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23 February 2024



HIGHLIGHTS

- **Inclusive Framework's report on Amount B**
 - Detailed review
- **Latest developments on GloBE rules**
 - Singapore, South Africa, Isle of Man, Zimbabwe, and Bahamas
- **EU updates black and grey lists of non-cooperative tax jurisdictions**

HAPPY FRIDAY!

The **US** goes back to the moon; **Nvidia** keeps growing; and **podcasts** turn 20!

Meanwhile, in the tax world ...

Amount B is optional, double taxation is not, but **New Zealand** opts out; **South Africa** saves drafting time; majority rules at the **UN**; the **EU** shrinks its lists; and **Saudi Arabia** provides a zero incentive!

But at the end of the week, the most important question is this: "If you buy a pair of **Donald Trump's gold sneakers**, will you know what it's like to walk in his shoes?"

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
2. Amount B
3. UN Framework Convention on International Tax Cooperation
4. Europe
 - EU, Isle of Man
5. Middle East & Central Asia
 - Saudi Arabia
6. Treaty news

ITB series on Pillar One

- **Report on Amount B in Pillar One** (ITB, 23 February 2024)
- **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: 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 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; 3 & 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

Javier Rubinstein, Lauren Friedman, and Tamsin Parzen
"Using Investment Treaties to Prevent Pillar 2's Revocation of Promised Tax Incentives"
Tax Notes International, Tax Analysts, 19 February 2024.

Rasmi Ranjan Das
"Qualified Domestic Minimum Top-up Tax: Should Developing Countries Adopt It?"
Bulletin for International Taxation, IBFD, 2024 (Vol. 78), No. 3.

Matias Miel
"Beneficial Ownership and Securities Lending: Drilling Down on Heavy Energy"
Tax Notes International, Tax Analysts, 19 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.

BCo, a company located in jurisdiction B, is also a Constituent Entity in the MNE Group. It is the only Constituent Entity located in jurisdiction B.

BCo sells goods to ACo, which distributes the goods to third parties in jurisdiction A.

For 2024, the group determines that a year-end transfer pricing adjustment of EUR 0.5m should be made in regard to the sale of goods from BCo to ACo – i.e., the adjustment will reduce the sale price by EUR 0.5m. This adjustment will be made by BCo giving to ACo, before year-end, a credit note for EUR 0.5m.

The adjustment will be reflected in the 2024 local statutory financial statements of the 2 companies, and it will also be reflected in the 2024 corporate income tax returns of the 2 companies. However, it is not reflected in the 2 companies' financial accounts (i.e., reporting packages) which are used to prepare the 2024 consolidated financial statements.

Also, as the MNE Group uses those reporting packages to prepare the CbC Report, the adjustment will not be reflected in the CbC Report for 2024.

The reporting packages for 2024 show these numbers:

1. ACo: Total Revenue: EUR 9.5m; Profit Before Income Tax: EUR 0.7m
2. BCo: Total Revenue: EUR 10.2m; Profit Before Income Tax: EUR 1.3m

Based on this information, will jurisdictions A and B qualify for the Transitional CbCR Safe Harbour in 2024?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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)?

LAST WEEK'S ANSWER

A Qualified CbC Report is "a Country-by-Country Report prepared and filed using Qualified Financial Statements", Safe Harbours and Penalty Relief report (SHPR) (issued by IF in December 2022).

Therefore, the question becomes this: are the financial accounts which are used to prepare the MNE Group's CbC Report for 2024, 2025, and 2026 "Qualified Financial Statements" (QFS)?

Prima facie, ACo's financial accounts (i.e., reporting package) which are used in the preparation of the Group's Consolidated Financial Statements (CFS) for 2024, 2025, and 2026 satisfy the revised definition of QFS in the December 2023 AG (para. 17 of SHPR, as amended by section 1.3 of December 2023 AG).

However, do any of the subsequent comments in the December 2023 AG deem those financial accounts not to constitute QFS?

Issue (1): Inclusion of the effect of purchase price accounting (PPA) adjustments:

Such inclusion will not adversely impact the status of the financial accounts as QFS, if the "consistent reporting condition" (para. 17.4 of SHPR) is met, and the "goodwill impairment adjustment" (para. 17.5 of SHPR) is made.

Consistent reporting condition: "The MNE Group has not submitted a CbC Report for a fiscal year after 31 December 2022 that was based on the Constituent Entity's reporting package ... without the PPA adjustments, except where the Constituent Entity was required by law or regulation to change its reporting package ... to include PPA adjustments."

As ACo's acquisition was in 2024, then the relevant PPA adjustments were not included in the MNE Group's 2023 CbC Report. Does this mean that the condition is failed? Arguably not, because the 2023 CbC Report was not based on ACo's reporting package: ACo was not yet a member of the group – therefore, the 2023 CbC Report was not based on ACo's reporting package without the PPA adjustments.

Goodwill impairment adjustment: based on the facts, this adjustment is not relevant.

Issue (2): Inclusion of deferred tax expenses related to the PPA adjustments:

The inclusion of the deferred tax expenses will not adversely impact the status of the financial accounts as QFS: see Example 1 in para. 74.5 of SHPR (added by December 2023 AG).

Conclusion: the CbC Report for 2024, 2025, and 2026 respectively should constitute a Qualified CbC Report.

Do you agree?



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