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25 August 2023



HIGHLIGHTS

- Indonesia has second thoughts on GloBE rules
- Russia's suspension of provisions in double tax treaties with 38 "unfriendly States"
 - Japan and UK react
 - Russia relies on Vienna Convention on the Law of Treaties
- Continuation of detailed review of July 2023 Administrative Guidance on GloBE rules
 - Today: Substance-based Income Exclusion (part 2)

HAPPY FRIDAY!

India is over the moon – but onions bring tears to Modi's eyes, Putin nails his nemesis – or did he?, and Rubiales kisses his future goodbye!

Meanwhile, in the tax world...

Indonesia has second thoughts; Russia relies on Vienna; Spain goes for the margin, not the median; BVI is unconcerned; Ukraine acts like it's already in the EU; and Australia wants to cap petroleum

But at the end of the week, the most important question is this: "With 6 new members in BRICS, what will be the new acronym?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

- GloBE rules
- Russia's suspension of specific articles in treaties with 38 "unfriendly States"
- July 2023 Administrative Guidance on GloBE rules: Substance-based Income Exclusion (part 2)
- Asia Pacific
 - Australia, India
- Europe
 - Spain, Ukraine
- Middle East & Central Asia
 - Israel
- Americas
 - US
- 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, 6 January 2023)
- Consultation document on Amount B in Pillar One (ITB, 16 December 2022)
- Progress Report on Amount A in Pillar One (ITB, 23 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)
 - Hexus 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, 6 January 2023)
- GloBE model rules:
 - July 2023 Administrative Guidance on GloBE rules: Substance-based Income Exclusion (Parts 1 & 2) (ITB, 18 & 25 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, 16, 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: GDMTs (Parts 1 & 2) (ITB, 16 & 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)
 - Changing 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, 16 & 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, 16 & 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)
- Subject to Tax Rule (STTR):
 - Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Jingdan Chen and Wilson Chow
"Global Minimum Tax Reform and the Future of Tax Competition"
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 8 (subscription service).

Robert Goulder
"DST Rollback: Who Controls the Conference of the Parties?"
Tax Notes Today International, Tax Analysts, 22 August 2023 (subscription service).

Monique van Herten, Olive Jie-A-Join, Jolanda Schenk, and Marc Levey
"Transfer Pricing and Environmental Taxation: Carbon Credits"
Tax Management International Journal, Bloomberg, 13 July 2023 (subscription service).

Angelika Kygga
"Group Taxation Regimes Across the European Union: A Domestic Tax Regime Beyond Borders?"
European Taxation, IBFD, 2023 (vol. 63), No. 9 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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

ACo incurs "green energy" expenditure in jurisdiction Y, 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 (which I will call year 1) or for any of the 4 subsequent tax years. The credit can be claimed in whole in one of those years, or in part in one or more years (providing 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 5 years, to a related or unrelated party
- In the situation where the tax credit is transferred, the jurisdiction Y tax law requires that the transfer price be at least 85% of the face value of the tax credit.

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

As ACo does not have sufficient tax capacity to use the tax credit, it transfers the tax credit in year 2 to BCo, for a price of EUR 88.

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

ACo and BCo are unrelated.

BCo acquired the tax credit for the purpose of deriving a profit on its sale.

In year 2, BCo transfers the tax credit to CCo, for a price of EUR 92.

CCo, a company located in jurisdiction Y, is a Constituent Entity in the C MNE Group, which is "within scope" of the GloBE rules.

ACo, BCo and CCo are unrelated.

CCo uses EUR 40 of the tax credit in year 2, and EUR 60 of the tax credit in year 3, in both cases against its jurisdiction Y corporate income tax liability.

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

Answer in next ITB email alert on 8 September!

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 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 (providing 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?

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 MTTG in ACo's hands, because:

- Legal transferability standard is satisfied – tax credit can be transferred to an unrelated party during year 1 or within 15 months of the end of year 1.
- Marketability standard is satisfied – transfer price (EUR 90) for transfer to BCo 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:

- Transfer price (EUR 90) included in ACo's GloBE income in year 1 (in lieu of EUR 100).
- 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 an MTTG in BCo's hands, because:

- Legal transferability standard is satisfied – tax credit can be transferred to an unrelated party in year 2.
- 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).

Thus, BCo's GloBE treatment:

- Inclusion in BCo's GloBE income in year 2: (EUR 100 – EUR 90) x 70% = EUR 7.
- Inclusion in BCo's GloBE income in year 3: (EUR 100 – EUR 90) x 30% = EUR 3.
- The tax credit is not taken into account in computing BCo's Adjusted Covered Taxes.

(See para. 112.6 in Comm to Art. 3.2.4; and amended para. 5 of Comm to Art. 4.1.2(i)).

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