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18 March 2022



HIGHLIGHTS

- **Inclusive Framework** releases **Commentary to GloBE model rules**
- **EU** considers **12 months deferral for start of GloBE rules**
- **Continuation of detailed review of GloBE model rules**
 - Today: **Computation of Effective Tax Rate and Top-up Tax**

HAPPY FRIDAY!

Tom Brady retires for 6 weeks; and **Apple** allows you to unlock your phone with your mask on (2 years late!)

Meanwhile, in the tax world...

The **EU** starts the **GloBE** deferral creep; **Business at OECD** objects to **GloBE** undermining home country tax incentives; **Malaysia** breaks its promise not to audit; **Russia** seeks to expand in both Asia and Europe; **Brazil** starts cutting; foreign tax credits are squeezed in the **US**; and **Peru** insists on no human intervention!

But at the end of another traumatic week in Ukraine, **President Zelensky's** global stature keeps growing!

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: Commentary, examples & public consultation**
2. **GloBE model rules: proposed EU Directive & other developments**
3. **GloBE model rules: detailed review**
4. **Other global developments**
5. **Asia Pacific**
 - Cambodia, Malaysia, Philippines
6. **Europe**
 - ECJ, EU, Luxembourg, Russia, Switzerland, UK
7. **Americas**
 - Brazil, Peru, US
8. **Treaty news**

ITB series on Pillars One & Two

- **GloBE model rules: Computation of Effective Tax Rate and Top-up Tax (ITB, 18 March 2022)**
- **GloBE model rules: Flow-through Entities and Hybrid Entities (ITB, 4 March 2022)**
- **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 determination (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

Ryan Finley
"Profit Attribution Ain't Transfer Pricing, but Should It Be?"
Tax Notes Today International, Tax Analysts, 14 March 2022 (subscription service)

Colleen O'Neill and David M. Abrahams
"Proceed With Caution: The Intersection of the Undertaxed Payments Rule in Pillar Two and the U.S. Foreign Tax Credit"
Tax Management International Journal, Bloomberg BNA, 4 March 2022 (subscription service)

Michael N. Kandeov and John J. Lennard
"Treaty Shopping in Canada after Afa Energy Luxembourg (2021): A Closed Door without a Lock"
Bulletin for International Taxation, 2022 (Volume 76), No. 3 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

An MNE Group has 4 Constituent Entities which are located in a jurisdiction. For the current Fiscal Year:

- ACo has GloBE Income of 9,400 and Adjusted Covered Taxes of 400
- BCo has a GloBE Loss of 2,000 and Adjusted Covered Taxes of 40
- CCo has GloBE Income of 2,200, Adjusted Covered Taxes of 200, and a Substance-based Income Exclusion of 3,000
- DCo has a GloBE Loss of 1,100, Adjusted Covered Taxes of 160, and a Substance-based Income Exclusion of 1,300
- The Group does not have any Additional Current Top-up Tax in regard to the jurisdiction
- The jurisdiction has not introduced a domestic minimum top-up tax

Q1: What is the Group's ETR and Top-up Tax (if any) for the jurisdiction?
Q2: If the Group has Top-up Tax for the jurisdiction, what is the allocation of that Top-up Tax amongst the 4 Constituent Entities?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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?

LAST WEEK'S ANSWER

Q1:

1. Characterisation of p/ship: (i) to extent of Partner #1's 30% share: Tax Transparent Entity (Art. 10.2.1(a)); (ii) to extent of Partner #2's 50% share: Reverse Hybrid Entity (Art. 10.2.1(b)); (iii) to extent of Partner #3's 20% share: Tax Transparent Entity (Art. 10.2.1(a)).
2. Partner #1's 30% share: (i) 30% of FANIL (i.e., 3,000) allocated to Partner #1 (Art. 3.5.1(b)); (ii) 30% of CT (i.e., 900) allocated to Partner #1 (Art. 4.3.2(b)).
3. Partner #2's 50% share: (i) 50% of FANIL (i.e., 5,000) allocated to p/ship (Art. 3.5.1(c)); (ii) 50% of CT (i.e., 1,500) retained by p/ship.
4. Partner #3's 20% share: (i) 20% of FANIL (i.e., 2,000) allocated to Partner #3 (Art. 3.5.1(b)); (ii) 20% of CT (i.e., 600) allocated to Partner #3.

Thus: FANIL: (i) Partner #1 = 3,000; (ii) Partner #2 = nil; (iii) Partner #3 = 2,000; (iv) p/ship = 5,000.

And CT: (i) Partner #1 = 900; (ii) Partner #2 = nil; (iii) Partner #3 = 600; (iv) p/ship = 1,500.

Q2:

1. Characterisation of p/ship: (i) to extent of Partner #1's 30% share: Hybrid Entity (Art. 10.2.5); (ii) to the extent of Partner #2's 50% share: neither a Flow-through Entity nor a Hybrid Entity (Art. 10.2); (iii) to the extent of Partner #3's 20% share: neither a Flow-through Entity nor a Hybrid Entity. Note: Q2 says that B treats the p/ship as a separate taxable person – thus, Partner #3's B treatment of the p/ship is not as a fiscally transparent entity.
2. Partner #1's 30% share: (i) no amount of FANIL is allocated to Partner #1; (ii) no amount of CT is allocated from p/ship to Partner #1 – however, CT can be allocated from Partner #1 to p/ship (see Art. 4.3.2(d) and Art. 4.3.3).
3. Partner #2's 50% share and Partner #3's 20% share: (i) no amount of FANIL is allocated to Partner #2 or #3; (ii) no amount of CT is allocated to Partner #2 or #3.

Thus: FANIL: (i) Partner #1, #2 & #3 = nil; (ii) p/ship = 10,000.

And CT: (i) Partner #1, #2 & #3 = nil (although CT can be allocated from Partner #1 to p/ship – see above); (ii) p/ship = 3,000.

Do you agree?



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