

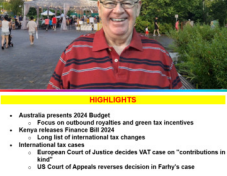
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17 May 2024



HIGHLIGHTS

- **Australia presents 2024 Budget**
 - Focus on outbound royalties and green tax incentives
- **Kenya releases Finance Bill 2024**
 - Long list of international tax changes
- **International tax cases**
 - European Court of Justice decides VAT case on "contributions in kind"
 - US Court of Appeals reverses decision in Farfy's case

HAPPY FRIDAY!

Biden doesn't like Chinese EVs; Zelensky's 5-year presidential term expires on Sunday (but he's going nowhere); and doing nothing is now a sport in Korea!

Meanwhile, in the tax world ...

Kenya applies the "if you can't beat them, join them" approach; Malaysia's APAs allow marginal changes; the EU will go faster (in 2030); Nigeria has second thoughts on cybersecurity; the IRS assesses a win; and dividends become very expensive in Argentina!

But at the end of the week, the most important question is this: "Would you like to play the sport of doing nothing?"

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. Asia Pacific
 - Australia, China, Malaysia
3. Europe
 - Czech Republic, ECJ, EU, UK
4. Africa
 - Kenya, Nigeria
5. Middle East
 - Saudi Arabia, UAE
6. Americas
 - Argentina, Colombia, US
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:**
 - 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, 6 December 2023)
 - July 2023 Administrative Guidance on GloBE rules: GDMTT Safe Harbour (Parts 1 & 2) (ITB, 10 & 17 November 2023)
 - July 2023 Administrative Guidance on GloBE rules: GDMTTs (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: GDMTTs (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

Martin A. Sullivan
"Will Singapore's Refundable Investment Credit Trigger Pillar 2 Tax?"
Tax Notes International, Tax Analysts, 13 May 2024.

Takato Masuda
"Japan Introduced Full VAT Liability Regime to Digital Platforms"
International VAT Monitor, IBFD, 2024 (Vol. 35), No. 3.

Sven-Eric Bänisch and Jan-Hendrik Hillers
"Germany's Growth Opportunities Act 2024 Brings Carrots and Sticks"
Tax Notes International, Tax Analysts, 13 May 2024.

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.

Each of Jurisdiction X and Y has a corporate income tax rate of 20%.

XCo manufactures and sells goods to YCo. In each of years 1, 2 and 3, the consideration paid by YCo to XCo for the purchase of the goods is EUR 100m. This amount is reflected in the respective financial statements of XCo and YCo, in each of years 1, 2 and 3.

In year 3, the MNE Group agrees a bilateral APA (BAPA) with the tax authorities in jurisdictions X and Y. The BAPA applies to years 1 to 3 (i.e., there is a "roll-back" to years 1 and 2). Under the BAPA, the arm's length consideration for the purchase of the goods is agreed as EUR 90m for each of years 1, 2 and 3.

Based on this information, what impact will implementation of the BAPA have on the GloBE ETRs of XCo and YCo, in each of years 1, 2 and 3?

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 12.5%.

In the current Fiscal Year, and in the 2 preceding Fiscal Years, ACo's ETR for GloBE purposes is/was 13%, 18%, and 19% (respectively). Also, in the current Fiscal Year, and in the 2 preceding Fiscal Years, BCo's ETR for GloBE purposes is/was 17%, 16%, and 18% (respectively).

BCo provides services to ACo. In the current 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., BCo increases its income from the services to ACo by 10), in accordance with the jurisdiction B transfer pricing "safe harbour" rules. No adjustment is made by ACo.

What impact (if any) will Art. 3.2.3 have on ACo or BCo?

LAST WEEK'S ANSWER

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

In this scenario, the Comm to Art. 3.2.3 provides confusing guidance.

Firstly, para. 101 says:

"Specifically, a unilateral transfer pricing adjustment will result in a corresponding adjustment to the GloBE Income or Loss of all counterparties under Article 3.2.3, unless the transfer pricing adjustment increases or decreases the MNE Group's taxable income in a jurisdiction that has a nominal tax rate below the Minimum Rate ...".

The "unless" part of that statement covers the facts here: BCo's unilateral TP adjustment of 10 increases BCo's taxable income in a jurisdiction with a 12.5% nominal tax rate. Thus, para. 101 indicates that there should be no adjustments to ACo's and BCo's GloBE Income or Loss under Art. 3.2.3.

Secondly, however, para. 103 says:

"Finally, 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 and/or Top-up Tax if the other jurisdiction is an under-taxed jurisdiction)."

The Comm's definition of "under-taxed jurisdiction" in para. 101 indicates that it includes a jurisdiction in which the nominal tax rate is below 15%, without there being a requirement that the jurisdiction's ETR in the current Fiscal Year is also below 15%.

The confusing guidance is that, in BCo's case, an adjustment under Art. 3.2.3 would not "expose the income to Top-up Tax in the jurisdiction in which the unilateral adjustment is made", as stated in the parentheses in the quote from para. 103: BCo's ETR in the current Fiscal Year is 17%.

Nevertheless, despite that confusion in the parentheses, the 2 express statements in paras. 101 & 103 should require that no adjustments be made under Art. 3.2.3.

What do you think?



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