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12 January 2024



HIGHLIGHTS

- Review of GloBE legislation which will commence operation around the world in 2024
Other GloBE developments
FAQs released by Japan and European Commission
OECD's updated economic impact assessment
Further anti-arbitrage guidance
2 international tax cases from Canada
Taxation of "merger fees"
Treaty shopping

HAPPY FRIDAY!

Sweden is told to "prepare for war"; France's new PM is 34; and Bob finds the door plug!

Meanwhile, in the tax world...

GloBE starts; Vietnam tries to compensate; the OECD relies on behavioural change; Malaysia gives companies 2 months; Glencore wins and loses, but Husky does not benefit; and group membership has its consequences!

But at the end of the week, the most important question is this: "Will you fly in a Boeing 737 Max 9?"

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 commence operation in 2024
2. GloBE rules: other news
3. Other global developments
4. Asia Pacific
China, Japan, Malaysia
5. Middle East & Central Asia
Azerbaijan, UAE
6. Americas
Canada, 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, 8 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, 8 January 2023)
GloBE model rules:
GloBE rules commence operation in 2024 (ITB, 12 January 2024)
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 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 (Part 4) (ITB, 15 December 2023)
STTR (Parts 1 to 3) (ITB, 8 & 20 October; 3 November 2023)
Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Gabriel Bez-Bati and Jonas Ferreira
"Brazil Court Decisions Address Withholding for Technical Services Without a Transfer of Know-How"
Tax Notes International, Tax Analysts, 1 January 2024.

Robert Goulder
"Oral Arguments in Moore: Do the Taxpayers Have a Problem?"
Tax Notes International, Tax Analysts, 8 January 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

UCo 1, a company located in jurisdiction U, is the UPE of an MNE Group, which is "in scope" of the GloBE rules.

UCo 1 directly owns 70% of the shares in PCo 1, a company located in jurisdiction P. The other 30% of the shares in PCo 1 are held by numerous small investors. PCo 1's shares are listed on the P stock exchange.

PCo 1 directly owns 100% of the shares in each of 2 subsidiaries: PCo 2 (a company located in jurisdiction P), and UCo 2 (a company located in jurisdiction U) - i.e., PCo 2 and UCo 2 are sister subsidiaries.

PCo 1, PCo 2, and UCo 2 are all members of UCo 1's MNE Group.

Jurisdiction U and jurisdiction P have each implemented an IIR, but neither jurisdiction has implemented a QDMTT.

In the current year, please assume that UCo 1, UCo 2, PCo 1, and PCo 2 each has: (i) GloBE Income of 110, and (ii) Adjusted Covered Taxes of 5. Also, please assume that each of the 2 jurisdictions has SBIE of 20.

Finally, please assume that there are no other Constituent Entities located in either of the 2 jurisdictions.

Based on this limited information: (1) which companies (if any) will be required to pay IIR tax, and (2) what is the amount of that tax?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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

UCo directly 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 directly 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?

LAST WEEK'S ANSWER

Q1:
If the QDMTT is imposed on YCo, the amount must be 100.

The Feb 2023 AG does not allow the amount of QDMTT to be "scaled down", to reflect UCo's 50% Ownership Interest. If the jurisdiction Y DMTT were to do so, it would lose its "qualified" status. See para. 118.10 of Comm to "QDMTT" definition in Art. 10.1.1 (added to Comm by Feb 2023 AG). Also, see ITQ193.

Para. 118.10 does allow jurisdiction Y not to impose QDMTT on YCo. However, as the question states that "the QDMTT is imposed on YCo", the amount must be 100.

Q2:
The amount of IIR tax imposed on UCo would be 50, reflecting UCo's 50% Ownership Interest in YCo: see Art. 2.2.

Q3:
The amount of UTPR tax imposed on XCo2 would be 100: see Arts. 2.5 and 2.6. Note that the GloBE rules do not "scale down" the amount of UTPR tax, to reflect UCo's 50% Ownership Interest.

Comment:
This example shows 2 counter-intuitive aspects of the GloBE rules: (1) the fact that the amount of QDMTT is not "scaled down", to reflect UCo's 50% Ownership Interest (i.e., the QDMTT must be either 100 or 0), despite the fact that the potential IIR tax is only 50; and (2) the fact that the amount of UTPR tax is also not "scaled down", to reflect UCo's 50% Ownership Interest (i.e., the UTPR tax must be 100), again despite the fact that the potential IIR tax is only 50.

Do you agree?



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