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10 February 2023



HIGHLIGHTS

- Detailed review of chapter 5 on QDMTTs in Administrative Guidance on GloBE rules
- European Court of Justice decides State aid case concerning "Spanish tax lease system"

HAPPY FRIDAY!

North Korea presents the "respected" daughter; Bing searches for AI (while Google finds Bard); and the French demand the right to be lazy!

Meanwhile in the tax world ...

Qatar commits, but is not territorial; the OECD launches a new IF; Blackstone has the winning certificate; Spain must collect from ships; Biden targets billionaires; Kenya attacks exports; and 3M becomes unstuck!

But at the end of the week, the most important question is this: "Will Microsoft eat Google's lunch?"

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

- Pillars One & Two
- Other global developments
- Administrative Guidance on GloBE rules: QDMTTs
- Asia Pacific
- Europe
- Africa
- Middle East & Central Asia
- Americas
- 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:
 - Administrative Guidance on GloBE rules: QDMTTs (ITB, 10 February 2023)
 - 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

Heydon Wardell-Burnus
"GloBE Administrative Guidance – The QDMTT and GILTI Allocation"
4 February 2023 (freely available on www.ssm.com; and posted by author on LinkedIn).

Jessie Coleman and Sayantani Ghose
"Carbon Trading and Transfer Pricing: The Next Frontier?"
Tax Notes Today International, Tax Analysts, 30 January 2023 (subscription service).

Stefano Schiavello and Raimondo Rossi
"Italian Budget Law for 2023 Introduces a Land-Rich Clause for Italian-Sourced Capital Gains"
European Taxation, IBFD, 2023 (Vol. 63), No. 2/3 (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.

ACo owns 90% of the shares in BCo, a company located in jurisdiction B. The other 10% of the shares in BCo are owned by third parties. BCo is the only member of the MNE Group located in jurisdiction B.

BCo owns 100% of the shares in CCo, a company located in jurisdiction C.

Jurisdictions A and B have implemented the GloBE rules (both IIR and UTPR), and they have also each implemented a QDMTT.

For a Fiscal Year:

- ACo is subject to 4 jurisdiction A taxes: (1) Corporate income tax:100; (2) CFC tax (in respect of BCo's profits): 150 (before credit for BCo's taxes), 30 (after credit for BCo's taxes); (3) IIR tax (in respect of the jurisdiction B Top-up Tax): to be determined ("TBD"); and (4) QDMTT: TBD.
- For purposes of both the GloBE rules and the QDMTT, ACo's GloBE Income is 2,000, and its Substance-based Income Exclusion ("SBIE") is 1,200.

For the same Fiscal Year:

- BCo is subject to 3 jurisdiction B taxes: (1) Corporate income tax: 50; (2) CFC tax (in respect of CCo's profits, which do not include any Passive Income): 80; and (3) QDMTT: TBD.
- For purposes of both the GloBE rules and the QDMTT, BCo's GloBE Income is 1,400 (including 400 of Passive Income), and its SBIE is 800.

Based on this information:

- Q1: What is ACo's IIR tax liability in respect of the jurisdiction B Top-up Tax?
- Q2: What is ACo's QDMTT liability?
- Q3: What is BCo's QDMTT liability?

Answer in next ITB email alert on 24 February 2023!

LAST WEEK'S QUESTION

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. XCo and YCo are sister subsidiaries.

The UPE is located in jurisdiction U. The UPE has a direct Ownership interest in both XCo and YCo of 100%.

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:

- 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 law is a "CFC Tax Regime", but it is not a "Blended CFC Tax Regime".
- YCo has a Top-up Tax amount, which is allocated (in part) to XCo under Art. 2.6.
- 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 information:

- Q1: Is jurisdiction X's minimum tax a QDMTT?
- Q2: 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?

LAST WEEK'S ANSWER

Q1
Jurisdiction X's minimum tax will qualify as a QDMTT. The fact that it does not include a Substance-based Income Exclusion does not disqualify it from QDMTT status: see paras. 118.36-37 in the Administrative Guidance on the GloBE rules (AG).

Q2
Neither the UPE's CFC tax nor the jurisdiction X UTPR tax (in respect of YCo's Top-up Tax) will be taken into account in computing XCo's QDMTT tax liability.

Regarding the CFC tax, see para. 118.30 of the AG.

Regarding the UTPR tax, see para. 118.31 of the AG and the exclusion of UTPR tax from the definition of "Covered Taxes" in Art. 4.2.2(c).

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