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30 September 2022



HIGHLIGHTS

- Corporate tax aspects in UK's controversial mini-Budget
- Tax increases in Scandinavia
 - Denmark announces withholding tax on dividends paid to foreign States, including sovereign wealth funds
 - Finland proposes mining tax
 - Norway increases taxation in resources and energy sectors
- Continuation of detailed review of GloBE model rules
 - Today: Art. 6.2 on Constituent Entities joining and leaving an MNE Group

HAPPY FRIDAY!

Ian blows an ill wind, NASA strikes back for the dinosaurs, and Kipchoge saves 30 seconds!

Meanwhile, in the tax world...

Liz Truss is not for turning; Norway taxes the wind; Australia applies integrity; Brazil provisionally exempts; Switzerland says no; and the World Bank counts its options!

But at the end of the week, the most important question is this: "Is the UK now a submerging market?"

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. Other global developments
3. GloBE model rules: detailed review
4. Asia Pacific
 - Australia, Maldives, Philippines
5. Europe
 - Denmark, Finland, France, Ireland, Luxembourg, Norway, Poland, Switzerland, UK
6. Americas
 - Brazil
7. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
 - Art. 6.2 on Constituent Entities joining and leaving an MNE Group (ITB, 30 September 2022)
 - Art. 6.1: application of consolidated revenue threshold to group mergers and demergers (ITB, 23 September 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 9) (ITB, 11, 18 & 25 February; 29 July; 5,12,19 & 26 August; 16 September 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

Heydon Wardell-Burns

"MNE Strategic Responses to the GloBE Rules"

Oxford University Centre for Business Taxation, 27 September 2022, freely available at www.ssm.com (and posted by the author on LinkedIn)

Aditya Singh Chandel, Sagnik Chatterjee and Gunjan Pande

"Cross-Border Secondment of Employees to India: Recent Developments"

Tax Notes Today International, Tax Analysts, 28 September 2022 (subscription service)

H. Brown and G. Jackson

"Interpretation of Multi-lateral Treaties: The Purposive Approach and Multiple Parties Through the Lens of the UK Courts"

Intertax, Kluwer, Volume 50 (2022), Issue 11 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

X Group sells 100% of the shares in ZCo (a Constituent Entity located in jurisdiction Z) to Y Group. ZCo is not an Investment Entity.

Both groups are MNE Groups "within scope" of the GloBE rules, and both use the calendar year as the fiscal year.

The sale is effective on 31 May of Year 2.

In its consolidated financial statements for Year 2, X Group reports these 2 items in regard to ZCo: (1) 300 of payroll costs incurred in the 5 months to 31 May; and (2) 50 of depreciation incurred in the 5 months to 31 May. The depreciation relates to a tangible asset ("asset A") which has a carrying value (net of accumulated depreciation) at the start of Year 2 of 240.

In its consolidated financial statements for Year 2, Y Group reports these items in regard to ZCo: (1) 300 of payroll costs incurred in the 7 months to 31 December; and (2) carrying value of asset A (net of accumulated depreciation for Y Group's 7 months of ownership of ZCo) of 350 – this reflects the fair value of asset A, net of Y Group's 7 months' depreciation.

Please assume that: (i) ZCo is the only Constituent Entity in jurisdiction Z for both groups; (ii) the jurisdiction Z corporate income tax law does not treat the transfer of shares in ZCo as a transfer of ZCo's assets and liabilities; (iii) the payroll costs satisfy the conditions for the payroll carve-out in Art. 5.3.3; and (iv) asset A is an Eligible Tangible Asset and it satisfies the conditions for the tangible asset carve-out in Art. 5.3.4.

For each of X Group and Y Group, what will be the amount of Substance-based Income Exclusion for Year 2 for jurisdiction Z?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

ACo Group (with ACo as its parent company) and BCo Group (with BCo as its parent company) are not under common control. Neither Group has ever been "within scope" of the GloBE rules.

The 2 Groups report these consolidated revenues in Years 1 to 4 (all in EUR millions):

- Year 1:
 - ACo Group: 450 (including revenue of 150 from sales to BCo Group)
 - BCo Group: 350
- Year 2:
 - ACo Group: 300
 - BCo Group: 400
- Year 3:
 - ACo Group: 300
 - BCo Group: 420
- Year 4:
 - ACo Group: 350
 - BCo Group: 500

At the start of Year 5, ACo acquires all of the shares in BCo, for cash consideration.

In Year 5, the ACo Group reports consolidated revenue of EUR 900 million.

At the start of Year 6, ACo distributes all of the shares in BCo, to ACo's shareholders.

In Year 6:

- ACo Group reports consolidated revenue of EUR 200 million
- BCo Group reports consolidated revenue of EUR 700 million

Based on these facts, is the ACo Group and/or the BCo Group "within scope" of the GloBE rules in Years 1 to 6?

LAST WEEK'S ANSWER

(1) Years 1 to 4:

Neither ACo Group nor BCo Group is "within scope" of the GloBE rules because neither group satisfies the consolidated revenue threshold test in those years: Art. 1.1.1.

(2) Year 5:

ACo's acquisition of all of the shares in BCo qualifies as a "merger", as defined in Art. 6.1.2(b), despite the fact that the acquisition was for cash consideration: see Commentary.

Thus, Art. 6.1.1(b) will apply to amend the consolidated revenue threshold test in Art. 1.1, for Years 1 to 4. Under that amended test, the separate consolidated revenues of the ACo Group and the BCo Group for Years 1 to 4 are aggregated ("the sum"). Importantly, the ACo Group revenue of 150 from sales to the BCo Group in Year 1 is not ignored. Thus, the aggregate revenues are: Year 1: 800; Year 2: 700; Year 3: 720; and Year 4: 850.

Accordingly, the ACo Group will satisfy the "at least 2 years out of the previous 4 years" amended consolidated revenue threshold test (in Years 1 and 4), and therefore the ACo Group will be "within scope" of the GloBE rules in Year 5.

(3) Year 6:

ACo's distribution of all of the shares in BCo, to ACo's shareholders, qualifies as a "demerger", as defined in Art. 6.1.3.

A pre-condition to apply Art. 6.1.1(c) is that there is a single MNE Group which is "within scope" of the GloBE rules. According to the Commentary, the single MNE Group must be "within the scope of the GloBE Rules in the Fiscal Year that the demerger takes place". That means Year 6. Under the amended consolidated revenue threshold test (see above), the ACo Group would satisfy the "at least 2 years out of the previous 4 years" standard, in Years 4 & 5.

Subpara. (i) of Art. 6.1.1(c) will apply a consolidated revenue threshold test to each of the 2 demerged groups (ACo Group and BCo Group), by considering only the consolidated revenue of that demerged Group in Year 6. BCo Group will satisfy this test (i.e., 700). However, the ACo Group will not satisfy the test (i.e., 200).

Thus, in Year 6, the BCo Group will be "within scope" of the GloBE rules, but the ACo Group will not.

You will notice that Art. 6.1.1(c) treats the ACo Group in Year 6 differently (a) before the demerger (when the ACo Group is required to be "within scope", as a pre-condition for Art. 6.1.1(c) to apply); and (b) after the demerger (when the demerged ACo Group has been found to be not "within scope").

(4) Final answer:

Years 1 to 4: neither Group is "within scope"

Year 5: ACo Group is "within scope"

Year 6: BCo Group is "within scope"

Do you agree?



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