PART A
'
Answer-to-Question-_1_

Article 27 under the OEDC Model provides a framework for the cooperation between Contracting States for the collection of taxes.

There is no limitation under Article 27 by Articles 1 and 2 of the model treaty meaning that it applies to all types of persons and taxes.

This is a quite an important article since it moves away from the revenue rule that existed (or the Dicey - Morris rule) which basically stated that due to the sovereignty of states no state could enforce the collection of taxes due to its state by another state.

According to Article 27 para 3 such claims can be made for enforceable taxes under the laws of that state meaning that when a contracting state requests from another state to collect taxes on its behalf it means that the requesting state can do so if such taxes are enforceable in its jurisdiction.

Para 4 of Art 27 also gives the right to a state to take conservancy measures as long as these are permitted by its laws.

As per para 5 of the Article there are no time limits regarding such a request. Para 22 of the Commentary on Art 27 states that since as per para 3 of the article this revenue claim refers to enforceable taxes in th requesting jursidiction it means that this request is in accordance and within the time limits permitted by the requesting state.

Para 23 of the commentary then mentions that when states cannot agree to disregard their own domestic time limits for the collection of taxes should ammend para 5 of the Article.

Para 6 of Art 27 states that the administrative courts of the requested state will not question the existence or validity of the claims

As per para 7 of the article however if at any time after the request has been made that revenue claim ceases to be enforceable in that state of if the first state requesting assistance has conservancy measures at its disposal then that claim must be suspended or withdrawn.

Para 8 of the article then places some limitations on such requests which are as follows:

a) the requested state cannot carry out administrative measures at variance with its laws and adimistrative practices

b)carry out measures contrary to public policy

c) provide asistance if the requesting state has not pursued all reasonable measures of collection or conservancy

d) to provide assistance where the administrative burden will be clearly disproportionate to the benefit to be derived by the other contracting state.

As per para 33 of the Commentary to art 27 providing assistance with respect to a revenue claim after the requested state's time limit have expired will not be considered to be at variance with the laws and administrative practices of that state as per para 8 a) mentioned above.

Conclusion

Even though article 27 of the OECD Model Treaty provides assistance between Contracting states for the collection of taxes this is not without limitations.

Such claims will have no time limits (as far as para 5 of the Model Treaty is not ammended by the 2 contracting states)and will be collected as long as they remain enforceable according to the laws of the requesting states and its time limits based on its relevant laws.

Additionally the requested state cannot be expected to collect taxes when it is at variance with its own laws or contrary to public policy.

PART A
Answer-to-Question-_2__

Introduction

Pillar Two resulted from the work of the OECD on the 2013 BEPS project due to its concerns about the shifting of profits by MNE's to lower tax jursidictions.

This is also in line with BEPS action point 1 in Addressing the Tax Challenges of the Digital Economy however that later became Pillar 1 that focuses on finding ways to to ensure that profits are taxed if npot at the state of operation then at the level of the parent entity.

Pillar Two refererred as the global anti base erosion (GLOBE) focuses on addressing tax avoidance through global minimum taxation and therefore avoid the profit shifting to low tax jursidictions.

Pillar 2

As per Pillar Two MNE's should pay a minimum effective tax rate (ETR) of 15% in every jursisdiction where they operate.

This is done through different models either the Income Inclusion Rule (IIR) and the Undertaxed payments rule (UTPR).

Another rule to be applied in priority is the Subject to Tax Rule (STTR) which however is not part of the Globe Rules.

IIR

This rule imposes a top up tax on a parent entity in their jursidiction in respect of subsidiaries or PE's of the group that pay effective taxation less than 15% in the source jurisdiction. In other words the difference between the ETR of the subs and PE's which is less than 15% is added on top of the tax of the parent company.

UTR

In case IIR cannot be applied then UTR can be used to deny deductions for payments made to related parties that are either not subject to tax or taxed at lower than 15%

The last rule mentioned above the STTR is a treaty based rule that allows source jurisdcitions to impose limited source tax on related party payments that are subject to tax below a minimum rate of 9%

These rules apply to MNE's that have annual gross revenues equal to or exceeding 750 million in the Consolidated Financial Statements.

The implementation of Pillar 2 has had its challenges since it is proving to be complex to apply by many countries especially developing nations that lack the tax expertise and therefore just a few of those developing countries have chosen to implement Pillar 2.

In order for Pillar 2 to be implemented it is implemented in the domestic laws of jurisdictions.

There have been other countries also from developing nations that have not been easy to agree on Pillar 2. The US has stated that it will not participate in Pillar 2 which is in line with what they have stated regarding Pillar 1.

There were however also EU countries that have initially opposed to Pillar 2 including Poland and Hungary which however later withdrew their oppositions and therefore all EU member states came to an agreement regarding Pillar 2.

Tax sovereignty

This is the power to tax within a territorial area. The consept of sovereignty is linked to the concept of a nation state which has the right to design its tax system to make it competitive in the global market.

However as this was abused by taxpayers and in many instances states themselves the BEPS action points were produced.

