International Tax Bytes *by Steve Towers*

"International tax news, explained"

9 September 2022

HIGHLIGHTS

- **Latest developments on Pillars One & Two**
  - **Germany is a first-mover – it announces that it will implement GloBE rules**
  - **Pascal Saint-Amans resigns from OECD**
- **2 recent international tax cases**
  - **Burlington case on Art. 12(5) of Ireland / UK treaty**
  - **Eaton case on cancellation of APAs**
- **Tax responses in EU to energy crisis**
  - **VAT rates on electricity and natural gas are cut**
  - **European Commission proposes "solidarity contribution from fossil fuel companies"**

HAPPY FRIDAY!

Germany is a first-mover; **Pascal Saint-Amans** bows out; the **EU** wants a solidarity contribution; **SICL** didn't retain an interest, and so **Burlington** got all of its interest; the **IRS** learns about basic contract law; **Sri Lanka** increases twice in one year; **Kyrgyzstan** gets creative; and **Panama's** courts don't like to be replaced!

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. Asia Pacific
   - Malaysia, New Zealand, Sri Lanka
5. Europe
   - EU, UK
6. Africa
   - Angola
7. Middle East & Central Asia
   - Kazakhstan, Kyrgyzstan, Oman, Saudi Arabia, Uzbekistan
8. Americas
   - Panama, Suriname

ITB series on Pillars One & Two

- **GloBE model rules:**
  - **Art. 4.6.1 on carry back of tax losses, and Arts. 4.6.2 to 4.6.4 (ITB: 26 August 2022)**
  - **Art. 4.6.1: Post-filing adjustments (ITB: 19 August 2022)**
  - **GloBE Loss Election in Art. 4.5 (ITB: 12 August 2022)**
  - **Deferred tax liability recapture rules in Arts. 4.4.4 and 4.4.5 (ITB: 5 August 2022)**
  - **Art. 4.4: mechanism to address temporary differences (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

J. Harold McClure
"Australian Tax Office vs. Rio Tinto Over the Appropriate Gross Margin for a Marketing Hub"
Tax Management International Journal, Bloomberg BNA, 2 September 2022 (subscription service)

Costas Michail
"The CJEU's Arm's-Length Standard and the Unshell Directive's 'Rebuttal of the Presumption' Carveout"
Tax Notes Today International, Tax Analysts, 1 September 2022 (subscription service)

Gary Sprague
"The Wayward Marketing and Distribution Profits Safe Harbor"
Tax Management International Journal, Bloomberg BNA, 2 September 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 rate is 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 rate to 30% (effective in Year 2)

Based on these facts, what amounts of Top-up Tax (if any) does XCo have in each of Years 1 and 2?

Please assume that jurisdiction X has no Substance-based Income Exclusion and no Qualified Domestic Minimum Top-up Tax.

Answer in next ITB email alert!

LAST WEEK'S QUESTION

XCo is the only Constituent Entity (within an "in-scope" MNE Group), which is located in jurisdiction X.

Jurisdiction X's corporate income tax has a 10% rate and allows the carry back of tax losses.

In Year 1, XCo derives:

- GloBE Income: 100
- Taxable profits: 100

In Year 2, XCo incurs:

- GloBE Loss: 80
- Tax loss: 100

XCo carries back all of the Year 2 tax loss to apply against the Year 1 taxable profits.

What amounts of Top-up Tax (if any) will arise for XCo in Year 1 and Year 2?

LAST WEEK'S ANSWER

(1) Year 1 (before tax loss carried back):

GloBE Income: 100
Taxable profits: 100

Current tax expense: 10
Total Deferred Tax Adjustment Amount: nil
Adjusted Covered Taxes: 10

ETR: 10 / 100 = 10%

Top-up Tax: 5

(2) Year 2 (before tax loss carried back):

GloBE Loss: 80
Tax loss: 100

Current tax: nil
Total Deferred Tax Adjustment Amount: (80 x 15%) + (20 x 10%) = (14) (i.e., deferred tax asset for tax loss at 10% rate, increased to 15% rate to the extent of GloBE Loss of 80: Art. 4.4.2(c), Art. 4.4.3)
Adjusted Covered Taxes: (14)

As no GloBE Income, there is no ETR (Art. 5.1.1), and thus no Top-up Tax Percentage (Art. 5.2.1)

Expected Adjusted Covered Taxes (defined in Art. 4.1.5): 80 x 15% = (12)
Thus, Additional Current Top-up Tax: (12) – (14) = 2 (Art. 4.1.5)

Thus, Top-up Tax: 2

(3) Year 1 (after tax loss carried back):

GloBE Income: 100
Taxable profits: nil

Current tax expense: nil (or Reduction to Covered Taxes under Art. 4.1.3(c))
Total Deferred Tax Adjustment Amount: 14
(Amended) Adjusted Covered Taxes: 14

As this is an increase of 4 in Adjusted Covered Taxes, Art. 4.6.1 directs that this be treated as an adjustment to Covered Taxes in Year 2.

Accordingly, Top-up Tax of 5 in Year 1 remains.

(4) Year 2 (after tax loss carried back):

In Year 2, 4 is added to Adjusted Covered Taxes, which become (10) (i.e., (14) + 4 = (10))

This will cause the Additional Current Top-up Tax in Year 2 to reduce to nil, because the (amended) Adjusted Covered Taxes are not less than the Expected Adjusted Covered Taxes.

Thus, (amended) Top-up Tax: nil

(5) Final answer:

Year 1: Top-up Tax = 5
Year 2: Top-up Tax = nil

Do you agree?

If you have a friend or colleague who you think might find this email alert interesting, please forward it to them.