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6 January 2023



HIGHLIGHTS

- **Pillar One**
 - **OECD's consultation document on draft MLC provisions for commitments on DSTs and other relevant similar measures**
- **OECD releases first part of GloBE Implementation Framework**
 - **Today: detailed review of OECD's Guidance on Safe Harbours and Penalty Relief**

HAPPY FRIDAY!

Europe melts in the sun; Ronaldo goes for the money; but McCarthy can't find the numbers!

Meanwhile in the tax world...

Pillar Two dominoes start to fall; **Albania** is potentially harmful; **Japan** surcharges its military; **Korea** wants more credit; **Malaysia** provides adequate requirements; and **Brazil** doesn't keep the **OECD** at arm's length!

But at the end of the week, the most important question is this: "Have you broken your New Year's resolution yet?"

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 One
2. Pillar Two: Safe Harbours and Penalty Relief for GloBE rules
3. Pillar Two: other developments
4. Other global developments
5. Asia Pacific
 - Japan, Korea, Malaysia
6. Europe
 - Germany
7. Americas
 - Brazil, US
8. Treaty news

ITB series on Pillars One & Two

- **Draft MLC provisions for commitments on DSTs and other relevant similar measures (ITB, 6 January 2023)**
- **Consultation document on Amount B in Pillar One (ITB, 16 December 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)**
- **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)**
- **GloBE Implementation Framework:**
 - **Guidance on Safe Harbours and Penalty Relief (ITB, 6 January 2023)**

WORTH READING

Robert Goulder
"Old Man Yells at Clouds and Other Responses to the UTPR"
Tax Notes Today International, Tax Analysts, 3 January 2023 (subscription service)

Ruth Mason
"Ding-Dong! The EU Arm's-Length Standard Is Dead"
13 December 2022 (freely available on www.ssm.com)

Bezhah Salehy
"A Global Tax System? Appraising the Model GloBE Rules"
British Tax Review, Thomson Reuters, 2022, Vol. 5, 601-622 (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 only Constituent Entity located in jurisdiction A. ACo became a member of the MNE Group on 1 January 2025, when 100% of its shares were purchased by the UPE from third parties.

For the MNE Group, the GloBE rules commence operation in 2024.

ACo has the following financial income for 2025 (determined in accordance with the Acceptable Accounting Standard used by the UPE in preparing its Consolidated Financial Statements) (all in EUR millions):

1. Profit before Income Tax: 1.5
2. Revenue: 9.5
3. Income tax expense (100% Covered Taxes, no "uncertain tax positions"): 0.25
4. Net positive adjustments (under Art. 3.2 and following) in computing GloBE Income: 1.5
5. Adjusted Covered Taxes: 0.3
6. Substance-based Income Exclusion: 1.0

Based on this information, does jurisdiction A have a Top-up Tax in 2025?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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 in its 2022 financial statements 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 25% tax rate. BCo is the only Constituent Entity located in jurisdiction B.

At the start of 2023, 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 2023 and later 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 (please 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.

LAST WEEK'S ANSWER

The key issue in this case is whether, in computing its GloBE Income in 2024, BCo will use a basis in the IP of 1,000 (the fair market value price which it pays to ACo) or 100 (ACo's carrying value) – in other words, whether the intra-group sale of the IP in 2023 (i.e., before the start of the GloBE rules) achieves a "step-up" in the basis of IP for GloBE purposes.

The answer is: BCo will use 100 – i.e., no step-up will be achieved.

2024 is a "Transition Year" for the MNE Group: see Art. 10.1.1 definition.

Art. 9.1.3: "In the case of a transfer of assets between Constituent Entities after 30 November 2021 and before the commencement of a Transition Year, the basis in the acquired assets ... shall be based on the disposing Entity's carrying value of the transferred assets upon disposition ...".

In 2024:

1. BCo's Adjusted Covered Taxes: (110 – 100) x 25% = 2.5
2. BCo's GloBE Income: 110 – (100 x 10%) = 100
3. Jurisdiction B ETR: 2.5 / 100 = 2.5%
4. Jurisdiction B Top-up Tax: 12.5% x 100 = 12.5 (ignoring QDMTT)

Thus, my answer is: Jurisdiction B Top-up Tax = 12.5

Do you agree?



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