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4 June 2021



HIGHLIGHTS

- Digital taxation, including: G7 finance ministers meeting and USD 500 million puzzle from the US in regard to Pillar Two
- US Treasury releases Green Book, with details of Biden administration's corporate tax plan
- Continuation of in-depth analysis of Pillar One – today: Tax Certainty (Part 3)

HAPPY FRIDAY!

China allows 3 children, and wants to be loved; and Biden recommends drinking beer while you're having your vaccine jab!

Meanwhile, in the tax world...

The G7 gets ready to make tax history; Italy really is exceptional; Katherine levies and suspends; the Green Book poses a \$500 million riddle; Biden shows that everything is negotiable; public comments on Art. 9 are kept at arm's length; the EU finally gets to publish; and Israel and the UAE sign away the past!

But at the end of the week, the most important question is this: "Do you understand the WHO's new labels for Covid-19 variants, or are they all just Greek to you?"

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. US Green Book
3. Other global developments
4. Pillar One: Tax Certainty (Part 3)
5. Asia Pacific
 - Singapore
6. Europe
 - EU, Italy, Sweden
7. Treaties

ITB series on Pillar One

- Scope (Parts 1, 2 & 3) – ITB (22, 29 Jan & 5 Feb 2021)
- Nexus – ITB (19 Feb 2021)
- Revenue sourcing rules (Parts 1 & 2) – ITB (26 Feb & 5 Mar 2021)
- Tax base determinations (Parts 1 & 2) – ITB (12 & 19 Mar 2021)
- Profit allocation (Parts 1 & 2) – ITB (26 Mar & 9 Apr 2021)
- Elimination of double taxation (Parts 1 & 2) – ITB (16 & 23 Apr 2021)
- Amount B (Parts 1 & 2) – ITB (30 Apr & 7 May 2021)
- Tax Certainty (Parts 1, 2 & 3) – ITB (21, 28 May & 4 Jun 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 (Parts 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, GILTI & hub jurisdictions – ITB (18 Dec 2020)

WORTH READING

Robert Goulder
["From Europe With Love: U.S. States Flirt With Domestic DSTs"](#)
Tax Notes Today International, Tax Analysts, 1 June 2021 (subscription service)

Vikram Chand and Serena Picariello
["The Revamping of Public CbCR in Europe: much ado about nothing?"](#)
Kluwer International Tax Blog, 1 June 2021 (freely available)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company resident in X, is a major business consulting company. It has a representative office in Y, with one employee (Mr S). Mr S's role is to look for business opportunities in Y for XCo.

Following a suggestion from Mr S, XCo has sought to obtain consulting contracts with several specific companies resident in Y. To secure those contracts, senior executives of XCo have made numerous visits to Y to meet with the Y companies and discuss opportunities. Also discussed at the meetings were the key terms of XCo's proposed contracts. The meetings each lasted up to 3 days and took place at the Y companies' respective offices. The XCo senior executives spent very little time in the premises of the representative office.

Mr S attended all of those meetings, but played no role in the discussions.

Several (assume 4) proposed contracts are now ready for signature by each pair of parties (XCo and the respective Y company). The plan is that each contract will be signed at a "signing ceremony" at the Y office of the respective Y company. It is also planned that the XCo senior executives would not attend those signing ceremonies – instead, XCo would give Mr S a power of attorney to sign those contracts on XCo's behalf.

The X/Y treaty is identical to the 2014 OECD model treaty.

Will XCo have a PE in Y under the treaty? If so, how would the profits attributable to the PE be determined?

Answer in next week's ITB email alert!

LAST WEEK'S QUESTION

ACo, a company resident in A, wants to make a loan to a related company, BCo, resident in B.

However, B domestic law imposes a 30% withholding tax on outbound interest, and there is no A/B treaty.

ACo therefore forms a new 100% subsidiary, CCo, in C. CCo is resident in C, but it has very little substance.

ACo injects share capital into CCo, which makes an interest-bearing loan to BCo (the interest rate is an arm's length rate).

The B/C treaty is identical to the 2017 OECD model treaty, with the PPT (Art. 29(9)) but not the LOB.

The C corporate income tax rate is 15%.

There is no A/C treaty. The A corporate income tax rate is 25%.

After applying the B/C treaty, what will be the aggregate tax liability on the interest paid by BCo to CCo?

LAST WEEK'S ANSWER

Art. 11(2) will allow B to tax the interest. However, the benefit of the 10% tax rate limit in Art. 11(2) should not be given to CCo, due to the applicability of Art. 29(9) (PPT). Thus, 30% B tax should apply.

The C tax rate is 15%. Prima facie, CCo would be entitled to a credit for the B tax under Art. 23A/B.

However, does Art. 29(9) apply to the credit? If the plan had worked, the B tax would have been limited to 10% (Art. 11(2)) and a credit for that 10% would be available (Art. 23A/B), leaving a net 5% C tax. It is possible that CCo would not obtain a credit for the B tax under C domestic law (i.e., in the absence of the treaty) – e.g., if the C domestic law does not provide a credit for tax paid in a treaty jurisdiction. If that is the case, then arguably obtaining of the credit under Art. 23A/B is "one of the principal purposes" of the plan. Nevertheless, I think the 2nd limb in Art. 29(9) should apply: it is the "object and purpose" of Art. 23A/B to provide a credit for B tax which is imposed in accordance with the treaty, even if that is part of a tax plan. On balance, I think the credit should be available – thus, the net C tax should be nil.

Would A be able to levy tax on the interest income? I will assume that there are no CFC rules in A. But what about transfer pricing? CCo has very little substance: let's assume that it has no employees who are able to decide to raise the share capital and make the loan to BCo – all decisions are made by ACo. If A's domestic law TP rules apply the 2017 OECD TPG¹, then these facts would indicate that CCo would be entitled to no more than a risk-free return, and ACo would be allocated the balance. To the extent that the interest income is allocated to ACo, the A 25% tax rate would apply. As ACo does not incur the B tax, ACo would likely not qualify for a credit under A domestic law foreign tax credit rules.

Thus, potentially, the aggregate ETR would be 30% on the full amount of interest, plus 25% on the amount of interest allocated to ACo.

¹See para. 10.25 of Transfer Pricing Guidance on Financial Transactions (published by the OECD on 11 February 2020), to be included in the next edition of the OECD TPG.



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