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2 June 2023



HIGHLIGHTS

- **Latest on Pillars One & Two**
 - Netherlands introduces bill into parliament to enact GloBE rules
 - European Commission plans Directive for Amount A in Pillar One
- **International tax cases**
 - Classification of Brazilian "interest on net equity" for purposes of Brazil / Netherlands treaty
 - "Furnishing of services" PE in Netherlands / Pakistan treaty
- **Continuation of detailed review of Administrative Guidance on GloBE rules**
 - Today: Equity investment inclusion Election and treatment of tax credits derived through Tax Transparent Entity

HAPPY FRIDAY!

The IRS loses \$20 billion; AI is illegal for lawyers; and Joe Biden kicks a sandbag!

Meanwhile, in the tax world...

Norway taxes salmon; Chile is approved again; Hong Kong publishes rulings without substance; Malaysia discriminates against comparables; a Netherlands court penalises for ambiguity; Pakistan courts days; and the UAE sees interest everywhere!

But at the end of the week, the most important question is this: "What did the Washington brinkmanship achieve?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. Pillars One & Two
2. Administrative Guidance on GloBE rules: Income & taxes (part 7)
3. Asia Pacific
 - Australia, Hong Kong, India, Malaysia, Philippines
4. Europe
 - Netherlands
5. Middle East & Central Asia
 - Bahrain, Pakistan, UAE
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 Returns (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 7) (ITB, 31 March; 14, 21 & 28 April; 5, 12 May; 2 June 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 GPC Tax Regimes (ITB, 3 March 2023)
 - Administrative Guidance on GloBE rules: GOMTTs (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, 5, 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

Reuven S. Avi-Yonah
"China Yawns at Pillar 2"
Letter to the Editor, Tax Notes Today International, Tax Analysts, 30 May 2023 (subscription service).

Danielle Frescurato, Vello Alessandro Morelli and Federico Bortolameazzi
"The Italian Investment Manager Exemption: All That Glitters Is Not Gold"
Finance and Capital Markets, IBFD, 2023 (vol. 34), No. 1 (subscription service).

Lee A. Sheppard
"India's Model Bilateral Investment Treaty and Taxes"
Tax Notes Today International, Tax Analysts, 30 May 2023 (subscription service).

Ivan Lazarov
"Withholding Taxation Under the Fundamental Freedoms"
Interfax, Kluwer, Vol. 51 (2023), Issue 6 (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. ACo is the only Constituent Entity located in jurisdiction A. The jurisdiction A corporate income tax rate is 20%.

Before considering its investment in partnerships, ACo has these financial numbers for a fiscal year:

- GloBE Income: 2,000
- Adjusted Covered Taxes: 310

ACo is a partner in 2 jurisdiction A partnerships. Both partnerships are tax transparent under the jurisdiction A corporate income tax law. ACo accounts for its investment in both partnerships using the equity method.

The relevant information for the 2 partnerships:

- Partnership A1:
 - ACo's ownership interest: 25%.
 - In the fiscal year, the partnership incurs a financial statement and tax loss of 800. Under the jurisdiction A corporate income tax law, ACo's share of the tax loss (i.e., 25% x 800 = 200) is included as a deduction in the computation of its corporate income tax.
- Partnership A2:
 - ACo's ownership interest: 20%.
 - In the fiscal year, the partnership derives a financial statement and tax profit of 200. Under the jurisdiction A corporate income tax law, ACo's share of the tax profit (i.e., 20% x 200 = 40) is included as income in the computation of its corporate income tax.

Based on this information, what is the jurisdiction A Top-up Tax in the fiscal year?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

BCo, a company located in jurisdiction B, is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules.

