International Tax Bytes
by Steve Towers

"International tax news, explained"

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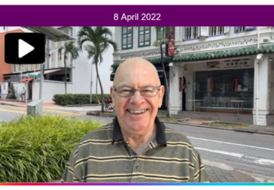
8 April 2022



HIGHLIGHTS

- **Review of draft model rules on scope for Amount A in Pillar One**
  - **released for public comment**
- **UN publishes 2021 model double tax treaty**
  - **review important changes**
- **Continuation of detailed review of GloBE model rules**
  - **Today: Art. 5.4.1 on Additional Current Top-up Tax**

HAPPY FRIDAY!

French vineyards burn; **Twitter** is forced to edit its policy; and **Rishi Sunak** finds that tax avoidance begins at home!

Meanwhile, in the tax world ...

The **OECD** provides more placeholders than scope; **Poland** resists agreement; the **UN** finally finds a printer; **Australia** puts treaties in their place; **China** favours the little guy; **Lao** joins the club; and **Finland** breaches its contract!

But at the end of the week, the most interesting comment was from Tiger Woods: **"My golf is fine. It's walking the course that could be tricky!"**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

1. Pillar One
2. Pillar Two
3. 2021 UN model double tax treaty
4. GloBE model rules: detailed review
5. Asia Pacific
   - Australia, China, Lao PDR
6. Europe
   - ECJ, EU
7. Americas
   - US
8. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules: Art. 5.4.1: Additional Current Top-up Tax (ITB, 8 April 2022)**
- **GloBE model rules: Substance-based Income Exclusion – Tangible asset carve-out (ITB, 1 April 2022)**
- **GloBE model rules: Substance-based Income Exclusion – Payroll carve-out (ITB, 25 March 2022)**
- **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: Scope (ITB, 8 April 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

Roberto Codorniz Leite Pereir
"The Brazilian Case Law on the Single Tax Principle: A Case of Tax Treaty Override"
Intertax, Kluwer, Vol. 50, Issue 3 (subscription service)

Jonathan Schwarz
"What is in a language? Parlez-vous français?"
Kluwer International Tax Blog, 31 March 2022 (freely available)

Casey Plunket
"What's in a Name? The Undertaxed Profits Rule"
Letter to the Editor, Tax Notes Today International, Tax Analysts, 5 April 2022 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

An MNE Group has one Constituent Entity (ACo) located in jurisdiction A.

For Year 1, the Group reported for jurisdiction A:

- Adjusted Covered Taxes: EUR 5 million
- Net GloBE Income: EUR 100 million
- ETR: 5%
- Substance-based Income Exclusion: nil
- Additional Current Top-up Tax: nil
- Qualified Domestic Minimum Top-up Tax: nil
- Thus, Top-up Tax = (10% x EUR 100 million) + 0 + 0 = EUR 10 million

For the current Fiscal Year (Year 3), the Group plans to report for jurisdiction A:

- Adjusted Covered Taxes: EUR 20 million
- Net GloBE Income: EUR 100 million
- ETR: 20%
- Substance-based Income Exclusion: nil
- Additional Current Top-up Tax: nil
- Qualified Domestic Minimum Top-up Tax: nil
- Thus, Top-up Tax = (0% x EUR 100 million) + 0 + 0 = 0

However, the Group now identifies a major jurisdiction A corporate income tax error in regard to Year 1. That error has caused an underpayment of EUR 2 million of tax for Year 1. However, the correction of the error will not cause any change to the GloBE Income for Year 1.

Q1: What are the adjusted amounts of Top-up Tax for Years 1 and 3?

Q2: Assume the same facts as above, except that the error in Year 1 has caused an overpayment of EUR 2 million of jurisdiction A corporate income tax for Year 1. Again, the correction of the error will not cause any change to the GloBE Income for Year 1. What are the adjusted amounts of Top-up Tax for Years 1 and 3?

Answer in next ITB email alert on 22 April 2022!

LAST WEEK'S QUESTION

An MNE Group has one Constituent Entity, XCo, located in jurisdiction X.

At the beginning of the 2025 Fiscal Year, XCo has these operating assets in its balance sheet:

- Plant & equipment #1: cost of 20,000 (including capitalised payroll expenses of 5,000); accumulated depreciation of 4,000
- Plant & equipment #2: cost of 14,000; accumulated depreciation of 2,000
- Land #1: cost of 10,000; impairment adjustment of 3,000
- Land #2: cost of 15,000

During the 2025 Fiscal Year:

- XCo sells plant & equipment #2 for a price of 15,500
- XCo purchases plant & equipment #3 for 5,000
- XCo starts holding Land #2 for sale

At the end of the 2025 Fiscal Year, XCo's balance sheet shows:

- Plant & equipment #1: accumulated depreciation of 6,000
- Plant & equipment #3: accumulated depreciation of 250
- Land #1: a further impairment adjustment of 1,000 (i.e., total impairment adjustment is now 4,000)
- Land #2: held for sale

Note: With the exception of Land #2: at year-end, all of these assets are being used in the production of XCo's goods.

What is the MNE Group's tangible asset carve-out for jurisdiction X for the 2025 Fiscal Year?

LAST WEEK'S ANSWER

1. P&E #1:
1.1 Beginning of year carrying value: 20,000 – 4,000 = 16,000
1.2 End of year carrying value: 20,000 – 6,000 = 14,000
1.3 Average carrying value: 15,000
Note: The 5,000 of capitalised payroll expenses is not excluded.

2. P&E #2:
2.1 Beginning of year carrying value: 14,000 – 2,000 = 12,000
2.2 End of year carrying value: nil (sold)
2.3 Average carrying value: 6,000
Note: Sale price is irrelevant.

3. P&E #3:
3.1 Beginning of year carrying value: nil (purchased)
3.2 End of year carrying value: 5,000 – 250 = 4,750
3.3 Average carrying value: 2,375

4. Land #1:
4.1 Beginning of year carrying value: 10,000 – 3,000 = 7,000
4.2 End of year carrying value: 10,000 – 4,000 = 6,000
4.3 Average carrying value: 6,500

5. Land #2:
5.1 Beginning of year carrying value: 15,000
5.2 During year, XCo starts holding Land #2 for sale
5.3 End of year: held for sale (Note 1)
5.4 End of year carrying value: nil (Note 2)
5.5 Average carrying value: 7,500
Note 1: Assuming Land #2 satisfies the Commentary's requirements to be considered "held for sale".
Note 2: Art. 5.3.4 states that "the tangible asset carve-out computation shall not include the carrying value of property (including land or buildings) that is held for sale, lease or investment". However, it does not indicate the treatment of such property which becomes "held for sale" during the year. I think the logical treatment is to include its carrying value at the beginning of the year (when it was not "held for sale"), and to include a carrying value of nil at year-end, and then compute the average carrying value in the same way as for a disposal during the year.

6. Conclusions:
6.1 Aggregate average carrying values of Eligible Tangible Assets = 15,000 + 6,000 + 2,375 + 6,500 + 7,500 = 37,375
6.2 2025 rate: 7.6%
6.3 Tangible asset carve-out for 2025 = 37,375 x 7.6% = 2,840.5

Do you agree?

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