International Tax Bytes *by Steve Towers*

"International tax news, explained"

29 April 2022

HIGHLIGHTS

- **Latest developments on Pillars One & Two**
  - **Including public comments on draft model rules for Amount A**
- **Important changes in Commentary to 2021 UN model treaty**
- **Recent international tax cases**
  - **2 cases on international airline profits**
- **Continuation of detailed review of GloBE model rules**
  - **Today: Art. 5.6 on Minority-Owned Constituent Entities**

HAPPY FRIDAY!

The **US** shrinks, but the **greenback** surges! Huh?

Meanwhile, in the tax world ...

The **Extractives exclusion** is too exclusive, while **Amount A** is too domestic; the **UN** catches up on beneficial owners; **United Airlines** pools to win; **Taiwan** spreads goodwill; **Malaysia** ventures forth; and **Brazil's GAAR** lives on!

But at the end of the week, the most important question is this: **"Can you define unacceptable behaviour by tax advisers?"**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

1. Pillars One & Two
2. 2021 UN model double tax treaty
3. International tax cases
4. GloBE model rules: detailed review
5. Asia Pacific
   - Malaysia, Philippines, Singapore, Taiwan
6. Europe
   - Belarus, EU, Germany, Turkey
7. Middle East & Central Asia
   - UAE
8. Americas
   - Argentina, Brazil
9. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
  - **Art. 5.6: Minority-Owned Constituent Entities (ITB, 29 April 2022)**
  - **Art. 5.5: De minimis exclusion (ITB, 22 April 2022)**
  - **Art. 5.4.1: Additional Current Top-up Tax (ITB, 8 April 2022)**
  - **Substance-based Income Exclusion – Tangible asset carve-out (ITB, 1 April 2022)**
  - **Substance-based Income Exclusion – Payroll carve-out (ITB, 25 March 2022)**
  - **Computation of Effective Tax Rate and Top-up Tax (ITB, 18 March 2022)**
  - **Flow-through Entities and Hybrid Entities (ITB, 4 March 2022)**
  - **Computation of Adjusted Covered Taxes (Parts 1 to 3) (ITB, 11, 18 & 25 February 2022)**
  - **Computation of GloBE Income or Loss (Parts 1 to 4) (ITB, 7, 14, 21 & 28 January 2022)**
- **Draft model rules for Amount A in Pillar One:**
  - **Extractives exclusion (ITB, 22 April 2022)**
  - **Scope (ITB, 8 April 2022)**
  - **Tax base determination (ITB, 25 February 2022)**
  - **Nexus and revenue sourcing (ITB, 11 February 2022)**
- **Inclusive Framework's final agreement on Pillars One & Two (ITB, 15 October 2021)**

WORTH READING

Charlotte Tolman and Michael Molenaars
"The Unshell Directive and Its Impact on Dutch Holding Structures"
Tax Notes Today International, Tax Analysts, 21 April 2022 (subscription service)

Oliver R. Hoor, Keith O'Donnell and Samantha Schmitz
"Using a Sledgehammer to Crack a Nut: The European Commission's Draft Directive to Tackle Shell Entities"
Tax Notes Today International, Tax Analysts, 27 April 2022 (subscription service)

Timo Prokoph
"Applying the Arm's Length Principle to High-Risk and Low-Risk Financing / Treasury Entities – A Case Study"
International Transfer Pricing Journal, IBFD, 2022 (Volume 29), No. 3 (subscription service)

Ameya Kunte and Vasudevan G
"Asian Trends on Pillars One and Two – Who is Jumping on Board and Who May Be Jumping Ship"
Talking Points, IBFD, 2022, No. 13 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

An MNE Group has 4 Constituent Entities located in jurisdiction X: ACo, BCo, CCo and DCo.

The UPE's Ownership Interest in each Constituent Entity is this:

- ACo: 100%
- BCo: 40%
- CCo: 30%
- DCo: 25%

The other Ownership Interests in BCo, CCo and DCo are owned by shareholders who are unrelated to the UPE.

The UPE holds a Controlling Interest in all 4 Entities, and thus they are included in the UPE's Consolidated Financial Statements.