In addition the OECD Model treaty cannot to calim that it unilaterally limits the sovereignty of nations since 2 states must agree to sign such a treaty. In addition treaties limit taxing rights of 2 jurisidctions.

Conclusion

Pillar 2 will curb tax competition by imposing a minimum ETR of 15% and prevent a "race to the bottom" but not without affecting or limiting the tax sovereignty of nation states.

These concerns are more prevalent in the developing countries like African nations since they have frequently used tax incentives to attract foreign direct investment which may now be lost. Of course under the QDMTT approach African member states can collect any top up tax first.

PART B
Answer-to-Question-__4_

Amelie during Year 1 moved to State B on July 1 but returned to State A for 2 weeks in September and 3 weeks in December.

Therefore in Year 1 Amelie is most probably a resident of State A since she resided in State A more than 183 days in the year.

In case however the domestic laws of State B have different conditions for residency which is not per the 183 days rule then according to the double tax treaty para 2 the tie brekaer rule will be in favour of STate A since Amelie has a permanent home at her disposal in State A.

In this case State B consider a person non resident also after 183 days or no residence after the continuous absense of more than 6 months. Therefore no residency can be claimed for Year 1.

Therefore in year 1 Amelie is a resident of State A and she received the following 2 payments.

a) A monthly maintenance grant from a charitable organizartion based in State A

This falls under article 20 which is income for education purpose and therefore taxing rights are only with State A.

State B has no taxing rights as per article 20.

b) A research related payment from a foundation in State B

Since this income derived in State B is also part of her dissertation it may not fall under article 20 but under article 21 wich deals with any other income not dealt with in other articles.

In this case again as per article 21 taxing rights remain only with the resident state which in this case is State A and taxing rights will be awarded only to State A.

As per article 21 no taxing rights on that income will be awared to State B

In Year 2 Amelie resides for a full year in State B and therefore becomes resident of State B since it exceeds the threshold of 183 days.

The only income for Amelie in Year 2 is the maintenance grant from State A.

Again even though Amelie in Year 2 is resident of State B based on the type of income she receives (education grant) and according to article 20 taxing rights remain with State A.

State B will have no taxing rights on the income received by Amelie in Year 2.

----

1)

REPORT

From: Tax advisor
To: Country X tax Policy Unit

Introduction

Frist of all we need to comment on the plans made by Country Y regarding imposing taxes based on an MPA.

Article 2

As noted in the notes provided to us Country X and Y have included in Article 2 (3) income taxes (tax rates to be applied to net income)

The MPA will be levied by country Y on gross receipts with no deductions on revenue from Country X.

Therefore this is not in line with the taxes covered by Article 2 (3) as previously agreed by the 2 states and included in their treaty

Additionally Article 23 B which deals with the provision of credit relief on double tax paid clearly states that such relief shall be given for taxes imposed with the provisions of this convention.

As we have mentioned above such taxes calculated on revenue which have been imposed unilaterally by Country Y will not fall under the taxes covered by the convention as agreed by the 2 countries and therefore relief cannot be claimed on those taxes paid to Country Y.

However this can be discussed with the authorities of Country X since unilateral credit relief may be given in this case even though we find this to be unlikely since it will promote such unilateral DST taxes to be imposed also by other jursidictions and unilateral credit relief will then be expected by Country X.

In case no such relief is given then companies operating in Country Y which are resident in Country X or in other states with similar treaties between that state and State Y will think twice to keep operating in Country Y whilst keeping a country resident in another state.

MLI or Protocol

In order to ammend the current treaty to deal with such taxes and therefore provide relief under Article 23B a Multilateral Instrument (MLI) can be agreed and added to the treaty without the need to negotiate the whole treaty.

Alternatively a protocol can also be signed which would be binding between the 2 countries without the need for a new treaty which would included these types of taxes for credit relief purposes.

Of course we find it high unlikely for Country X to accept to sign such a protocol or MLI since it will be waiving its taxing rights based on its jurisdiction.

Taxing rights based on jursidiction is one of the fundamental purposes of the double tax treaties whre states agreed to limit their taxing rights on certain income sourced abroald in order to promote globalism and growth in the worlds economy without however waiving their sovereign rights to tax their resident persons and companies.

Th other side of the argument howver also has its merits since in the new digital economy its the users that creat value and substance for the income and should be taxed accordingly

2)
This is basically a DST (Digital Services Tax) posed unilaterally by Country Y. This is not something the OECD is in line with.

In order to avoid unilateral impositions of such virtual PE's which do not fall under Article 5 of the model treaty the OECD attempted to introduce Pillar 1 after first attempting to tackle the issue with BEPS action point 1 on the Digital Economy.

Since BEPS Action point 1 was not enough to tackle the issue the OECD attempted to remedy this issue through Pillar 1 by taxing revenues where the users generate the value.

However it seems that Pillar 1 is not ratified by many countries and especially by the US which means that most probably Pillar 1 will not go through and therefore many juirsidiactions will once again try to impose unilateral DSTs as it is now in the case of Country Y.