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24 June 2022



HIGHLIGHTS

- Latest developments on Pillar Two
 - Hungary's flip-flop
- Triskellon case on "deemed services PE" provision in Canada / US treaty
- Continuation of detailed review of GloBE model rules
 - Today: Arts. 1.1 to 1.4 on scope of the GloBE rules

HAPPY FRIDAY!

New York becomes the Wild West; while the Republicans and Democrats finally agree on something; and Ukraine and Moldova get in line!

Meanwhile, in the tax world...

Hungary flip-flops; Triskellon doesn't count; Cambodia shortens arms; India's MAP and vsV don't get along; McDonald's gets tried in France; Germany won't turn back on extra-territorial IP; and India withholds on crypto!

But at the end of the week, here's a new definition of creepy: Alexa will sound like your dead relatives!

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 case
3. Other global developments
4. GloBE model rules: detailed review
5. Asia Pacific
 - Cambodia, India
6. Europe
 - ECJ, France, Germany, UK
7. Americas
 - US
8. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
 - **Scope: Arts. 1.1 to 1.4** (ITB: 24 June 2022)
 - **Charging Provisions (parts 1 to 5)** (ITB: 6, 13 & 20 May; 10 & 17 June 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

Brian J. Arnold
["An Investigation into the Interaction of CFC Rules and the OECD Pillar Two Global Minimum Tax"](#)
Bulletin on International Taxation, IBFD, 2022 (Vol. 76), No. 6 (subscription service)

Belisa Ferreira Liotti, Joy Waguguru Ndubai, Ruth Wamuyu, Ivan Lazarov and Jeffrey Owens
["The Treatment of Tax Incentives under Pillar Two"](#)
WU GTPC Working Paper (freely available on www.ssm.com)

Dennis Weber
["Enhanced cooperation: EU implementation of Pillar 2 without unanimity"](#)
Kluwer International Tax Blog, 7 June 2022 (freely available)

Jonathan Schwarz
["VAT Fixed establishment = permanent establishment? or, should direct and indirect tax practitioners talk to each other?"](#)
Kluwer International Tax Blog, 6 June 2022 (freely available)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company located in jurisdiction A, is the parent company of an MNE Group. The Group includes subsidiaries in several other jurisdictions.

Jurisdiction A has implemented the GloBE rules.

ACo prepares Euro-denominated consolidated financial statements for the Group, in accordance with an Acceptable Financial Accounting Standard (defined in Art. 10.1.1).

ACo's consolidated financial statements reported these amounts of revenue in the previous 4 Fiscal Years and the current Fiscal Year (defined in Art. 10.1.1):

- Fiscal Year 1: EUR 700 million
- Fiscal Year 2: EUR 600 million
- Fiscal Year 3: EUR 740 million
- Fiscal Year 4: EUR 760 million
- Fiscal Year 5 (current year): EUR 720 million

All of these Fiscal Years were 12 months in duration, except Fiscal Year 2 which was 9 months (due to a change in year-end).

For many years, 60% of the shares in ACo have been owned by the B Family Trust, which is a trust created in jurisdiction X. The trustee and beneficiaries of the trust are members of the B family, who all reside in X. The remaining 40% of the shares in ACo are owned by third parties.

Jurisdiction X has not implemented the GloBE rules. Although the trust law of X requires simple accounting records to be kept by all trusts created in X, consolidated financial statements are not required. Consequently, the B Family Trust has not prepared consolidated financial statements.

Questions: For Fiscal Year 5, do the GloBE rules apply to the companies within the ACo Group? If yes, will the IIR apply to ACo?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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?

LAST WEEK'S ANSWER

There will be no IIR tax: jurisdiction A has not implemented the GloBE rules, and BCo has no Ownership Interest in CCo and vice versa.

The Total UTPR Top-up Tax Amount (i.e., the sum of the Top-up Tax calculated for each Low-Taxed Constituent Entity) = 300 (ACo) + 400 (BCo) + 200 (CCo) = 900: Art. 2.5.1.

Art. 2.6.1:

1. Jurisdiction A: nil – GloBE rules not implemented in A.
2. Jurisdiction B:
UTPR Percentage = $[50\% \times 150 / 300] + [50\% \times 250 / 400] = 25\% + 31.25\% = 56.25\%$
UTPR Top-up Tax Amount allocated to B = $900 \times 56.25\% = 506.25$
3. Jurisdiction C:
UTPR Percentage = $[50\% \times 150 / 300] + [50\% \times 150 / 400] = 25\% + 18.75\% = 43.75\%$
UTPR Top-up Tax Amount allocated to C = $900 \times 43.75\% = 393.75$

Art. 2.4.1:

1. Jurisdiction B: All of BCo's deductions of 300 will be disallowed, which would cause BCo to have an additional cash tax expense of 60 in the current year – i.e., $300 \times 20\% = 60$. That will leave a remaining UTPR Top-up Tax Amount of 446.25 – i.e., $506.25 - 60 = 446.25$. The 446.25 will be carried forward for adjustment in Art. 2.4.1 in future years: Art. 2.4.2.
2. Jurisdiction C: All of CCo's deductions of 550 will be disallowed, which would cause CCo to move from a tax loss of 150 to a taxable profit of 400. It would therefore have an additional cash tax expense of 80 in the current year – i.e., $400 \times 20\% = 80$. That will leave a remaining UTPR Top-up Tax Amount of 313.75 – i.e., $393.75 - 80 = 313.75$. The 313.75 will be carried forward for adjustment in Art. 2.4.1 in future years: Art. 2.4.2. [Note that, if the C tax law allows tax losses to be carried forward, the disallowance of CCo's 150 tax loss in the current year might cause an additional cash tax expense of 30 in future years – this might reduce the UTPR Top-up Tax Amount carried forward by 30.]

Art. 2.6.3 & 2.6.4: Due to Art. 2.6.4, in the next year, B and C will not be deemed to have a UTPR Percentage of zero under Art. 2.6.3.

Do you agree?



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