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13 January 2023



HIGHLIGHTS

- **OECD's discussion draft on Tax Certainty for GloBE rules**
- **OECD's discussion draft on GloBE Information Return**
- **Other developments on GloBE rules**
 - **Korea enacts legislation implementing GloBE rules**
 - **IASB issues Exposure Draft on accounting for GloBE rules**

HAPPY FRIDAY!

US Republicans want to abolish income tax (and the IRS!); **China** reopens; but way too many **Brazilians** attend Selma's party!

Meanwhile, in the (real) tax world...

Korea wants to capture the **UTPR** first mover advantage; **GIR** has over 200 data points (but don't worry, they're not all needed!); the **IASB** wants to ignore deferred taxes; **Denmark** looks through; **Italy** becomes land-rich; and the **OECD** lacks certainty on setting the standard!

But at the end of the week, the most important question is this: "Have you read Harry's book?"

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: Tax Certainty for the GloBE rules
2. Pillar Two: GloBE Information Return
3. Pillar Two: other developments
4. Asia Pacific
 - Malaysia
5. Europe
 - Denmark, Italy

ITB series on Pillar One

- **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 from scope (ITB, 22 April 2022)**
 - **Scope (ITB, 8 April 2022)**
 - **Tax base determinations (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)**

ITB series on Pillar Two

- **GloBE Implementation Framework:**
 - **Tax Certainty for the GloBE rules (ITB, 13 January 2023)**
 - **GloBE Information Return (ITB, 13 January 2023)**
 - **Guidance on Safe Harbours and Penalty Relief (ITB, 6 January 2023)**
- **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)**

WORTH READING

Eva Eberhartinger and Georg Winkler
"Pillar Two and the Accounting Standards"
Intertax, Kluwer, Volume 51 (2023), Issue 2 (subscription service)

Robert Goulder
"What If Amount B is All There Is?"
Tax Notes Today International, Tax Analysts, 10 January 2023 (subscription service)

Niels Bammens and Dieter Bettens
"The Potential Impact of Pillar Two on Tax Incentives"
Intertax, Kluwer, Volume 51 (2023), Issue 2 (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.

The UPE is a large manufacturing company which is located, and has significant manufacturing operations, in jurisdiction U. The UPE has 3 subsidiaries (including ACo) located outside jurisdiction U. The 3 subsidiaries are low-risk buy / sell distributors of the UPE's goods: they have no valuable IP, they hold only small amounts of inventory, and they operate from leased premises.

For the 2024 fiscal year, jurisdiction A is the only jurisdiction (in which the MNE Group operates) for which the GloBE rules are in effect (IIR, UTPR, and QDMTT).

UPE enjoys a tax incentive in jurisdiction U, causing its ETR (calculated under the GloBE rules) to be 10% in 2024. The UPE's GloBE Income in 2024 is EUR 200 million.

For 2024, ACo has the following financial information (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: 0.5
2. Revenue: 15
3. Income tax expense (100% Covered Taxes, no "uncertain tax positions"): 0.06
4. Net positive adjustments (i.e., add-back) (under Art. 3.2 and following) in computing GloBE Income: 0
5. Adjusted Covered Taxes: 0.08
6. Substance-based Income Exclusion: 0.4

Based on this information, will ACo have a tax liability under jurisdiction A's GloBE rules (IIR, UTPR and/or QDMTT) for 2024?

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 MNE Group's first and 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 (i.e., add-back) (under Art. 3.2 and following) in computing GloBE Income: 1.8
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?

LAST WEEK'S ANSWER

A preliminary point to note is that the de minimis exclusion in Art. 5.5 does not apply, because ACo's GloBE Income (EUR 3.3m) exceeds the limit of EUR 1m.

However, the key issue is whether the Transitional CbCR Safe Harbour ("TSH") (described in IF Framework issued in December 2022) will apply:

1. 2025 is within the "Transition Period".
2. Although the MNE Group did not apply the TSH with respect to jurisdiction A in 2024, the "once out, always out" rule does not apply because the MNE Group had no Constituent Entities located in jurisdiction A in 2024.
3. De minimis test: (i) Total Revenue: EUR 9.5m; (ii) Profit before Income Tax: EUR 1.5m; (iii) Thus, the de minimis test is failed, because the Profit before Income Tax exceeds the limit of EUR 1m.
4. Simplified ETR test: (i) Simplified Covered Taxes: EUR 0.25m; (ii) Profit before Income Tax: EUR 1.5m; (iii) "Transition Rate" for 2025: 18%; (iv) Simplified ETR = 0.25 / 1.5 = 16.7%; (v) Thus, the simplified ETR test is passed.
5. Routine profits test: (i) Profit before Income Tax: EUR 1.5m; (ii) SBIE amount: EUR 1.0m; (iii) Thus, the routine profits test is failed, because the Profit before Income Tax is not equal to or less than the SBIE amount.

Therefore, as the simplified ETR test is passed, the TSH with respect to jurisdiction A is available to the MNE Group in 2025, provided the election in Art. 8.2.1 is made and the GloBE Information Return includes the correct information. If this is the case, there will be no Top-up Tax for jurisdiction A in 2025.

Do you agree?



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