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14 June 2024



HIGHLIGHTS

- 3 International tax cases
- UK: interest withholding tax
- India: outbound guarantee fee payments
- Ireland: transfer pricing treatment of share-based awards
Corporate profits levy imposed in Mauritius – but corporate income tax rate reductions announced in Bangladesh and Luxembourg

HAPPY FRIDAY!

Europe jumps to the right; Apple catches up with AI, and Korean noodles are too hot for Denmark!

Meanwhile, in the tax world...

UN produces a zero draft; Burlington takes a 2-sided view; Delhi High Court guarantees Johnson Matthey a loss by not ruling on Art. 7; EU thinks that Chinese EVs are too cheap; accounting expense is not a cost in Ireland; and the usual suspects in the US Congress demand a global minimum tax on billionaires!

But at the end of the week, the most important question is this: "Siri, what is 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. Pillar One
2. GloBE news
3. Burlington Loan Management case
4. Other global developments
5. Asia Pacific
- Bangladesh, India, Malaysia
6. Europe
- Czech Republic, EU, Ireland, Luxembourg
7. Africa
- Mauritius
8. Middle East & Central Asia
- Saudi Arabia
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, 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 Returns (ITB, 28 July 2023)
- Tax Certainty for the GloBE rules (ITB, 13 January 2023)
- GloBE Information Returns (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; 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

Lucas de Lima Carvalho "Good Faith" in Tax Treaties Tax Notes International, Tax Analysts, 3 June 2024.

Dragos Dăncău "Saudi Arabia Regional Headquarters Program – Transfer Pricing Perspective" International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 4.

Michele Ferrari Italy – The Extension of the Participation Exemption Regime to Companies Without a Permanent Establishment in Italy European Taxation, IBFD, 2024 (Vol. 54), No. 7.

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. XCo is the only Constituent Entity located in jurisdiction X.

XCo is subject to a low effective tax rate in jurisdiction X, due to tax incentives.

XCo is planning a major acquisition program of plant and equipment, for use in its manufacturing business. The plan is that the plant and equipment will be acquired and installed for use, at some point during the first half of the next fiscal year (which is the calendar year).

XCo wants to maximise its Substance-based Income Exclusion for the next fiscal year. With that as an objective, XCo has asked you whether the acquisition and installation of the plant and equipment should be at any particular date during the first half of the next fiscal year.

What is your advice?

Thank you, Priscilla Koh, for the idea!

Answer in next ITB email alert on 28 June 2024!

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. ACo is the only Constituent Entity located in jurisdiction A.

BCo, a company located in jurisdiction B, is also a Constituent Entity in the same MNE Group. ACo owns 100% of the shares in BCo. BCo is treated as a disregarded entity for jurisdiction A tax purposes; however, for jurisdiction B tax purposes, BCo is treated as a taxable company. BCo is the only Constituent Entity located in jurisdiction B.

Jurisdiction A has a 25% corporate income tax, and a 15% QDMTT. The corporate income tax applies to foreign sourced income, and it includes a foreign tax credit.

Jurisdiction B has a 5% corporate income tax, and a 15% QDMTT.

ACo is a pure holding company. As noted above, it holds 100% of the shares in BCo. Also, ACo holds 2% of the shares in XCo (an unrelated company) – these shares were purchased by ACo during the fiscal year (see below).

BCo carries on a trading business. It buys goods from, and sells goods to, other members of the MNE Group.

In a particular fiscal year:

- ACo receives 60 of dividends from XCo – these dividends are tax-exempt under the jurisdiction A corporate income tax.
ACo does not receive any dividends from BCo.
BCo derives 100 of pre-tax profits. Please assume that there are no permanent or timing differences vs. the corporate income tax laws of jurisdictions A and B, respectively.

Based on this limited information, what amounts of corporate income tax and QDMTT will each of ACo and BCo be required to pay in respect of this fiscal year?

LAST WEEK'S ANSWER

Introductory point: BCo is a "Hybrid Entity" (Art. 10.2.5).

(1) BCo

Corporate income tax (CIT): 100 x 5% = 5.

QDMTT: 100 x 10% = 10

No Covered Tax is allocated from ACo to BCo; para. 118.30 of Comms to Art. 10.1.1 definition of "QDMTT".

Total BCo tax = 5 + 10 = 15.

(2) ACo

CIT: [100 (i.e., inclusion from BCo) x 20%] – 15 (FTC for jurisdiction B's CIT and QDMTT) = 10. The 60 of dividend from XCo is exempt.

Whether jurisdiction A allows an FTC for the jurisdiction B QDMTT will depend on the jurisdiction A law. In Notice 2023-80, the US IRS states that QDMTT should qualify for US FTC purposes: see ITQ195.

QDMTT:

GloBE Income: 60

2 points: (i) 60 is not an "Excluded Dividend" (defined in Art. 10.1.1), because ACo's shareholding in XCo is a "Short-term Portfolio Shareholding" (defined in Art. 10.1.1) – thus, 60 is not excluded from GloBE income under Art. 3.2.1(b); (ii) 100 is not included in ACo's GloBE income, despite the fact that BCo is treated as a disregarded entity for jurisdiction A tax purposes, because the 100 would not be included in ACo's Financial Accounting Net Income or Loss: Arts. 3.1.1 & 3.1.2.

QDMTT Covered Tax: nil

The CIT of 10 does not qualify as Covered Tax for ACo's QDMTT, because it relates to income (which is not "Passive Income", as defined in Art. 10.1.1) derived through BCo, a Hybrid Entity: see paras. 118.28 & 118.29 of Comms to Art. 10.1.1 definition of "QDMTT".

Thus, QDMTT: 60 x 15% = 9.

Total ACo tax = 10 + 9 = 19.

Do you agree?



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