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15 September 2023



**HIGHLIGHTS**

- **Statements on Pillars One & Two at G20 leaders meeting in New Delhi**
- **European Commission releases proposed Directives on BEFIT and transfer pricing**
- **Continuation of detailed review of July 2023 Administrative Guidance on GloBE rules**
  - Today: **QDMTTs (part 1)**

**HAPPY FRIDAY!**

Kim catches a train; iPhone 15 is launched; and Elon Musk has no friends in Taiwan!

Meanwhile, in the tax world ...

The **EU is HOT**, and so the **Commission** wants to **BEFIT**; **Sweden** opts for plastic; driving in **France** will take its toll; **Lithuania** defers for 6 years; **TBL** recognises an upfront loss; and the **OECD** writes **EU law!**

But at the end of the week, the most important question is this: "After Covid and WPH, has Friday lost its magic?"

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. EU: Proposed BEFIT & TP Directives
3. July 2023 Administrative Guidance on GloBE rules: QDMTTs (part 1)
4. Asia Pacific
  - China, Malaysia, Singapore
5. Europe
  - EU, France, Sweden
6. Africa
  - South Africa
7. Middle East & Central Asia
  - Lebanon, UAE
8. Americas
  - Brazil, US
9. 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: QDMTTs (Part 1) (ITB, 15 September 2023)**
  - **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 CPC 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**

Werner Haselohner  
"The Costs of Pillar 2: Legitimacy, Legality, and Lock-in"  
Intertax, Kluwer, Vol. 51 (2023), Issue 10 (subscription service).

Mindy Herzfeld  
"Moore and the History of the Realization Requirement"  
Tax Notes Today International, Tax Analysts, 11 September 2023 (subscription service).

Andrea Laura Ricciardi Sacchi  
"Is Latin American and Caribbean Tax Policy in the Hands of the European Union? A Three-Country Case Study: The Source Principle under Attack"  
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 9 (subscription service).

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

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

ACo carries on a securities trading business from an office building which it owns in jurisdiction X.

ACo also leases some assets to other companies:

1. ACo leases (under an operating lease) 30% of the floor space of the building to BCo, a company located in jurisdiction X. BCo is not related to ACo and is not a member of any MNE Group.  
  
In the 2031 fiscal year:
  - a. ACo's carrying value of the building: (i) start of year: 3,000; (ii) end of year: 2,800.
  - b. BCo's right-of-use asset recognised in its financial accounts: (i) start of year: 150; (ii) end of year: 75.
2. ACo also leases (under an operating lease) some office equipment to CCo, which is also a company located in jurisdiction X. The office equipment is located in jurisdiction X. CCo is not related to ACo and is not a member of any MNE Group.  
  
In the 2031 fiscal year:
  - a. ACo's carrying value of office equipment: (i) start of year: 100; (ii) end of year: 80.
  - b. CCo does not recognise a right-of-use asset for the office equipment in its financial accounts.
3. ACo leases (under an operating lease) a motor vehicle to the jurisdiction X branch of DCo, a company located in jurisdiction Y. The vehicle is located in jurisdiction X. DCo is not related to ACo, but it is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules.  
  
In the 2031 fiscal year:
  - a. ACo's carrying value of vehicle: (i) start of year: 200; (ii) end of year: 180.
  - b. DCo's right-of-use asset recognised in its financial accounts: (i) start of year: 40; (ii) end of year: 20.

Based on this information, what is ACo's tangible asset carve-out in the 2031 fiscal year?

Answer in next ITB email alert!

**LAST WEEK'S QUESTION**

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 it has 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?

**LAST WEEK'S ANSWER**

See July 2023 AG, chapter 3...

1. Lease to XCo

- a. LCo's average carrying value: 1,150.
- b. XCo's average amount of right-of-use asset: 200.

LCo's Eligible Tangible Asset = 1,150 – 200 = 950.

(See para. 43.1.5 of Comm to Art. 5.3.4).

2. Lease to YCo

As the asset is not located in jurisdiction A, LCo's Eligible Tangible Asset = 0.

(See para. 43.1.5 of Comm to Art. 5.3.4).

Note: I have assumed that the presence of the asset in jurisdiction B does not cause LCo to have a PE in jurisdiction B – see the definition of "Permanent Establishment" in Art. 10.1.1.

3. Lease to ZCo

LCo's average carrying value: 1,900.

LCo's Eligible Tangible Asset = 1,900.

(See para. 43.1.6 of Comm to Art. 5.3.4: "The carrying value of Eligible Tangible Assets is determined after taking into account elimination entries for intercompany leases. ... Consequently, the lessee in an intercompany operating lease will not have a right-of-use asset and the lessor's carrying values for purposes of preparing the Consolidated Financial Statements are used to compute its carveout.")

4. Total

LCo's aggregate Eligible Tangible Assets = 950 + 1,900 = 2,850.

Art. 5.3.4 rate in 2030: 6.2% (see Art. 9.2.2).

LCo's tangible asset carveout = 6.2% x 2,850 = 176.7.

Do you agree?



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