International Tax Bytes
by Steve Towers

"International tax news, explained"

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3 February 2023

HIGHLIGHTS

- **OECD releases Agreed Administrative Guidance on GloBE rules**
  - **Including treatment of US GILTI regime and design features of QDMTT**
- **European Commission releases proposed Green Deal Industrial Plan**
  - **Including relaxation of EU State aid rules, to allow "green" tax incentives**
- **Top 10 international tax cases in 2022**
  - **Today: countdown from #5 to #1**

HAPPY FRIDAY!

China flies a balloon; **Hindenburg** sells **Adani** short; and **Meta** makes a comeback!

Meanwhile, in the tax world…

GILTI is a blend, but **QDMTT** wins first prize; **FASB** follows suit; **Indonesia** gets ready; **India** stays silent; the **EU's** temporary crisis looks permanent; and the **OECD** makes a **MoMA**!

But at the end of the week, the most important question is this: **"Does the US government not have a system to manage classified documents?"**

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 & other global developments
3. Top international tax cases in 2022
4. India Budget
5. Treaty news

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

Błażej Kuźniacki
"Beneficial Ownership in International Taxation and Biosemantics – Why a Redundant, Paradoxical and Harmful Concept Can Be a Potent Weapon in the Hands of the Tax Authorities"
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 2 (subscription service)

Tarcísio Diniz Maghalhães and Allison Christians
"Global Tax Reform and Mythical International Law"
30 January 2023 (freely available on www.ssrn.com)

Rita de la Feria
"Editorial: Pillar 2, Fiat, and the EU Unanimity Rule on Tax Matters"
EC Tax Review, Kluwer, 2023 (Vol. 32), Issue 1 (subscription service) (article posted on LinkedIn by author)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company located in jurisdiction X, is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules. It is the only Constituent Entity located in X.

YCo, a company located in jurisdiction Y, is a Constituent Entity in the same MNE Group. It is the only Constituent Entity located in Y.

The UPE is located in jurisdiction U.

The GloBE rules have been implemented in jurisdictions X and Y (in both cases: IIR and UTPR), but they have not been implemented in jurisdiction U.

In a Fiscal Year:

1. UPE incurs CFC tax (under the jurisdiction U tax law) in respect of the profits of XCo. For the purposes of the GloBE rules, jurisdiction U's CFC tax is a "CFC Tax Regime", but it is not a "Blended CFC Tax Regime".
2. YCo has a Top-up Tax amount, which is allocated (in part) to XCo under Art. 2.6.
3. XCo incurs a tax liability under jurisdiction X's minimum tax. That minimum tax has the same rules as the GloBE rules, except that it does not include a Substance-based Income Exclusion.

Based on this limited information:

- Is jurisdiction X's minimum tax a QDMTT?
- Assuming the answer to Q1 is "yes", will UPE's CFC tax and/or the jurisdiction X UTPR tax (in respect of YCo's Top-up Tax) be taken into account in computing XCo's QDMTT liability?

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 only Constituent Entity located in jurisdiction A.

ACo carries on a manufacturing business in jurisdiction A, and is provided with a tax incentive under the jurisdiction A tax law.

ACo is trying to determine how the tax incentive should be designed in the future, having regard to the GloBE rules.

For that purpose, ACo assumes: (1) its GloBE Income will be 1,000; (2) its Substance-based Income Exclusion (SBIE) amount will be 800; and (3) it will not satisfy a safe harbour or the de minimis exclusion.

Q1: If jurisdiction A provides an income tax exemption for the SBIE amount (800), and levies a 15% income tax on the remainder of ACo's GloBE Income (200), will there be no Top-up Tax?

Q2: If the answer to Q1 is that there would be a Top-up Tax, what rate of tax should jurisdiction A levy on the remainder of ACo's GloBE Income (200) to ensure that the Top-up Tax is zero?

For the purposes of these questions, please assume that (apart from the exemption of the SBIE amount) there are no permanent or timing differences between the computation of GloBE Income and the computation of taxable profits under the jurisdiction A tax law.

LAST WEEK'S ANSWER

Q1
Adjusted Covered Taxes: 15% x 200 = 30
GloBE Income: 1,000 (i.e., not reduced by the SBIE amount)
Thus, ETR = 30 / 1,000 = 3% (Art. 5.1)

Top-up Tax Percentage = 12%
Excess Profit = 1,000 – 800 = 200

Thus, Jurisdictional Top-up Tax = 12% x 200 = 24 (Art. 5.2)

Q2
To ensure that the Top-up Tax is zero, jurisdiction A would need to levy a tax of 150 on the remainder of ACo's GloBE Income (200).
With Adjusted Covered Taxes of 150, ACo's ETR would be: 150 / 1,000 = 15%.

The tax of 150 on 200 of income is a 75% tax rate!

Comments
With a 15% jurisdiction A tax rate on the 200, the total tax paid would be: 30 (juris. A tax) + 24 (Top-up Tax) = 54.

Alternatively, with a 75% jurisdiction A tax rate on the 200, the total tax paid would be: 150 (juris. A tax) + 0 (Top-up Tax) = 150.

Ironically, of the 2 alternatives, the MNE Group would pay less tax by allowing the Top-up Tax to apply.

An important point to note is that the SBIE amount does not reduce GloBE Income. Therefore, a low ETR can still occur, even though most of the GloBE Income is SBIE and the remainder is subject to a 15% tax rate.

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