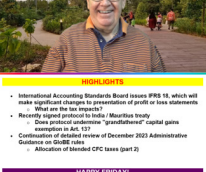


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12 April 2024



HIGHLIGHTS

- International Accounting Standards Board issues IFRS 18, which will make significant changes to presentation of profit or loss statements
 - What are the tax impacts?
- Recently signed protocol to India / Mauritius treaty
 - Does protocol undermine "grandfathered" capital gains exemption in Art. 13?
- Continuation of detailed review of December 2023 Administrative Guidance on GloBE rules
 - Allocation of blended CFC taxes (part 2)

HAPPY FRIDAY!

O.J. ("If the glove don't fit, you must acquit") bows out; Mike snubs David; and Liverpool loses more than its nerves!

Meanwhile, in the tax world...

IASB makes a new presentation; Australia weighs risks; the ECJ still cares about the UK; Ireland participates with straws; and India targets grandfathered!

But at the end of the week, the most important question is this: "Are you old enough to remember O.J.'s low-speed Bronco car chase in 1994?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. IFRS 18
2. December 2023 Administrative Guidance on GloBE rules: Allocation of CFC taxes (part 2)
3. Asia Pacific
 - Australia, India
4. Europe
 - Cyprus, ECJ, France, Ireland, Netherlands, Norway, Portugal
5. Africa
 - Zambia
6. Americas
 - US

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, 26 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, 26 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: Allocation of blended CFC taxes (Part 1 & 2) (ITB, 5 & 12 April 2024)
 - December 2023 Administrative Guidance on GloBE rules: Additional guidance on application of GloBE rules (ITB, 22 March 2024)
 - 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: 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, 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, 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, 16 & 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, 26 July 2023)

WORTH READING

Steven Kohart, Cynthia Furmanek, and Raza Janjua

"IRA Credits and Pillar 2: Risk of Climbback Persists"

Tax Notes International, Tax Analysts, 8 April 2024.

Susann Kamath and Hannah Brugger

"Germany – Recent Case Law on the Relocation of Functions Rules"

International Transfer Pricing Journal, ITPJ, 2024 (Vol. 31), No. 3.

Nurdana Bonanbayeva

"Comparative Analysis of Carried Interest Taxation in the US and UK"

Tax Notes International, Tax Analysts, 8 April 2024.

Mindy Herzfeld

"Can the United States Protect Its Tax Base From Withholding Taxes?"

Tax Notes International, Tax Analysts, 8 April 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

An MNE Group's UPE, which is located in jurisdiction U, is subject to the jurisdiction U CFC rules. Those CFC rules qualify as a Blended CFC Tax Regime, as defined in the February 2023 AG. Under the CFC rules, the foreign effective tax rate must be 13.125% in order to generate sufficient foreign tax credits (ignoring any foreign tax credit limitation) to prevent the imposition of a tax charge. Also, under those CFC rules, a foreign tax credit is allowed for GDMTT on the same terms as any other creditable Covered Tax.

In the 2024 Fiscal Year, UPE has a tax charge of 30 under the CFC rules.

UPE directly owns shares in 3 CFCs. For the 2024 Fiscal Year, the CFCs have the information (all in EUR millions):

1. ACo 1 (located in jurisdiction A) (100% owned by UPE)

- GloBE Income: 100
- Covered Tax (disregarding any CFC tax): 8
- GDMTT payable: 2
- Qualifies for GDMTT Safe Harbour
- Attributable income (for purposes of CFC rules): 60
- Constituent Entity for GloBE purposes

2. ACo 2 (located in jurisdiction A) (50% owned by UPE)

- Exempt from GDMTT
- Qualifies for Transitional CbCR Safe Harbour, under de minimis test
- Total Revenue: 8
- Profit before Income Tax: 0.9
- Simplified Covered Taxes: 0.1
- Attributable income (for purposes of CFC rules): 5 (reflecting 50% ownership interest)
- Joint Venture for GloBE purposes

3. ACo 3 (located in jurisdiction A) (40% owned by UPE)

- Exempt from GDMTT
- Attributable income (for purposes of CFC rules): 100 (reflecting 40% ownership interest)
- Not a Constituent Entity or Joint Venture for GloBE purposes

Based on this information, what will be the allocation of CFC tax under Art. 4.3.2(c)? Please ignore any possible cap under Art. 4.3.3.

