ITB International Tax Bytes by Steve Towers

"International tax news, explained"

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1 July 2022

HIGHLIGHTS

- **Latest developments on Pillars One & Two**
  - **Interesting updates provided in this week's OECD tax conference in Washington, DC**
- **Planet case on beneficial ownership of royalties under France / New Zealand treaty**
  - **Can a "look-through" approach be applied?**
- **Continuation of detailed review of GloBE model rules**
  - **Today: Art. 1.5 on Excluded Entities**

HAPPY FRIDAY!

Russia can't hold the snake; **Xi** goes on tour; and a **whale** is spotted in the **Seine!**

Meanwhile, in the tax world…

Mauritius loses character; **France** looks through the Planet to **New Zealand**; **Australia** doesn't correspond to **GILTI**; **India** maintains tolerance; and the **UK** rewrites history!

But at the end of the week, the most interesting question is this: **"Did Justin Trudeau forget the name of Australia's prime minister?"**

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 case
3. GloBE model rules: detailed review
4. Asia Pacific
   - Australia, India, Thailand
5. Europe
   - Germany, Ireland, Spain, UK
6. Africa
   - Mauritius
7. Middle East & Central Asia
   - Pakistan
8. Americas
   - US
9. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
  - **Scope: Art. 1.5 (definition of "Excluded Entity") (ITB: 1 July 2022)**
  - **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

Mindy Herzfeld
"Tax Credits and Incentives Under a Global Minimum Tax Regime"
Tax Notes International, Tax Analysts, 27 June 2022 (subscription service)

Heydon Wardell-Burrus
"Should CFC Regimes Grant a Tax Credit for Qualified Domestic Minimum Top-up Taxes?"
Tax Notes International, Tax Analysts, 27 June 2022 (subscription service)

Georg Kofler
"Editorial: Should We Cut 'Final' Losses?"
EC Tax Review, Kluwer, 2022 (Vol. 31), Issue 3 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

A Real Estate Investment Trust (REIT), located in jurisdiction X, is the UPE of an MNE Group which is "within scope" of the GloBE rules. The REIT is in the form of a unit trust.

The REIT is widely-held by unconnected investors (unitholders). One of those investors is a pension fund, which is also located in jurisdiction X.

Under the X income tax law:

- The REIT is exempt from taxation on all of its taxable profits, provided it distributes to its unitholders, within 12 months of its year-end, 100% of its taxable profits.
- The unitholders are generally subject to tax on distributions from the REIT.
- However, the pension fund is tax-exempt on all income – this includes the distributions from the REIT.
- The GloBE rules have been implemented in jurisdiction X.

If one or more of the Constituent Entities within the REIT's MNE Group have a Top-up Tax, will the REIT be subject to an IIR tax?

Answer in next ITB email alert on 22 July 2022!

LAST WEEK'S QUESTION

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. A's implementing legislation uses the Euro.

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.

Q1: For Fiscal Year 5, do the GloBE rules apply to the companies within the ACo Group?
Q2: If the answer to Q1 is "yes", will the IIR apply to ACo?

LAST WEEK'S ANSWER

Q1:

The B Family Trust is an "Entity", as defined in para. (b) of Art. 10.1.1.

The B Family Trust would be the UPE of the MNE Group: Art. 1.4.1(a). In particular, the B Family Trust would own a "Controlling Interest" in ACo, under para. (b) of the definition of "Controlling Interest" in Art. 10.1.1.

Accordingly, the revenue threshold test in Art. 1.1.1 must be applied to the B Family Trust's "Consolidated Financial Statements", which would be the deemed consolidated financial statements in para. (d) of the definition in Art. 10.1.1.

Before doing so, we need to adjust the revenue threshold for Fiscal Year 2, to take into account the 9 months accounting period: Art. 1.1.2. The adjusted threshold would be EUR 562.5 million (i.e., 750 million x 75%).

The revenue threshold would therefore be satisfied in Fiscal Years 2 and 4: Art. 1.1.1.

Accordingly, the GloBE rules would apply to the companies within the ACo Group (i.e., the B Family Trust MNE Group) in Fiscal Year 5, despite the fact that the revenue threshold is not satisfied in Fiscal Year 5 itself.

Q2:

Although the B Family Trust is the UPE of the MNE Group, the IIR will not apply to the B Family Trust because jurisdiction X has not implemented the GloBE rules.

ACo would be an Intermediate Parent Entity, and therefore it would be subject to the IIR in jurisdiction A: Art. 2.1.2. Art. 2.1.3(a) is not applicable, as the IIR does not apply to the UPE.

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