

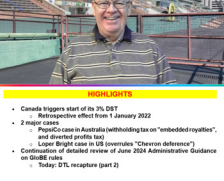
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5 July 2024



HIGHLIGHTS

- Canada triggers start of its 3% DST
 - Retrospective effect from 1 January 2022
- 2 major cases
 - PepsiCo case in Australia (withholding tax on "embedded royalties", and diverted profits tax)
 - Loper Bright case in US (overrules "Chevron deference")
- Continuation of detailed review of June 2024 Administrative Guidance on GloBE rules
 - Today: DTL recapture (part 2)

HAPPY FRIDAY!

Joe wobbles; Rishi is clobbered; and Le Tik Tok King could be France's new PM!

Meanwhile, in the tax world ...

Canada presses the trigger; China is not stuck in the 1990s; Loper Bright lacks deference; Pakistan takes a big SEP; and Vietnam wants to give foreigners a 2% haircut!

But at the end of the week, the most important question is this: "Why did both Sunak and Macron call early elections?"

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 & DST
2. GloBE news
3. PepsiCo case
4. June 2024 Administrative Guidance on GloBE rules: DTL recapture (part 2)
5. Asia Pacific
 - Australia, China, Vietnam
6. Middle East & Central Asia
 - Pakistan
7. Americas
 - US
8. 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, 16 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:
 - June 2024 Administrative Guidance on GloBE rules: DTL recapture (Parts 1 & 2) (ITB, 28 June; 5 July 2024)
 - June 2024 Administrative Guidance on GloBE rules: DTL recapture (part 1) (ITB, 28 June 2024)
 - 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 (Parts 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, 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)
 - Changing 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; 28 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

- Philippe Gobel
"Profit Attribution to Permanent Establishments without Personnel under the AOA: A Systematic Analysis of OECD Literature and Recent Developments in Germany"
International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 4.
- Reuven S. Avi-Yonah
"Are Exit Taxes Discriminatory?"
Tax Notes International, Tax Analysts, 24 June 2024.
- Gorka Echevarria
"Dolá Yu Drama: The Controversy of Subsidiaries as Fixed Establishments as illustrated by the Adient Case"
International VAT Monitor, IBFD, 2024 (Vol. 35), No. 4.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules. For its "intangible assets" balance sheet account, XCo chooses to track DTLs (for the purposes of the DTL recapture rule) by reference to an Aggregate DTL Category which comprises all of the "intangible assets" general ledger accounts. The net DTL movement in this Aggregate DTL Category for each of 10 years is:

Year 1: 130
Year 2: 120
Year 3: (40)
Year 4: 0
Year 5: 80
Year 6: 90
Year 7: (100)
Year 8: 50
Year 9: 70
Year 10: 30

XCo qualifies to use the FIFO methodology, and it chooses to do so. Based on this limited information, what will be the impact on XCo's Top-up Tax computations for years 1 through 10?

Please ignore issues which might arise with: (1) Short-term DTLs; and (2) Transition Year.

Answer in next ITB email alert!

LAST WEEK'S QUESTION

ACo, a Constituent Entity, has several balance sheet accounts, including:

1. Fixed Assets, which consists of 6 General Ledger (GL) accounts:
 - GL account 1: plant and equipment – 20 items
 - GL account 2: land and buildings – 4 items
 - GL account 3: non-amortisable goodwill – 1 item
 - GL account 4: patents with a life of over 10 years – 3 items
 - GL account 5: leasehold assets – 5 items (GL account 5 can produce, at different times, either a net deferred tax asset (DTA) or a net deferred tax liability (DTL))
 - GL account 6: computers and other office equipment – 15 items (DTLs for the computers and other office equipment will fully reverse after 3 years)
2. Trade receivables, which consists of 4 GL accounts:
 - GL account 7 – 3 items
 - GL account 8 – 5 items
 - GL account 9 – 1 item
 - GL account 10 – 1 item
3. Trade payables, which consists of 2 GL accounts:
 - GL account 11 – 25 items
 - GL account 12 – 10 items
4. Dividends receivable, which consists of 2 GL accounts:
 - GL account 13 – 1 item (dividends from ACo's subsidiary, BCo)
 - GL account 14 – 1 item (dividends from ACo's subsidiary, CCo)

Based on this limited information, which categories is ACo allowed to use, in order to apply the DTL recapture rule in Art. 4.4.4?

LAST WEEK'S ANSWER

This answer is based on paras. 90 to 90.11 in the Comm on Art. 4.4.4 (amended / introduced by June 2024 AG)...

2 or more of the 4 balance sheet accounts cannot comprise an Aggregate DTL Category (ADTLC): para. 90.6.

Fixed Assets (i.e., all 6 GL accounts) cannot comprise an ADTLC: 3 of the GL accounts are excluded from participating in an ADTLC: (i) GL account 3 (non-amortisable goodwill: para. 90.9(a)); (ii) GL account 4 (patents with life of 10 years: para. 90.9(b)); and (iii) GL account 5 (springing account: para. 90.11). Each of these 3 exclusions must be separately tracked on a GL account basis or on an item-by-item basis. See Note below regarding GL account 5.

Tax expenses for GL accounts 1, 2, and 6 should qualify as Recapture Exception Accruals (defined in Art. 4.4.5(a): "Cost recovery allowances on tangible assets"). They should therefore be excluded from the DTL recapture rule: para. 90.5.

Trade receivables (i.e., all 4 GL accounts) can comprise an ADTLC. Alternatively, 2 or 3 of the GL accounts can comprise an ADTLC; or DTL tracking can be done on a GL account basis or on an item-by-item basis.

Trade payables (i.e., both of 2 GL accounts) can comprise an ADTLC. Alternatively, DTL tracking can be done on a GL account basis or an item-by-item basis.

Dividends receivable: both GL accounts are excluded from the DTL recapture rule, because the dividends are excluded from the computation of GloBE Income or Loss: para. 90.3.

Final answer: (i) GL accounts 3, 4, and 5 [see Note below] can be tracked on a GL account basis or on an item-by-item basis, but they cannot comprise an ADTLC; (ii) GL accounts 7, 8, 9, and 10 can comprise an ADTLC (any 2, 3 or all 4 of the accounts), or be tracked on a GL account basis or on an item-by-item basis; (iii) GL accounts 11 and 12 can comprise an ADTLC, or can be tracked on a GL account basis or on an item-by-item basis; (iv) the remaining accounts (GL accounts 1, 2, 6, 13, and 14) are excluded from the DTL recapture rule.

Note: It's possible that tax expenses for GL account 5 (leasehold assets) would be Recapture Exception Accruals – in which case, GL account 5 would be excluded from the DTL recapture rule.

Do you agree?