

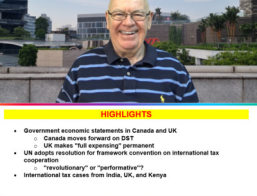
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1 December 2023



HIGHLIGHTS

- **Government economic statements in Canada and UK**
 - Canada moves forward on DST
 - UK makes "full expensing" permanent
- **UN adopts resolution for framework convention on international tax cooperation**
 - "revolutionary" or "performative"?
- **International tax cases from India, UK, and Kenya**

HAPPY FRIDAY!

Charlie and Henry bow out, Rishi refuses to talk, and COP28 creates a sandstorm in Dubai!

Meanwhile, in the tax world...

Vietnam defers subsidies; the Netherlands is cool on HOT; the UK goes permanent; Naivas controls, but not the decision; Canada calls the US's bluff; and everyone imposes windfall taxes on banks!

But at the end of the week, the most important question is this: "Has Rishi Sunak lost his Marbles?"

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 and Amount A
2. Other global developments
3. Asia Pacific
 - Australia, China, Hong Kong, India, Korea, Malaysia
4. Europe
 - Germany, Netherlands, Slovenia, UK, Ukraine
5. Africa
 - Cabo Verde, Kenya
6. Middle East & Central Asia
 - Bahrain, Pakistan
7. Americas
 - Argentina, Canada, US
8. 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: QDMTT Safe Harbour (Parts 1 & 2) (ITB, 10 & 17 November 2023)
 - July 2023 Administrative Guidance on GloBE rules: QDMTTs (Parts 1 to 4) (ITB, 15, 22 & 29 September; 6 & 27 October; 3 November 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):**
 - STTR (Parts 1 to 3) (ITB, 6 & 20 October; 3 November 2023)
 - Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Reuven S. Avi-Yonah
"Much Ado: Why the United States Should Calm Down About DSTs"
Tax Notes International, Tax Analysts, 13 November 2023.

S. Kulper, Y. Long, M.L. Schippers, and B. van den Burgard
"Are Royalties Dutable? A Tango between Transfer Pricing and Customs Valuation"
International Transfer Pricing Journal, IBFD, 2023 (Vol. 30), No. 6.

Oliver R. Hoer
"A Critical Analysis of the European Commission's BEFIT Proposal"
Tax Notes International, Tax Analysts, 27 November 2023.

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. It is the only Constituent Entity located in jurisdiction A.

The UPE (which is located in jurisdiction U) directly owns 90% of the shares in ACo. The other 10% of the shares are owned by the senior management of ACo.

Both jurisdiction A and jurisdiction U have implemented the GloBE rules. Also, jurisdiction A has introduced a Domestic Minimum Top-up Tax (DMTT), which is intended to be a QDMTT.

Jurisdiction A's DMTT is identical to the GloBE rules, except for: (i) the 2 "mandatory variations" described in chapter 5 of the July 2023 AG; and (ii) the DMTT "scales down" the amount of the tax, to reflect the MNE Group's percentage ownership (see below for example).

Under the GloBE rules, the jurisdiction A Jurisdictional Top-up Tax (before deducting "QDMTT payable") is EUR 10 million.

Under jurisdiction A's DMTT, ACo's prima facie top-up tax is EUR 10 million. However, that amount is then "scaled down" to EUR 9 million, to reflect the fact that the MNE Group's percentage ownership in ACo is 90%. Thus, the DMTT payable by ACo is EUR 9 million.

Q1: Should the jurisdiction A DMTT qualify as a QDMTT?

Q2: What amount of IIR tax will be imposed on the UPE, in respect of jurisdiction A?

LAST WEEK'S QUESTION

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

The UPE is a company located in jurisdiction U, which has implemented the GloBE rules. The UPE's "Ownership Interest" in XCo is 100%.

Jurisdiction X has also implemented the GloBE rules and a QDMTT.

For the purpose of computing GloBE Income under the QDMTT, jurisdiction X requires its local accounting standard to be used, instead of the accounting standard which applies for the consolidated group accounts. That local accounting standard is an "Acceptable Financial Accounting Standard" for the purposes of the GloBE rules. Jurisdiction X also requires that local accounting standard to be used for the purpose of computing its corporate income tax.

Apart from that difference in accounting standard and apart from the 2 "mandatory variations" described in chapter 5 of the July 2023 AG, jurisdiction X's QDMTT is identical to the GloBE rules.

For the purposes of the GloBE rules, the jurisdiction X Jurisdictional Top-up Tax (before deducting QDMTT payable) in a fiscal year is EUR 2 million.

The jurisdiction X QDMTT charge imposed on XCo for that fiscal year is EUR 1.4 million.

Q1: Based on this information, what amount of IIR tax is payable by UPE, in regard to jurisdiction X?

Q2: What would be your answer to Q1, if the UPE's "Ownership Interest" in XCo is 80%, but all other facts and figures are unchanged?

LAST WEEK'S ANSWER

Q1:

Unless a Safe Harbour applies, the IIR tax will be: 100% x (EUR 2.0m – EUR 1.4m) = EUR 0.6m (Art. 5.2.3).

However, if a Safe Harbour is available and is elected by the Filing Constituent Entity, the IIR tax will be deemed to be zero: Art. 6.2.1.

Based on the facts, it appears that the QDMTT Safe Harbour will be available:

1. QDMTT Accounting Standard is satisfied, because: (i) the QDMTT is computed based on the local financial accounting standard (which is an "Acceptable Financial Accounting Standard"); and (ii) that local financial accounting standard is required to be used for the purpose of computing the jurisdiction X corporate income tax (paras. 2 & 3 of "Standards for a QDMTT Safe Harbour", in chapter 5 of the July 2023 AG).
2. Consistency Standard is satisfied: para. 4 of "Standards ..." (see above).
3. Administration Standard: I will assume this is satisfied: para. 5 of "Standards ..." (see above).

Q2:

The question assumes this situation: UPE's "Ownership Interest" in XCo is 80%, but all other facts and figures are unchanged.

The fact that "all other facts and figures are unchanged" means that: (1) the X Jurisdictional Top-up Tax (before deducting QDMTT payable) is EUR 2m; and (2) the X QDMTT charge is EUR 1.4m.

Unless a Safe Harbour applies, the IIR tax will be: 80% x (EUR 2m – EUR 1.4m) = EUR 0.48m.

Is the QDMTT Safe Harbour available?
Based on the facts, jurisdiction X imposes the QDMTT on 100% of the Jurisdictional Top-up Tax, notwithstanding that the UPE's "Ownership Interest" is 80%. Thus, the Consistency Standard is satisfied: para. 4b, chapter 5 of July 2023 AG.
As the other standards are satisfied (see above), the QDMTT Safe Harbour should be available.
Thus, if the QDMTT Safe Harbour is elected by the Filing Constituent Entity, the IIR tax will be zero: Art. 6.2.1.

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