

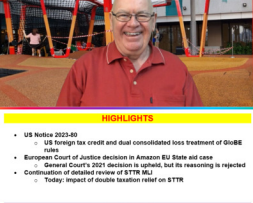
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15 December 2023



HIGHLIGHTS

- US Notice 2023-80: US foreign tax credit and dual consolidated loss treatment of GloBE rules
European Court of Justice decision in Amazon EU State aid case: General Court's 2021 decision is upheld, but its reasoning is rejected
Continuation of detailed review of STTR MLI: Today: impact of double taxation relief on STTR

HAPPY FRIDAY!

Orbán blocks; Milei cuts; but COP28 transitions incrementally, while Pacific Island delegates are not in the room

Meanwhile, in the tax world...

The US gives no credit to Art. 4.3; Malaysia doesn't copy the OECD; the UAE extracts guidance; Belgium and the Netherlands establish work from home; and Amazon wins again, but (this time) for the right reasons!

But at the end of the week, the most important question is this: "Is it too late for the Democrats to ditch Joe Biden?"

Have a great weekend! Steve

THIS WEEK'S PODCAST

(For ITB video subscribers, please log in to access the video and documents/reports)

- GloBE rules
Notice 2023-80: US FTC and DCL treatment of GloBE rules
Other global developments
STTR (part 4)
Asia Pacific: Hong Kong, Malaysia, Singapore
Europe: ECJ
Middle East & Central Asia: UAE
Americas: US
Treaty notes

ITB series on Pillar One

- Consultation document on Amount B in Pillar One (ITB, 28 July 2023)
Draft MLC provisions for commitments on D&Ts and other relevant similar measures (ITB, 6 January 2023)
Consultation document on Amount B in Pillar One (ITB, 16 December 2023)
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 & 28 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, 5, 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 (Part 4) (ITB, 15 December 2023); STTR (Parts 1 to 3) (ITB, 6 & 20 October; 3 November 2023); Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Carol Wang: "Check-the-Box Regulations After Pillar 2" Tax Notes International, Tax Analysts, 11 December 2023.

Alice Piroit: "ChatGPT for Writing and Teaching about Tax" Interfax, Kluwer, Vol. 52 (2024), Issue 1.

J. Harold McClure: "Transfer Pricing Confusion Over the Term Structure of Interest Rates" Tax Notes International, Tax Analysts, 4 December 2023.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

USCo, a company situated in the US, is the UPE of an MNE Group which is "in scope" of the GloBE rules. USCo owns 100% of the shares in ACo, a company located in jurisdiction A. ACo owns 100% of the shares in BCo, a company located in jurisdiction B. BCo is the only Constituent Entity located in jurisdiction B.

Q1: Assume that jurisdiction B levies 100 of QDMTT tax on BCo. Will USCo obtain a US foreign tax credit for that tax?

Q2: Assume that jurisdiction A levies 100 of IIR tax on ACo (in respect of jurisdiction B Top-up Tax - i.e., on the assumption that jurisdiction B has not implemented a QDMTT). Will USCo obtain a US foreign tax credit for the jurisdiction A IIR tax?

LAST WEEK'S QUESTION

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 (i.e., for Federal income tax purposes, State income tax is a deduction in computing taxable income). Jurisdiction X has 6 States (A to F).

The Federal and State income taxes are all imposed on a comprehensive measure of income.

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 ANSWER

This question focuses on whether the Transitional UTPR Safe Harbour (UTPR SH) will be available to the MNE Group in 2025. Based on the facts, the MNE Group will not qualify for the Transitional CbCR Safe Harbour in respect of jurisdiction X.

To qualify for the UTPR SH, jurisdiction X must have "a corporate income tax rate that applies at a rate of at least 20 percent". (Section 5.2 in July 2023 AG).

Para. 5 says this: "The corporate income tax rate for each jurisdiction is the nominal statutory tax rate generally imposed on in-scope MNE Groups on a comprehensive measure of income. This rate may take into account sub-national taxes provided that such taxes are structured so that in the case of all sub-national jurisdictions, the combined rate generally applicable to in-scope MNE Groups will be equal to or greater than 20%."

The facts raise 2 issues:

Issue 1: what impact does the deductibility of the State income taxes (for Federal income tax purposes) have on the "corporate income tax rate"?

In my view, no impact - para. 5 refers to "nominal statutory tax rate".

Issue 2: what impact does State D have on the "corporate income tax rate"?

For all the other States, the combined rate of Federal and State nominal statutory income tax rates is 20% or greater.

However, for State D, the combined rate is 19%.

XCo does not operate in State D. Nevertheless, para. 5 requires consideration of the combined rate "in the case of all sub-national jurisdictions".

Therefore, State D's combined Federal / State rate of 19% will cause XCo to fail the "corporate income tax rate" condition.

Accordingly, the MNE Group will not qualify for the UTPR SH.

Final answer: For 2025, UTPR Top-up Tax liabilities will exist in one or more jurisdictions where the MNE Group has Constituent Entities, based on a Total UTPR Top-up Tax Amount of: 15% x EUR 80 million = EUR 12 million.

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