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22 December 2023



HIGHLIGHTS

- Latest volume of Administrative Guidance on GloBE rules
 - Overview of all topics
- Other GloBE developments
 - Gibraltar, Hong Kong, UK, Luxembourg
- Recent tax cases on double tax treaties
 - Czech Republic (aircraft lease payments)
 - France (treaty-based dividend exemption)
 - India (payments for domain name registration)

HAPPY FRIDAY!

Fat Leonard returns; Glynn is cleared (50 years later); and Trump is canceled in Colorado!

Meanwhile, in the tax world...

IF moves the goalposts, but it's the ECJ which wants to change the game; GoDaddy rules in its domain; Korean Air Lines can't change the meaning; Legrand adds-back; Latvia and Slovakia target the banks; Brazil's indirect tax revolution will take 10 years; and the Blue Book is a great door stopper!

But at the end of the week, the most important question is this: "Is the European Super League a good idea?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. December 2023 Administrative Guidance on GloBE rules: overview
2. Other GloBE news
3. Amount A MLC
4. Asia Pacific
 - India
5. Europe
 - Czech Republic, France, Latvia, Slovakia, UK
6. Americas
 - Brazil, 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:
 - December 2023 Administrative Guidance on GloBE rules: overview (ITB, 22 December 2023)
 - 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 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):
 - 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

Robert Goulder

"Expectations for 2024: Pillar 1 Finds an Off-Ramp"

Tax Notes International, Tax Analysts, 18 December 2023.

John Avery Jones

"GE Financial Investments v HMRC: a novel point of treaty interpretation"

British Tax Review, Thomson Reuters, 2023, Issue 5.

Kevin Brogan, Alistair Pepper, and Darren J. Gottlieb

"Leveling the Pillar 2 Playing Field For the Asset Management Industry"

Tax Notes International, Tax Analysts, 18 December 2023.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

UCo, a company located in jurisdiction U, is the UPE of an MNE Group which is "within scope" of the GloBE rules.

UCo owns 50% of the shares in YCo, a company resident in jurisdiction Y. YCo's shares are listed on a stock exchange in jurisdiction Y. The other 50% of the shares are held by numerous investors. YCo is controlled by UCo, and therefore YCo is included in UCo's consolidated financial statements. YCo is the only Constituent Entity located in jurisdiction Y.

UCo also owns 60% of the shares in XCo2, a company located in jurisdiction X. The other 40% of the shares in XCo2 are owned by XCo1, an unrelated company located in jurisdiction X. XCo2 is the only Constituent Entity located in jurisdiction X.

Please assume that jurisdiction Y has Jurisdictional Top-up Tax of 100, for both GloBE and QDMTT purposes.

Based on this limited information:

1. If (i) jurisdiction Y has implemented a QDMTT, and (ii) the QDMTT is imposed on YCo: what is the amount of QDMTT tax which would be levied on YCo?
2. If jurisdiction U has implemented an IIR (and if jurisdiction Y has not implemented a QDMTT): what is the amount of IIR tax which would be levied on UCo?
3. If (i) jurisdiction Y has not implemented a QDMTT, (ii) jurisdiction U has not implemented an IIR, and (iii) jurisdiction X is the only jurisdiction (in which a Constituent Entity is located) to have implemented a UTPR: what is the amount of UTPR tax which would be levied on XCo2?

Answer in next ITB email alert on 12 January 2024!

LAST WEEK'S QUESTION

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 the 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 ANSWER

Preliminary comments

Both questions require the application of Notice 2023-80, which was recently released by the US Treasury and IRS.

ACo and BCo are USCo's CFCs for the purposes of the US Subpart F and GILTI rules.

Therefore, in determining the jurisdiction B Jurisdictional Top-up Tax under the GloBE rules, USCo's US tax under Subpart F or GILTI which relates to BCo is allocable to BCo, pursuant to Art. 4.3.2(c).

Q1

Q1 refers to BCo's QDMTT tax liability.

Allocation of Subpart F or GILTI tax is not permitted in computing QDMTT.

Accordingly, the jurisdiction B QDMTT is not a "final top-up tax" (as defined in Notice 2023-80).

A foreign tax credit (FTC) is therefore allowed to USCo in regard to the QDMTT. The amount of the FTC is 80 (i.e., 100 x 80%), after the "20% haircut" under US section 960(d).

Q2

Q2 refers to ACo's IIR tax liability in regard to the jurisdiction B Jurisdictional Top-up Tax.

Allocation of Subpart F or GILTI tax is required in computing that IIR tax.

Accordingly, the jurisdiction A IIR tax is a "final top-up tax" (as defined in Notice 2023-80), regardless of whether there is any Subpart F or GILTI tax to actually allocate.

An FTC is therefore not allowed to USCo in regard to the IIR tax.

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