

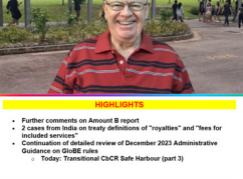
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1 March 2024



HIGHLIGHTS

- Further comments on Amount B report
- 2 cases from India on treaty definitions of "royalties" and "fees for included services"
- Continuation of detailed review of December 2023 Administrative Guidance on GloBE rules
 - Today: Transitional CbCR Safe Harbour (part 3)

HAPPY FRIDAY!

Biden warns of "cars of concern", but it's the "uncommitted" he should be really worried about; Singapore's exclusive deal with Taylor Swift upsets the neighbours; and Mitch exits stage right!

Meanwhile, in the tax world ...

ATAF and WATAF disagree; Achim floats another MLC; Lexis Nexis finds the right answer; Germany reaches a compromise, but forgets climate change; Switzerland asks all the questions; Chile is indirectly consistent; and SAIC navigates a victory!

But at the end of the week, the most important question is this: "Do you like the idea of a GloBE MLC?"

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: further comments
3. Other global developments
4. December 2023 Administrative Guidance on GloBE rules: Transitional CbCR Safe Harbour (part 3)
5. Asia Pacific
 - India, Malaysia
6. Europe
 - Germany, Switzerland
7. Americas
 - Canada, Chile
8. 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 to 3) (ITB, 19 January; 16 February; 1 March 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 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

Giuseppe Francesco Patti
"Interpretative Issues Arising from the Definitions of Permanent Establishments under the GloBE Model Rules"

Bulletin for International Taxation, IBFD, 2024 (Vol. 78), No. 3.

Joachim Engleisch
"Dynamic References to International Soft Law Agreements: Flexibility with Limits"

EC Tax Review, Kluwer, 2024, No. 1.

Angelo Nikolakakis
"Not So Fast, Husky Lovers! Examining the Tax Court of Canada's Recent Decision"

Tax Notes International, Tax Analysts, 19 February 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo, a company located in jurisdiction X, 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 X.

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

In 2023, XCo issued preference shares ("pref shares") to YCo.

The pref shares, which carry an arm's length coupon dividend rate, are treated as debt in XCo's consolidation reporting package. However, for tax purposes in jurisdiction X, the pref shares are treated as equity.

The pref shares are also treated as debt in YCo's consolidation reporting package. However, for tax purposes in jurisdiction Y, the pref shares are treated as equity. Consequently, the dividends received by YCo on the pref shares qualify for a 95% exemption under the jurisdiction Y corporate income tax law.

The 2 reporting packages are used by the MNE Group to prepare its CbC Report. In that CbC Report, the dividend on the pref shares is excluded from the jurisdiction Y Revenue and PBT numbers.

For the purposes of the De minimis test for the Transitional CbCR Safe Harbour, how should the dividend on the pref shares be treated: (1) for jurisdiction X; and (2) for jurisdiction Y?

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.

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?

LAST WEEK'S ANSWER

The key point to note is that the MNE Group uses the consolidation reporting packages to prepare the CbC Report.

This means that the reporting packages for ACo and BCo are their Qualified Financial Statements (QFS): para. 17, Safe Harbour and Penalty Relief (SHPR) report.

For the purposes of the Transitional CbCR Safe Harbour (TCSH), year-end transfer pricing adjustments are not permitted to be made to the QFS: para. 74.15, SHPR report (added by December 2023 AG).

Therefore, the TCSH calculations must be based on the numbers in the reporting packages, without the TP adjustments.

Based on those numbers: (1) ACo will satisfy the De minimis test; and (2) BCo will fail the De minimis test.

Therefore, jurisdiction A will qualify for the TCSH.

The question does not provide sufficient information to determine whether jurisdiction B will satisfy either the Simplified ETR test or the Routine profits test.

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