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12 May 2023



HIGHLIGHTS

- Australia announces implementation of GloBE rules, effective 1 January 2024
- Unusual tax law changes
 - Kenya announces digital asset tax on transfers of cryptocurrencies and non-fungible tokens
 - Australia expands GAAR to be triggered when taxpayer's sole or dominant purpose is to avoid foreign tax
- Detailed review of Administrative Guidance on GloBE rules
 - Today: Loss-making Parent Entities of CFCs

HAPPY FRIDAY!

Trump joins CNN; the Tasmanian Devil has a trademark; but Google has no moat!

Meanwhile, in the tax world...

Australia takes the plunge; Article 17 is too narrow; Kenya gives 24 hours; Nigeria changes its mind (again); Singapore allows remote operator; and Part IVA goes global!

But at the end of the week, the most important question is this: "Should AI be regulated?"

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. Administrative Guidance on GloBE rules: Income & taxes (part 6)
4. Asia Pacific
 - Australia, Philippines, Singapore
5. Europe
 - Denmark, ECJ
6. Africa
 - Benin, Kenya, Nigeria
7. Americas
 - Brazil
8. Treaty notes

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, 18 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: Income & taxes (Parts 1 to 4) (ITB, 31 March; 14, 21 & 28 April; 5, 12 May 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

Luis Eduardo Schoueri

"The Twilight of Bilateralism"

Intertax, Kluwer, Vol. 51 (2023), Issue 5 (subscription service).

Radhakishan Rawal

"The Subject-to-Tax Rule in the U.N. Tax Model"

Tax Notes Today International, Tax Analysts, 27 April 2023 (subscription service).

David G. Noren

"More Fun with Extraterritorial Taxes: Application of U.S. Stock Buyback Exche. Tax to Foreign-Based Groups"

Tax Management International Journal, Bloomberg, Vol. 52 (2023), Issue 5 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company located in jurisdiction A, is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules. It is the only Constituent Entity located in jurisdiction A. Jurisdiction A has a corporate income tax rate of 25%.

ACo directly owns 100% of the shares in 2 subsidiaries: BCo (located in jurisdiction B) and CCo (located in jurisdiction C).

(1) Year 1:

ACo's jurisdiction A corporate income tax computation has these financial numbers:

- Domestic source tax loss: (300)
- Income inclusion under jurisdiction A CFC rules, in respect of BCo: 100
- Foreign tax credit (FTC) in respect of that CFC inclusion: 20
- Dividend income received from CCo: 100 (such dividend income is taxable under jurisdiction A law)
- FTC in respect of that dividend income: 22
- Royalties received from DCo, an unrelated company resident in jurisdiction D: 100 (such royalties are treated as foreign source income under jurisdiction A law)
- FTC in respect of those royalties: 10

Please assume that under the jurisdiction A corporate income tax law: (1) for FTC purposes, all foreign source income is placed in the same "basket"; (2) for FTC purposes, no expenses are allocated against foreign source income; (3) all foreign source income numbers described above include the "gross-up" for the relevant FTC; (4) a domestic source tax loss is offset against foreign source income, before application of FTGs; and (5) all excess FTCs are carried forward to future years, to be offset against tax on domestic source income which is recharacterized (i.e., "re-sourced") as foreign source income.

Also in Year 1, ACo has a GloBE Loss: (300).

(2) Year 2:

ACo's jurisdiction A corporate income tax computation has these financial numbers:

- Domestic source taxable income: 300
- Actual foreign source income (from CFC inclusions, foreign source dividends, foreign source royalties, or other): 0

Also, in Year 2, ACo has GloBE Income of 300.

Based on this limited information, what is ACo's jurisdiction A corporate income tax and Top-up Tax for Year 1 and Year 2?

Answer in next ITB email alert on 26 May!

LAST WEEK'S QUESTION

ACo is a Constituent Entity in a "within scope" MNE Group. It is the only Constituent Entity located in jurisdiction A. Jurisdiction A has a 15% corporate income tax rate.

In Years 1, 2, and 3, ACo has these financial numbers:

(1) Year 1:

- GloBE Income: 300
- Substance-based Income Exclusion (SBIE): 100
- Tax loss (jurisdiction A corporate income tax): 100 (can be carried forward indefinitely)

(2) Year 2:

- GloBE Income: 200
- SBIE: 100
- Taxable income (before deduction of carry-forward tax loss): 60
- Taxable income (after deduction of carry-forward tax loss): 0

(3) Year 3:

- GloBE Income: 250
- SBIE: 120
- Taxable income (before deduction of carry-forward tax loss): 40
- Taxable income (after deduction of carry-forward tax loss): 0

Based on this limited information, what is the Top-up Tax for jurisdiction A in each of Years 1, 2, and 3?

LAST WEEK'S ANSWER

(1) Year 1:

- GloBE Income: 300
- SBIE: 100
- Current tax expense: 0
- Deferred tax asset (DTA) in respect of tax loss: 15% x 100 = 15
- Adjusted Covered Taxes (ACT) (prima facie): (15)
- ETR (prima facie): (15) / 300 = (5)%
- Top-up Tax Percentage (TTP) (prima facie): 15% - (5)% = 20%

As TTP (prima facie) exceeds the Minimum Rate, the administrative procedure under Art. 5.2.1 applies (see AG, section 2.7):

- ACT: 0
- Excess Negative Tax Expense Carry-forward (ENTEC): 15
- ETR: 0 / 300 = 0%
- TTP: 15% - 0% = 15%
- Top-up Tax: 15% x (300 - 100) = 30

(2) Year 2:

- GloBE Income: 200
- SBIE: 100
- Current tax expense: 0
- DTA partial reversal: 60 x 15% = 9
- ACT (prima facie): 9
- ACT (after applying ENTEC): 0
- Remaining ENTEC: 15 - 9 = 6
- ETR: 0 / 200 = 0%
- TTP: 15%
- Top-up Tax: 15% x (200 - 100) = 15

(3) Year 3:

- GloBE Income: 250
- SBIE: 120
- Current tax expense: 0
- DTA reversal: 40 x 15% = 6
- ACT (prima facie): 6
- ACT (after applying ENTEC): 0
- Remaining ENTEC: 0
- ETR: 0 / 250 = 0%
- TTP: 15%
- Top-up Tax: 15% x (250 - 120) = 19.5

Do you agree?



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