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21 January 2022



HIGHLIGHTS

- Continuation of detailed review of GloBE model rules
 - Today, computation of GloBE Income or Loss (Part 3)
- Top international tax cases in 2021
- OECD releases 2022 edition of Transfer Pricing Guidelines

HAPPY FRIDAY!

Kyrgios performs, but loses; Biden talks about the fake 2022 election; and Putin gets ready to roll the dice!

Meanwhile, in the tax world...

The OECD releases "something old, something new"; EU Member States push back on France; and the UK never tires of consulting!

But at the end of the week, the most important question is this: "Do you need to be a good accountant to fully understand the GloBE model rules?"

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

- GloBE model rules
- Top 10 international tax cases in 2021
- 2022 edition of OECD Transfer Pricing Guidelines
- Europe
 - EU, UK
- Treaty news

ITB series on Pillars One & Two

- GloBE model rules: Computation of GloBE Income or Loss (Part 3) (ITB, 21 January 2022)
- GloBE model rules: Computation of GloBE Income or Loss (Part 2) (ITB, 14 January 2022)
- GloBE model rules: Computation of GloBE Income or Loss (Part 1) (ITB, 7 January 2022)
- Inclusive Framework's final agreement on Pillars One & Two (ITB, 15 October 2021)

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)

Pillar Two

- 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)
- 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

Gary Sprague
"Application of Treasury's New 'Reasonably Similar' Source Rule Requirement to Claim Foreign Tax Credits for Royalty Withholding Taxes"
Tax Management International Journal, Bloomberg BNA, 7 January 2022 (subscription service)

Charlotte Tolman and Michael Molenaars
"Netherlands Considers an Exit Levy Proposal in Response to Corporate Relocations"
Tax Notes Today International, Tax Analysts, 20 January 2022 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company resident in X, is a Constituent Entity within an MNE Group, for the purposes of the GloBE rules.

XCo has the following financial information for the current fiscal year:

- Profit or loss: **negative 5,000**
- Income tax expense (in regard to Covered Taxes): **2,000**
- Excise duty credit: **4,000**
 - The credit can be used to offset future excise duty liabilities for the next 3 years – to the extent it is not used during that period, it will lapse
 - Reported as credit to indirect tax expense in profit or loss
- Loss of **8,000** under impairment accounting (included in profit or loss)
 - XCo has not disposed of relevant asset
 - Filing Constituent Entity makes election under Art. 3.2.5 to determine loss under realisation principle
- Dividends of **2,500** paid on redeemable preference shares issued to YCo (Constituent Entity resident in Y)
 - MNE Group has jurisdictional ETR of 14.95% in Y in current fiscal year
 - Dividends are non-deductible / tax-exempt (including no withholding tax) in the 2 jurisdictions
 - Dividends treated as interest expense in computing XCo's profit or loss
- Prior period error of **3,000** (after tax benefit of **800**)
 - Error was understatement of expenses in prior fiscal year
 - Error correction is reported as a decrease in the opening equity at the start of the current fiscal year

Based on those numbers, what is XCo's GloBE Income or Loss for the current fiscal year?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

ACo 1, a company resident in A, is a Constituent Entity within an MNE Group, for the purposes of the GloBE model rules.

ACo 1 has the following financial information for the current fiscal year:

- Profit (in P&L): **EUR 30 million**
- Other comprehensive income: **EUR 8 million**, including **EUR 5 million** (after tax) of gain under fair value accounting in respect of property, plant and equipment (not subsequently reported through P&L). The tax expense on this fair value accounting gain is **EUR 1.5 million**
- Income tax expense:
 - In regard to Covered Taxes: **EUR 9 million**
 - In regard to other taxes: **EUR 0.8 million**
- Transfer of assets and liabilities in merger transaction with ACo 2 (another Constituent Entity also resident in A):
 - Gain (included in P&L): **EUR 3.5 million** (tax-free under A tax law)
 - Consideration received by ACo 1: issue of new shares in ACo 2 (consideration satisfies arm's length principle)
 - ACo 2 inherits ACo 1's tax basis in assets (for A tax purposes)
- Loss (included in P&L) on sale of 8% shareholding (ACo 1 held these shares for 4 years): **EUR 0.7 million**
- Gain (included in P&L) on sale of 10% shareholding (ACo 1 acquired half of these shares 3 years ago, and it acquired the other half during this current fiscal year): **EUR 2 million**
- Prior period error of **EUR 5 million** (after tax expense of **EUR 2 million**) – This error was an understatement of revenue in a prior fiscal year, and is reported as increase in opening equity at start of current fiscal year
- Pensions:
 - Pension liability expense in P&L: **EUR 2.5 million**
 - Contributed to pension fund for current fiscal year: **EUR 3 million**
- Royalties expense:
 - Relates to licence of IP from BCo (Constituent Entity resident in B)
 - Actual expense: **EUR 3 million**
 - Transfer pricing adjustment by A tax authorities: **EUR 1 million** (i.e., **EUR 2 million** allowed as income tax deduction)

Based on those numbers, what is ACo 1's GloBE Income or Loss for the current fiscal year?

LAST WEEK'S ANSWER

Computation of ACo 1's GloBE Income or Loss:

- Start with profit (in P&L) (Art. 3.1): **EUR 30 million**
- Other comprehensive income: EUR 8 million: ignore. However, EUR 6.5 million (before tax) qualifies as "Included Revaluation Method Gain or Loss" (Art. 3.2.1(d))
Thus, EUR 6.5 million added
- Income tax expense:
 - In regard to Covered Taxes: add EUR 9 million (Art. 3.1.1(a))
 - In regard to other taxes: to the extent "other taxes" are those described in para. (c), (d) or (e) of definition of "Net Taxes Expense" in Art. 10.1.1, the amount will be added; but not otherwise. I will assume that no part of the "other taxes" falls with para. (c), (d) or (e).

Thus, EUR 9 million is added

- Transfer of assets and liabilities in merger transaction, which qualifies as "GloBE Reorganisation": EUR 3.5 million excluded from GloBE Income (Art. 3.2.1(e) & Art. 6.3.2)

Thus, EUR 3.5 million is deducted

- Loss on sale of 8% shareholding: not treated as "Excluded Equity Gain or Loss", because a portfolio shareholding (Art. 3.2.1(c) & definitions in Art. 10.1.1)

Thus, no adjustment

- Gain on sale of 10% shareholding: treated as "Excluded Equity Gain or Loss", because not a portfolio shareholding (Art. 3.2.1(c) & definitions in Art. 10.1.1)

Thus, EUR 2 million is deducted

- Prior period error – qualifies as "Prior Period Errors and Changes in Accounting Principles" (Art. 3.2.1(h) & definition in Art. 10.1.1); note that the exception in para. (a) of definition does not apply, because the "error corrector" resulted in a material increase (not decrease) in Covered Taxes of EUR 2 million. As the amount reported as an increase in opening equity is after the tax expense, that "after tax" amount should, I think, be the amount which is adjusted.

Thus, EUR 5 million is added

- Pensions: Contribution to pension fund exceeds pension liability expense by EUR 0.5 million. Thus, Accrued Pension Expense (Art. 3.2.1(i) & definition in Art. 10.1.1) is negative EUR 0.5 million. There is nothing to indicate that Accrued Pension Expense cannot be negative.

Thus, EUR 0.5 million is deducted

- TP adjustment for royalties expense (Art. 3.2.3)
EUR 1 million is added

Based on the above, ACo 1's GloBE Income or Loss = 30m + 6.5m + 9m – 3.5m – 2m + 5m – 0.5m + 1m = **EUR 43.5 million**



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