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19 April 2024



HIGHLIGHTS

- **Canada releases 2024 Budget**
 - More tax credits for green investments
 - Capital gains tax effective rate increased
- **5 international tax cases**
 - Deductions for interest and bond issuance fees
 - Non-discrimination
 - EU State aid
 - EU free movement of capital

HAPPY FRIDAY!

A desert deluge in Dubai; Scotland gives up; Swift tortures poets; and there's a new rule in chess: walk softly!

Meanwhile, in the tax world ...

Brazil targets billionaires; **Canada** opens a capital gains window (until 25 June); **India** and **Chile** know not to discriminate; large **Swedish** banks are incomparable; **Letta** lets loose Article 116; and **India's** tax authorities really don't understand tax planning!

But, at the end of the week, the most important question is this: "Does Tortured Poets Department need an apostrophe?"

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. UN
3. Global minimum wealth tax
4. BlackRock case
5. Asia Pacific
 - India, New Zealand
6. Europe
 - EGC, EU, Finland, Netherlands, UK
7. Middle East & Central Asia
 - UAE
8. Americas
 - Canada, Chile

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, 18 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: 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; 18 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, 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: 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; 18 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

Gianluca Mazzoni

"Worldwide Developments Regarding Sovereign Wealth Funds in General and the Specific Example of the United Arab Emirates and Its Tax Treaties"

Bulletin for International Taxation, IBFD, 2024 (Vol. 78), No. 5.

T.M. Vergouwen

"Conflicts between Directives that Require Taxation of Income and Tax Treaties: The Effectiveness of the EU Primacy-based Conflict Rule"

Intertax, Kluwer, 2024 (Vol. 52), Issue 4.

Théophile Trancart

"Assessing Arm's Length Guarantee Fee: Insights from the Crédit Industriel et Commercial Case"

Tax Notes International, Tax Analysts, 8 April 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.

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

Jurisdiction A has a corporate income tax rate of 20%, and jurisdiction B has a corporate income tax rate of 10%.

BCo provides services to ACo. In a Fiscal Year, BCo charges ACo 100 for the services. The 100 is recognised as expense and as income in the Financial Accounting Net Income or Loss of ACo and BCo, respectively.

In its jurisdiction B corporate income tax return for the Fiscal Year, BCo makes a book-to-tax adjustment of 10 (i.e., a further 10% of taxable income is recognised by BCo), in accordance with the jurisdiction B transfer pricing "safe harbour" rules.

What will be the impact under the GloBE rules, for each of ACo and BCo?

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. Also, under those CFC rules, a foreign tax credit is allowed for QDMTT 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
 - QDMTT payable: 2
 - Qualifies for QDMTT Safe Harbour
 - Attributable income (for purposes of CFC rules): 80
 - Constituent Entity for GloBE purposes
2. ACo 2 (located in jurisdiction A) (50% owned by UPE)
 - Exempt from QDMTT
 - 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 QDMTT
 - 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.

LAST WEEK'S ANSWER

A. Preliminary points:

ACo 3 is a non-GloBE Entity (i.e. an Entity which is not a Constituent Entity, Joint Venture, or JV Subsidiary), but it is a CFC. Thus, para. 58.7 (in the Commentary to Art. 4.3.2) sets out a special procedure for its role in the allocation of blended CFC tax.

Also, as ACo 2 is a Joint Venture, Art. 6.4 requires its ETR to be calculated separately from ACo 1. Therefore, for the purposes of para. 58.6.2, there are 2 blending groups in jurisdiction A: ACo 1 and ACo 2.

B. GloBE Jurisdictional ETRs:

- (i) ACo 1: As ACo 1 qualifies for QDMTT Safe Harbour, it uses formula in para. 58.6.2(b): $(8 + 2) / 100 = 10\%$.
- (ii) ACo 2: As ACo 2 qualifies for Transitional CbCR Safe Harbour, para. 58.6.2(a) requires it to use the Simplified ETR (regardless of fact that it qualifies for the safe harbour under the de minimis test): $0.1 / 0.9 = 11.1111\%$.
- (iii) ACo 3: Not applicable: para. 58.7.

C. Attributable income of Entity: (i) ACo 1: 80; (ii) ACo 2: 5; (iii) ACo 3: 100.

D. Blended CFC Allocation Key: (i) ACo 1: $80 \times (13.125\% - 10\%) = 2.5$; (ii) ACo 2: $5 \times (13.125\% - 11.1111\%) = 0.1007$; (iii) ACo 3: 2.5 (i.e., ACo 1's Blended CFC Allocation Key, as required by para. 58.7).

E. Sum of All Blended CFC Allocation Keys: $2.5 + 0.1007 + 2.5 = 5.1007$.

F. Blended CFC tax allocated to Entity: (i) ACo 1: $2.5 / 5.1007 \times 30 = 14.7039$; (ii) ACo 2: $0.1007 / 5.1007 \times 30 = 0.5922$; (iii) ACo 3: $2.5 / 5.1007 \times 30 = 14.7039$.

As ACo 3 is a non-GloBE Entity, the CFC tax allocated to it (14.7039) does not qualify as Covered Tax for the MNE Group.

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