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

1. Profit (i.e., net income, after tax) (in P&L): 50,000.
2. Equity accounting method in respect of associated company, CCo (BCo holds 30% Ownership interest in CCo):
 - a. Included in Profit: share of net income from CCo: 10,000.
 - b. Not included in Profit: gross dividend received from CCo: 7,000 (this dividend is taxable in Jurisdiction B).
 - c. Included as expense in computing Profit: Jurisdiction C withholding tax on dividend: 1,400.
 - d. Included as expense in computing Profit: BCo's management expenses directly relating to investment in CCo: 1,000.
3. Other foreign sourced income (not derived from CCo):
 - a. Included in Profit: Jurisdiction D gross interest: 2,000.
 - b. Included as expense in computing Profit: Jurisdiction D withholding tax on interest: 200.
 - c. Included in Profit: Jurisdiction D digital services income: 3,500.
 - d. Included as expense in computing Profit: Jurisdiction D digital services tax (imposed on gross revenue): 900.
 - e. Included as expense in computing Profit: BCo's employment expenses directly relating to Jurisdiction D digital services income: 2,000.
4. Jurisdiction B tax (included as expense in computing BCo's Profit):
 - a. Alternative Minimum Tax (AMT) (not computed on GloBE income): 10,000. [Note: BCo is subject to AMT because its Jurisdiction B regular income tax liability has fallen below the AMT threshold. The AMT is calculated by applying a 5% tax rate to gross revenue, and then subtracting foreign tax credits.]
 - b. In computing AMT, foreign tax credits have been subtracted:
 - i. Dividend withholding tax (Jurisdiction C): 1,200.
 - ii. Interest withholding tax (Jurisdiction D): 200.
 - iii. Digital services tax (Jurisdiction D): 200.

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

LAST WEEK'S ANSWER

Computation of BCo's GloBE Income:

1. Profit: 50,000.
2. Equity accounting method in respect of CCo:
 - a. Included in Profit: share of net income from CCo - adjust: (10,000).
 - b. Not included in Profit: gross dividend (Excluded Dividend) - do not adjust: 0.
 - c. Included as expense in computing Profit: Juris. C dividend withholding tax - included in "Net Taxes Expense" - adjust: 1,400.
 - d. Included as expense in computing Profit: management expenses - see Note 1 below - adjust: 1,000.
3. Other foreign sourced income (not derived from CCo):
 - a. Included in Profit: Juris. D gross interest - do not adjust: 0.
 - b. Included as expense in computing Profit: Juris. D interest withholding tax - included in "Net Taxes Expense" - adjust: 200.
 - c. Included in Profit: Juris. D digital services income - do not adjust: 0.
 - d. Included as expense in computing Profit: Juris. D digital services tax - not included in "Net Taxes Expense" (see Note 2 below) - do not adjust: 0.
 - e. Included as expense in computing Profit: employment income - do not adjust: 0.
4. Juris. B taxes:
 - a. AMT - included in "Net Taxes Expense" (see Note 3 below) - adjust: 10,000.
 - b. In computing AMT, foreign tax credits have been subtracted - i.e., AMT of 10,000 is net of the FTCs - do not adjust: 0.

Thus, GloBE Income = 50,000 + (10,000) + 1,400 + 1,000 + 200 + 10,000 = 52,600.

Note 1: Does the definition of "Excluded Equity Gain or Loss" in Art. 10.1.1 include directly related expenses? No guidance is provided in the Comm, Examples or AG. Based on the fact that the definition refers to "gain, profit or loss", I favour the view that directly related expenses are included in the definition.

Note 2: Is a DST a Covered Tax (defined in Art. 4.2)? As the Juris. D DST is imposed on a gross basis, then it probably is not a "Covered Tax", on the basis that it is not imposed in lieu of a generally applicable corporate income tax.

Note 3: Is the AMT a Covered Tax (defined in Art. 4.2), having regard to the fact that it is imposed on a gross basis? No guidance is provided in the Comm, Examples or AG. Based on the fact that the AMT applies in place of the regular corporate income tax, I favour the view that it is imposed in lieu of a generally applicable corporate income tax.

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