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24 September 2021



**HIGHLIGHTS**

- Latest developments on Pillars One & Two
  - G-24 issues warning
  - Ireland's brinkmanship
- Netherlands government presents 2022 Tax Plan
  - Transfer pricing mismatches
  - Reverse hybrid entities
- Interesting treaty provisions
  - Hungary / Kyrgyzstan treaty
  - UAE / Zimbabwe treaty

**HAPPY FRIDAY!**

China prepares for an Evergrande storm, and Angela bows out; but don't worry – Bond is back!

Meanwhile, in the tax world ...

The G-24 states its position; the Netherlands unilaterally deals with mismatches; India provides intermediary guidance; the EU generally prefers; Malaysia eyes a windfall; Norway loses continuity; Kenya needs to be fair; and the UK makes crime pay!

But at the end of the week, the most important question is this: "Have you ever used a recorded Zoom call from YouTube as a fake meeting, to avoid being disturbed in the office or at home?"

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 & Two
2. Netherlands: 2022 Tax Plan
3. Interesting treaty provisions
4. Asia Pacific
  - India, Malaysia
5. Europe
  - EU, Norway, Poland, Sweden, UK
6. Africa
  - Kenya
7. Americas
  - Brazil, Canada, Colombia, US
8. Treaty news

**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**

Ron Dabrowski  
"Bad Haircuts? Evaluating Policy Choices Under Biden's International Tax Proposals"  
Tax Notes Today International, Tax Analysts, 21 September 2021 (subscription service)

J. Anthony Coughlan  
"Biden's Proposal to Swap FDII for Research Expenditure Support"  
Tax Notes Today International, 21 September 2021 (subscription service)

Mika Nissinen  
"From Evasion to Avoidance: The Historical Evolution of the OECD Model in Addressing Tax Abuse"  
Bulletin for International Taxation, IBFD, 2021 (Volume 75), No. 10 (subscription service)

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

ACo, a company resident in A, has a branch in B. The branch has office premises in B and there are 10 employees who are based at the branch.

The branch conducts an investment business – it holds equity and debt instruments issued by numerous companies which are resident in B. In regard to several of those companies, 100% of the issued shares are held by the branch.

The branch wanted to acquire all of the shares in BCo, a company resident in B. Most of BCo's shareholders were resident in A. The transaction was structured as a "share for share" exchange – i.e., ACo issued new shares to the BCo shareholders, in return for 100% of the shares in BCo (which were then held by ACo's branch in B).

ACo incurred significant costs in the "share for share" exchange (e.g., time of head office and branch employees, and external professional costs for lawyers, accountants, valuers, etc.). Those costs are tax deductible under the A income tax law.

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

In determining the profits attributable to the PE under Art. 7 of the treaty, how should the costs be treated?

Answer in next ITB email alert on 8 October 2021!

**LAST WEEK'S QUESTION**

XCo, a company resident in X, carries on a share trading business. For financial accounting purposes, XCo reports the shares it owns as inventory (i.e., trading stock).

As part of its share trading business, XCo purchased shares in YCo, a company resident in Y. YCo's shares are listed on the Y stock exchange. Over 95% of YCo's assets (by value) are buildings in Y.

Several weeks later, XCo sold all of its shares in YCo for a profit.

The share purchase and sale transactions were undertaken for XCo by ZCo, an independent stockbroker in Y.

XCo has never had any employees or office premises in Y.

Under Y domestic law, XCo's profit on the sale of the YCo shares is subject to income tax.

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

Does the treaty permit Y to levy income tax on XCo's profit?

**LAST WEEK'S ANSWER**

Art. 13

As more than 95% of YCo's assets (by value) are buildings in Y, the shares in YCo satisfy the "more than 50 per cent" test in Art. 13(4). Therefore, Art. 13(4) permits Y to levy income tax on XCo's gains derived from the sale of the YCo shares.

Art. 13(2) is not relevant, as XCo does not have a PE in Y (see below).

Art. 5

XCo does not have either a "fixed place of business" PE in Y or an agency PE in Y. In regard to agency PE, ZCo's contract-concluding activities would be excluded from Art. 5(5), by the independent agent exception in Art. 5(6) (provided ZCo is acting in the ordinary course of its business).

Art. 7

As XCo does not have a PE in Y, it would (prima facie) be exempt from Y tax, under Art. 7(1). The conflict between Art. 13(4) (taxable) and Art. 7(1) (exempt) is resolved in favour of Art. 13(4), due to Art. 7(4). Thus, Y would be permitted to levy income tax on XCo's gains derived on the sale of the YCo shares.



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