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6 October 2023



HIGHLIGHTS

- **STTR MLI is now open for signature**
 - I take a close look at the document
- **Latest developments with GloBE rules**
 - Several EU member States release draft bills
 - African Tax Administration Forum provides useful guidance on drafting of QDMTTs
- **Continuation of detailed review of July 2023 Administrative Guidance on GloBE rules**
 - Today: QDMTTs (part 4)

HAPPY FRIDAY!

Matt Gaetz his man; **Commander** goes a bite too far; and **VAR** miscommunicates!

Meanwhile, in the tax world ...

Argentina needs cash; the **US** triangulates; **GloBE** floodgates open in the **EU**; **ATAP** provides options; and **Hungary's** tax rate is annexed!

But at the end of the week, the most important question is this: "Should football scrap **VAR**?"

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. STTR MLI
3. July 2023 Administrative Guidance on GloBE rules: QDMTTs (part 4)
4. Europe
 - Poland
5. Americas
 - Argentina, Brazil, US
6. 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 to 4) (ITB, 15, 22 & 29 September; 6 October 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, 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)
 - STTR MLI (ITB, 6 October 2023)

WORTH READING

Tarcisio Diniz Magalhães and Francesco De Lillo
"The Return of Windfall Taxation"
Intertax, Kluwer, Vol. 51 (2023), Issue 11 (subscription service).

Mindy Herzfeld
"Moore, Part 4: The Moores' Mistakes, Misstatements, and Possible Misfiling"
Tax Notes Today International, Tax Analysts, 2 October 2023 (subscription service).

Andréa M. Leho
"Asset Management and Transfer Pricing"
International Transfer Pricing Journal, IBFD, 2023 (Vol. 30), No. 5 (subscription service).

Raul-Angelo Papotti and Carlomaria Setti della Volta
"Italian Supreme Court Directly Applies EU Law in Capital Gain Source Tax Case"
Tax Notes Today International, Tax Analysts, 2 October 2023 (subscription service).

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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

ACo operates a cargo air transport business between several jurisdictions in the region, including jurisdiction B.

ACo has a branch in jurisdiction B. The branch, which has 20 employees and operates from an office in an airport in jurisdiction B, enters into cargo air transport contracts with customers which want to export goods from jurisdiction B. In addition, the branch manages the logistics and customs arrangements in regard to such contracts (e.g., presenting the relevant documents to the jurisdiction B customs authorities, receiving the goods from the customers, etc.). The branch also invoices and collects payments from such customers. Finally, the branch manages the logistics and customs arrangements for goods which are imported into jurisdiction B.

The A/B double tax treaty is identical to the 2017 OECD model treaty.

Under the jurisdiction A corporate income tax law, foreign-sourced "active income" (i.e., income from the conduct of a business) is exempt.

ACo also owns 70% of the shares in BCo, a company located in jurisdiction B. BCo operates a cargo air transport business within jurisdiction B. The other 30% of the shares are owned by third party investors in jurisdiction B.

Jurisdiction B has implemented a QDMTT.

Is jurisdiction B permitted to impose its QDMTT on (i) BCo; and (ii) ACo's jurisdiction B branch?

Answer in next ITB email alert on 20 October 2023!

LAST WEEK'S QUESTION

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

ACo owns 100% of the shares in BCo, a company located in jurisdiction B. BCo is the only Constituent Entity located in jurisdiction B.

Both ACo and BCo use the calendar year as their fiscal year.

For the year ending 31 December 20X1, BCo derives a significant after-tax profit.

In March 20X2, BCo's board of directors accepts the audited 20X1 financial statements, and it resolves that a final dividend of 100 (from the 20X1 profit) be paid to ACo on 1 May 20X2.

That dividend of 100 is paid on 1 May 20X2. In accordance with the jurisdiction B law, BCo deducts withholding tax of 10 from the dividend, and pays the remainder of 90 to ACo. The jurisdiction B withholding tax is a final tax.

For jurisdiction A tax purposes, ACo is entitled to a 95% participation exemption, and a foreign tax credit for part of the withholding tax. After applying both of these reliefs, ACo is liable for 1 of jurisdiction A tax on the dividend.

Question 1: For the purpose of computing the jurisdiction B Top-up Tax under the GloBE rules, will any tax in respect of the dividend be taken into account: (a) for the 20X1 fiscal year; or (b) for the 20X2 fiscal year?

Question 2: For the purpose of computing the jurisdiction B Top-up Tax under jurisdiction B's QDMTT, will any tax in respect of the dividend be taken into account: (a) for the 20X1 fiscal year; or (b) for the 20X2 fiscal year?

LAST WEEK'S ANSWER

This question focuses on the application of Art. 4.3.2(e), for GloBE and QDMTT purposes...

Q1(a): No; Art. 4.3.2(e) allocates taxes on distributions during the Fiscal Year. As the dividend was paid in 20X2, the taxes on the dividend are not allocated for 20X1.

Q1(b): Yes, both the jurisdiction B withholding tax of 10 and the jurisdiction A tax of 1, will be allocated to BCo for 20X2.

Q2(a): No, for the same reason as given for Q1(a) above.

Q2(b): Yes, the jurisdiction B withholding tax of 10 will be allocated to BCo for 20X2. However, the jurisdiction A tax of 1 will not be allocated to BCo, for QDMTT purposes:

para. 118.30 of Comm on definition of "Qualified Domestic Minimum Top-up Tax" in Art. 10.1.1, as amended by July 2023 AG.

Do you agree?



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