

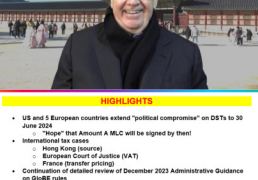
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16 February 2024



HIGHLIGHTS

- **US and 5 European countries extend "political compromise" on DSTs to 30 June 2024**
 - "Hope" that Amount A MLC will be signed by then!
- **International tax cases**
 - Hong Kong (source)
 - European Court of Justice (VAT)
 - France (transfer pricing)
- **Continuation of detailed review of December 2023 Administrative Guidance on GloBE rules**
 - Today: Transitional CbCR Safe Harbour (part 2)

HAPPY FRIDAY!

Japan goes backwards; Prabowo dances; and Trump makes Europe very nervous!

Meanwhile, in the tax world ...

DST goalposts are moved; Australia goes public, but chooses to discriminate retrospectively; Hong Kong has the magic source; France takes a median approach; and employees pay VAT in the EU!

But at the end of the week, the most important question is this: "Do you support the use of blue cards in football?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. Global news
2. December 2023 Administrative Guidance on GloBE rules: Transitional CbCR Safe Harbour (part 2)
3. Asia Pacific
 - Australia, Hong Kong
4. Europe
 - ECJ, France, Netherlands, UK
5. Middle East & Central Asia
 - Saudi Arabia
6. Americas
 - Canada
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 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, 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 Returns (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 (Parts 1 & 2) (ITB, 19 January; 16 February 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: QDMTT Safe Harbour (Parts 1 & 2) (ITB, 10 & 17 November 2023)
 - July 2023 Administrative Guidance on GloBE rules: QDMTTs (Parts 1 to 4) (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 CPC 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; 14 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

- Brian J. Arnold
"Earth to OECD: You Must Be Joking – The Subject to Tax Rule of Pillar Two"
Bulletin for International Taxation, IBFD, 2024 (Vol. 78), No. 2.
- Maria R. U. D. Tambunan and Gabriel Muara Thobias Sitahih
"Resolving Conflicts Between Production Sharing Contracts and Tax Treaties in Indonesia"
Intertax, Kluwer, Vol. 52, Issue 2.
- Libin Zhang
"More Implications From Forgetting The Foreign Commerce Clause"
Tax Notes International, Tax Analysts, 5 February 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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. Both ACo and the MNE Group use the calendar year as their Fiscal Year.

100% of the shares in ACo were purchased by the MNE Group (from third parties) in 2024.

ACo's financial accounts (i.e., reporting package) which are used in the preparation of the Group's Consolidated Financial Statements for 2024, 2025, and 2026: (1) include the effect of purchase price accounting (PPA) adjustments relating to the purchase of ACo's shares, (2) include the deferred tax expenses related to those PPA adjustments, and (3) do not include any impairment of goodwill.

Those financial accounts are used to prepare the MNE Group's CbC Report for 2024, 2025, and 2026.

Based on this limited information, will the CbC Report for 2024, 2025, and 2026 constitute a Qualified CbC Report, for the purposes of the Transitional CbCR Safe Harbour (in regard to jurisdiction A)?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

The Jurisdiction X corporate income tax has a standard rate of 20%. However, for qualifying companies, a reduced income tax rate of 5% is imposed.

The government is concerned about the adverse impact of the GloBE rules on inbound investment.

It has suggested this proposal for companies which currently qualify for the 5% corporate income tax rate:

- An additional income tax (called an extra-profit tax) will be imposed on these companies. The extra-profit tax will have the same tax base as the corporate income tax, and it will have a 10% tax rate.
- The extra-profit tax will not be deductible or creditable for corporate income tax purposes, and vice versa.
- The extra-profit tax will reduce certain of the company's jurisdiction B tax liabilities, other than corporate income tax, on a euro for euro basis - i.e., property tax, excise tax, and VAT ("specified taxes"). The reduction will not be in the form of a credit - instead, the legislation imposing the specified taxes will deduct the extra-profit tax, in computing the liability for the specified taxes. However, the extra-profit tax will not be refundable, in whole or part.

Based on this limited information: will the extra-profit tax qualify as a Covered Tax, under the GloBE rules?

LAST WEEK'S ANSWER

Assumption: the jurisdiction X corporate income tax (CIT) qualifies as a "Covered Tax", under para. (a) of the definition in Art. 4.2.1 - i.e., a tax with respect to income or profits.

Prima facie, as the extra-profit tax (EPT) "will have the same tax base as the [CIT]", it will also qualify as a "Covered Tax", under para. (a).

Issue (1): Will the fact that the EPT will not be deductible or creditable for CIT purposes, and the CIT will not be deductible or creditable for EPT purposes, change the analysis?

IMHO: No - both taxes will continue to be imposed with respect to income or profits, although neither tax provides relief for the other.

Issue (2): Will the fact that the EPT will reduce the company's jurisdiction X "specified tax" liabilities, on a euro for euro basis, change the analysis? (Note: (i) the 3 forms of "specified tax" are not "Covered Taxes"; (ii) the EPT will not be refundable, in whole or part.)

The Commentary on Art. 4.2.1 defines "tax" as: "a compulsory unrequited payment to General Government. ... Taxes are unrequited in the sense that any benefits provided by government to the taxpayer are not in proportion to their payments."

Is the EPT, to the extent it reduces the company's "specified tax" liabilities, not unrequited? In other words: to the extent of the reduction in "specified taxes", does the EPT generate a benefit provided by the government that is in proportion to the EPT payment? In addressing this question, the context is that other companies (i.e., companies which do not qualify for the 5% CIT rate) will generally be subject to the 3 forms of "specified tax", without reduction.

I don't know what the answer is. However, the fact that other companies will generally be subject to the 3 forms of "specified tax", without reduction, suggests that an EPT taxpayer will receive a benefit in proportion to the EPT payment. Therefore, on balance, I favour a conclusion that the EPT (to the extent it reduces the 3 forms of "specified tax") will not be a "tax", and therefore will not be a "Covered Tax".

What do you think?

Steve

P5: Under the US foreign tax credit regulations, the fact that the EPT will reduce the 3 forms of "specified tax" should not adversely impact its status as a foreign income tax.



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