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27 September 2024



HIGHLIGHTS

- Latest developments on GloBE rules and Amount B
 - Puerto Rico plans to introduce a QDMTT
 - OECD releases Model Competent Authority Agreement for Amount B
- Netherlands releases 2025 Tax Plan
- 3 international tax cases
 - Denmark, European Court of Justice, and India

HAPPY FRIDAY!

Turkey claims ownership of the doner kebab; Eric Adams sets an unwelcome precedent; and Starmer drops points at the Emirates!

Meanwhile, in the tax world...

Amount B shows some progress; Puerto Rico goes its own way; India takes a PE class; Denmark does not allow change of form; and everyone is still bewildered by the Apple case!

But at the end of the week, the most important question is this: "Have you seen Megalopolis?"

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. Amount B
3. Other global developments
4. Asia Pacific
 - India, Japan, Malaysia, New Zealand, Vietnam
5. Europe
 - Denmark, ECJ, Netherlands
6. Americas
 - Argentina, Brazil, Canada, Colombia
7. 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 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: Divergences between GloBE and accounting carrying values (Parts 1 to 4) (ITB, 23 & 30 August; 6 & 13 September 2024)
 - June 2024 Administrative Guidance on GloBE rules: DTL recapture (Parts 1 to 4) (ITB, 28 June; 5, 12 & 19 July 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, 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

Robert Goulder
"The Apple State Aid Decision: Is This Really About Pillar 2?"
Tax Notes International, Tax Analysts, 23 September 2024.

Ryan Finley
"The Meaning of State Aid Is Anyone's Guess After Apple"
Tax Notes International, Tax Analysts, 23 September 2024.

Dragos Dancau
"Australia – PepsiCo Embedded Royalties" (Intermediate) Win – Zoom-Out Lessons"
International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 6.

Saurabh Dhanuka, Cameron Taheri, Lillie Sullivan, and Kathryn Peyton
"Worldwide Trends in Transfer Pricing"
Tax Notes International, Tax Analysts, 16 September 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

The UPE of an MNE Group has these figures in its consolidated income statement for each of years 1 to 4 (in EUR millions):

Interest income: 1,200
Interest expense: (900)
Net interest income: 300

Net fee and commission income: 100

Other income: 40

Total operating income: 440

This presentation is in accordance with the Acceptable Financial Accounting Standard (as defined in Art. 10.1.1) which applies in the UPE's home jurisdiction.

Based on this limited information, does the MNE Group satisfy the revenue threshold test in Art. 1.1.1, in respect of year 5?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

MNE Group A owns 100% of the shares in YCo, a Constituent Entity located in jurisdiction Y.

MNE Group A sells 100% of the shares to unrelated MNE Group B for a price of 180.

Both MNE Group A and MNE Group B are "within scope" of the GloBE rules.

For jurisdiction Y corporate income tax purposes:

- The share sale is treated in the same manner as the transfer of YCo's assets.
- A capital gains tax is imposed on the transfer based on the difference between the price of 180 and the jurisdiction Y CIT tax basis of YCo's assets (100).

Please assume that the GloBE carrying value of YCo's assets, at the time of the share sale, was also 100.

Based on this limited information, what is the GloBE carrying value of the assets for MNE Group B?

LAST WEEK'S ANSWER

The share sale satisfies Art. 6.2.2, which will treat the share sale (for GloBE purposes) as a transfer of assets.

Under Art. 6.3.1:

- MNE Group A will recognise a gain of 80 on the transfer of assets. The gain is computed as the difference between (i) price of 180, and (ii) GloBE carrying value of assets (100) – i.e., 80.
- MNE Group B's carrying value for GloBE purposes will be: "Fair value [of the assets] to the extent gain or loss on those assets ... was included in the GloBE Income or Loss computation of the disposing Constituent Entity" (para. 72 of Comm to Art. 6.3.1).

What does "to the extent" mean in this context? Does it mean that MNE Group B's GloBE carrying value will be 80 (i.e., the amount of MNE Group A's gain, which was included in its GloBE Income or Loss computation)? Or alternatively, does it mean that MNE Group B's GloBE carrying value will be 180 (i.e., the fair value of the assets, because the whole amount of the fair value was taken into account in computing the gain, which was included in MNE Group A's GloBE Income or Loss computation)?

My preference is for 180 (i.e., the alternative meaning). If the first meaning applied, there could be absurd outcomes – for example, if MNE Group A's GloBE carrying value was 178, and thus its gain was 2, MNE Group B's GloBE carrying value would be 2!

Do you agree?



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