Answer-to-Question-_4_of part B
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From: Tax Adviser

To:Mrs X

Report for moving of tax residence from State A to State B - Tax consequences

Dear Mrs. X,

Further to the information provided to us, below you will find an analysis based on the EU Law in relation to your movement from State A to State B.

Legal Background

First of all in accordance with art.18 (umbrella article)of TFEU any discrimination of the grouds of nationality shall be prohibited.

Furthermore, based on art.21 of the TFEU every citizen of the Union shall have the right to move and reside freely within the territory of a MS. The said status of the ''citizen of the Union'' is destined to be the fundamental status of nationals of the MS, enabling those among such nationals who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality(case C-184/99 Grzelczyk & C-224/02 Pusa).

A citizen of the Union must be granded in all MS the same treatment in law as that accorded to nationals of the MS who find themselves in the same situation. Otherwise it would be incompatible with the right to freedom of movement. National legislation which places some of its nationals at a disadvantage simple because they have exercised their freedom to move and to reside in another MS would give rise to inequality of treatment.

Our Advice based on the facts

You receive all your income more State A and State A which has the only right to tax your pension income will tax you on a higher tax rate than that a resident will be taxed. This seems to be a restriction of the EU Law and more specifically of the art 21 mentioned above because a cross border situation is treated worse off than a purely domestic situation.

Based on the case law Turpeinen (C-520/04), we identified similarities with your case because all or almost all your income is raised in State A, so you are in a comparable situation with someone resides in State A (same as Schumacker case).

If we reconsider the commissions recommendation on the taxation of certain items of income received by non-residents in MS other than that in which they are residents we would find out that their intention was to mention that when a Union resident is going to reside in an other MS if the ''most'' of his income becomes from one of the MS, then he/ she should be taxed as the residents of that MS. That is why they have made the 75% recommendation and then the 90% recommendation.

As a result in case were you will reside to State B, and on the basis that no income will arise on that State, we assume that State A should tax your personal income as if you were State's A citizen.

We remain at your disposal.

Best Regards,

The Tax Adviser

Answer-to-Question-2_of Part A_
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From: Tax Adviser

To:The BoD and CFO of Company Z

Report for the acquisition of share capital of Company X (located in a MS) through a subsidiary located in 3rd Country - Tax consequences

Dear All,

What firstly should we identify if there is a cross border situation treated worse off than of a purely domestic situation?

It seems that State's A legislation is treated the domestic group transfers situations in a different way than that of cross border. The domestic transfers were no taxed (tax neutral), otherwise when cross border situations took place, then there is an immediate tax. This seems to be a discrimination of the EU Law and more specifically of the free movement of establishment an or capital.

In accordance with TFEU and the freedoms applied when a 3rd country involved in the transaction only art. 63 could be applied (freedom of capital). This is something that has been pointed out

in the case law C-446/04 & C-35/11 Test Claimants in the Franked Investment Income. The situation here seems to be the same.

Also, in case law Comm. v. Spain the EU Court has realised that the determination of the tax due on realised capital gains at the moment of the cross border transfer may be justified due to the territoriality of the taxing rights but the immediate taxation is a disproportionate measure which goes beyond what is necessary this way State's A impeded the possibility of a non-resident to invest in that State due to restrictive tax rules.

Moreover, if State A has a Mutual Agreement with the 3rd country in order to exchange information it should give the opportunity of deferral taxation (i.e. a guarantee of tax).

The tax rules of State A seems to be restrictive but in a way justified due to cohesion of the tax system and the allocation of taxing rights.

We remain at your disposal.

Best regards,

The Tax Adviser.

Answer-to-Question-1_Part A

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1)What we should examine in order to identify of there is a compatibility with EU Law is to identify if there is a different treatment between domestic and cross border situations.

As regards the deducibility of bonus that is given to a person which is non-EU resident the national rule seems to be restricted since bonuses will be tax deductible if they will to be given to domestic persons. Same as OY AA case when group contribution is tax deductible for Finnish entities but not for foreign. In that case there was a restriction of the freedom of establishment, but justified on the basis of safeguarding the balance allocation of the power to tax between MS and the prevention of Tax avoidance.

In our case and base on the fact that the bonus is given to a person which is resident in a 3rd country and with which State A has no DTA in order to provide her with information that maybe requested in case were such amounts are transferred for non economic reality reasons in that way State A safeguards its taxing rights.

As regards the WHT imposed by Member State A to State Z where no tax credit is applied, it seems that State A has applied her right to tax the dividends. In accordance with case Law Test Claimants FII Glo, there is a free choice of a MS to exempt or tax the dividends distribution on the basis that the said tax is

not higher for non domestic situations than those of domestic. State A has applied her right to tax the dividends in accordance with EU law. Shareholder of State Z should complain to State Z for double taxation and non credit of the tax paid in State A.

2) Interest would have been deductible if the said transaction has took place within the territory of State A. So this could be considered as breach of freedom of establishment. The same has happened to Case law C- 398/16 where the CJ has mentioned that situation of a PC wishing to for a fiscal unity with non-resident subsidiary is objectively comparable to that of a PC forming a single entity with domestic subsidiary (X holding). On that basis what should examined is if in that way is preventing tax evasion and fraud and conduct involving the creation of wholly artificial arrangements. However, the likelihood of tax evasion is the same in purely domestic case as it is in cross border situation. So before State A denies the deducibility of interest paid should give LOL the opportunity to prove the no artificiality of the arrangement (Burden of proof principle).

Answer-to-Question-6 Part C

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The absence of tax harmonization on TP has brought the EU Commission to conduct its investigations on State Aid with a notable insight of domestic law. The EU Commission had to bring evidence of the relevance of arm's length in each country involved as well as existence of different interpretation of such standard by the scrutinised ruling as compared to that which would have otherwise applied. This line of reasoning has been rejected by recent case law in the Amazon case. The CJEU's judgement was in line with the prior case law, Fiat. According to the court the arm's length principle can be only be applied if it is recognized by the National Law. In that fact as EU law currently stands there is no autonomous arm's length principle so as to examine tax measures in the context of the application of article 107. Based on that case and on the Draft of TP the aim of the directive is to harmonize the way that MS's are interpreted the arm's length and the intention of the legislator is to be compatible with art 107. However the directive doesn't clarify what will happen with 3rd countries transactions and MS that are not MS of The OECD such as Cyprus, Malta and Bulgaria that don't apply in their domestic law the OECD TP guidelines.

Answer-to-Question-_5 of Part C__

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The 3 types of exchange of info are the following:

1. Automatic exchange of information (AEOI): exchange of predefined tax data, using predefined formats and the predetermined times, without prior request from anther country - form source to residence country. There are mandatory AEOI for specific types of income/ assets and information.
2. Spontaneous exchange of information (SEOI): unsystematic flows of information deemed to be interest to the receiving country- possible tax evasion relevant to source or resident country.
3. Exchange of information on request (EOIR): information concerning persons or transactions expressed by the requesting country.

Developed by the OECD model agreement on the exchange of Information on tax matters and art.26 of the MC. In accordance with recital 9 of the DAC the standard of foreseeable relevance is intended to provide for exchange of info in tax matters to the widest possible extend and at the same time to clarify the MS are not at liberty to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. The purpose of the foreseeable relevance has been verified through many case laws such as, Berlioz, Etat Luxembourgeois. Based on the case laws mentioned before and on the the way the foreseeable relevance is mentioned in the EU Law

we assume that is stated as condition for all exchanges of information. It is mentioned clearly in DAC 7 (art . 5a and recital 3).