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2 December 2022



HIGHLIGHTS

- Latest developments on Pillar Two
 - IASB starts project on drafting IAS 12 amendments for Pillar Two
 - Proposed EU Directive on GloBE rules is on agenda (again!) for next Tuesday's Ecofin meeting
- Centrica case from UK
 - Deductibility of advisory fees for investment company
- EU's proposed regulation on foreign subsidies distorting EU internal market
- Continuation of detailed review of GloBE model rules
 - Today: Art. 7.4 on ETR computation for Investment Entities

HAPPY FRIDAY!

Macron comes to dinner; but Germany goes home!

Meanwhile, in the tax world....

It's crunch time for Hungary; the EU & US disagree on subsidies (again!); Hong Kong prefers to fly solo; Ghana applies levies to everyone; Myanmar gets tough on tax avoidance; Centrica loses "in principle"; Puerto Rico elects flexibility; and Zimbabwe prefers heavy metal!

But at the end of the week, the most important question is this: "Will Hungary now support the EU Directive on the GloBE rules?"

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. Trade
3. GloBE model rules: detailed review
4. Asia Pacific
 - Hong Kong, Myanmar, Taiwan, Thailand
5. Europe
 - EU, UK
6. Africa
 - Ghana, Zimbabwe
7. Middle East & Central Asia
 - UAE
8. Americas
 - Puerto Rico, US
9. Treaty news

ITB series on Pillars One & Two

- **GloBE model rules:**
 - Art. 7.4 on ETR computation for Investment Entities (ITB, 2 December 2022)
 - Corporate Restructurings and Holding Structures (Parts 1 to 7) (ITB, 23 & 30 September; 7, 14 & 21 October; 11 & 18 November 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

Bram Markey and Tibo Gisqueire
"Eligibility for Mutual Agreement Procedure under Tax Treaties Following Application of the Principal Purpose Test"
Bulletin for International Taxation, IBFD, 2022 (Volume 78), No. 12 (subscription service).

Stephan Rasch, Christoph Richter and Sebastian Grund
"German Withholding Taxes on Extraterritorial Royalty Payments: New Guidance on the Top-Down Approach"
Tax Notes Today International, Tax Analysts, 21 November 2022 (subscription service).

Eric Chen
"Hong Kong – The Court of First Instance Reaffirmed the Principles for Determining Locality of Profits"
Asia-Pacific Tax Bulletin, IBFD, 2022 (Volume 28), No. 3 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company located in jurisdiction A, is the UPE of an MNE Group which is "within scope" of the GloBE rules.

BCo is a company located in jurisdiction B (which has not implemented a QDMTT). BCo qualifies as an "Investment Fund" (Art. 10.1.1 definition). BCo has one class of issued shares.

ACo owns a 60% Ownership Interest in BCo. The other 40% Ownership Interests are owned by third party investors.

ACo includes BCo's financial results in its consolidated financial statements on a line-by-line basis.

In the current year, BCo reports 200 of pretax profits in its financial statements. Included in those pretax profits are: (1) dividends on long-term (greater than 12 months) portfolio shareholdings: 65; (2) gains on sale of such shareholdings: 35; (3) interest on corporate and government bonds: 60; and (4) gains on sale of such bonds: 40. Please ignore expenses.

BCo is tax-exempt in jurisdiction B. Also, please assume that BCo does not incur any foreign withholding tax, and does not have any "Eligible Employees" (Art. 10.1.1 definition) or "Eligible Tangible Assets" (Art. 5.3.4 definition). In addition, please assume that no election is made under Art. 7.5 or Art. 7.6.

ACo is subject to CFC tax in jurisdiction A with respect to its investment in BCo. For the purposes of the CFC rules, BCo's interest income and gains on sale of bonds, are taxable. The CFC tax rate is 25%.

Based on this information, what is BCo's Top-up Tax (if any) for the current year?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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.

LAST WEEK'S ANSWER

Question 1

There will be no impact, under the GloBE rules, on either UPE 1 or UPE 2, for 2 reasons: (1) ACo is not a Constituent Entity of either MNE Group 1 or MNE Group 2, because it is not included in either Group's consolidated financial statements on a line-by-line basis (see the definition of "Constituent Entity" in Art. 1.3, and the definition of "Group" in Art. 1.2); and (2) XCo is excluded from the definition of "Joint Venture" in Art. 10.1.1 by para. (a), and therefore ACo is not a "JV Subsidiary" (Art. 10.1.1 definition).

An IIR tax liability of 100 will be imposed on XCo in jurisdiction X.

Question 2

There will be no impact, under the GloBE rules, on any of UPE 3, UPE 4 or UPE 5, for 2 reasons: (1) YCo is not a Constituent Entity of any of the MNE Groups, as it is not included in any Group's consolidated financial statements on a line-by-line basis (see the definition of "Constituent Entity" in Art. 1.3, and the definition of "Group" in Art. 1.2); and (2) YCo is not a "Joint Venture" (Art. 10.1.1 definition) as none of the 3 UPEs has an Ownership Interest of at least 50%.

Thus, no IIR or UTPR tax liability.

Do you agree?



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