

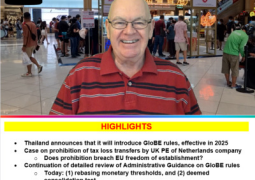
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10 March 2023



HIGHLIGHTS

- Thailand announces that it will introduce GloBE rules, effective in 2025
- Case on prohibition of tax loss transfers by UK PE of Netherlands company
 - Does prohibition breach EU freedom of establishment?
- Continuation of detailed review of Administrative Guidance on GloBE rules
 - Today: (1) rebasing monetary thresholds, and (2) deemed consolidation test

HAPPY FRIDAY!

The UN protects the high seas; Tucker Carlson loses his Dominion; and the Sphinx just smiles!

Meanwhile, in the tax world...

The US Budget is presented on Groundhog Day; Thailand decides to act, but slowly; the EU gives the green light on green tax incentives; France is pro-choice; Thomson Reuters is privileged; Lithuania robs the banks; and the honeymoon is over in Chile!

But the most important point to note is that Tax Analysts have changed "GloBE" to "GLOBE". Will it catch on?

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
3. Asia Pacific
 - Malaysia
4. Europe
 - Belgium, EU, Finland, France, Lithuania, Russia, Spain, UK
5. Americas
 - Chile, US

ITB series on Pillar One

- Draft MLC provisions for commitments on DSTs and other relevant similar measures (ITB, 4 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 (ITB, 10 March 2023)
 - Administrative Guidance on GloBE rules: Allocation of taxes arising under Blended CFC 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)
 - 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 3) (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

Ethan Kroll
"QDMTT for Me, No Allocation for Them: Recent Guidance on Allocating GILTI Taxes under Pillar Two"
Tax Management International Journal, Bloomberg, 3 March 2023 (subscription service).

Robert Goulder
"Enlightenment Through Sticky Notes: 3M Goes Down"
Tax Notes Today International, Tax Analysts, 7 March 2023 (subscription service).

Marjana Heilmann
"Impact of the TFEU Fundamental Freedoms on Disregarding Non-Arm's Length Business Transactions"
European Taxation, IBFD, 2023 (Vol. 63), No. 2/3 (subscription service).

Min Gu Kim, Ross Harman, and Ye Jin Oh
"Korean Foreign Investment Rules Seek to Clarify Beneficial Ownership"
Tax Notes Today International, Tax Analysts, 2 March 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo 1, a private company located in jurisdiction A, is an "investment entity", as defined in IFRS 10, which is the applicable financial accounting standard in jurisdiction A. 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 owns 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?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

An MNE Group's UPE, which is located in jurisdiction U, is subject to the jurisdiction U CFC rules. Those CFC rules (as) qualify as a Blended CFC Tax Regime, as defined in the Administrative Guidance (AG). Under the CFC rules, the foreign effective tax rate must be 13.125% in order to generate sufficient foreign tax credits (ignoring any foreign tax credit limitation) to prevent the imposition of a tax charge.

In a Fiscal Year, UPE has a tax charge of 50 under the CFC rules.

UPE directly owns 100% of the shares in 4 CFCs. For the Fiscal Year, the CFCs have this financial information:

1. XCo 1 (located in jurisdiction X)
 - Net income (P&L): 220
 - GloBE Income: 200
 - Attributable Income: 80
 - Constituent Entity for GloBE purposes
2. XCo 2 (located in jurisdiction X)
 - Net income (P&L): 100
 - GloBE Income: Nil
 - Attributable Income: 70
 - Non-Constituent Entity for GloBE purposes
3. YCo (located in jurisdiction Y)
 - Net income (P&L): 150
 - GloBE Income: 150
 - Attributable Income: 100
 - Constituent Entity for GloBE purposes
4. ZCo (located in jurisdiction Z)
 - Net income (P&L): 200
 - GloBE Income: 150
 - Attributable Income: 50
 - Constituent Entity for GloBE purposes

The MNE Group has these GloBE Jurisdictional ETRs (as defined in the AG) for the Fiscal Year:

- X: 8%
- Y: 11%
- Z: 14%

Based on this information, what will be the allocation of CFC tax under Art. 4.3.2(c)? Please ignore any possible cap under Art. 4.3.3.

LAST WEEK'S ANSWER

The question requires the application of AG, section 2.10.3.

First step: calculate Blended CFC Allocation Key for each CFC (including XCo 2, which is a non-Constituent Entity), using this formula (AG, para. 58.3):

$$\text{Attributable Income of Entity} \times (\text{Applicable Rate} - \text{GloBE Jurisdictional ETR}).$$

Based on the question, the Applicable Rate is 13.125% (see AG, para. 58.5).

Thus, Blended CFC Allocation Keys:

1. XCo 1: $80 \times (13.125\% - 8\%) = 4.10$
2. XCo 2: $70 \times (13.125\% - 8\%) = 3.50$
3. YCo: $100 \times (13.125\% - 11\%) = 2.13$
4. ZCo: $50 \times (13.125\% - 14\%) = 0$ (see AG, para. 58.6)

Sum of All Blended CFC Allocation Keys: $4.10 + 3.50 + 2.13 + 0 = 9.82$

Second step: calculate Blended CFC Tax allocated to each Entity (including XCo 2), using this formula (AG, para. 58.3):

$$\text{Blended CFC Allocation Key} / \text{Sum of All Blended CFC Allocation Keys} \times \text{Allocable Blended CFC Tax}.$$

Based on the question, the Allocable Blended CFC Tax is 50 (see AG, para. 58.3).

Thus, Blended CFC Tax allocated to:

1. XCo 1: $4.10 / 9.82 \times 50 = 20.88$
2. XCo 2: $3.50 / 9.82 \times 50 = 18.28$
3. YCo: $2.13 / 9.82 \times 50 = 10.85$
4. ZCo: $0 / 9.82 \times 50 = 0$

Total: $20.88 + 18.28 + 10.85 + 0 = 50.01$ (due to rounding)

Thus, allocation of CFC taxes under Art. 4.3.2(c):

- XCo 1: 20.88
- YCo : 10.85

The 18.28 of Blended CFC tax allocated to XCo 2 is not allocated under Art. 4.3.2(c), because XCo 2 is not a Constituent Entity.

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