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14 April 2023



HIGHLIGHTS

- IASB finalizes amendments to IAS 12 in response to GloBE rules
 - But it won't release the amendments until the end of May!
- Australia releases draft legislation to deny deductions for certain outbound intangibles payments
 - But it ignores withholding tax, CFC tax, and GloBE rules tax!
- Detailed review of Administrative Guidance on GloBE rules
 - Today: (1) excluded dividends – asymmetric treatment of dividends and distributions; and (2) treatment of debt releases

HAPPY FRIDAY!

Jack the leaker is arrested; Joe goes home; and China "moderately" exercises!

Meanwhile, in the tax world...

IASB finalises, but keeps secret; Australia tries for double taxation; Estonia increases; Ireland banks on consultation; Uganda gives up on Pillar One; Argentina is in suspense; and Farby gets very lucky!

But at the end of the week, the most important question is this: "Did you expect the US leak to be an inside job?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

- Pillar Two
- Australia: Denial of deductions for certain outbound intangibles payments
- Administrative Guidance on GloBE rules: Income & taxes (part 2)
- Asia Pacific
 - Australia, Hong Kong, Singapore
- Europe
 - Estonia, Ireland
- Africa
 - Kenya, Uganda
- Americas
 - Argentina, Brazil, US
- Treaty news

ITB series on Pillar One

- Draft MLC provisions for commitments on DSTs and other relevant similar measures (ITB, 8 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, 8 January 2023)
- GloBE model rules:
 - Administrative Guidance on GloBE rules: Income & taxes (Parts 1 & 2) (ITB, 31 March; 14 April 2023)
 - Administrative Guidance on GloBE rules: Scope (Parts 1 to 3) (ITB, 10, 17 & 24 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 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

Beritl Wiman
"Klaus Vogel Lecture 2022: Who Should Be in the Driver's Seat in Developing International Tax Norms – Civil Servants or National Parliaments?"
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 4 (subscription service)

Petros Pantazopoulos
"Boundaries of Legal Professional Privilege Under DAC6"
Tax Notes Today International, Tax Analysts, April 5, 2023 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

A Holdco, A Sub 1 and A Sub 2 are companies located in jurisdiction A. A Holdco is a direct 100% subsidiary of the UPE of an MNE Group, which is "within scope" of the GloBE rules. A Holdco directly owns 100% of the shares in each of A Sub 1 and A Sub 2 (i.e., A Sub 1 and A Sub 2 are sister subsidiaries). A Holdco, A Sub 1 and A Sub 2 are the only Constituent Entities located in jurisdiction A. None of the companies is an Investment Entity.

Jurisdiction A has implemented a QDMTT, which is effectively identical to the GloBE rules.

The MNE Group's tax director estimates that, absent planning, the group will incur a significant QDMTT liability in the next fiscal year. In particular, the director estimates that the following numbers will apply for the next fiscal year:

- A Holdco:
 - GloBE Income: Nil
 - Adjusted Covered Taxes: Nil
- A Sub 1:
 - GloBE Income: 500
 - Adjusted Covered Taxes: 50
- A Sub 2:
 - GloBE Income: 400
 - Adjusted Covered Taxes: 48

The tax director proposes this plan: (1) A Sub 2 would subscribe for redeemable preference shares (RPS) in A Sub 1; (2) A Sub 1 would use the cash from the RPS to buy-back some of its common shares from A Holdco; (3) A Holdco would use the cash from (2) to subscribe for new common shares in A Sub 2; (4) the terms of the RPS would be drafted such that the RPS would be treated as a liability for A Sub 1 under the Acceptable Financial Accounting Standard applicable in jurisdiction A; and (5) those terms of the RPS would also require ACo 2 to treat the RPS as equity under the same Acceptable Financial Accounting Standard.

The RPS would carry a coupon dividend of 100 in the next fiscal year (the dividend would be due and payable on the last business day of that fiscal year).

The tax director explains that there will be no impact on corporate income tax, because the RPS will be treated as equity for jurisdiction A corporate income tax purposes by both A Sub 1 and A Sub 2: thus, A Sub 1 would not obtain a deduction for the coupon dividend, and A Sub 2 would qualify for a 100% exemption under the jurisdiction A corporate income tax law.

The tax director asks you whether this plan will cause a reduction in the group's QDMTT liability in the next fiscal year.

What is your view?

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.

The UPE has a 60% Ownership Interest in ACo, with the balance of 40% owned by minority shareholders.

ACo has the following financial income for a fiscal year (determined in accordance with the Acceptable Financial Accounting Standard used by the UPE in preparing its Consolidated Financial Statements) (numbers in parentheses are debits):

- Profit (i.e., net income) (in P&L): 30,000
- Income included in Profit under equity accounting method: 5,000
- Other comprehensive income (relating to changes in liabilities under ACo's pension plan): 4,500 (after deducting tax of (1,500))
- Immaterial deviations from the Acceptable Financial Accounting Standard: (800)
- Income tax expense: (10,000) (includes (1,000) referable to income included in Profit under equity accounting method)
- Withholding tax deducted from outbound royalties: (1,500) – this tax is economically borne by ACo under a "gross-up" condition in the licence agreement

Based on this information, what is ACo's GloBE Income or Loss for the fiscal year?

LAST WEEK'S ANSWER

Note: Commentary references are to the Commentary to chapter 3 of the GloBE rules.

The fact that the UPE has only a 60% Ownership Interest in ACo does not impact the computation of ACo's GloBE Income: see Comm, para. 8.

Computation of ACo's GloBE Income

- Start with Profit: 30,000
- Income included in Profit under equity accounting method – negative adjustment of (5,000): see Art. 3.2.1(c) and definition of "Excluded Equity Gain or Loss" in Art. 10.1.1; also, see Comm, para. 51.
- OCI (including tax) remains adjusted – no adjustment: see Comm, para. 9. [Note that the description, "changes to liabilities under ACo's pension plan", does not indicate that there is any "Accrued Pension Expense" (see Art. 3.2.1(i) and definition of "Accrued Pension Expense" in Art. 10.1.1).]
- Immaterial deviations from Acceptable Financial Accounting Standard – no adjustment: see Comm, para. 12.
- Income tax expense (including 1,000 referable to income included in Profit under equity accounting method) – positive adjustment of 10,000: see Art. 3.2.1(a) and definition of "Net Taxes Expense" in Art. 10.1.1; also, see Comm, paras. 26 & 27.
- Withholding tax deducted from outbound royalties (economically borne by ACo under "gross-up" condition, but legally imposed on payee) – no adjustment: Comm, para. 29.

Thus, ACo's GloBE Income: 30,000 – 5,000 + 10,000 = 35,000

Do you agree?



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