The International Taxation of Autonomous Artificial Intelligence (AAI): Questions from Leopoldo Parada

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Hi Leopoldo,


This is the second article of a short series that explores the international taxation of income attributable to Autonomous Artificial Intelligence (AAI). The series is based on an article written by the author and published by Kluwer in EURPAPY, Volume 4, Issue 3 (May 2019). Each article features questions posed by Leopoldo Parada to the author, followed by an answer to the question and a discussion of the relevant literature and case law to the extent the author sees fit.

As explained in the first article of the series, we are discussing the international taxation of income attributable to an evolved form of Artificial Intelligence (AI) called Autonomous Artificial Intelligence. In my paper, I identified three broad questions: (i) How does the fact that AI has no physical manifestation affect the identification of its place of business? (ii) How does the fact that AI has no physical manifestation affect the identification of its place of management? (iii) How does the fact that AI has no physical manifestation affect the identification of its place of control or significant authority? In this paper, I explore the first of these questions in some detail. The second and third questions are the subject of a future study, particularly if interested tax authorities wish to treat AAI and non-AAI parties equally. This second article of the series features the first set of questions from Leopoldo Parada. (My previous article is available here.)

1. What is the tax policy justification (based on your proposal) to provide an inclusive and an exclusive test for residence? Would it perhaps make more sense to provide also an inclusive criterion in the second article of your short series is generally irrelevant.

I propose in my paper a two-tiered test for the tax residence of AAI. The first tier is what I call the Primary Facts of Business (PFB) test, and it is basically whether residence in the jurisdiction in which income is earned can reasonably be linked to the "physical manifestation" of the economic activities of that AI. The second tier is what I call the Test of Power of Business (TOPB) and it is whether that activity can reasonably be linked to the jurisdiction that is the source of production link...
multinational or AAI is in fact completely controlled by an SVJ-resident AAI. Would that conclusion enable those authorities to deny a tax benefit under the relevant treaty? In principle, if the SVJ is not able to sign treaties with other jurisdictions, then SVJ-resident AAI will always be subject to domestic tax legislation and never benefit from tax treaties directly or indirectly, as in the case of local tax residents or multinational AAI. However, if the SVJ is able to sign treaties, then SVJ-resident AAI will be allowed to access benefits of existing tax treaties following a multilateral “agreement” that the treaty-shopping concerns bearing the “traditional” application of CFC clauses are denied in cases involving SVJ-resident AAI. However, even I am not sure if that last sentence is true, because AAI will be skilled enough to maximize the economic returns of their worldwide activities in ways tax departments of multinational entities today can only dream of. Is that not the type of international tax planning that led us to BEPS Action 6 in the first place?

I would like to thank Leopoldo Parada for having read my paper and asked very interesting questions (which I hopefully have answered in the paragraphs above). I would also like to thank you for reading this article – if you have any comments on my paper or on my answers to the questions, please feel free to use the Comments section below. All the best!

The views expressed by the author in this article are his own.

END NOTES


[3] In accordance with our taxable residence criteria, an AAI should be regarded as a taxable resident of a given jurisdiction if, in a first-tier analysis, its primary place of business (PPB) is physically located in that jurisdiction. If and only if a PPB cannot be reasonably associated with an AAI, in a second-tier analysis, the AAI will be regarded as a resident of a single virtual jurisdiction (SVJ), and this will require both (1) a blanket source taxation and (2) a harmonized approach for taxing income of SVJ residents worldwide. “See note 1, p. 442.


