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22 July 2022



HIGHLIGHTS

- **Pillar Two**
 - UK publishes draft legislation on GloBE rules
 - Senator Manchin withholds his vote on QILTI amendments
 - US terminates treaty with Hungary
- **Progress Report on Amount A in Pillar One**
 - Title 4 (Allocation of Amount A)
 - Title 5 (Elimination of double taxation)

HAPPY FRIDAY!

Europe sweaters; Trump sits in his dining room; and Boris wishes everyone "Hasta la vista, baby!"

Meanwhile, in the tax world...

Manchin withdraws his vote; Brazil looks through shareholders; Mauritius provides transparent guidance; Australia doesn't like shopping; Chile mines royalties; and the UK wants to reduce immunity!

But at the end of the week, the most important question is this: "Do you agree with Mathias Cormann that the GloBE rules are ineluctable?"

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. Pillar One: Progress Report on Amount A
3. Asia Pacific
 - Australia, Hong Kong, Malaysia
4. Europe
 - EU, Germany, Italy, Netherlands, Poland, Spain, UK
5. Africa
 - Mauritius
6. Americas
 - Brazil, Chile
7. 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)
- **Progress Report on Amount A in Pillar One (ITB, 22 July 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

Adolfo Martín Jiménez
["Is There an International Minimum Standard on Tax Treaty Shopping after BEPS Action 6? Some Recent Divergent Trends"](#)
World Tax Journal, IBFD, 2022 (Vol. 14), No. 3 (subscription service)

Heydon Wardell-Burnus
["Can Pillar 2 Be Leveraged to Save Pillar 1?"](#)
Tax Notes Today International, Tax Analysts, 18 July 2022 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

The UPE of an MNE Group is a sovereign wealth fund which is 100% owned by the government of jurisdiction U. The UPE's principal purpose is to invest the government's assets through the making and holding of share investments. The UPE does not carry on a trade or business.

The MNE Group is within scope of the GloBE rules.

The UPE owns 70% of the shares in UCo, a company located in jurisdiction U. The other 30% is owned by third parties. UCo carries on a manufacturing business.

The UPE also owns 80% of the shares in ACo 1, a company located in jurisdiction A. The other 10% is owned by third parties.

ACo 1's only assets are shares in other companies. The shares are held by ACo 1 as long-term investments. None of those other companies is an Investment Entity (defined in Art. 10.1.1).

ACo 1 owns 100% of the shares in ACo 2, a company which is also located in jurisdiction A. ACo 2 carries on a manufacturing business.

ACo 1 also owns 90% of the shares in BCo 1, a company located in jurisdiction B. The other 10% is owned by third parties. BCo 1's only assets are shares in other companies. The shares are held by BCo 1 as long-term investments. None of those other companies is an Investment Entity (defined in Art. 10.1.1).

BCo 1 owns 100% of the shares in BCo 2, a company which is also located in jurisdiction B. BCo 2 carries on a goods trading business.

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

All of the above-mentioned jurisdictions have implemented the GloBE rules.

In the current Fiscal Year, there are amounts of Jurisdictional Top-up Tax in both jurisdiction A and jurisdiction U.

Which company or companies (if any) within the MNE Group will be subject to IIR tax or UTPR tax?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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. Most of the REIT's assets are in the form of shares in land-rich companies (i.e., companies whose assets predominantly consist of immovable property) – these companies are located in X and other jurisdictions.

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, regardless of whether they are resident in X or not.
- 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?

LAST WEEK'S ANSWER

If the REIT qualifies as an "Excluded Entity", then it will be exempt from IIR tax: Art. 1.1.3.

The REIT might qualify as an "Excluded Entity" under either para. (e) or para. (f) of Art. 1.5.1.

I will consider para. (f) first.

Para. (f) applies to a Real Estate Investment Vehicle that is a UPE.

The definition of "Real Estate Investment Vehicle" in Art. 10.1.1 contains 3 conditions, all of which must be satisfied: (1) "the taxation of [the Entity] achieves a single level of taxation either in its hands or in the hands of its interest holders (with at most one year of deferral)"; (2) "[the Entity] holds predominantly immovable property"; and (3) "[the Entity] is itself widely held".

Based on the facts, condition (3) is satisfied.

Condition (1): The fact that a tax-exempt pension fund is a unitholder in the REIT would appear to cause condition (1) to be failed, even if the REIT distributes all of its taxable profits within 12 months of its year-end. However, the Commentary states that that would not be the case, if the pension fund satisfies the definition of "Pension Fund" in Art. 10.1.1.

Condition (2): The Commentary states that the holding of securities the value of which is linked to immovable property, qualifies as the holding of immovable property for the purposes of condition (2). Thus, condition (2) should be satisfied in this situation.

Therefore, the REIT should satisfy the definition of "Real Estate Investment Vehicle" (if it distributes 100% of its taxable profits within 12 months of its year-end), and accordingly (in that situation) it should be an "Excluded Entity" under para. (f) of Art. 1.5.1, and thus be exempt from IIR tax.

Alternatively, if the REIT does not satisfy the definition of "Real Estate Investment Vehicle", it might qualify as an "Excluded Entity" under para. (e) of Art. 1.5.1. Para. (e) refers to an Investment Fund that is a UPE. The term, "Investment Fund", is defined in Art. 10.1.1. An investment fund which is focused on the real estate sector can satisfy that definition. However, based on the facts in the question, it is not possible to conclude whether the particular REIT in the question satisfies the definition.

Do you agree?



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