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2 July 2021



HIGHLIGHTS

- Latest developments on Pillars One and Two
 - What was decided in this week's meeting of Inclusive Framework?
- Brazil: government launches second phase of corporate tax reform proposals
- Australia: controversial draft ruling on software payments and "royalties" definition
- Countdown of top international tax cases in H1, 2021

HAPPY FRIDAY!

Canada feels the heat; the peloton pauses in France; China threatens to crack heads; while Donald Trump reads an Al Capone biography!

Meanwhile, in the tax world...

IF creates history; Brazil loses interest in equity; Australia distributes a copyright on legalistic rulings; Taiwan goes multilateral; Poland delays the inevitable; France gets ready to levy on Bastille Day; Indonesia adds value; China converts bonds to equity; while Germany shows better passes in the Bundesrat than at Wembley!

But at the end of a very important week in international tax, the most important question is this: "At the start of this year, did you really think that 130 members of the Inclusive Framework would agree on Pillars One & Two by July?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. Pillars One and Two
2. Brazil's corporate tax reform
3. Australia's draft guidance on software payments and the "royalties" definition
4. Top international tax cases in H1, 2021
5. Asia Pacific
 - Australia, China, Indonesia, Taiwan, Thailand, Vietnam
6. Europe
 - Germany, Poland
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 to 4) – ITB (21, 28 May & 4, 11 Jun 2021)
- Implementation and administration – ITB (18 Jun 2021)

ITB series on Pillar Two

1. GloBE rules
 - Scope – ITB (9 Oct 2020)
 - Calculating the ETR (Parts 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

- Lucas de Lima Carvalho
["Lessons From the MLJ's Least Popular Articles"](#)
 Tax Notes Today International, Tax Analysts, 1 July 2021 (subscription service)
- Nicola Calucci and Federico Scimenes
["ATAD 2's Punishment of Disregarded Entities: Potential Italian Remedies for Double Taxation"](#)
 European Taxation, IBFD, 2021 (Volume 61), No. 7 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company resident in X, owns some IP.

Some years ago, XCo licensed the IP to YCo (a related company resident in Y), for use in Y.

The royalties paid by YCo to XCo are (1) tax deductible to YCo, (2) subject to 10% Y royalty withholding tax (in accordance with the X/Y treaty), and (3) taxable to XCo under X income tax law (with a foreign tax credit for the Y royalty withholding tax). However, due to the calculation of credits under X law (i.e., allocation of deductions), XCo does not obtain a full credit for the Y withholding tax.

YCo entered into a unilateral APA with the Y tax authorities. Under the APA, the royalty rate was reduced. Also, the APA was "rolled back" for 2 years.

YCo has filed amended Y income tax returns covering the last 2 years, to reflect reduced deductions for royalties, as agreed in the APA.

The APA does not cover the Y royalty withholding tax which has been incurred by XCo – and, being unilateral, it also does not cover XCo's X income tax liability on the royalty income.

The X/Y treaty is identical to the 2017 OECD model treaty, with Art. 23B – except that Art. 12 permits 10% source country tax on royalties.

What steps can be taken to properly adjust XCo's tax position (in both X and Y), to reflect the APA's reduced royalty rate for the last 2 years?

Answer in next ITB email alert on 16 July 2021!

LAST WEEK'S QUESTION

ACo, a company resident in A, owns 100% of the shares in BCo, a company resident in B.

ACo formed BCo many years ago to hold real estate in a number of countries.

BCo now owns real estate in B and C. The relative market value of the real estate is currently 40% in B, and 60% in C.

BCo owns no other assets and it has no liabilities.

ACo is planning to sell 20% of its shares in BCo. ACo will derive a profit of \$10 million on the sale.

The A/B, A/C and B/C treaties are all identical to the 2017 UN model treaty, with Art. 23B

Questions:

- (1) Do the treaties permit B and/or C to levy income tax on ACo's profit?
- (2) If so, is the tax permitted to be on the whole, or only part, of the profit?
- (3) Is A required to provide a credit for the tax in B and/or C?

LAST WEEK'S ANSWER

1. The A/C treaty (Art. 13(4)) permits C to levy income tax on ACo's profit. Also, the A/B treaty (Art. 13(5)) permits B to levy income tax on ACo's profit. Although I did not specify the percentage in Art. 13(5) of the A/B treaty, as ACo owns 100% of the shares in BCo, any percentage in Art. 13(5) would be satisfied.
 2. For each treaty, the tax is permitted to be on the whole of the profit – i.e., \$10 million.
 3. Under the A/C treaty (Art. 23B(1)), A is required to provide a credit to ACo for the tax paid to C on the profit.
- Also, under the A/B treaty (Art. 23B(1)), A is required to provide a credit to ACo for the tax paid to B on the profit.
- For each treaty, the credit is limited to the amount of A tax on ACo's profit, as computed before the relevant credit. As ACo would be entitled to 2 credits, in practice this would mean that the aggregate of the 2 credits cannot exceed the A tax on ACo's profit.
4. The B/C treaty is irrelevant, because ACo is not a resident of either B or C (Art. 1(1)).



Tax Quiz Archives



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AskSteve



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