

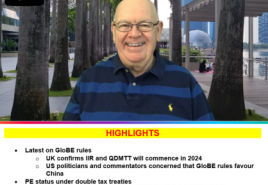
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17 March 2023



HIGHLIGHTS

- **Latest on GloBE rules**
 - UK confirms IIR and QDMTT will commence in 2024
 - US politicians and commentators concerned that GloBE rules favour China
- **PE status under double tax treaties**
 - Private rulings issued in Japan, Denmark, and Netherlands
- **Continuation of detailed review of Administrative Guidance on GloBE rules**
 - Today: (1) consolidated deferred tax amounts, and (2) sovereign wealth funds and definition of UPE

HAPPY FRIDAY!

Macron doesn't need parliament; Freddy stays too long; and GPT-4 is everything everywhere all at once!

Meanwhile, in the tax world...

The UK counts on R&D; Australia tightens its interest; PEs rule, but don't exist; France wastes credits; Russia wants to suspend; Brazil carries a victory; and Indonesia loses USD 20 billion!

But at the end of the week, the most important question is this: "What's wrong with the banks?"

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. Administrative Guidance on GloBE rules: Scope (part 2)
3. Asia Pacific
 - Australia, Indonesia, Japan, Malaysia
4. Europe
 - Denmark, ECHR, France, Netherlands, Russia, Turkey, UK
5. Americas
 - Brazil, US
6. 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: Scope (Parts 1 & 2) (ITB, 10 & 17 March 2023)
 - Administrative Guidance on GloBE rules: Allocation of taxes arising under Blended CPC Tax Regimes (ITB, 3 March 2023)
 - Administrative Guidance on GloBE rules: QDMTTs (Parts 1 & 2) (ITB, 10 & 24 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)
 - Changing 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; 18 September 2022)
 - Computation of GloBE Income or Loss (Parts 1 to 4) (ITB, 7, 14, 21 & 28 January 2022)

WORTH READING

Mindy Herzfeld
"Reimagining International Tax Cooperation at the U.N.: A Roadmap"
tax Notes Today International, Tax Analysts, 13 March 2023 (subscription service).

Yarit Brauner
"The Rule of Law and Rule of Reason in the Aftermath of BEPS"
Intertax, Kluwer, Vol. 51 (2023), Issue 4 (subscription service).

Ryan Finley
"Does Medtronic Reveal Friction Between U.S. and OECD Standards?"
Tax Notes Today International, Tax Analysts, 13 March 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

SCo, a company located in jurisdiction S, is a sovereign wealth fund which is 100% owned by the government of jurisdiction S. SCo's principal purpose is to invest the government's funds through the making and holding of investments.

The applicable financial accounting standard which applies in jurisdiction S does not provide an exclusion, from consolidation, for "investment entities". However, jurisdiction S law exempts SCo from the requirement to prepare consolidated financial statements – and thus, SCo does not do so.

Jurisdiction S has implemented the GloBE rules. Jurisdiction S does not have a CFC regime. SCo is a taxpayer under the jurisdiction S corporate income tax law.

One of SCo's many investments is a 60% direct shareholding in XCo, a company located in jurisdiction X. The other 40% of the shares are owned by unrelated investors who are located in jurisdiction Y. XCo carries on an R&D business in jurisdiction X, which enables it to qualify for an exemption from the 25% jurisdiction X corporate income tax. However, jurisdiction X has implemented the GloBE rules and a QDMTT (which is effectively identical to the GloBE rules). XCo has no subsidiaries.

For the purposes of the GloBE rules and the QDMTT, XCo has: (1) GloBE Income of 100; (2) Adjusted Covered Taxes of nil; and (3) a Substance-based Income Exclusion of 40.

Based on this information, what tax liability will arise, in respect of XCo, under the GloBE rules (in jurisdictions S or X) or QDMTT (in jurisdiction X)?

In answering this question, please assume that the revenue threshold in Art. 1.1.1 is satisfied.

Answer in next ITB email alert!

LAST WEEK'S QUESTION

ACo 1, a private company located in jurisdiction A, is an "investment entity", as defined in IFRS 10. The shares in ACo 1 are owned by several (unrelated) individual investors.

Jurisdiction A law does not require private companies to prepare consolidated financial statements, and ACo 1 does not do so.

As part of its investment business, ACo 1 directly owns common shares (with the percentage ownership shown) in the following companies:

- ACo 2 (100%)
- ACo 3 (80%)
- ACo 4 (70%)
- BCo 1 (80%)
- BCo 2 (70%)
- CCo (100%)

ACo 2-4 are located in jurisdiction A, BCo 1-2 are located in jurisdiction B, and CCo is located in jurisdiction C. All of these companies are operating companies, except CCo (which is a pure holding company).

CCo owns 100% of the shares in DCo, an operating company located in jurisdiction D.

IFRS is the applicable financial accounting standard in all 4 jurisdictions.

Jurisdiction C does not require pure holding companies to prepare consolidated financial statements, and CCo does not do so.

Based on this information:

- Q1: Are there one or more MNE Groups, for the purposes of the GloBE rules?
Q2: If yes, which companies are members of that, or each, MNE Group?

LAST WEEK'S ANSWER

1. Is ACo 1 a "UPE"?

As ACo 1 is an "investment entity" as defined in IFRS 10, it is required not to consolidate its subsidiaries, but instead it is required to measure an investment in a subsidiary at fair value through profit or loss: para. 31, IFRS 10. The facts do not indicate that the exception in para. 32 of IFRS 10 would be triggered.

ACo 1 therefore does not own a "Controlling Interest" (defined in Art. 10.1.1) in any of ACo 2-4, BCo 1-2, CCo, or DCo ("the 7 subsidiaries"). In particular, the "deemed consolidation test" in para. (b) of the "Controlling Interest" definition does not apply: even if the jurisdiction A law did require private companies to prepare consolidated financial statements, IFRS (which is the applicable financial accounting standard in jurisdiction A) requires ACo 1 not to consolidate the 7 subsidiaries.

ACo 1 therefore is not an "Ultimate Parent Entity" (defined in Art. 1.4.1) in respect of the 7 subsidiaries.

Thus, ACo 1 and the 7 subsidiaries do not satisfy the Art. 1.2.2 definition of "Group", and therefore they do not constitute an "MNE Group" (defined in Art. 1.2.1).

2. Is CCo a "UPE"?

CCo is a "pure holding company". The facts do not state that CCo is an "investment entity" as defined in IFRS 10, and therefore presumably it is not.

Jurisdiction C law does not require CCo to prepare consolidated financial statements. However, if the jurisdiction C law did require CCo to do that, IFRS 10 would require CCo to consolidate DCo.

Therefore, CCo owns the "Controlling Interest" in DCo, under para. (b) of the definition in Art. 10.1.1. Also, CCo is deemed to have prepared consolidated financial statements which include DCo (see para. (d) of the definition of "Consolidated Financial Statements" in Art. 10.1.1).

Thus, CCo is a "UPE" (Art. 1.4.1), CCo & DCo are a "Group" (Art. 1.2.2), and (because DCo is not located in jurisdiction C) CCo & DCo are an "MNE Group".

3. Administrative Guidance (AG)

The above issues are discussed in AG, section 1.2.4 (Examples).

4. Final answers

- Q1: 1 MNE Group
Q2: CCo & DCo

Do you agree?



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