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23 August 2024



HIGHLIGHTS

- UN, by majority, approves terms of reference for Framework Convention on International Tax Cooperation
- 2 transfer pricing cases
 - Kenya: another case on use of median in interquartile range
 - US: IRS succeeds in obtaining foreign employee performance evaluations
- Review of June 2024 Administrative Guidance on GloBE rules
 - Today: Divergences between GloBE and accounting carrying values (part 1)

HAPPY FRIDAY!

Canada is denied; Kamala doesn't worry about the details; and Ticke vs. Giggle decides who is a woman in Australia!

Meanwhile, in the tax world ...

Majority rules in the UN; Tesla minimises a dumping; Eaton's Irish employees are exposed; and Siemens does not find a happy median!

But this week's number 1 observation is this: "Democrats don't care whether Kamala Harris is a progressive or a moderate – they're just relieved she's not Biden!"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

- GloBE news
- Other global developments
- June 2024 Administrative Guidance on GloBE rules: Divergences between GloBE and accounting carrying values (part 1)
- Asia Pacific
 - Singapore
- Europe
 - EU
- Africa
 - Kenya
- Middle East & Central Asia
 - Oman
- Americas
 - Colombia, US
- 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, 8 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 2023)
- Draft model rules for Amount A in Pillar One:
 - Tax certainty (ITB, 19 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 (Part 1) (ITB, 23 August 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: 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, 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: 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, 5, 12 & 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

Kash Mansori and Guy Sanechagrin
"CFPM Benchmarking Studies: Risk Adjustments to Improve Comparability"
Tax Notes International, Tax Analysts, 12 August 2024.

Bo Wingerter, Michal Wojcniak, and Maja Veljanova
"Pricing of AI-Generated Content"
International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 5.

Michael Hendriks, Markus Gmeinert, Susan Karnath, and Andreas Loonhardt
"German Relocation of Function Rules – Case Law Developments"
Tax Notes International, Tax Analysts, 19 August 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. XCo is the only Constituent Entity located in jurisdiction X.

YCo, a company located in jurisdiction Y, is also a Constituent Entity in the same MNE Group. YCo is the only Constituent Entity located in jurisdiction Y.

Jurisdiction X does not levy corporate income tax (CIT) on asset disposals (other than inventory).

Jurisdiction Y has a CIT rate of 25%.

XCo sells an asset (not inventory) to YCo for a price of 200 (which is its fair market value).

The cost and the accounting carrying value of the asset for XCo are both 120.

For accounting purposes, both XCo and YCo record the sale at cost (i.e., 120), in accordance with the relevant accounting standard.

YCo amortises the asset for accounting purposes on a straight-line basis over 10 years. However, YCo amortises the asset for jurisdiction Y CIT purposes on a straight-line basis over 5 years.

Based on this limited information, what will be the impact under the GloBE rules, for each of XCo and YCo?

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. 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. BCo is the only Constituent Entity located in jurisdiction B.

Prior to entering into the loan transaction described below, ACo has these expected tax numbers for the current year:

- GloBE Income (GI): 1,000
- Adjusted Covered Taxes (ACT): 130
- Substance-based Income Exclusion (SBIE): 900
- Taxable income (for jurisdiction A corporate income tax (CIT) purposes): 1,000
- CIT: 120 (12% CIT rate)
- Excess interest expense brought forward from previous years (available for deduction against current year interest income, if any (currently, nil)): 100

Also prior to entering into the loan transaction described below, BCo has these expected tax numbers for the current year:

- GI: 200
- ACT: 10
- SBIE: 0
- Taxable income (for jurisdiction B CIT purposes): 200
- CIT: 10 (5% CIT rate)

At the start of the current year, ACo lends money to BCo. The terms of the loan satisfy the arm's length principle. The current year's interest expense, which is deductible for jurisdiction B CIT purposes, is 100. Please assume that the full amount of 100 of ACo's excess interest expense brought forward from previous years is deductible in the current year, against the 100 of ACo's interest income.

Based on this limited information, what amounts of Top-up Tax will arise for the current year in regard to jurisdictions A and B?

Please ignore safe harbours and the de minimis exclusion.

LAST WEEK'S ANSWER

(1) ACo:

GloBE Income (GI) = 1,000 + 100 = 1,100.
Adjusted Covered Tax (ACT) = 130 + 12 = 142 [See Notes below].
ETR = 142 / 1,100 = 12.9%.
Top-up Tax Percentage (TUTP) = 2.1%.
SBIE = 900.
Excess Profit = 1,100 – 900 = 200.
Top-up Tax (TUT) = 200 x 2.1% = 4.2.

Notes:

- The loan will not cause any change to ACo's taxable income for jurisdiction A CIT purposes, and thus there will be no change to ACo's current tax expense.
- ACo would probably have a deferred tax asset (DTA) of 12 (100 x 12%) for the brought forward interest expense, after giving effect to Art. 4 A.5(c). The reversal of the DTA (caused by the use of the brought forward interest expense against the 100 of interest income) would cause a deferred tax expense of 12.

(2) BCo:

GI = 100 [See Note below].

ACT = 5.
ETR = 5%.
TUTP = 10%.
Excess Profit = 100.
TUT = 100 x 10% = 10.

Note:

- The brought forward interest expense allows ACo to "shelter" the 100 of interest income from jurisdiction A CIT. Nevertheless, the intragroup loan is not an "Intragroup Financing Arrangement" (as defined in Art. 10.1.1), because ACo is not a "High Tax Counterparty" (also defined in Art. 10.1.1) – for the reason that jurisdiction A is a "Low-Tax Jurisdiction", regardless of whether ACo's ETR is determined with or without regard to the intragroup interest income. Therefore, the intragroup interest expense is not excluded (under Art. 3.2.7) from BCo's GloBE Income.

This example illustrates a weakness in Art. 3.2.7: the provision does not apply if the lender is located in a "Low-Tax Jurisdiction", and its Top-up Tax is significantly reduced by the Substance-based Income Exclusion.

Do you agree?



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