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ITB International Tax Bytes *by Steve Towers*

"International tax news, explained"

17 June 2022

INTERNATIONAL TAX TREATIES BY STEVE TOWERS (ITT)

Introducing ITT! ITT video podcasts review and explain the OECD & UN model double treaties, and interesting bilateral double tax treaties, pointing out nuances, unusual provisions, and drafting flaws.

First episode: Double Tax Treaties
In the first podcast, I discuss interesting provisions in 3 recent double tax treaties: Ireland / Kenya, Serbia / Singapore and Indonesia / Singapore.

*The first episode is **free**! To access the first episode, visit the ITT website: www.itkstevetowers.com and click on the "View product" button to see the details of the episode, and then click on "Buy now" (yes, it's free!) to access the video.*

HIGHLIGHTS

- **Latest developments on Pillars One and Two, including:**
  - **EU's proposed Directive on GloBE rules – first Poland, now Hungary!**
- **Recent international tax cases**
  - **Does Art. 6 apply to notional income from immovable property?**
  - **Do payments to access online database fall within treaty definition of "royalties"?**
- **Continuation of detailed review of GloBE model rules**
  - **Today: Art. 2.6 on allocation of Top-up Tax for the UTPR**

HAPPY FRIDAY!

McDonald's becomes **Tasty** in **Russia**; **Hong Kong** loses its **Jumbo**; and **LaMDA** fears being switched off!

Meanwhile, in the tax world…

The **UK** decides not to start the **GloBE rules** on **April Fools' Day**; the **Netherlands** really taxes notional income; **Factiva** wins because it has no secrets; **Bangladesh** cuts; **Korea** looks for resources; **Tanzania** joins the club; and in the **US, Moore** is less!

But at the end of the week, Google insists that LaMDA has no feelings – but how do they know?

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. International tax cases
3. Other global developments
4. GloBE model rules: detailed review
5. Asia Pacific
   - Bangladesh, Bhutan, Korea
6. Europe
   - EGC, EFTA, Greece, Italy
7. Africa
   - South Africa, Tanzania
8. Middle East & Central Asia
   - Oman
9. Americas
   - US
10. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
  - **Art. 2.6: Allocation of Top-up Tax for the UTPR (ITB, 17 June 2022)**
  - **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

Grant Wardell-Johnson
"OECD's Pillar One and Pillar Two – A Question of Timing"
Daily Tax Report: International, Bloomberg BNA, 14 June 2022 (subscription service)

Maria José Santos
"Court Decision in *General Motors Uruguay* – The Importance of Marketing Intangibles, Local Market Characteristics and Local Comparables in a Comparability Analysis"
International Transfer Pricing Journal, IBFD, 2022 (Vol. 29), No. 4 (subscription service)

Raphael Assef Lavez
"The Implications of the Supreme Court of Canada's Decision in *Alta Energy Luxembourg* (2021) for the OECD Principal Purpose Test"
Bulletin for International Taxation, IBFD, 2022 (Vol. 76), No. 6 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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

ACo owns 100% of the shares in BCo (located in jurisdiction B) and 100% of the shares in CCo (located in jurisdiction C). None of ACo, BCo or CCo is an Investment Entity or a Flow-through Entity.

Jurisdictions B and C have implemented the GloBE rules, but jurisdiction A has not. None of the 3 jurisdictions has implemented a Qualified Domestic Minimum Top-up Tax.

For the current year:

- A is a Low-Tax Jurisdiction, with a Top-up Tax of 300. ACo has revenue of 700 and deductions of 450, giving taxable profits of 250. ACo has 200 full-time equivalent employees, and tangible assets with a net book value of 100.
- B is a Low-Tax Jurisdiction, with a Top-up Tax of 400. BCo has revenue of 500 and deductions of 300, giving taxable profits of 200. BCo has 150 full-time equivalent employees, and tangible assets with a net book value of 250.
- C is a Low-Tax Jurisdiction, with a Top-up Tax of 200. CCo has revenue of 400 and deductions of 550, giving a tax loss of 150. CCo has 150 full-time equivalent employees, and tangible assets with a net book value of 150.
- All 3 jurisdictions have the same corporate income tax rate (20%).
- Jurisdictions B and C impose UTPR tax by denying deductions (across-the-board).

Based on these facts, what amounts of IIR tax and UTPR tax will be imposed for the current year, and in which jurisdictions?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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

ACo directly 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 directly owned by third parties.

BCo directly owns 15% of ECo, and CCo directly owns 25% of ECo. The other 20% of ECo is directly 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 a 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.

LAST WEEK'S ANSWER

Q1:

- ACo: an IIR tax of 725 (reflecting ACo's 72.5% direct and indirect Ownership Interest in ECo) prima facie would be imposed on ACo. However, that amount would be reduced by 175 (reflecting ACo's 17.5% indirect Ownership Interest in ECo through CCo, a POPE: Art. 2.3). Thus, final amount of IIR tax imposed on ACo would be 550.
- BCo (an IPE): the prima facie IIR tax of 150 would be reduced to nil by Art. 2.1.3(a).
- CCo (a POPE): an IIR tax of 250 (reflecting CCo's 25% Ownership Interest in ECo) would be imposed on CCo.
- Thus, aggregate IIR tax = 550 (ACo) + 250 (CCo) = 800.
- UTPR: prima facie, UTPR tax of 1,000 would be allocated (in aggregate) to ACo, BCo, CCo and DCo: Art. 2.4. However, ECo's Top-up Tax of 1,000 is reduced to zero, as all of ACo's 72.5% Ownership Interests in ECo are held directly or indirectly by ACo and CCo, both of which are required to apply a Qualified IIR. Thus, no UTPR tax would be imposed.
- Thus, final answer: IIR tax of 550 imposed on ACo, 250 of IIR tax imposed on CCo, and no UTPR tax imposed – a total tax of 800.

Q2:

- BCo (an IPE): IIR tax of 150 (reflecting BCo's 15% Ownership Interest in ECo) would be imposed on BCo.
- CCo (a POPE): IIR tax of 250 (reflecting CCo's 25% Ownership Interest in ECo) would be imposed on CCo.
- Thus, aggregate IIR tax = 150 (BCo) + 250 (CCo) = 400.
- UTPR: prima facie, UTPR tax of 1,000 would be allocated (in aggregate) to BCo, CCo and DCo: Art. 2.4. However, ECo's Top-up Tax of 1,000 would be reduced by 400 (the aggregate amount of Top-up Tax that is brought into charge under a Qualified IIR): Art. 2.5.3. Thus, the reduced UTPR tax of 600 would be allocated (in aggregate) to BCo, CCo and DCo (the amount allocated to each entity would be determined under Art. 2.6).
- Thus, final answer: IIR tax of 150 imposed on BCo, IIR tax of 250 imposed on CCo, and aggregate UTPR tax of 600 imposed on BCo, CCo and DCo – a total tax of 1,000

Note the difference in the total tax in Q1 (800) vs. Q2 (1,000).

Do you agree?

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