

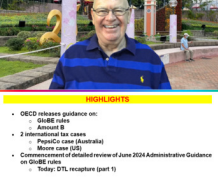
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28 June 2024



HIGHLIGHTS

- OECD releases guidance on:
- GloBE rules
- Amount B
2 international tax cases
- PepsiCo case (Australia)
- Moore case (US)
Commencement of detailed review of June 2024 Administrative Guidance on GloBE rules
- Today: DTL recapture (part 1)

HAPPY FRIDAY!

Gen Zs protest Kenyan tax increases; Assange cuts a deal; and US Democrats have a big problem!

Meanwhile, in the tax world ...

Pillar One goes down to the wire, but the OECD still qualifies; Pepsi wins like royalty; France, Denmark and Canada target streaming; and the US Supreme Court goes narrow in Moore!

But at the end of the week, the most important question is this: "Should the Democrats find a new candidate for US President?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

- 1. June 2024 Administrative Guidance on GloBE rules: DTL recapture (part 1)
2. Other GloBE news
3. Amount B
4. Other global developments
5. Asia Pacific
- Australia, Japan, Malaysia, Singapore
6. Europe
- Denmark, France, Netherlands
7. Africa
- Kenya
8. Middle East & Central Asia
- Pakistan
9. Americas
- US
10. 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: 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 (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 8) (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)
- 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

Joni Ghekiens, Gilles Franssens, Stefan De Baets, and Isabel Verlinden "Navigating the Transfer Pricing Pitfalls and Opportunities of Pillar Two: Part 1 – Transfer Pricing Adjustments." International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 4.

Michael McDonald "IRS: GLAM on Implicit Support: Don't Blame Canada, Blame Me." Tax Notes International, Tax Analysts, 17 June 2024.

Henri Bitar and Amanda Z. Gueneta "Indirect Tax Impacts of Transfer Pricing Adjustments: EU & US Approaches When the Price Evolves To Make it 'Right'." International VAT Monitor, IBFD, 2024 (Vol. 35), No. 4.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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 either a net deferred tax asset or a net deferred tax liability)
- 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?

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. 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 in the 3 months period from 1 December in the current calendar year to 28 February in the next calendar year. XCo's fiscal year 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 that 3 months period.

What is your advice?

LAST WEEK'S ANSWER

The tangible asset carve-out for the SBIE is equal to 5% (increased during the years through to 2032: Art. 9.2.2) of the carrying value of the Eligible Tangible Assets: Art. 5.3.4.

Carrying value is computed as the average of the carrying value (net of accumulated depreciation, etc.) at the beginning and ending of the Fiscal Year, as recorded for the purposes of preparing the Consolidated Financial Statements (CFS) of the UPE: Art. 5.3.5.

The impact of a delay in acquisition of plant can be illustrated:

Scenario (1): Plant acquired on 1 February for 1,000, 10% straight line annual depreciation rate ...
Carrying value: at beginning of year (0) and end of year (1,000 - (1,000 x 10% x 11/12) = 908.3).
Average carrying value = 454.15.
Tangible asset carve-out (@ 5%) = 454.15 x 5% = 22.7.

Scenario (2): Plant acquired on 1 December for 1,000, 10% straight line annual depreciation rate ... -4x
Carrying value: at beginning of year (1,000 - (1,000 x 10% x 1/12) = 991.7) and end of year (991.7 - (1,000 x 10%) = 891.7).
Average carrying value = 941.7.
Tangible asset carve-out (@ 5%) = 941.7 x 5% = 47.1.

Thus, to maximise the SBIE in the next Fiscal Year, XCo must ensure that the plant and equipment is recorded as at the beginning of the Fiscal Year for the purposes of preparing the UPE's CFS.

Two points should be noted:

- 1. It should be clarified whether that recording is dependent only on acquisition, or alternatively whether it requires both acquisition and installation ready for use.
2. It would be prudent to aim for an acquisition / installation date in early to mid December, to ensure that the recording is made as at the beginning of the next Fiscal Year: the amount of carrying value which is "lost" from depreciation in December should be minor, compared to the risk of missing the 1 January date: see above illustration.

Do you agree?



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