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16 December 2022



HIGHLIGHTS

- **EU Member States finally, and formally, agree to proposed Directive on GloBE rules**
- **Inclusive Framework's consultation document on Amount B in Pillar One**
- **Review of important provisions in UAE's new corporate tax law**

HAPPY FRIDAY!

The **UK** is on strike; and **Qatar** scores an own goal in the **EU!**

Meanwhile in the tax world...

The **EU** finally agrees, after brinkmanship by **Hungary** and **Poland**; the **UAE** starts with a blank page; legal professional privilege wins in the **ECJ**; **CBAM** is greenlighted; but does **Amount B** deliver the goods?

But at the end of the week, the most important question is this: **"Will France win another World Cup, or will it be really Messi?"**

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. EU: GloBE rules
2. Amount B (Pillar One) consultation document
3. UAE's new corporate tax law
4. Other global developments
5. Europe
 - ECJ, EGC, EU, Netherlands, UK
6. Americas
 - Chile, Colombia, US, Uruguay

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)**
- **Consultation document on Amount B in Pillar One (ITB, 16 December 2022)**
- **Inclusive Framework's final agreement on Pillars One & Two (ITB, 15 October 2021)**

WORTH READING

Dieter Bettens

"The CFC rule under GloBE: definition, rule order and strategic responses"

8 December 2022 (freely available on www.ssm.com)

Ryan Finley

"Flat and the Rejection of External Transfer Pricing Parameters"

Tax Notes Today International, Tax Analysts, 12 December 2022 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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

ACo is the owner of valuable IP, which it licenses to group companies throughout the world, in return for arm's length royalties. ACo's carrying value of the IP is 100.

Jurisdiction A does not impose a corporate income tax.

BCo, a newly formed company in jurisdiction B, is also a Constituent Entity in the same MNE Group. BCo currently does not have any business operations, and it has no employees. Jurisdiction B has a corporate income tax, with a 15% tax rate. BCo is the only Constituent Entity located in jurisdiction B.

In 2022, ACo sells its IP to BCo for 1,000 (the IP's fair market value). BCo finances the acquisition by issuing new shares to the UPE in the MNE Group (located in jurisdiction U). By virtue of the sale, BCo becomes the licensor of the IP to the group company licensees.

In its financial statements, BCo amortises the IP at a rate of 10% per annum (i.e., 100 each year). BCo derives 110 of royalty income each year (assume that no foreign withholding tax is paid on those royalties). For jurisdiction B corporate income tax purposes, BCo deducts tax depreciation on the IP at a rate of 10% per annum (i.e., 100 each year).

The GloBE rules first apply to the MNE Group in 2024.

Based on this information, will the MNE Group have a Top-up Tax for jurisdiction B in 2024? Please assume that BCo continues to have no employees in 2024.

Answer in next ITB email alert on 6 January 2023!

LAST WEEK'S QUESTION

ACo, a company located in jurisdiction A, is the UPE of an MNE Group which is "within scope" of the GloBE rules. Jurisdiction A has a corporate income tax rate of 20%. ACo has no tax losses.

ACo directly owns 100% of the shares in XCo, a company located in jurisdiction X. Jurisdiction X has a corporate income tax rate of 25%. XCo has no tax losses.

XCo directly owns 100% of the shares in YCo, a company located in jurisdiction Y. Jurisdiction Y does not levy a corporate income tax.

In the current year, YCo derives 200 of profits, comprising (1) 100 of interest income (no related expenses), and (2) 150 of service fees (less 50 of related expenses). YCo does not incur any foreign withholding taxes.

Jurisdiction X has CFC rules. Under those rules, an amount equal to YCo's 100 of interest income is imputed to XCo.

Jurisdiction A also has CFC rules. Under those rules, an amount equal to the whole of YCo's profits (i.e., 200) is imputed to ACo. However, ACo will obtain a credit for the CFC tax paid by XCo on the same amount.

Based on this limited information, what will be YCo's Adjusted Covered Taxes in the current year?

LAST WEEK'S ANSWER

1. XCo's CFC tax

XCo's CFC tax: 25% x 100 = 25

Prima facie, that amount of 25 will be allocated to YCo under Art. 4.3.2(c), subject to Art. 4.3.3 (see below).

2. ACo's CFC tax

ACo's CFC tax: [20% x 200] – credit for XCo's CFC tax

I will assume that jurisdiction A's tax law limits the credit to ACo's CFC tax on the same income (i.e., 100 of interest income).

Based on that assumption, the credit will be: 20% x 100 = 20

Thus, ACo's CFC tax: 40 – 20 = 20

Prima facie, that amount of 20 will be allocated to YCo under Art. 4.3.2(c), subject to Art. 4.3.3 (see below).

3. Art. 4.3.3

YCo's 100 of interest income is included in "Passive Income" (Art. 10.1.1 definition), but its 100 of profit from service fees is not.

XCo's CFC tax of 25 is wholly in respect of "Passive Income".

A question arises as to how much (if any) of ACo's CFC tax of 20 is in respect of "Passive Income". After giving the credit for XCo's CFC tax in respect of YCo's 100 of interest income, is the remainder of ACo's CFC tax (20) wholly in respect of the 100 of net service fees – or, alternatively, is it 50% in respect of the 100 of net service fees and 50% in respect of the 100 of interest income? The Commentary and the Examples do not answer that question.

I will assume that the answer is that ACo's CFC tax is wholly in respect of 100 of net service fees – i.e., none of ACo's CFC tax of 20 is in respect of "Passive Income".

Based on that assumption:

Jurisdiction Y's Top-up Tax Percentage is 15%.

Art. 4.3.3, para. (b) amount: 15% x 100 = 15.

Art. 4.3.3, para. (a) amount: 25 (XCo) + 0 (ACo) = 25.

Thus, Art. 4.3.3 "cap" is 15.

4. Final amounts allocated to YCo under Art. 4.3.2(c)

XCo's CFC tax (capped under Art. 4.3.3) = 15

ACo's CFC tax (not capped under Art. 4.3.3) = 20

Total CFC tax amounts allocated to YCo (i.e., YCo's Adjusted Covered Taxes): 15 + 20 = 35.

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