International Tax Bytes *by Steve Towers*

"International tax news, explained"

10 June 2022

HIGHLIGHTS

- **Latest developments on Pillars One and Two**
  - **2 consultation documents on "tax certainty" aspects of Amount A in Pillar One**
- **Windfall profits taxes in Argentina, Hungary and the UK**
- **Continuation of detailed review of GloBE model rules**
  - **Today: UTPR Top-up Tax Amount in Art. 2.5**

HAPPY FRIDAY!

January 6 goes prime time; **New Zealand** tackles sheep indigestion; and soon a **full tank of petrol will be worth more than your car**!

Meanwhile, in the tax world…

The **OECD** aims for certainty; revenue authorities talk to each other in **Shenzhen**; **Denmark** takes aim at **Netflix**; **Hungary** sees windfall profits everywhere; the **UK** incentivises investment in oil and gas (I'm not kidding!); and the **US** doesn't want to give the credit where it's due!

But at the end of the week, the most important question is this: **"How high will petrol prices go?"**

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. Trade & other global developments
4. GloBE model rules: detailed review
5. Asia Pacific
   - China, Hong Kong, Singapore, Sri Lanka
6. Europe
   - Denmark, Germany, Hungary, Netherlands, Poland, Russia, Turkey, UK
7. Americas
   - Argentina, Brazil, Chile, US
8. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
  - **Art. 2.5: UTPR Top-up Tax Amount (ITB, 10 June 2022)**
  - **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:**
  - **Tax certainty (ITB, 10 June 2022)**
  - **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

Nupur Jalan
"Dichotomy on the Applicability of Articles 9(1) and 24(4) of the Model Convention to the Thin Capitalization Rules"
Tax Management International Journal, Bloomberg BNA, 2022 (Volume 51), No. 6 (subscription service)

Matteo Cataldi and Mirko Severi
"Transfer Pricing Aspects of Sanctions against Countries"
International Transfer Pricing Journal, IBFD, 2022 (Volume 29), No. 4 (subscription service)

Kim Blanchard
"Friction Between Pillar Two and U.S. Tax Principles"
Tax Management International Journal, Bloomberg BNA, 2022 (Volume 51), No. 6 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, located in A, is the UPE of an MNE Group.

ACo owns 100% of BCo (located in B), 70% of CCo (located in C), 100% of DCo (located in D), and 40% of ECo (located in E).

The other 30% of CCo is owned by third parties.

BCo owns 15% of ECo, and CCo owns 25% of ECo. The other 20% of ECo is owned by third parties.

All of the shares in all of the companies are common shares, with an equal right to profit distributions and capital.

A, B, C and D have implemented the GloBE rules, but E has not.

ECo is a Low-Taxed Constituent Entity. It has Top-up Tax for the current Fiscal Year of 1,000.

Q1: What amount of IIR tax and UTPR tax will be imposed, and on which entity or entities?

Q2: Same question as Q1, with one change in the facts: A has not implemented the GloBE rules.

Answer in next ITB email alert!

LAST WEEK'S QUESTION

An MNE Group has 1 Constituent Entity (ACo) located in jurisdiction A. The UPE owns a direct or indirect 75% Ownership Interest in ACo, with the balance of 25% owned by third parties.

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
- That UTPR Top-up Tax Amount relates to the Top-up Tax of XCo, a Low-Taxed Constituent Entity located in jurisdiction X. ACo has no transactions with, and no direct or indirect equity investment in, XCo.
- 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 (if any) will be imposed on ACo in years 1 and 2?

LAST WEEK'S ANSWER

Introductory point: UTPR will be imposed on ACo, regardless of: (1) the fact that ACo is 25% owned by third parties; and (2) the fact that ACo has no transactions with, and no direct or indirect equity investment in, XCo.

Year 1:

- ACo will be denied all of its existing deductions of 3,000: Art. 2.4.1.
- That will cause an additional cash tax expense of 3,000 x 20% = 600.
- And that will leave 400 of UTPR to be imposed.

Year 2:

- Art. 2.4.2 will require there to be a second adjustment under Art. 2.4.1, in regard to year 2.
- Therefore, ACo will be denied deductions of 1,600: Art. 2.4.1.
- That will cause an additional cash tax expense of 1,600 x 25% = 400.
- This second adjustment will be made in year 2, regardless of: (1) the fact that the MNE Group is not "within scope" of the GloBE rules; and (2) the fact that ACo is wholly owned by third parties: Commentary on Art. 2.4. (I hope the third party acquirers do their tax due diligence thoroughly!)

Do you agree?

If you have a friend or colleague who you think might find this email alert interesting, please forward it to them.