

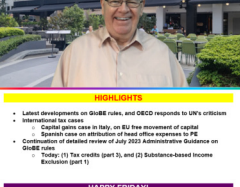
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18 August 2023



HIGHLIGHTS

- Latest developments on GloBE rules, and OECD responds to UN's criticism
- International tax cases
 - Capital gains case in Italy, on EU free movement of capital
 - Spanish case on attribution of head office expenses to PE
- Continuation of detailed review of July 2023 Administrative Guidance on GloBE rules
 - Today: (1) Tax credits (part 3), and (2) Substance-based Income Exclusion (part 1)

HAPPY FRIDAY!

Franzi uses RICO; the rouble collapses; and the BRICS plan a party in Johannesburg (without Putin!)

Meanwhile, in the tax world...

ATAP incentivises on GloBE; Australia jumps on the CBAM bandwagon; Poland wants to recount the votes; Spain is selective before it apportions; and the OECD returns served

But at the end of the week, the most important question is this: "Who will win the women's World Cup? Spain or England?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. GloBE rules
2. OECD vs. UN
3. July 2023 Administrative Guidance on GloBE rules: Tax credits (part 3)
4. July 2023 Administrative Guidance on GloBE rules: Substance-based Income Exclusion (part 1)
5. Asia Pacific
 - Australia, Singapore
6. Europe
 - EU, Italy, Spain
7. 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:
 - 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:
 - GloBE Information Return (ITB, 28 July 2023)
 - 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:
 - July 2023 Administrative Guidance on GloBE rules: Substance-based Income Exclusion (Part 1) (ITB, 18 August 2023)
 - July 2023 Administrative Guidance on GloBE rules: Tax credits (Parts 1 to 3) (ITB, 4, 11 & 18 August 2023)
 - July 2023 Administrative Guidance on GloBE rules: overview (ITB, 28 July 2023)
 - Administrative Guidance on GloBE rules: Transition (Parts 1 to 3) (ITB, 16 & 23 June; 14 July 2023)
 - 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: 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 & 23 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)
- Subject to Tax Rule (STTR):
 - Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

René Mattetti
"Sharing and shifting of corporate losses – The new profit shifting?"
Cahiers de droit fiscal international, International Fiscal Association, Volume 107A, General report for 2023 Cancun Congress (available to IFA members).

Sjerd Douma and Craig Elliff
"Good faith in domestic and international tax law"
Cahiers de droit fiscal international, International Fiscal Association, Volume 107B, General report for 2023 Cancun Congress (available to IFA members).

Mindy Herzfeld
"Course-Correcting the U.S.-OECD Relationship"
Tax Notes Today International, Tax Analysts, 14 August 2023 (subscription service).

Daniele Frescurato and Federico Bortolameazzi
"EASTER: The Proposal to Streamline Withholding Tax Procedures"
Tax Notes Today International, Tax Analysts, 16 August 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a company located in jurisdiction X, is a Constituent Entity in the A MNE Group, which is "within scope" of the GloBE rules.

ACo incurs R&D expenditure in jurisdiction X, which entitles ACo to a EUR 100 tax credit.

The tax credit entitles the holder to a credit of EUR 100 against its corporate income tax liabilities for the current tax year (year 1) or for either of the 2 subsequent tax years. The credit can be claimed in whole in one of those years, or in part in one or more years (provided the aggregate does not exceed EUR 100).

The tax credit:

- Is not refundable
- However, it can be transferred up to 2 times, at any time during the 3 years, to a related or unrelated party
- In the situation where the tax credit is transferred, the jurisdiction X tax law has no requirements in regard to the price (if any) for the transfer

There is an established market in jurisdiction X for the transfer of tax credits.

ACo does not have sufficient tax capacity in year 1 to use any of the tax credit. ACo transfers the tax credit in year 2 to BCo, for a price of EUR 90.

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

ACo and BCo are unrelated.

BCo uses EUR 70 of the tax credit in year 2, and the remaining EUR 30 of the tax credit in year 3, in both cases against BCo's jurisdiction X corporate income tax liability.

Based on these facts, what is the GloBE treatment of ACo and BCo?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

ACo, a company located in jurisdiction X, is a Constituent Entity in the A MNE Group, which is "within scope" of the GloBE rules.

ACo makes energy-saving investments in jurisdiction X, which entitles ACo to a EUR 100 tax credit.

The tax credit entitles the holder to a credit of EUR 100 against its corporate income tax liabilities for the current tax year (year 1) and for any of the 3 subsequent tax years. The credit can be claimed in whole or in part in any of those 4 years (provided the aggregate does not exceed EUR 100).

The tax credit is not refundable. However, it is transferable (once only) to a related or unrelated party. If it is transferred, jurisdiction X law has no requirements regarding the price (if any) for the transfer.

As ACo does not have sufficient tax capacity in year 1 to use the tax credit, ACo transfers it in year 1 to BCo, for a price of EUR 90.

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

ACo and BCo are not related.

BCo uses EUR 60 of the tax credit in year 2, and the remaining EUR 40 of the tax credit in year 3, against its jurisdiction X corporate income tax liabilities.

The jurisdiction X tax year and the Fiscal Year (for GloBE purposes) for ACo and BCo (respectively), is the calendar year.

Based on this information, what is the GloBE treatment of ACo and BCo in respect of the tax credit?

LAST WEEK'S ANSWER

The following analysis is based on July 2023 AG, chapter 2...

1. ACo:

ACo is the Originator of the tax credit (amended para. 111 of Comm to Art. 3.2.4).

The tax credit is not a QRTC or NQRTC, because it is not refundable.

The tax credit is an MTTC in ACo's hands, because:

- (i) Legal transferability standard is satisfied - ACo transfers the tax credit to an unrelated party (BCo) in year 1.
- (ii) Marketability standard is satisfied - transfer price (EUR 90) exceeds 80% of the net present value (NPV) of the tax credit (EUR 100).

(See para. 112.1 in Comm to Art. 3.2.4).

Thus, ACo's GloBE treatment:

- a. Transfer price (EUR 90) included in ACo's GloBE income in year 1.
- b. The tax credit is not taken into account in computing ACo's Adjusted Covered Taxes.

(See para. 112.5 in Comm to Art. 3.2.4; and amended para. 5 of Comm to Art. 4.1.2)(i.)

2. BCo:

BCo is a purchaser of the tax credit.

The tax credit is not an MTTC in BCo's hands, because:

- i. Legal transferability standard is not satisfied - as the tax credit can be transferred only once, BCo cannot transfer the tax credit.
- ii. Marketability standard is satisfied - BCo's purchase price (EUR 90) exceeds 80% of the NPV of the tax credit (EUR 100).

(See para. 112.1 in Comm to Art. 3.2.4).

The tax credit is a Non-MTTC in BCo's hands, because:

- i. The tax credit is not an MTTC.
- ii. BCo is a purchaser.

(See para. 14.2 of Comm to Art. 4.1.3(c)).

Thus, BCo's GloBE treatment:

- a. The tax credit is not taken into account in computing BCo's GloBE income
- b. BCo's Covered Taxes in year 2 are reduced by (EUR 100 - EUR 90) x 60% = EUR 6
- c. BCo's Covered Taxes in year 3 are reduced by (EUR 100 - EUR 90) X 40% = EUR 4

(See amended para. 113 of Comm to Art. 3.2.4; and para. 14.3(b) of Comm to Art. 4.1.3(c)).

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