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20 May 2022



HIGHLIGHTS

- **Latest developments on Pillar Two**
 - **Poland's continued objection to EU's proposed Directive on GloBE rules**
- **Recent international tax cases**
 - **Should a "beneficial ownership" condition be "read into" capital gains article of double tax treaty?**
 - **Business restructuring case: are tax authorities entitled to deem a transfer of IP?**
- **Continuation of detailed review of GloBE model rules**
 - **Today: Art. 2.4 (application of the UTPR)**

HAPPY FRIDAY!

The bears rule Wall Street; China cuts rates; and Covid-19 finally arrives in North Korea!

Meanwhile, in the tax world...

Poland continues to obstruct; **New Zealand** wants the tax, but resists the imputation; **Article 13** locks out beneficial ownership; **Medingo** wins by doing nothing exceptional; **Nigeria** stops withholding the rule of law; **Brazil** settles for half, as a sign of goodwill; **US** Republicans and Democrats agree on **Russia**; and will **Netflix** soon open a **Swiss** studio?

But at the end of a tumultuous week on financial markets, there are 2 important questions: "Where's the bottom? And will the USD soon reach parity with the EUR?"

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 Two
2. International tax cases
3. GloBE model rules: detailed review
4. Asia Pacific
 - Australia, India
5. Europe
 - ECJ, Sweden, Switzerland, Turkey, UK
6. Africa
 - Kenya, Nigeria, South Africa
7. Americas
 - Brazil, Chile, US
8. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
 - **Art. 2.4: Application of the UTPR (ITB, 20 May 2022)**
 - **Art. 2.2: Allocation of Top-up Tax under the IIR & Art. 2.3: IIR Offset Mechanism (ITB, 13 May 2022)**
 - **Art. 2.1: Application of the IIR (ITB, 6 May 2022)**
 - **Computation of Effective Tax Rate and Top-up Tax (Parts 1 to 6) (ITB, 18 & 25 March; 1, 8, 22 & 29 April 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:**
 - **Regulated Financial Services exclusion from scope (ITB, 13 May 2022)**
 - **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

Gary Sprague
"New Foreign Tax Credit Regulations and Software Transactions"
Tax Management International Journal, Bloomberg BNA, 2022 (Volume 51), Issue No. 5 (subscription service)

Theresa Siebing and Markus Greinert
"Latest Developments on the German License Barrier"
Tax Notes Today International, Tax Analysts, 12 May 2022 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

An MNE Group has 1 Constituent Entity (ACo) located in jurisdiction A.

In year 1:

- The MNE Group is "within scope" of the GloBE rules
- A UTPR Top-up Tax Amount of 1,000 is allocated to jurisdiction A
- The corporate income tax rate in jurisdiction A is 20%
- ACo has:
 - Revenue: 7,000
 - Deductions: 3,000
 - Taxable profits: 4,000

Under the jurisdiction A tax law, the UTPR Top-up Tax Amount is imposed by denial of deductions (across-the-board, not specific deductions).

In year 2:

- The MNE Group is not within scope of the GloBE rules
- At the start of year 2, the MNE Group sells 100% of the shares in ACo to a third party
- The corporate income tax rate in jurisdiction A is increased to 25%
- ACo has:
 - Revenue: 6,000
 - Deductions: 3,000
 - Taxable profits: 3,000

What UTPR Top-up Tax will be imposed on ACo in years 1 and 2?

Answer in next ITB email alert on 3 June 2022!

LAST WEEK'S QUESTION

An MNE Group consists of a UPE (located in U), XCo 1 (located in X), XCo 2 (located in X), YCo (located in Y), ZCo (located in Z), and UCo (located in U).

The Ownership Interests are directly owned as follows:

- XCo 1: 100% owned by UPE
- XCo 2: 80% owned by XCo 1, 10% owned by UPE, and 30% owned by third parties
- YCo: 60% owned by XCo 2, 30% owned by UPE, and 10% owned by third parties
- ZCo: 100% owned by YCo
- UCo: 100% owned by YCo

All shares in all companies are common shares, which carry an equal right to profit distributions and capital.

None of the Constituent Entities is an Investment Entity or a Flow-through Entity.

All of the jurisdictions have implemented the GloBE rules.

For the current Fiscal Year:

- ZCo has Top-up Tax of 1,000, and GloBE Income of 25,000
- UCo has Top-up Tax of 3,000, and GloBE Income of 10,000

Based on these facts, what are the amounts of IIR tax imposed on UPE, XCo 1, XCo 2 and YCo for the current Fiscal Year?

LAST WEEK'S ANSWER

(1) XCo 1 is an Intermediate Parent Entity (IPE) (100% directly owned by UPE).

No Top-up Tax will be imposed on XCo 1, due to the fact that a Qualified IIR applies to UPE: Art. 2.1.3(a).

(2) YCo is a Partially-Owned Parent Entity (POPE) (28% directly or indirectly owned by third parties).

In regard to ZCo: YCo's Allocable Share is 100%: Art. 2.2. Thus, Top-up Tax of 1,000 is imposed on YCo: Art. 2.1.4.

In regard to UCo: YCo's Allocable Share is 100%: Art. 2.2. Thus, Top-up Tax of 3,000 is imposed on YCo: Art. 2.1.4. Note that the fact that UCo is located in U (same as UPE) has no impact on the application of Art. 2.1 to YCo: see Art. 2.1.6.

(3) XCo 2 is a POPE (30% directly owned by third parties).

Art. 2.1.5 does not apply to exclude XCo 2 from IIR tax, as XCo 2 does not wholly own YCo.

In regard to ZCo: XCo 2's Allocable Share is 60%: Art. 2.2. Prima facie, Top-up Tax of 600 is imposed on XCo 2. However, Art. 2.3.1 reduces that Top-up Tax to nil.

In regard to UCo: XCo 2's Allocable Share is 60%: Art. 2.2. Prima facie, Top-up Tax of 1,800 is imposed on XCo 2. However, Art. 2.3.1 reduces that Top-up Tax to nil.

(4) UPE: In regard to ZCo: UPE's Allocable Share is 72% (i.e., 30% owned directly in YCo, plus 42% owned indirectly in YCo through XCo 1 and XCo 2): Art. 2.2. Prima facie, Top-up Tax of 720 is imposed on UPE. However, Art. 2.3.1 reduces that Top-up Tax to nil, due to the fact that all 72% is owned through YCo, which applies a Qualified IIR.

In regard to UCo: As UCo is located in U (same as UPE), Art. 2.1.6 provides an exclusion. Note: the Commentary allows jurisdictions to delete Art. 2.1.6 when they transpose the GloBE rules into domestic law.

(5) Summary: ZCo: Top-up Tax imposed on YCo: 1,000. UCo: Top-up Tax imposed on YCo: 3,000.

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