In the current Fiscal Year:

- ACo has:
  - Adjusted Covered Taxes: 100
  - GloBE Income: 250
- BCo has:
  - Adjusted Covered Taxes: 25
  - GloBE Income: 100
- CCo has:
  - Adjusted Covered Taxes: 20
  - GloBE Loss: 200
- DCo has:
  - Adjusted Covered Taxes: 50
  - GloBE Income: 500
- For jurisdiction X, there is:
  - No Additional Current Top-up Tax
  - No Domestic Top-up Tax
  - No Substance-based Income Exclusion
  - No de minimis exclusion

What is the Top-up Tax, if any, for jurisdiction X for the current Fiscal Year?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

An MNE Group has 3 Constituent Entities (ACo, BCo and CCo) located in jurisdiction X.

The MNE Group uses the calendar year as its Fiscal Year.

ACo has these financial numbers for Fiscal Years 1 to 3:

- Year 1:
  - GloBE Revenue: EUR 5 million
  - GloBE Income: EUR 0.8 million
- Year 2:
  - GloBE Revenue: EUR 7 million
  - GloBE Income: EUR 0.7 million
- Year 3:
  - GloBE Revenue: EUR 12 million
  - GloBE Loss: EUR 0.1 million

BCo has these financial numbers for Fiscal Years 1 to 3:

- Year 1 (BCo was dormant in Year 1):
  - GloBE Revenue: EUR 0
  - GloBE Income or Loss: EUR 0
- Year 2:
  - GloBE Revenue: EUR 4 million (including EUR 3 million from services provided to ACo)
  - GloBE Income: EUR 0.2 million
- Year 3:
  - GloBE Revenue: EUR 3 million (including EUR 2 million from services provided to ACo)
  - GloBE Income: EUR 0.3 million

CCo was formed on 1 April in Year 2, and commenced operations immediately.

CCo has these financial numbers for Fiscal Years 2 & 3:

- Year 2:
  - GloBE Revenue: EUR 0.75 million
  - GloBE Loss: EUR 0.3 million
- Year 3:
  - GloBE Revenue: EUR 1 million
  - GloBE Loss: EUR 0.4 million

Note: The "GloBE Revenue" for each Fiscal Year is the Entity's revenue for that year, taking into account the adjustments in Chapter 3 of the GloBE model rules.

Is the MNE Group entitled to make a "de minimis exclusion" election for Year 3?

LAST WEEK'S ANSWER

Preliminary points:

1. In Year 1, BCo was dormant and CCo had not been formed. Nevertheless, due to the existence and operation of ACo in Year 1, Year 1 is included in the calculation of averages. In other words, the second sentence in Art. 5.5.2 does not apply.
2. CCo was formed on 1 April in Year 2 and commenced operations immediately. Thus, its Year 2 numbers need to be converted into equivalent 12 month numbers. Thus, CCo's GloBE Revenue for Year 2 becomes: EUR 0.75 million x 4/3 = EUR 1 million; and its GloBE Loss becomes: EUR 0.3 million x 4/3 = EUR 0.4 million.
3. BCo's GloBE Revenue for Years 2 & 3 includes significant amounts of revenue from services provided to ACo. No adjustment is made for such intra-group revenue.

GloBE Revenue (in EUR millions):
Year 1: 5 + 0 = 5
Year 2: 7 + 4 + 1 = 12
Year 3: 12 + 3 + 1 = 16

Average GloBE Revenue (in EUR millions) = (5 + 12 + 16) / 3 = 11

GloBE Income or Loss (in EUR millions):
Year 1: 0.8 + 0 = 0.8
Year 2: 0.7 + 0.2 + (0.4) = 0.5
Year 3: (0.1) + 0.3 + (0.4) = (0.2)

Average GloBE Income or Loss (in EUR millions) = (0.8 + 0.5 + (0.2)) / 3 = 0.4 (rounded)

As the Average GloBE Revenue is not less than EUR 10 million, Art. 5.5.1(a) is not satisfied. Thus, the Group is not entitled to make a "de minimis exclusion" election for Year 3.