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30 April 2021



HIGHLIGHTS

- Digital taxation
- UN releases the 2021 edition of its transfer pricing manual, with new material on several important topics
- Concretic case decided by the Delhi High Court, on the "most favoured nation" clause in the India / Netherlands treaty
- Continuation of in-depth analysis of Pillar One – today: Amount B

HAPPY FRIDAY!

It's Cook vs. Zuck; the Oscars don't know how to end; and in Korea, the Lee family has to pay the Monet!

Meanwhile, in the tax world...

Hungary claims sovereignty, but France & Germany acquiesce; the UN goes manual; India wonders if "is" includes "will be"; Euromoney has the right purpose; Bolivia joins the club; and Biden spends trillions again!

But the scariest headline I read this week is this: "Deodorant sales fall at Unilever as consumers abandon personal hygiene in lockdown!"

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. UN transfer pricing manual
3. Concretic case (MFN clause)
4. Pillar One: Amount B (Part 1)
5. Asia Pacific
 - India
6. Europe
 - UK
7. Americas
 - Bolivia, US

ITB series on Pillar One

- Scope (Part 1, 2 & 3) – ITB (22, 29 Jan & 5 Feb 2021)
- Nexus – ITB (19 Feb 2021)
- Revenue sourcing rules (Part 1 & 2) – ITB (26 Feb & 5 Mar 2021)
- Tax base determinations (Part 1 & 2) – ITB (12 & 19 Mar 2021)
- Profit allocation (Part 1 & 2) – ITB (26 Mar & 9 Apr 2021)
- Elimination of double taxation (Part 1 & 2) – ITB (16 & 23 Apr 2021)
- Amount B (Part 1) – ITB (30 Apr 2021)

ITB series on Pillar Two

1. GloBE rules
 - Scope – ITB (9 Oct 2020)
 - Calculating the ETR (Part 1 & 2) – ITB (16 & 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 & 2) – ITB (20 & 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, SIFTI & hub jurisdictions – ITB (18 Dec 2020)

WORTH READING

Elsa Cass-Eberhard, Xiao Chen, Mark D. Orlitzky and Christoph Spengler
"One Directive, Several Transpositions, A Cross-Country Evaluation of the National Implementation of DAC6"
World Tax Journal, IBFD, 2021 (Volume 13), No. 1 (subscription service)

Annaliese Foong
"International Tax Reform: A Solution in Search of a Problem"
Daily Tax Report: International, Bloomberg BNA, 28 April 2021 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company resident in X, is the parent of a group which carries on a famous restaurant business in X.

XCo plans to use X-Sub (a newly formed X subsidiary) to open a branch of the restaurant in Z city in country Y for a period of one month, during the Olympic Games in Z city. At the end of the Games, the restaurant will close, and X-Sub will be liquidated.

X-Sub will pay XCo arm's length fees for the provision of knowhow and the right to use the restaurant's name in Z city. Also, a number of XCo chefs and other restaurant staff will be seconded to X-Sub for the one month, in return for an arm's length fee which is paid to XCo.

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

Will the X/Y treaty allow Y to levy income tax on XCo or X-Sub?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

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

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 (i.e., after deducting expenses) – 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 AB treaty is identical to the 2017 OECD model treaty.

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

What do you say?

LAST WEEK'S ANSWER

Although ACo's gold mine would constitute a PE in B, ACo's B taxation will be governed by Art. 6, and not by Art. 7: see Art. 7(4). Art. 6 does not provide any limitation in regard to the B taxation. In particular, Art. 6 does not prevent B from levying tax on ACo's gross revenue from the gold mine. Thus, the short answer to ACo's question is that Art. 7(1) cannot be used to claim deductions in computing its B income tax.

However, as ACo's gold mine would constitute a PE in B, Art. 24(3) is relevant: see para. 9 of OECD Comm. on Art. 5.

Art. 24(3) requires that B's taxation of ACo's PE is not "less favourably levied" than the taxation levied on B-resident enterprises carrying on the same activities. Under the B income tax law, a resident company which owns and operates a gold mine in B would be subject to a 30% tax rate on its taxable profits (i.e., after deducting expenses). As Art. 24(3) operates in only one direction (i.e., it refers only to "less favourably levied" – it does not seek to equalise the tax treatment), it should provide ACo with this outcome in B: ACo will be subject to B tax which is computed as the LESSER of (i) 20% of gross revenue, and (ii) 30% of taxable profits.

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