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30 August 2024

HIGHLIGHTS

- Ireland releases second feedback statement on proposed participation exemption for foreign dividends
- 2 international tax cases
 - Volkswagen transfer pricing case from Argentina
 - Varian DRD case from the US
- Review of June 2024 Administrative Guidance on GloBE rules
 - Today: Divergences between GloBE and accounting carrying values (part 2)

HAPPY FRIDAY!

Kamala and Dana play softball; Noel and Liam reunite to make money; and the UK Chancellor wants to smash Churchill's urn!

Meanwhile, in the tax world ...

Ireland keeps feeding; the UK gets ready for pain; Volkswagen has an extraordinary loss; Canada targets Chinese EVs; and Varian minds the gap!

But at the end of the week, the most important question is this: "Should Churchill's urn be protected for its historical significance?"

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. Other global developments
3. June 2024 Administrative Guidance on GloBE rules: Divergences between GloBE and accounting carrying values (part 2)
4. Asia Pacific
 - Australia, New Zealand
5. Europe
 - Ireland, Switzerland, UK
6. Americas
 - Argentina, Canada, 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 DSI's 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, 16 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 & 2) (ITB, 23 & 30 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: 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 6) (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

Deff and Nidya Hapsari

"Indonesia – A Critical Analysis of the Recent Regulatory Developments in Secondary Adjustments"

Asia-Pacific Tax Bulletin, IBFD, 2024 (Vol. 30), No. 2.

Reuven S. Avi-Yonah

"The Usefulness of Pillar 1"

Tax Notes International, Tax Analysts, 19 August 2024.

Natassia Burkhalter-Martinez and Jeanne Roy-Stämpfli

"Switzerland – Primary, Corresponding and Secondary Transfer Pricing Adjustments"

International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 5.

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.

ACo owns and operates in jurisdiction A a large item of plant & equipment ("asset").

For a fiscal year, ACo has these numbers in respect of the asset:

- Accounting carrying value (before impairment): 300
- GloBE carrying value (before impairment): 150

During the fiscal year, ACo undertakes impairment testing in respect of the asset, which results in the post-impairment accounting carrying value of the asset being 170.

Q1: Based on this limited information, what is the asset's (i) GloBE carrying value; and (ii) carrying value for the purposes of computing the tangible asset carve-out under the Substance-based Income Exclusion? Please ignore current year depreciation.

Q2: What would be your answer to Q1 if the post-impairment carrying value of the asset was 120?

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.

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?

LAST WEEK'S ANSWER

Art. 3.2.3 (transfer pricing) applies to the sale. This answer is based on the example in para. 104.2 of the Comm to Art. 3.2.3.

1. XCo

XCo will include 80 of gain in its GloBE Income.

There will be no impact on XCo's Adjusted Covered Taxes.

2. YCo

Accounting carrying value = 120.

Jurisdiction Y CIT tax basis = 200.

For accounting purposes, YCo will record a deferred tax asset of 20 (i.e., 25% x (200 – 120)).

However, due to Art. 3.2.3, GloBE carrying value = 200.

Therefore, YCo will not record any deferred tax asset for GloBE purposes upon acquisition.

YCo will amortise the asset, under the relevant accounting standard, based on its GloBE carrying value. Thus, annual amortisation expense for GloBE purposes will be 20 (i.e., 200 x 10%).

Annual amortisation deduction for jurisdiction Y CIT purposes will be 40 (i.e., 200 x 20%).

Annual deferred tax expense for GloBE purposes will be 3 (i.e., 20 x 15%), after applying recasting at 15%, because the jurisdiction Y CIT rate is 25%.

DTL recapture under Art. 4.4.4 will apply, unless the DTL is a Recapture Exception Accrual in Art. 4.4.5.

If the asset qualifies for the tangible asset carve-out in the Substance-based Income Exclusion, the tangible asset carve-out will be computed based on YCo's accounting carrying value of 120: see para. 49 of Comm to Art. 5.3.5.

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