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8 March 2024



HIGHLIGHTS

- 5 international tax cases
 - From European Court of Justice, France, Kenya, and US (2 cases)
- Malaysia: new capital gains tax
 - Guidance and exemption order released
- Continuation of detailed review of December 2023 Administrative Guidance on GloBE rules
 - Today: Transitional CbCR Safe Harbour (part 4)

HAPPY FRIDAY!

Joe comes out fighting; don't get sick in Korea this week (or next!); and the Cookie Monster hates shrinkflation!

Meanwhile, in the tax world ...

Poland takes its time; the US works on "phase 2"; Malaysia carves out intellectual property; DAC6 is lawful, but the CTA is not; Sonfy takes credit; and Microsoft has the right formula!

But at the end of the week, the most important question is this: "Should shrinkflation be illegal?"

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. Pillar One: Amount A and Amount B
3. December 2023 Administrative Guidance on GloBE rules: Transitional CbCR Safe Harbour (part 4)
4. Asia Pacific
 - Australia, Malaysia
5. Europe
 - ECJ, EU, France, Italy, Turkey, UK
6. Africa
 - Kenya, Nigeria
7. Middle East & Central Asia
 - UAE
8. Americas
 - US
9. 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, 19 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 4) (ITB, 19 January; 16 February; 1 & 8 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 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; 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

Soi Pociotto, Jeffery M. Kadet, and Bob Michel
"A Tale of Two Subject-to-Tax Rules"
Tax Notes International, Tax Analysts, Vol. 113, 4 March 2024.

Steve Dixon and Amanda Padvin Varma
"IRS Transfer Pricing Memo on Implicit Support Has Legal Flaws"
Bloomberg Law News, Bloomberg, 5 March 2024.

Lucas de Lima Carvalho
"The Origins of 'Best Practices' in International Tax Policy"
Tax Notes International, Tax Analysts, Vol. 113, 4 March 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.

ACo directly owns 100% of the shares in BCo.

For the 2024 fiscal year, an amount of income is included in ACo's jurisdiction A taxable income, under the jurisdiction A CFC rules. The income inclusion relates to certain CFC income derived by BCo during 2024. The jurisdiction A corporate income tax caused by this income inclusion is EUR 100,000.

Question 1: Based on this limited information, what impact (if any) will the EUR 100,000 have on the 2024 Simplified ETR computation (for the purposes of the Transitional CbCR Safe Harbour) for: (1) jurisdiction A; and (2) jurisdiction B?

Question 2: In 2024, ACo recharges the EUR 100,000 to BCo. Therefore, for the 2024 consolidation reporting packages (which are used to prepare the MNE Group's CbC Report), the recharged EUR 100,000 is reflected as an income item in ACo's accounting profit, and as an expense item in BCo's accounting profit. Based on this limited information, do your answer for Question 1 change?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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?

LAST WEEK'S ANSWER

(1) Jurisdiction X

The pref shares constitute a "deduction / non-inclusion arrangement": para. 74.27 of the Safe Harbours and Penalty Relief (SHPR) report, as added by para. 35 of the December 2023 AG. The pref shares are therefore a "hybrid arbitrage arrangement": para. 74.25, SHPR report.

Therefore, for the purposes of the jurisdiction X De minimis test computation, the expense on the pref shares (i.e., the coupon dividend) is excluded: para. 74.26 of SHPR report. Thus, XCo's PBT will be increased by the amount of the coupon dividend.

(2) Jurisdiction Y

The CbC Report correctly excludes the coupon dividend from the Revenue and PBT of YCo: answer to Question 7.1 in chapter 2 of October 2022 CbCR document, referenced by para. 17, December 2023 AG.

However, that treatment must be reversed for the purposes of the De minimis test: paras. 74.16-17 of SHPR report, as added by para. 18 of the December 2023 AG.

Therefore, for the purposes of the jurisdiction Y De minimis test computation, the coupon dividend is included in YCo's Total Revenues and PBT.

Do you agree?



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