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19 January 2024



### HIGHLIGHTS

- Detailed review of December 2023 Administrative Guidance on GloBE rules
  - Today: treatment of hybrid arbitrage arrangements for Transitional CbCR Safe Harbour
- Australia releases new guidance:
  - "intangibles migration arrangements"
  - royalty withholding tax treatment of software payments
- US Republican and Democrat leaders in Congress agree on new tax bill
  - several taxpayer-friendly corporate income tax changes

### HAPPY FRIDAY!

Calvin Klein is banned, Arnie watches time in Munich, and billionaires ask to be taxed!

Meanwhile, in the (MNE) tax world...

DPT will move in the January transfer window, Korea wants higher share prices; Republicans and Democrats finally agree; the UK has only one-way streets, and Australia wants to discriminate!

But at the end of the week, the most important question is this: "Who won the Republican Iowa primary? Donald Trump or 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)

- December 2023 Administrative Guidance on GloBE rules: Transitional CbCR Safe Harbour (part 1)
- Asia Pacific:
  - Australia, Korea, Philippines
- Europe:
  - Selarus, UK
- Americas:
  - US
- 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 CbCRs 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 2023)
- 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, 9 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: Transitional CbCR Safe Harbour (Part 1) (ITB, 19 January 2024)
  - 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: GDMTT Safe Harbour (Parts 1 & 2) (ITB, 16 & 17 November 2023)
  - July 2023 Administrative Guidance on GloBE rules: GDMTTs (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, 16 & 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, 26 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 CFC Tax Regimes (ITB, 3 March 2023)
  - Administrative Guidance on GloBE rules: GDMTTs (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)
  - Changing 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, 16 & 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

Rouven S. Avi-Yonah  
"Klaus Vogel Lecture 2023: The Past, Present and Future of Destination-Based Income Taxation"

Bulletin for International Taxation, IBFD, 2024 (Vol. 76), No. 2.

Carla Lui, Alison Tsang, Itee Cheah, Shih Hui Lee, and Wanyu Wu  
"Foreign-Source Income Exemption Changes in Hong Kong, Malaysia, and Singapore"

Tax Notes International, Tax Analysts, 15 January 2024.

Jule Provencher, Anikha Mukh Dange, and Sebastian Kujper  
"The BEFIT Directive: A Game Changer for Transfer Pricing or an Irrelevant Buzz?"

International Transfer Pricing Journal, IBFD, 2024 (No. 31), No. 1.

### INTERNATIONAL TAX QUIZ

#### THIS WEEK'S NEW QUIZ

XCo (a company located in jurisdiction X) and YCo (a company located in jurisdiction Y) are Constituent Entities in an MNE Group which is "within scope" of the GloBE rules. Each of XCo and YCo is the only Constituent Entity located in its respective jurisdiction. XCo, YCo and the MNE Group use the calendar year as their Fiscal Year.

In January 2022, the UPE injected EUR-denominated share capital into XCo, XCo made a EUR-denominated loan to YCo, and YCo used the borrowed funds for working capital purposes in its business. This was done to allow YCo to claim a tax deduction on the interest expense, and to allow XCo to use its carryforward tax losses to avoid a tax liability in jurisdiction X.

The loan is repayable on demand, carries an interest rate of €STR (Euro Short-Term Rate) + 300 basis points, and the interest is payable (in cash) quarterly in arrears. Please assume that the interest rate satisfies the arm's length principle. The €STR is an overnight (i.e., floating) rate.

In 2024, the loan is still outstanding. In 2024, it is expected that the interest on the loan will be EUR 0.3 million.

It is expected that, in the MNE Group's CbC Report for 2024, these financial numbers will apply:

- XCo: (i) Total Revenue: EUR 5 million; (ii) Profit (Loss) before Income Tax: EUR 0.5 million (this includes the EUR 0.3 million of interest income).
- YCo: (i) Total Revenue: EUR 6 million; (ii) Profit (Loss) before Income Tax: EUR 0.9 million (this is after deducting the EUR 0.3 million interest expense).

At the beginning of 2024, XCo has EUR 2 million of carryforward tax losses. Tax losses can be carried forward indefinitely in jurisdiction X, subject to compliance with ownership and business continuity tests. A deferred tax asset for the tax losses is not recognised in XCo's financial statements or in the MNE Group's consolidated financial statements.

Based on this limited information, will jurisdiction X and jurisdiction Y each qualify for the Transitional CbCR Safe Harbour in 2024?

Answer in next ITB email alert!

#### LAST WEEK'S QUESTION

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 XCo 1, a company located in jurisdiction X. The other 30% of the shares in XCo 1 are held by numerous small investors. XCo 1's shares are listed on the X stock exchange.

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

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

Jurisdiction U and jurisdiction X have each implemented an IIR, but neither jurisdiction has implemented a GDMTT.

In the current year, please assume that UCo 1, UCo 2, XCo 1, and XCo 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?

Would your answers be different if both jurisdiction U and jurisdiction X are EU Member States?

#### LAST WEEK'S ANSWER

1. Juris. X, TUT:

GI = 110 = 110 = 220  
ACT = 5 + 5 = 10  
SBIE = 20  
EP = 200  
ETR = 10 / 220 = 4.5455% (to 4 decimal places)  
TUT% = 10.4545% x 20 = 20.909

2. Juris. U, TUT:

Same as Juris. X – i.e., 20.909

3. Non-EU:

3.1 Juris. X, TUT:

IIR levied on XCo 1: nil (Art. 2.1.6)

IIR levied on UCo 1:  
70% x 20.909 = 14.6363

3.2 Juris. U, TUT:

IIR levied on UCo 1: nil (Art. 2.1.6)

IIR levied on XCo 1 (POPE):

Limited to TUT of UCo 2 (computed under Art. 5.2.4) – i.e., 20.909 x 110 / 220 = 10.4545

4. EU:

4.1 Juris. X, TUT:

IIR levied on XCo 1: 20.909 (Arts. 8(2) & 8(3), GloBE Directive)

IIR levied on UCo 1:

Prima facie: 14.6363

IIR offset applies when UPE holds an ownership interest "indirectly through" an IPE or a POPE: Art. 10, GloBE Directive.

That is the case for XCo 2, but not for XCo 1!

Thus, IIR levied on UCo 1 (in respect of XCo 1's TUT) = 14.6363 / 2 = 7.3186

Thus, double tax (on XCo 1 and UCo 1) in respect of XCo 1's TUT! Is this correct? See Note below.

4.2 Juris. U, TUT:

IIR levied on XCo 1 (in respect of UCo 2's TUT): 20.909 + 110 / 220 = 10.4545

IIR levied on UCo 1:

In respect of UCo 2's TUT = nil (Art. 10, GloBE Directive)

In respect of UCo 1's TUT: 20.909 + 110 / 220 = 10.4545

5. Final answer:

Non-EU:

UCo 1: 14.6363

XCo 1: 10.4545

EU:

UCo 1: 7.3186 + 10.4545 = 17.7731

XCo 1: 20.909 + 10.4545 = 31.3635

In the EU scenario, there is an apparent double counting, due to the drafting of Art. 10, GloBE Directive!

Note on Art. 10, GloBE Directive:

This possible outcome is contrary to the purpose of Art. 10 (which corresponds to Art. 2.3 of the GloBE model rules). This possible outcome is caused by the extension of the IIR (in Art. 8(2) and Art. 9(3) of the GloBE Directive) to the Top-up Tax of the POPE. That situation is not provided for in the GloBE model rules. Thus, as Art. 10 is relevantly the same as Art. 2.3, the drafting issue has arisen.

Do you agree?



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