Answer in next ITB email alert!

LAST WEEK'S QUESTION

An MNE Group's UPE, which is located in jurisdiction U, is subject to the jurisdiction U CFC rules. Those CFC rules qualify as a Blended CFC Tax Regime, as defined in the February 2023 AG. Under the CFC rules, the foreign effective tax rate must be 13.125% in order to generate sufficient foreign tax credits (ignoring any foreign tax credit limitation) to prevent the imposition of a tax charge.

In the 2025 Fiscal Year, UPE has a tax charge of 50 under the CFC rules.

UPE directly owns shares in 4 CFCs. For the 2025 Fiscal Year, the CFCs have the information:

1. XCo 1 (located in jurisdiction X) (100% owned by UPE)

- GloBE Income: 200
- Covered Tax: 12
- Attributable income (for purposes of CFC rules): 80
- Constituent Entity for GloBE purposes

2. XCo 2 (located in jurisdiction X) (80% owned by UPE; 20% owned by third parties)

- GloBE Income: Nil
- Covered Tax: 10
- Attributable income (for purposes of CFC rules): 70 (at 100% level)
- Constituent Entity for GloBE purposes

3. XCo 3 (located in jurisdiction X) (25% owned by UPE; 75% owned by third parties)

- GloBE Income: 150
- Covered Tax: 30
- Attributable income (for purposes of CFC rules): 100 (at 100% level)
- Constituent Entity for GloBE purposes

4. YCo (located in jurisdiction Y) (100% owned by UPE)

- GloBE Income: 150
- Covered Tax: 15
- Attributable income (for purposes of CFC rules): 50
- Constituent Entity for GloBE purposes

Jurisdictions X and Y do not impose GDMTTs.

Based on this information, what will be the allocation of CFC tax under Art. 4.3.2(c)? Please ignore any possible cap under Art. 4.3.3.

LAST WEEK'S ANSWER

Preliminary point
As XCo 3 is a Minority-Owned Constituent Entity (defined in Art. 10.1.1), Art. 5.8.2 requires its ETR to be calculated separately from XCo 1 and XCo 2. Therefore, for the purposes of the new para. 58.6.1 in the Commentary to Art. 4.3.2, there are 2 blending groups in jurisdiction X: XCo 1 and XCo 2 (together, a blending group) and XCo 3 (a blending group). New para. 58.6.1 was added by the December 2023 AG.

GloBE Jurisdictional ETR: (i) XCo 1 / XCo 2: $22 / 200 = 11\%$; (ii) XCo 3: $30 / 150 = 20\%$; (iii) YCo: $15 / 150 = 10\%$.

Attributable income of Entity: (i) XCo 1: 80; (ii) XCo 2: 56 (after applying 80% ownership level); (iii) XCo 3: 25 (after applying 25% ownership level); (iv) YCo: 50.

Blended CFC Allocation Key: (i) XCo 1: $80 \times (13.125\% - 11\%) = 1.7$; (ii) XCo 2: $56 \times (13.125\% - 11\%) = 1.16$; (iii) XCo 3: nil (as GloBE Jurisdictional ETR exceeds Applicable Rate of 13.125%); (iv) YCo: $50 \times (13.125\% - 10\%) = 1.5625$.

Sum of All Blended CFC Allocation Keys: $1.7 + 1.16 + 0 + 1.5625 = 4.4525$.

Blended CFC tax allocated to Entity: (i) XCo 1: $1.7 / 4.4525 \times 50 = 19.06$; (ii) XCo 2: $1.16 / 4.4525 \times 50 = 13.36$; (iii) XCo 3: nil; (iv) YCo: $1.5625 / 4.4525 \times 50 = 17.55$.

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