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ITB International Tax Bytes by Steve Towers

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25 November 2022

HIGHLIGHTS

- **US releases proposed regulations on foreign tax credits**
    - **Significant amendments to cost recovery and attribution requirements**
- **UN resolves to strengthen inclusiveness and effectiveness of international tax cooperation**
    - **Might threaten OECD's pre-eminent position on international tax**
- **European Court of Justice declares invalid requirement which allows general public access to beneficial ownership register**
    - **Infringes fundamental rights**

HAPPY FRIDAY!

Mickey Mouse makes a comeback; **Donald Trump** prefers **Truth**; but **Germany's football team** is speechless!

Meanwhile, in the tax world…

The **UN** flexes its muscles; **Australia** and **Ireland** chase games; the **US** provides substantially all; windfall profits taxes are fashionable in **Europe**; **Luxembourg** registers a defeat; **South Africa** withdraws support; **Brazil** extends; and the **EU** tries one more time!

But at the end of the week, the most important question is this: **"Will Saudi Arabia win the World Cup?"**

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. UN: new international tax cooperation framework or instrument
3. Other global developments
4. US foreign tax credit proposed regulations
5. Asia Pacific
    - Australia
6. Europe
    - Windfall profits tax, Belgium, ECJ, Finland, Ireland
7. Africa
    - South Africa
8. Americas
    - Brazil, Canada, Colombia, US
9. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
    - **Art. 6.4 on joint ventures (ITB, 18 November 2022)**
    - **Art. 6.3: Transfer of assets and liabilities (ITB, 21 October; 11 November 2022)**
    - **Art. 6.2: Constituent Entities joining and leaving an MNE Group (ITB, 30 September; 7 & 14 October 2022)**
    - **Art. 6.1: application of consolidated revenue threshold to group mergers and demergers (ITB, 23 September 2022)**
    - **Scope (parts 1 & 2) (ITB, 24 June; 1 July 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

Filip Debelva & Luc De Broe
"Pillar 2: An Analysis of the IIR and UTPR from an International Customary Law, Tax Treaty Law and European Law Perspective"
Intertax, Kluwer, Volume 50 (2022), Issue 12 (subscription service)

Leopoldo Parada
"Global Minimum Taxation: A Strategic Approach for Developing Countries"
posted on SSRN on 22 November 2022 (freely available on www.ssrn.com)

Xaver Ditz and Christian Heider
"Allocation of Profits to Construction or Installation Permanent Establishments"
International Transfer Pricing Journal, 2022 (Volume 29), No. 7 (subscription service)

David Ledure, Pieter Deré, Michaël Van der Velden, and Caroline Bastiaens
"DEBRA: All That Glitters Is Not Gold"
Bulletin for International Taxation, IBFD, 2022 (Volume 76), No. 11 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

Question 1

UPE 1 is the UPE of MNE Group 1, and UPE 2 is the UPE of MNE Group 2. Both MNE Group 1 and MNE Group 2 are "within scope" of the GloBE rules.

UPE 1 and UPE 2 each owns 50% of the issued shares in XCo, a company located in jurisdiction X. XCo has only one class of issued shares.

UPE 1 and UPE 2 each report XCo's financial results in their respective consolidated financial statements under the equity method.

XCo is the UPE of MNE Group 3, which is also "within scope" of the GloBE rules.

ACo, located in jurisdiction A, is a 100% subsidiary of XCo. ACo has a Top-up Tax of 100 in the current year. What will be the impact, under the GloBE rules, on UPE 1, UPE 2, and XCo, in regard to ACo's Top-up Tax? Please assume that all relevant jurisdictions (except jurisdiction A) have implemented the GloBE rules, and that ACo is the only Constituent Entity located in jurisdiction A.

Question 2

UPE 3 is the UPE of MNE Group 3; UPE 4 is the UPE of MNE Group 4; and UPE 5 is the UPE of MNE Group 5. All 3 groups are "within scope" of the GloBE rules.

The 3 UPEs are all shareholders in YCo, a company located in jurisdiction Y. YCo has only one class of issued shares. The percentages held are: UPE 3: 40%; UPE 4: 30%; and UPE 5: 30%.

