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International Tax Bytes *by Steve Towers*

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4 March 2022

HIGHLIGHTS

- **Continuation of detailed review of GloBE model rules**
  - **Today: Flow-through Entities and Hybrid Entities – allocations of (1) GloBE Income or Loss, and (2) Covered Taxes**
- **Royal Bank of Canada case on Canada / UK treaty**
  - **Definition of "immovable property" in Art. 6(2)**
  - **Characterisation of receipts for treaty purposes**

HAPPY FRIDAY!

Another difficult week in **eastern Europe**.

Meanwhile, in the tax world …

Royal Bank of Canada makes the wrong argument; **Bulgaria** doesn't like interest-free loans; the **UK** wants to tax online; **Brazil** cuts rates; and **Baker McKenzie** identifies hallmarks!

But this week's prize for best comment in the tax world goes to the **Ukrainian tax authority guidance to soldiers who capture Russian tanks and other equipment: "No need to declare that [expletive], because it's worthless!"**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

1. GloBE model rules
2. Digital Services Taxes and other relevant similar measures
3. Royal Bank of Canada case
4. Other global developments
5. Europe
   - ECJ, UK
6. Americas
   - Brazil
7. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules: Computation of Adjusted Covered Taxes (Part 3) (ITB, 25 February 2022)**
- **GloBE model rules: Computation of Adjusted Covered Taxes (Part 2) (ITB, 18 February 2022)**
- **GloBE model rules: Computation of Adjusted Covered Taxes (Part 1) (ITB, 11 February 2022)**
- **GloBE model rules: Computation of GloBE Income or Loss (Part 4) (ITB, 28 January 2022)**
- **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)**
- **Draft model rules for Amount A in Pillar One: Tax base determinations (ITB, 25 February 2022)**
- **Draft model rules for Amount A in Pillar One: Nexus and revenue sourcing (ITB, 11 February 2022)**
- **Inclusive Framework's final agreement on Pillars One & Two (ITB, 15 October 2021)**

WORTH READING

Noam Noked
"The Case for Domestic Minimum Taxes on Multinationals"
Tax Notes International, Tax Analysts, 7 February 2022 (subscription service)

Leopoldo Parada
"Tailoring Developing Country Advice: A Response to Noam Noked"
(Letter to the Editor), Tax Notes International, Tax Analysts, 14 February 2022 (freely available at www.ssrn.com)

Savvas Kostikidis
"The Relationship between the Taxation of Business Profits and Income from Immovable Property under Tax Treaties"
Bulletin for International Taxation, IBFD, 2022 (Vol. 76), No. 3 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

A general partnership is created under the law of jurisdiction B. The partnership is treated as fiscally transparent in B.

The partnership has 3 partners:

- Partner #1 (with a 30% share in the partnership) is a company which is resident in jurisdiction A. A treats the partnership as fiscally transparent.
- Partner #2 (with a 50% share in the partnership) is a company which is resident in jurisdiction C. C does not treat the partnership as fiscally transparent.
- Partner #3 (with a 20% share in the partnership) is a company which is resident in B. As already noted, B treats the partnership as fiscally transparent.

The partnership's financial statements show that it has a Financial Accounting Net Income (FANIL) of 10,000, and an income tax expense in regard to Covered Taxes (CT) of 3,000. The partnership does not have a PE in another jurisdiction.

All 4 entities (partnership, partner #1, partner #2 and partner #3) are Constituent Entities within an MNE Group.

Q1: What amounts of FANIL and CT are allocated to each of the 4 Constituent Entities?
Q2: Would your answer to Q1 change if B treated the partnership as a separate taxable person which was tax resident in B?

Answer in next ITB email alert on 18 March 2022!

LAST WEEK'S QUESTION

UPE, a company resident in R, is the ultimate parent of an MNE group. The corporate income tax rate in R is 25%.

UPE owns 100% of the shares in ACo, a company resident in A.

ACo owns 100% of the shares in BCo, a company resident in B.

During the current Fiscal Year:

- ACo pays to UPE a royalty of 200, from which is deducts A royalty withholding tax of 20
- ACo also pays to UPE a dividend of 600, from which it deducts A dividend withholding tax of 30
- UPE pays to BCo interest of 400, from which it deducts R interest withholding tax of 40
- BCo pays to ACo a dividend of 250, from which it deducts B dividend withholding tax of 25
- UPE includes in its income tax expense: R tax of 250 in respect of BCo's income of 1,000 allocated to UPE under the R CFC rules. Of that 1,000, 600 is "Passive Income" (as defined in Art. 10.1.1). Before taking into account the R tax of 250, the Top-up Tax Percentage for jurisdiction B is 5%.

Based on these numbers, what are the amounts of Covered Taxes for UPE, ACo and BCo?

LAST WEEK'S ANSWER

1. ACo pays to UPE a royalty of 200, from which it deducts A royalty withholding tax of 20: not allocated under Art. 4.3.
   Thus, UPE's tax of 20.
2. ACo pays to UPE a dividend of 600, from which it deducts A dividend withholding tax of 30: allocated under Art. 4.3.2(e) to ACo.
   Thus, ACo's tax of 30.
3. UPE pays to BCo interest of 400, from which it deducts R interest withholding tax of 40: not allocated under Art. 4.3.
   Thus, BCo's tax of 40.
4. BCo pays to ACo a dividend of 250, from which it deducts B dividend withholding tax of 25: allocated under Art. 4.3.2(e) to BCo.
   Thus, BCo's tax of 25.
5. (a) UPE includes in its income tax expense R tax of 250 in respect of BCo's income of 1,000 allocated to UPE under the R CFC rules: prima facie, 250 allocated to BCo under Art. 4.3.2(c).
   (b) However, of that 1,000, 600 is "Passive Income" (as defined in Art. 10.1.1). Before taking into account the R tax of 250, the Top-up Tax Percentage for B is 5%: Art. 4.3.3 applies a cap to the amount allocated to BCo under Art. 4.3.2(c) – cap = 600 x 5% = 30.
   Thus, BCo's tax of 30; and UPE's tax of 220.

Thus, Covered Taxes: (1) UPE = 20 + 220 = 240; (2) ACo = 30; and (3) BCo = 40 + 25 + 30 + 95.