **Tax base determinations (Part 2) – ITB (19 Mar 2021)**
- **Profit allocation (Part 1) – ITB (26 Mar 2021)**
- **Profit allocation (Part 2) – ITB (9 Apr 2021)**
- **Elimination of double taxation (Part 1) – ITB (16 Apr 2021)**
- **Elimination of double taxation (Part 2) – ITB (23 Apr 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

Steven Dean and Attiya Waris
"Ten Truths About Tax Havens: Inclusion and the 'Liberia' Problem"
www.ssm.com, posted 9 April 2021 (freely available)

Raffaele Russo
"60 Years Later: Wishes Coming True?"
Kluwer International Tax Blog, posted 21 April 2021 (freely available) [Note: The title refers to the announcement of CFC rules by the US, in 1961; and the recent strong support by the US for Pillar Two]

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company resident in A, owns and operates a gold mine in B.

Under the B income tax law, all resident companies, and non-resident companies which operate in B via a branch, are subject to a 30% tax rate on their taxable profits – subject to one exception. That exception concerns non-resident companies which conduct mining operations in B – such companies are subject to income tax at the rate of 20% applied to their gross mining revenue (i.e., no deductions).

In ACo's case, the B income tax it pays at the 20% rate applied to gross mining revenue, significantly exceeds the B income tax it would pay if it were subject to the "30% on taxable profits" regime.

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

ACo asks you whether it can use Art. 7(1) to claim deductions in computing its B income tax.

What do you say?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

Ms X, a resident of X, is a partner in a major law firm in X. The law firm is in the form of a general partnership. Ms X specialises in estate planning, and she has a growing number of clients in X and some nearby countries, including Y.

Ms X's clients in Y are wealthy individuals, many of whom have built large businesses in Y.

During the 2019 income year, Ms X spent a total of 180 days in Y, which comprised 5 separate visits. On all but 20 of those days, she had meetings with clients and prospective clients – the other 20 days were for rest. During her 5 visits, Ms X stayed at different hotels, and did not use any office facilities. The meetings with clients and prospective clients occurred in their homes or at restaurants.

During those meetings, Ms X signed engagement letters with 10 clients.

The X/Y treaty is identical to the 2017 UN model treaty, with a 10% rate specified in Art. 12A(2).

Ms X's firm receives significant fees from her clients in Y. Does the X/Y treaty permit Y to levy income tax on those fees?

LAST WEEK'S ANSWER

This question requires a decision as to which of 3 articles applies: Art. 7, Art. 12A, or Art. 14.

Art. 12A will not apply if "the payment is made...by an individual for services for the personal use of an individual": Art. 12A(3). As Ms X's services involve estate planning for wealthy individuals, it is likely that Art. 12A would be excluded. If this is not the case, Art. 12A would allow Y tax, limited to 10% on gross (Art. 12A has priority over Arts. 7 & 14).

Assuming Art. 12A does not apply...

Ms X's activities cause a contract-concluding agency PE to exist in Y. However, Art. 7 will not apply if the income is dealt with in Art. 14: Art. 7(6).

Art. 14 applies to income in respect of "professional services", the definition of which would cover Ms X's services. Ms X does not have a "fixed base" in Y. Also, her time in Y does not satisfy the 183 days / 12 months test. Thus, Art. 14(1) should provide an exemption from Y tax.

Thus, if Art. 12A does not apply, the treaty should not allow any Y tax.



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