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7 June 2024



HIGHLIGHTS

- 3 International tax cases
 - From India, Kenya, and UK
- Australia presses ahead with public CbC reporting
- Canada introduces 5% online streaming levy
 - Attracts criticism from US

HAPPY FRIDAY!

Modi wins (just); French PM manterupts; and balloon warfare erupts in Korea!

Meanwhile, in the tax world...

Canada upsets the neighbours (again); Pillar One looks shaky; AG Kokott supports lawyers; Houmet is not entitled; ECP does way too much; and Nigeria wants to cut taxes, but not revenue!

But at the end of the week, the most important question is this: "How often do men manterupt?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

(For ITB video subscribers, please log in to access the video and documents/reports)

1. Pillars One & Two
2. Other global developments
3. Asia Pacific
 - Australia, India, Malaysia, New Zealand, Singapore
4. Europe
 - ECJ, EU, Lithuania, Slovenia, UK
5. Africa
 - Kenya, Nigeria
6. Middle East & Central Asia
 - Bahrain
7. Americas
 - Barbados, Canada, 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, 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, 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, 18, 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, 16 & 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

Aditya Singh Chandel, Suhail Bansal, and Sarvagya Bilgariyan
"Navigating the New Norm: PPT's Entry into the India-Mauritius Tax Treaty"
Tax Notes International, Tax Analysts, 9 June 2024.

Max Velthoven
"The ATAD GAAR: A Little Older, but are We Wiser?"
EC Tax Review, Kluwer, 2024, Issue 3.

Manjit Singh and Zoi Samonas
"Canada's Federal Court of Appeal Hits the Brakes on Break Fees"
Tax Notes International, Tax Analysts, 27 May 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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. XCo owns 100% of the shares in YCo.

Jurisdiction X has a 20% corporate income tax, and a 15% QDMTT. The corporate income tax includes CFC rules and a foreign tax credit.

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

XCo is a pure holding company. Its only source of income is dividends received from YCo.

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

In a particular fiscal year:

- XCo derives no profits (i.e., it receives no dividends from YCo).
- YCo derives 100 of pre-tax profits. Please assume that there are no permanent or timing differences vs. the corporate income tax laws of jurisdictions X and Y, respectively.
- XCo includes 100 in its jurisdiction X taxable income, under the CFC rules, in respect of YCo.

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

LAST WEEK'S ANSWER

1. YCo:
Corporate income tax (CIT) = 100 x 5% = 5.
QDMTT = 100 x 10% = 10 (assuming that YCo's SBIE is 0, or jurisdiction Y's QDMTT does not provide for a SBIE).

In computing YCo's QDMTT, there can be no allocation of XCo's CFC tax: para. 118.30 of Comm to definition of "QDMTT" in Art. 10.1.1.

2. XCo:
CIT = [100 (i.e., CFC inclusion) x 20%] - 15 (i.e., FTC for YCo's CIT and QDMTT) = 5.

Note that in Notice 2023-80, the US IRS states that QDMTT should qualify for US FTC purposes: see ITQ195. However, this would depend on each country's FTC law.

QDMTT = 0, as XCo has no GloBE Income. If, hypothetically, XCo did have some GloBE Income, XCo's CFC tax (i.e., 5) would not qualify as a Covered Tax for the purposes of XCo's QDMTT: para. 118.28 of Comm to definition of "QDMTT" in Art. 10.1.1.

Thus, total tax = 15 (YCo) + 5 (XCo) = 20.

Do you agree?



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