UPE 3, UPE 4, and UPE 5 each report YCo's financial results in their respective consolidated financial statements under the equity method.

YCo has no subsidiaries or PEs.

If YCo were to compute its position under the GloBE rules, it would have a Top-up Tax of 200.

What will be the impact, under the GloBE rules, on UPE 3, UPE 4, and UPE 5, in regard to that Top-up Tax of 200? Please assume that all relevant jurisdictions (except jurisdiction Y) have implemented the GloBE rules.

Answer in next ITB email alert!

LAST WEEK'S QUESTION

XCo 1 is a company located in jurisdiction X. It has 3 shareholders: UPE 1, UPE 2, and UPE 3 (each of which is a UPE of an MNE Group "in scope" of the GloBE rules).

XCo 1 has only 1 class of issued shares, which are owned in these percentages: UPE 1 (50%), UPE 2 (25%), and UPE 3 (25%).

All 3 of the UPEs include XCo 1's financial results in their consolidated financial statements under the equity method.

XCo 1 owns 80% of the shares in YCo, a company located in jurisdiction Y. The other 20% is owned by third parties.

UPE 1 owns 100% of the shares in XCo 2, a Constituent Entity located in jurisdiction X. UPE 1 does not own any other subsidiaries in X, and UPE 2 & 3 own no subsidiaries in X.

In the current Fiscal Year:

(1) XCo 1 has GloBE Income of 100, and Adjusted Covered Taxes of 10.
(2) XCo 2 has GloBE Income of 100, and Adjusted Covered Taxes of 25.
(3) YCo has GloBE Income of 100, and Adjusted Covered Taxes of 5.

Based on this information, what will be the impact, under the GloBE rules, on UPE 1, UPE 2, and UPE 3? Please ignore any Additional Current Top-up Tax, Substance-based Income Exclusion, and/or Qualified Domestic Minimum Top-up Tax.

LAST WEEK'S ANSWER

XCo 1 and YCo are not Constituent Entities in the respective MNE Group of UPE 1, UPE 2 or UPE 3, because none of those UPEs consolidate XCo 1 and YCo on a line-by-line basis: see Arts. 1.2 & 1.3. Thus, except for the "JV" liability discussed below, there is no impact, under the GloBE rules, for any of the 3 UPEs.

XCo 1 is a "Joint Venture" (defined in Art. 10.1.1) in regard to UPE 1, which reports XCo 1's financial results in its consolidated financial statements under the equity method, and which holds at least 50% of XCo 1's "Ownership Interests" (defined in Art. 10.1.1). I have assumed that XCo 1 is not a UPE of an "in scope" MNE Group, and is not otherwise excluded from being a "Joint Venture": see paras. (a) & (b) of the Art. 10.1.1 definition of "Joint Venture".

XCo 1 is not a "Joint Venture" in regard to either UPE 2 or UPE 3, because neither holds at least 50% of XCo 1's Ownership Interests.

YCo is a "JV Subsidiary" (defined in Art. 10.1.1). XCo 1 and YCo together form a "JV Group" (Art. 10.1.1 definition).

In accordance with Art. 6.4.1(a), the Top-up Tax of XCo 1 and YCo will be computed as if they were Constituent Entities of a separate MNE Group and as if XCo 1 was the UPE of that Group. Importantly, this means that, in computing the jurisdictional Top-up Tax for jurisdiction X, XCo 1's numbers are not blended with XCo 2's numbers.

Thus: (i) XCo 1's Top-up Tax is: 5% x 100 = 5; and (ii) YCo's Top-up Tax is: 10% x 100 = 10.

UPE 1's "Allocable Share of the Top-up Tax" (defined in Art. 2.2.1) is: (i) in regard to XCo 1: 50% x 5 = 2.5; and (ii) in regard to YCo: 50% x 80% x 10 = 4.

Those 2 amounts (2.5 and 4) will be included in UPE 1's IIR tax: Art. 6.4.1(b).

XCo 2's numbers will not cause a Top-up Tax liability for UPE 1's MNE Group.

As noted above, there will be no impact, under the GloBE rules, on either UPE 2 or UPE 3.

Do you agree?