

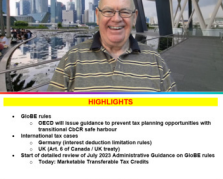
Want to learn more about ITB? Sign up for a free trial by emailing us

Free Trial

Check out our suite of subscription plans: individual (standard), student, university faculty, young professional, and enterprise

Subscribe

4 August 2023



HIGHLIGHTS

- GloBE rules
o OECD will issue guidance to prevent tax planning opportunities with transitional CoCR safe harbour
- International tax cases
o Germany (interest deduction limitation rules)
o UK (Art. 6 of Canada / UK treaty)
- Start of detailed review of July 2023 Administrative Guidance on GloBE rules
o Today: Marketable Transferable Tax Credits

HAPPY FRIDAY!

Rocket Force is shaken up; Uber delivers a profit; and Fitch bets against America!

Meanwhile, in the tax world...

Korea goes mining; Colombia creates a platform; New Zealand turns a loss into cash; Germany's syndication is not restricted; the Court of Appeal places Article 6 on solid ground; Argentina advances; and no-one is happy with Pillars One & Two, other than the OECD!

But at the end of the week, the most important question is this: "Has Janet Yellen really put America last?"

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. Other global developments
3. July 2023 Administrative Guidance on GloBE rules: Tax credits (part 1)
4. Asia Pacific
o China, Korea, New Zealand
5. Europe
o Germany, Ireland, UK
6. Africa
o South Africa
7. Americas
o Argentina
8. Treaty news

ITB series on Pillar One

- Consultation document on Amount B in Pillar One (ITB, 28 July 2023)
- 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:
o Tax certainty (ITB, 16 June 2022)
o Regulated Financial Services exclusion from scope (ITB, 13 May 2022)
o Extractives exclusion from scope (ITB, 22 April 2022)
o Scope (ITB, 9 April 2022)
o Tax base determinations (ITB, 25 February 2022)
o 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:
o GloBE Information Return (ITB, 28 July 2023)
o Tax Certainty for the GloBE rules (ITB, 13 January 2023)
o GloBE Information Return (ITB, 13 January 2023)
o Guidance on Safe Harbours and Penalty Relief (ITB, 8 January 2023)
- GloBE model rules:
o July 2023 Administrative Guidance on GloBE rules: Tax credits (part 1) (ITB, 4 August 2023)
o July 2023 Administrative Guidance on GloBE rules: overview (ITB, 28 July 2023)
o Administrative Guidance on GloBE rules: Transition (Parts 1 to 3) (ITB, 16 & 23 June; 14 July 2023)
o 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)
o Administrative Guidance on GloBE rules: Scope (Parts 1 to 3) (ITB, 16, 17 & 24 March 2023)
o Administrative Guidance on GloBE rules: Allocation of taxes arising under Blended CPC Tax Regimes (ITB, 3 March 2023)
o Administrative Guidance on GloBE rules: QDMTTs (Parts 1 & 2) (ITB, 16 & 24 February 2023)
o Art. 7.4 on ETR computation for Investment Entities (ITB, 2 December 2022)
o Corporate Restructurings and Holding Structures (Parts 1 to 7) (ITB, 23 & 28 September; 7, 14 & 21 October; 11 & 18 November 2022)
o Scope (Parts 1 & 2) (ITB, 24 June; 1 July 2022)
o Changing Provisions (Parts 1 to 5) (ITB, 6, 13 & 20 May; 10 & 17 June 2022)
o Computation of Effective Tax Rate and Top-up Tax (Parts 1 to 6) (ITB, 16 & 23 March; 1, 8, 22 & 29 April 2022)
o Flow-through Entities and Hybrid Entities (ITB, 4 March 2022)
o Computation of Adjusted Covered Taxes (Parts 1 to 9) (ITB, 11, 16 & 25 February; 29 July; 5, 12, 19 & 26 August; 16 September 2022)
o Computation of GloBE Income or Loss (Parts 1 to 4) (ITB, 7, 14, 21 & 28 January 2022)
- Subject to Tax Rule (STTR):
o Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Maarten de Wilde and Ying Than "Pillar Two and the Transitional Rule for Intragroup Asset Transfers" Bulletin for International Taxation, IBFD, 2023 (vol. 77), No. 8 (subscription service).

Mindy Herzfeld "Chips, China, Taiwan, and Tax Preferences" Tax Notes Today International, Tax Analysts, 31 July 2023 (subscription service).

Ryan Finley "Scoping-Criteria Dispute Overshadows Amount B Progress" Tax Notes Today International, Tax Analysts, 31 July 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

From the archive (May 2022) ...

An MNE Group consists of a UPE (located in U), XCo 1 (located in X), XCo 2 (located in X), YCo (located in Y), ZCo (located in Z), and UCo (located in U).

The Ownership Interests are directly owned as follows:

- XCo 1: 100% owned by UPE
- XCo 2: 60% owned by XCo 1, 10% owned by UPE, and 30% owned by third parties
- YCo: 60% owned by XCo 2, 30% owned by UPE, and 10% owned by third parties
- ZCo: 100% owned by YCo
- UCo: 100% owned by YCo

All shares in all companies are common shares, which carry an equal right to profit distributions and capital.

None of the Constituent Entities is an Investment Entity or a Flow-through Entity.

All of the jurisdictions have implemented the GloBE rules.

