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9 June 2023



### HIGHLIGHTS

- **Latest on Pillar Two**
  - Norway launches public consultation
  - Vietnam and Thailand try to re-design their tax incentives to comply with GloBE rules
- **Recent international tax cases**
  - Business restructuring case in Israel
  - GAAR case in Canada
- **Detailed review of Administrative Guidance on GloBE rules**
  - Today: Treatment of Qualified Flow-through Tax Benefits of Qualified Ownership Interests

### HAPPY FRIDAY!

Canada burns and New York chokes; 3 golf tours are putting differences aside; and Apple's Vision Pro is mind-goggling!

Meanwhile, in the tax world...

Thailand and Vietnam search for the right incentive; Singapore changes its situation; Amazon is manifestly favoured; Medtronic thought it bought assets; the UAE runs out of guidance; Canada stops abuse; and US Republicans move from the OECD to Germany!

But at the end of the week, the most important question is this: "Will you buy the Vision Pro for \$3,499?"

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: Income & taxes (part 8)
3. Asia Pacific
  - Singapore
4. Europe
  - ECJ
5. Africa
  - Nigeria, Zimbabwe
6. Middle East & Central Asia
  - Israel, UAE
7. Americas
  - Canada, US
8. 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)
  - Extrajurisdictional 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 8) (ITB, 31 March; 14, 21 & 28 April; 5, 12 May; 2 & 9 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 CFC Tax Regimes (ITB, 3 March 2023)
  - Administrative Guidance on GloBE rules: GDMTTs (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

Nicholas Mowbray, Alex Ruff, and Vraj Desai

"The Impact on Tax Policy of the Inflation Reduction Act of 2022 and the EU Green Deal Industrial Plan"

Tax Management International Journal, Bloomberg, Vol. 52 (2023), Issue 6 (subscription service).

Ana Paula Dourado

"Editorial: Pillar Two and the Principles of Ability-to-Pay, Legality, and Symmetry"

Intertax, Kluwer, Vol. 51 (2023), Issue 6/7 (subscription service).

Mindy Herzfeld

"International Tax Stability: Accounting for Tax Incentives"

Tax Notes Today International, Tax Analysts (5 June 2023) (subscription service).

J. Clifton Fleming

"Tax in History - Acknowledging (Celebrating?, Regretting?) Sixty Years of Subpart F"

Intertax, Kluwer, Vol. 51 (2023), Issue 6/7 (subscription service).

### INTERNATIONAL TAX QUIZ

#### THIS WEEK'S NEW QUIZ

XCo 1 and XCo 2 are members of an "in scope" MNE Group. They are the only Constituent Entities located in jurisdiction X, which has a corporate income tax rate of 25%.

XCo 1 owns 100% of the shares in XCo 2.

Before considering the equity investments of the 2 companies, they have these respective GloBE numbers for a fiscal year:

- XCo 1:
  - GloBE Income: 1,600
  - Adjusted Covered Taxes: 300
- XCo 2:
  - GloBE Income: 800
  - Adjusted Covered Taxes: 200

At the start of the fiscal year, XCo 1 became a tax equity investor in a newly formed tax-transparent partnership in jurisdiction X, which will undertake an energy project. There is one other partner in the partnership: a jurisdiction X energy project developer, which is unrelated to XCo 1.

XCo 1 invested 1,000 in the partnership at the start of the fiscal year. At that time, XCo 1's expected return on its ownership interest was positive, but only because of the expected non-refundable tax credits (see below).

XCo 1 uses the equity method to account for its ownership interest.

For the fiscal year, the partnership allocates to XCo 1:

- A financial statement loss and a tax loss of 200
- A non-refundable, non-transferable tax credit of 180

These allocations are effective for jurisdiction X tax purposes.

During the fiscal year, XCo 2 sells all of its 20% shareholding in XCo 3, an unrelated company. XCo 2 derives a profit of 1,200 on the sale. Under the jurisdiction X tax law, 20% of the profit is taxable at the standard 25% tax rate (i.e., 80% is excluded). Prior to the sale, XCo 2 used the equity method to account for its ownership interest in XCo 3.

Based on this information, what is the jurisdiction X Top-up Tax for the fiscal year? Please ignore the Substance-based Income Exclusion.

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. 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? Please ignore the Substance-based Income Exclusion.

### LAST WEEK'S ANSWER

1. If no Equity Investment Inclusion Election is made

- GloBE Income: 2,000 (i.e., no inclusion from the 2 partnerships, due to Art. 3.2.1(c)).
- Adjusted Covered Taxes: 310 - (200 x 20% = 40) = 270 (i.e., (i) inclusion of (40) from partnership A1, as Art. 4.1.3(a) does not apply; (ii) no positive inclusion from partnership A2, due to Art. 4.1.3(a)) [See AG, section 2.9.1: the use of "income excluded", but not "loss excluded", in Art. 4.1.3(a) causes an asymmetrical outcome].
- ETR: 270 / 2,000 = 13.5%.
- Top-up Tax = 1.5% x 2,000 = 30.

2. If Equity Investment Inclusion Election is made

- GloBE Income: 2,000 - 200 + 40 = 1,840 (i.e., election de-activates Art. 3.2.1(c)).
- Adjusted Covered Taxes: 310 - (200 x 20% = 40) + (40 x 20% = 8) = 278.
- ETR: 278 / 1,840 = 15.1%.
- Top-up Tax: 0.

Do you agree?



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