ITB International Tax Bytes *by Steve Towers*

"International tax news, explained"

8 September 2023

HIGHLIGHTS

- **Latest developments on Pillars One & Two**
  - **US House Ways and Means Committee Republicans meet with OECD to complain about Pillars One & Two**
  - **Ireland increases tax rate for Knowledge Development Box in response to STTR**
- **International tax cases**
  - **Royalty withholding tax case from Korea**
  - **Transfer pricing case from Denmark**
  - **Treaty exemption case from Nigeria**
- **Germany issues revised draft bill for Growth Opportunities Act**

HAPPY FRIDAY!

Pipigate brings light relief in **Belgium**; **Burning Man** has a mud bath; and **China** has nothing left to build, but it does need to plug a hole in the **Great Wall!**

Meanwhile, in the tax world ...

Mr Smith goes to Paris; **Maersk** suffers an aggregate loss; **Delmas's** ancillary income is not close enough; **Argentina** prices a deal with "massive consumption companies"; and **Korea** patently wins a withholding tax case!

But this week's scariest comment was made by the UN Secretary-General: **"The dog days of summer are not just barking, they are biting."**

Have a great weekend!
Steve

THIS WEEK'S PODCAST

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

1. ITB's 5th birthday
2. Pillars One & Two
3. Asia Pacific
   - China, India, Korea, Japan, Malaysia, New Zealand
4. Europe
   - Denmark, Germany
5. Africa
   - Kenya, Nigeria
6. Americas
   - Argentina, Brazil, US, Venezuela
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, 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:**
  - **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, 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 & 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

Peter Barnes
"Turning Point: A Century of International Tax Policy Flies toward a Sharp Curve"
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 9 (subscription service).

Axel Cordewener
"We Need to Know When Previous Case-Law Has Been 'Overruled'! – A Plea for More Legal Certainty in EU Tax Law"
EC Tax Review, Kluwer, 2023/4 (subscription service).

Guillermo O. Teijeiro and Juan Manuel Vázquez
"The Application of the Principal Purpose Test and Domestic General Anti-Avoidance Rules and Specific Anti-Avoidance Rules in Latin America: In Search of Legal Certainty"
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 9 (subscription service).

Ryan Finley
"Pillar 2 and IP Boxes: A New Chance to Scrap a Flawed Policy"
Tax Notes Today International, Tax Analysts, 6 September 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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

LCo carries on a leasing business.

In the 2030 fiscal year, LCo owns 3 items of plant and equipment which have been leased to other companies:

1. Lease of asset under operating lease to XCo, an unrelated company located in jurisdiction A.
   a. LCo's carrying value of asset: (i) start of year: 1,200; (ii) end of year: 1,100.
   b. XCo's right-of-use asset recognised in its financial accounts: (i) start of year: 250; (ii) end of year: 150.
2. Lease of asset under operating lease to YCo, an unrelated company located in jurisdiction B.
   a. LCo's carrying value of asset: (i) start of year: 1,500; (ii) end of year: 1,350.
   b. YCo's right-of-use asset recognised in its financial accounts: (i) start of year: 400; (ii) end of year: 300.
3. Lease of asset under operating lease to ZCo, which is a Constituent Entity in LCo's MNE Group and which is located in jurisdiction A:
   a. LCo's carrying value of asset: (i) start of year: 2,000; (ii) end of year: 1,800.
   b. ZCo's right-of-use asset recognised in its financial accounts: (i) start of year: 300; (ii) end of year: 200.

Please assume that each asset is located in the jurisdiction in which the relevant lessee is located.

Based on this information, what is LCo's tangible asset carve-out in the 2030 fiscal year?

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 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:

a. is not refundable
b. However, it can be transferred up to 2 times, at any time during the 5 years, to a related or unrelated party
c. 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.

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?

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 – tax credit can be transferred to an unrelated party during year 1 or within 15 months of the end of year 1.
ii. Marketability standard is satisfied – transfer price (EUR 88) 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:

a. Transfer price (EUR 88) included in ACo's GloBE Income in year 1 (in lieu of EUR 100).
b. 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(d)).

2. BCo

BCo is a purchaser of the tax credit.

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

i. Legal transferability standard is satisfied – tax credit can be transferred to an unrelated party in year 2.
ii. Marketability standard is satisfied – BCo's purchase price (EUR 88) 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:

a. Inclusion in BCo's GloBE Income in year 2: (EUR 92 – EUR 88) = EUR 4.
b. 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(d)).

3. CCo

CCo is also a purchaser of the tax credit.

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

i. Legal transferability standard is not satisfied – as the tax credit can be transferred only 2 times, CCo cannot transfer the tax credit.
ii. Marketability standard is satisfied – CCo's purchase price (EUR 92) 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 CCo's hands, because:

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

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

Thus, CCo's GloBE treatment:

a. The tax credit is not taken into account in computing CCo's GloBE Income
b. CCo's Covered Taxes in year 2 are reduced by (EUR 100 – EUR 92) x 40% = EUR 3.2
c. CCo's Covered Taxes in year 3 are reduced by (EUR 100 – EUR 92) x 60% = EUR 4.8

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

Do you agree?