For the current Fiscal Year:

- ZCo has Top-up Tax of 1,000, and GloBE Income of 25,000
- UCo has Top-up Tax of 2,000, and GloBE Income of 10,000

Based on these facts, what are the amounts of IR tax imposed on UPE, XCo 1, XCo 2 and YCo for the current Fiscal Year?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

ACo (a company located in jurisdiction A) and BCo (a company located in jurisdiction B) are both Constituent Entities in an MNE Group which will be "within scope" of the GloBE rules, when the rules commence (on 1 January 2024). ACo and BCo are the only Constituent Entities located in their respective jurisdictions. Jurisdiction U (in which the UPE is located) has enacted the IR, but it does not have any CFC rules.

Jurisdiction A has no corporate income tax. Jurisdiction B has a corporate income tax with a 20% tax rate. Neither jurisdiction A nor jurisdiction B has a QDMTT.

For many years, ACo has been the owner of IP, which it licenses to group companies in return for arm's length royalties (totalling EUR 40m annually). No foreign withholding tax is imposed on the royalties. ACo's accounting carrying value in the IP is zero. ACo has a zero tax basis in the IP, and there are no deferred taxes relating to the IP.

The MNE Group is concerned about the IR Top-up Tax which will be triggered in respect of jurisdiction A, when the GloBE rules commence.

The MNE Group has suggested this "solution": Before the GloBE rules commence, ACo will sell the IP (together with the licenses) to BCo for fair market value (which is EUR 400m). This will mean that, when the GloBE rules commence, BCo will derive the EUR 40m of annual royalties, not ACo.

The MNE Group has estimated that, in the first year of operation of the GloBE rules (2024), BCo's GloBE position (before considering the impact of its purchase of the IP) would be this:

- 1. GloBE Income: EUR 200m
2. Adjusted Covered Taxes: EUR 40m
3. Substance-based Income Exclusion: EUR 20m

Under the applicable accounting standard, BCo will have an accounting carrying value in the IP of zero.

For jurisdiction B corporate income tax purposes, BCo's tax basis in the IP will be EUR 400m. For tax purposes, BCo will amortise the IP at a rate of 20% per annum, straight line.

Based on this information, will the MNE Group's Top-up Tax in 2024 be lower if the above-mentioned "solution" is implemented, or if the status quo (i.e., ACo retains the IP) is maintained?

Please (1) assume that the sale transaction would be undertaken on 31 December 2023; and (2) ignore any possible safe harbour or de minimis exclusion.

LAST WEEK'S ANSWER

1. E status quo (i.e., ACo retains IP) is maintained

a. ACo:
GloBE Income: EUR 40m.
Adjusted Covered Taxes (ACT): zero.
ETR: 0%.
Top-up Tax (assuming ACo has zero SBIE): EUR 40m x 15% = EUR 6m.

b. BCo:
GloBE Income: EUR 200m.
ACT: EUR 40m.
ETR: 40m / 200m = 20%.
Top-up Tax = zero.
Thus, total Top-up Tax = EUR 6m.

2. E "solution" is implemented
a. ACo:
The question does not indicate what ACo does with the EUR 400m sale price. If ACo is immediately liquidated or immediately pays a dividend of the full EUR 400m, ACo should have no GloBE Income, and thus no Top-up Tax, in 2024.

However, if ACo invests the EUR 400m (e.g., intra-group loan), the income on the investment would generally produce GloBE income and thus Top-up Tax. For example, if ACo lends the EUR 400m intra-group at 8% p.a. interest, its GloBE Income for 2024 should be EUR 32m, and its Top-up Tax should be EUR 4.8m. But, against this, we would need to consider whether the group borrower would obtain a tax deduction for the interest expense and, if so, the tax effect of that deduction.

b. BCo:
GloBE Income (see Note 1): EUR 200m + EUR 40m = EUR 240m.
ACT (see Note 2): EUR 38m.
SBIE: EUR 20m.
ETR: EUR 28m / EUR 240m = 11.7%.
Excess Profits: EUR 240m - EUR 20m = EUR 220m.
Top-up Tax: EUR 220m x 3.3% = EUR 7.26m.

Note 1: Under Art. 9.1.3, BCo's GloBE carrying value in the IP would be equal to ACo's accounting carrying value - i.e., zero. Thus, no IP amortisation would be deducted in computing GloBE income. See para. 10.1 of Comm to Art. 9.1.3 (added by Feb23 AG, section 4.3.3).

Note 2:
1. Tax depreciation on IP for 2024: EUR 400m x 20% = EUR 100m.
2. 2024 taxable income: EUR 240m - EUR 100m = EUR 140m.
3. ACT: EUR 140m x 20% = EUR 28m.

To determine the final tax cost with the "solution", we would need to determine what ACo does with the EUR 400m sales price.

If ACo is immediately liquidated or if it immediately pays a dividend of the full EUR 400m, ACo should have no Top-up Tax in 2024 - and thus, the conclusion would be that the status quo would produce a lower Top-up Tax liability for the MNE Group than the "solution".

However, if the analysis becomes more complicated if ACo invests the EUR 400m - particularly if it lends the cash intra-group, because then we would need to take into account both ACo's Top-up Tax and the tax effect on the borrower.

Do you agree?



If you have a friend or colleague who you think might find this email alert interesting, please forward it to them.

Watch ITB video podcasts anytime, anywhere with our App!

