

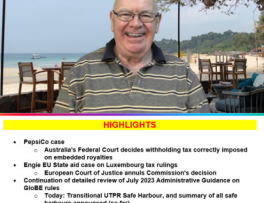
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8 December 2023



HIGHLIGHTS

- **PepsiCo case**
 - Australia's Federal Court decides withholding tax correctly imposed on embedded royalties
- **Engle EU State aid case on Luxembourg tax rulings**
 - European Court of Justice annuls Commission's decision
- **Continuation of detailed review of July 2023 Administrative Guidance on GloBE rules**
 - Today: Transitional UTPR Safe Harbour, and summary of all safe harbours announced (so far)

HAPPY FRIDAY!

Swift makes Time; Gemini is an artificial star; and Agnes Chow jumps!

Meanwhile, in the tax world...

Pepsi loses concentration; Colombia takes a big SEP; Saudi Arabia launches a forever exemption; the European Commission misses the reference; and Zimbabwe joins the club!

But with only 2 weeks to go until Christmas, the most important question is this: "Have you started your Christmas shopping yet?"

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. PepsiCo case; embedded royalties
3. Other global developments
4. July 2023 Administrative Guidance on GloBE rules: Transitional UTPR Safe Harbour & Summary of Safe Harbours
5. Europe
 - ECJ
6. Middle East & Central Asia
 - Saudi Arabia
7. Americas
 - Colombia, 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: Transitional UTPR Safe Harbour & Summary of Safe Harbours (ITB, 8 December 2023)
 - 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 6) (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 6) (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):**
 - STTR (Parts 1 to 3) (ITB, 6 & 20 October; 3 November 2023)
 - Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Mindy Herzfeld
"QDMTTs: Pillar 2's Minimum Tax Trendsetter"
Tax Notes International, Tax Analysts, 4 December 2023.

Philippe G. Penelle
"The Written Intercompany Agreement: Filing Cabinet Superman"
Tax Notes International, Tax Analysts, 20 November 2023.

Graham Robinson, Aamer Rafiq, Shezad Ajeem, and Jeremy Talbot
"Pillar Two – Gauging the Impact on the Banking Landscape"
Finance and Capital Markets, IBFD, 2023 (Vol. 24), No. 3.

Ryan Finley
"Surprise AG Opinion in Apple State Aid Case Ignores Fiat"
Tax Notes International, Tax Analysts, 4 December 2023.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a large operating company located in jurisdiction X, is the UPE of an MNE Group which is "within scope" of the GloBE rules. XCo uses the calendar year as its fiscal year. XCo is the only Constituent Entity located in jurisdiction X.

Jurisdiction X has not implemented either the GloBE rules or a QDMTT. However, the GloBE rules (IIR and UTPR) and QDMTTs have been implemented in several jurisdictions where the MNE Group's Constituent Entities are located.

Jurisdiction X has both Federal and State income taxes. The State income taxes are fully deductible for Federal income tax purposes. Jurisdiction X has 6 States (A to F).

The respective statutory income tax rates are:

- Federal: 15%
- A: 5%
- B: 8%
- C: 6%
- D: 4%
- E: 5%
- F: 10%

Jurisdiction X offers various income tax incentives. In 2025, XCo qualifies for an income tax exemption: it is liable for zero income tax, both Federally and in the 2 States (B and F) in which XCo operates.

In 2025, XCo has the following numbers for GloBE purposes:

- GloBE Income: EUR 100 million
- Substance-based Income Exclusion: EUR 20 million
- Adjusted Covered Taxes: zero

Based on this information, will there be any tax liability under the GloBE rules for 2025 in respect of jurisdiction X?

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. 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 ANSWER

Preliminary point: The jurisdiction A DMTT is EUR 9 million. The IIR tax imposed on the UPE (before considering the jurisdiction A DMTT) is also EUR 9 million.

Q1:

The DMTT should not qualify as a QDMTT.

Para. 118.10 of the February 2023 AG: "The Jurisdictional Top-up Tax that is subject to the QDMTT is based on the whole amount of the Jurisdictional Top-up Tax computed under Article 5.2.3 ..., irrespective of the Ownership interests held in the Constituent Entities located in the QDMTT jurisdiction by any Parent Entity of the MNE Group."

If the relevant Ownership interest is less than 100%, para. 118.10 permits the QDMTT jurisdiction to not apply its QDMTT to that Constituent Entity – but it does not permit the "scaling down" of the QDMTT, to reflect the Ownership interest.

Q2:

The DMTT should qualify as a Covered Tax (defined in Art. 4.2).

Thus, the Jurisdictional Top-up Tax for GloBE purposes will need to be computed after taking the DMTT into account as a Covered Tax.

UPE's IIR tax liability will be 90% of the Jurisdictional Top-up Tax (so computed).

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