ITB International Tax Bytes by Steve Towers

"International tax news, explained"

29 July 2022

HIGHLIGHTS

- **In US, 15% corporate alternative minimum tax will likely be enacted this year**
    - **Not an amendment to GILTI to make it compliant with GloBE rules**
- **2 international tax cases**
    - **Shipping profits article (Art. 8) in India / UAE treaty**
    - **"Remittance provision" (Art. 2(5)) in Malta / Netherlands treaty**
- **Continuation of detailed review of GloBE model rules**
    - **Today: Art. 4.4 on deferred tax expense**

HAPPY FRIDAY!

The **US** shows that Democrats and some Republicans can agree when the **CHIPS** are down; however, **Germany** takes cold showers; and **Nancy** plans a very quiet visit to **Taiwan!**

Meanwhile, in the tax world...

Manchin and **Schumer** make a deal; **Avana** shows that camels are the ships of the desert; the **Netherlands Supreme Court** makes the **Maltese** cross; **Rio Tinto's** marketing becomes expensive; the **Philippines** finally provides a roadmap; and **Colombia** concludes that not all beneficial owners are the same!

But at the end of the week, the most important question is this: **"Who decided that the Tour de France Femmes route would include gravel tracks?"**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

(For ITB video subscribers, please log in to access the video and documents/reports)

1. US tax reform
2. Pillars One & Two
3. International tax cases
4. Other global developments
5. GloBE model rules: detailed review
6. Asia Pacific
    - Australia, Hong Kong, Korea, Philippines
7. Europe
    - EU, France, Romania, Spain, UK
8. Americas
    - Colombia, US, Venezuela
9. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
    - **Art. 4.4: mechanism to address temporary differences (Part 1) (ITB: 29 July 2022)**
    - **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

Alistair Pepper, Tomas D. Bettge, and Jessie Coleman
"Amount B: The Forgotten Piece of the Pillar 1 Jigsaw"
Tax Notes Today International, Tax Analysts, 27 July 2022 (subscription service).

Roland Ismer
"Editorial: A Zebra or a Donkey? the European Commission's Proposal for a Debt-Equity Bias Reduction Allowance (DEBRA)"
EC Tax Review, Kluwer, 2022 (Vol. 31), Issue 4 (subscription service).

Philippe G. Pennelle
"An Article 9 Analysis of the OECD's Pillar One Amount B"
Daily Tax Report: International, Bloomberg BNA, 24 July 2022 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo is a Constituent Entity in an MNE Group, which is "within scope" of the GloBE rules. XCo is located in jurisdiction X, which levies a corporate income tax.

In Year 1:

- XCo purchases (at the start of Year 1) a fixed asset for 150, which it depreciates for financial accounting purposes at 10% per annum, and which it depreciates for X corporate income tax purposes at 20% per annum
- XCo has GloBE Income of 100, after expensing 15 of depreciation for the fixed asset
- XCo has taxable income (for the purposes of X corporate income tax) of 50, after deducting 30 of depreciation for the fixed asset
- XCo has no other temporary differences between its financial accounting pretax profit and taxable income
- The X corporate income tax has a nominal rate of 25%

In Year 2:

- XCo has GloBE Income of 120, after expensing 15 of depreciation for the fixed asset
- XCo has taxable income of 80, after deducting 30 of depreciation for the fixed asset
- XCo has no other temporary differences between its financial accounting pretax profit and taxable income
- Jurisdiction X increases its corporate income tax nominal rate to 30% (effective in Year 2)

Based on these facts, what are XCo's Adjusted Covered Taxes and ETR in Years 1 and 2?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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 90% 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?

LAST WEEK'S ANSWER

UPE should satisfy the definition of "Governmental Entity" (Art. 10.1.1), and it should therefore be an "Excluded Entity" (Art. 1.5.1). UPE should therefore be exempt from the GloBE rules (Art. 1.1.3).

ACo 1 should satisfy the definition of "Excluded Entity" in Art. 1.5.2(b): substantially all of its income should be Excluded Dividends or Excluded Equity Gain or Loss. ACo 1 should therefore be exempt from the GloBE rules (Art. 1.1.3).

BCo 1 does not satisfy the definition of "Excluded Entity" in Art. 1.5.2(b), despite the fact that its only assets are shares in other companies, and those shares are held as long-term investments. BCo 1 does not satisfy the "at least 85%" test: UPE's proportionate interest in BCo 1 is 81%. Note that the "at least 85%" test measures the UPE's interest, not ACo 1's interest, in BCo 1. BCo 1 is therefore not exempt from the GloBE rules.

ACo 2, BCo 2 and UCo are also not exempt from the GloBE rules.

In regard to the total Top-up Tax from jurisdictions A and U: (1) no IIR tax will apply; (2) UTPR tax will be allocated to jurisdictions A, B, and U (the allocation will be in accordance with the formula in Art. 2.6.1).

The UTPR tax (i) which is allocated to A will be imposed on ACo 2 (as ACo 1 is exempt from the GloBE rules); (ii) which is allocated to B will be imposed on BCo 1 and/or BCo 2, in accordance with the jurisdiction B law; and (iii) which is allocated to U will be imposed on UCo (as UPE is exempt from the GloBE rules).

Do you agree?