

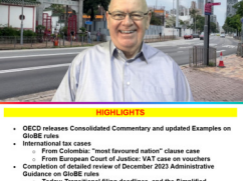
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26 April 2024



HIGHLIGHTS

- OECD releases Consolidated Commentary and updated Examples on GloBE rules
- International tax cases
 - From Colombia: "most favoured nation" clause case
 - From European Court of Justice: VAT case on vouchers
- Completion of detailed review of December 2023 Administrative Guidance on GloBE rules
 - Today: Transitional filing deadlines, and the Simplified Calculation Safe Harbour

HAPPY FRIDAY!

US rules out non-competes; Swifties crowd The Black Dog; and Pecker implements "catch and kill"

Meanwhile, in the tax world ...

OECD consolidates; carbon tax is the new Pillar 3; billionaires are in the firing line; the US is disappointed with Australia; abusive practices don't count in the ECJ; and Colombia favours Canada over Switzerland!

But, at the end of the week, the most important question is this: "How do you turn off Meta AI?"

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 news
2. Other global developments
3. December 2023 Administrative Guidance on GloBE rules: Transitional filing deadlines, and Simplified Calculation Safe Harbour
4. Asia Pacific
 - Australia
5. Europe
 - ECJ, Netherlands
6. Middle East & Central Asia
 - Saudi Arabia, UAE
7. Americas
 - Colombia, US
8. Trusty 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, 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: Transitional filing deadlines, and Simplified Calculation Safe Harbour (ITB, 26 April 2024)
 - 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, 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, 26 July 2023)

WORTH READING

Angelika Kygka
"2023: The Year of State Aid Developments"
European Taxation, IBFD, 2024 (Vol. 64), No. 5.

Reuven S. Avi-Yonah
"Is Treasury Bound by the Arm's-Length Standard?"
Tax Notes International, Tax Analysts, 1 April 2024.

Savvas Kostikidis and Florian Stiefler
"Cross-Border Loss Relief in the European Union Following W.A.G. (Case C-538/20)"
European Taxation, IBFD, 2024 (Vol. 64), No. 5.

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.

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

Jurisdiction X has a corporate income tax rate of 20%, and jurisdiction Y has a corporate income tax rate of 25%.

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

In its jurisdiction X corporate income tax return for the Fiscal Year, XCo makes a book-to-tax adjustment of 10 (i.e., XCo reduces its deduction claim by 10 to 90), in accordance with the jurisdiction X transfer pricing "safe harbour" rules. No adjustment is made by YCo.

Before considering Art. 3.2.3, the GloBE ETR of both XCo and YCo for the Fiscal Year is 15%.

What impact (if any) will Art. 3.2.3 have on XCo or YCo?

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.

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. No adjustment is made by ACo.

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

LAST WEEK'S ANSWER

The primary issue is whether adjustments of 10 should be made to the GloBE Income of ACo and BCo (respectively) under Art. 3.2.3.

According to paras. 101 & 103 of the Comm to Art. 3.2.3:

"Adjustments should be made under Article 3.2.3], unless the transfer pricing adjustment increases ... the MNE Group's taxable income in a jurisdiction that has a nominal tax rate below the Minimum Rate ... [A] unilateral transfer pricing adjustment that increases taxable income in an under-taxed jurisdiction should not be reflected in the GloBE Income because such adjustment would produce double taxation under the GloBE Rules (i.e. the adjustment would expose the income to Top-up Tax in the jurisdiction in which the unilateral adjustment is made and the income is already subject to local tax in the other jurisdiction ...)".

Thus, there should be no adjustment to the GloBE Income of ACo and BCo (respectively).

The subsidiary issue is whether the jurisdiction B tax incurred by BCo on the additional 10 of taxable income qualifies as Adjusted Covered Tax for GloBE purposes. The answer is yes. Thus, BCo's ETR will increase to that extent.

Note that this result does not impact the economic double taxation of the 10, under the corporate income tax laws of jurisdictions A and B.

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