

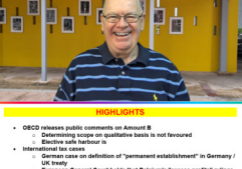
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22 September 2023



HIGHLIGHTS

- **OECD releases public comments on Amount B**
 - Determining scope on qualitative basis is not favoured
 - Elective safe harbour is
- **International tax cases**
 - German case on definition of "permanent establishment" in Germany / UK treaty
 - European General Court holds that Belgium's "excess profits" rulings are illegal State aid
- **Continuation of detailed review of July 2023 Administrative Guidance on GloBE rules**
 - Today: QDMTTs (part 2)

HAPPY FRIDAY!

Justin points the finger; Charles orders mushrooms (but bans foie gras); and Rupert leaves the building!

Meanwhile, in the tax world ...

Everyone wants a **safe harbour** (except tax authorities); **Australia** was not bluffing on penalties; **China** provides an extra 5%; **Hong Kong's** outsourcing is a success; **Belgium** loses second time around; **lockers** are critical in **Germany**; and the **US Senate** has a turf war over **Taiwan!**

But at the end of the week, the most important question is this: **"Should GloBE be replaced by GLOBE?"**

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. July 2023 Administrative Guidance on GloBE rules: QDMTTs (part 2)
3. Asia Pacific
 - Australia, China, Hong Kong
4. Europe
 - EOC, Germany, Ireland, Netherlands
5. Middle East & Central Asia
 - Saudi Arabia
6. Americas
 - US
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: QDMTTs (Parts 1 & 2) (ITB, 15 & 22 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, 18 & 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.A 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, 8, 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

Lucas de Lima Carvalho and Anita do Vale Palmeira de Aquino
"AI and the Future of In-House Tax Professionals"
Tax Notes Today International, Tax Analysts, 7 September 2023 (subscription service).

Gary D. Sprague, Erik Christenson, and Steven Smith
"Cloud Transactions: A Survey of Six Countries in Southeast Asia"
Tax Management International Journal, Bloomberg Law, 14 September 2023 (subscription service).

Jérôme Monsenogo
"Targeted Measures Against Intra-Group Debt Financing: What Needs and Design Options in Light of the ATAD, Transfer Pricing Rules, and Pillar 2?"
Interfax, Kluwer, 2023 (Vol. 51), Issue 10 (subscription service).

Mindy Herzfeld
"Moore, Part 2: How to Tax Foreign Earnings"
Tax Notes Today International, Tax Analysts, 11 September 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a general partnership formed under jurisdiction A law, has 2 partners: UCo (75% interest) and Third Party (25% interest). UCo, a company located in jurisdiction U, is the UPE of an MNE Group which is "within scope" of the GloBE rules. Third Party is also located in jurisdiction U.

XCo is treated as tax transparent in jurisdictions A, B and U.

UCo owns 100% of the shares in ACo, a company located in jurisdiction A.

XCo owns 100% of the shares in several companies located in jurisdiction B.

Jurisdictions U and A have each implemented the GloBE rules, including a QDMTT. Jurisdiction B has not implemented a QDMTT.

In the relevant fiscal year, the MNE Group has an amount of Top-up Tax in jurisdiction B.

Question 1: (a) Will IR apply in respect of the jurisdiction B Top-up Tax?; (b) if so, on which entity or entities will the IR tax be imposed?

Question 2: (a) in determining whether the MNE Group has a QDMTT liability in jurisdiction A, will the ETR and Top-up Tax be calculated on a jurisdictional basis or not?; (b) if there is a QDMTT liability in jurisdiction A, on which entity or entities will the tax be imposed?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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. Lease to BCo

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 2021 fiscal year:

- a. ACo's carrying value of the building: (i) start of year: 3,000; (ii) end of year: 2,900.
- b. BCo's right-of-use asset recognised in its financial accounts: (i) start of year: 100; (ii) end of year: 75.

2. Lease to CCo

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 2021 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. Lease to DCo

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 2021 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 2021 fiscal year?

LAST WEEK'S ANSWER

See July 2023 AG, chapter 3 ...

1. Lease to BCo

- a. ACo's average carrying value: 2,950.
- b. Allocation of carrying value, using percentage of floor space as the allocation key, between leased part and residual part: (i) leased part: 30% x 2,950 = 885; (ii) residual part: 70% x 2,950 = 2,065.
- c. BCo's average amount of right-of-use asset: 112.5.

ACo's Eligible Tangible Asset = 2,065 + (885 - 112.5) = 2,837.5.

(See para. 43.1.7 of Comm to Art. 5.3.4).

2. Lease to CCo

- a. ACo's average carrying value: 90.
- b. CCo's right-of-use asset = 0.

ACo's Eligible Tangible Asset = 90.

(See para. 43.1.1 of Comm to Art. 5.3.4).

3. Lease to DCo

- a. ACo's average carrying value: 180.
- b. DCo's average amount of right-of-use asset: 30.

ACo's Eligible Tangible Asset = 180 - 30 = 150.

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

4. Total

ACo's aggregate Eligible Tangible Assets = 2,837.5 + 90 + 150 = 3,077.5.

Art. 5.3.4 rate in 2021: 5.8% (see Art. 9.2.2).

ACo's tangible asset carveout = 5.8% x 3,077.5 = 153.875.

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