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25 October 2024



HIGHLIGHTS

- 2 cases on EBITDA-based interest restrictions
 - From Kenya and Finland
- Case from Ireland
 - Does US LLC qualify as US resident under Ireland / US double tax treaty?

HAPPY FRIDAY!

Musk tries to buy votes; **BRICS** and **CHOOM** meet (but not together); and **UK Labour** party members seek work experience in the **US!**

Meanwhile, in the tax world ...

India tolerates no change; **Finland** favours interest on principal; **Germany** slims down; **Susquehanna** is disregarded in **Ireland**; **Kenya** applies EBITDA without equity; and **Argentina** dissolves the tax authorities!

But as the **US** presidential candidates try to turnout the vote, the most important question is this: "Should voting be compulsory?"

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. Asia Pacific
 - India, Malaysia
4. Europe
 - Finland, France, Germany, Ireland, Italy, Switzerland
5. Africa
 - Kenya, Morocco
6. Middle East & Central Asia
 - UAE
7. Americas
 - Argentina, Brazil, Canada, Mexico, 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)
 - Extraterritorial 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 to 7) (ITB, 23 & 30 August; 6 & 13 September; 4, 11 & 18 October 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

Reuven S. Avi-Yonah
 "Where is China Now on Pillar 2?"
 Tax Notes Today International, Tax Analysts, 18 October 2024.

Mima S. Screpante
 "The Formulaic Approach to 'Substance-Based Income Exclusion' under Pillar Two: A Genuine Shift in International Tax Policy?"
 International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 6.

Johanna Hey
 "Time for Rethinking: The ATAD Experiment and the Conceptual Flaws of its Hybrid Mismatch Rules."
 Intertax, Kluwer, 2024 (Vol. 52), Issue 11.

INTERNATIONAL TAX QUIZ

LAST WEEK'S QUESTION

ACo, a company located in jurisdiction X, is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules. The UPE of the MNE Group is located in jurisdiction U, which implemented an IIR effective 1 January 2024. Please assume that all Fiscal Years are calendar years.

On 1 January 2026, ACo moves its place of effective management to jurisdiction Y. This has the effect of causing ACo to cease to be a resident under jurisdiction X corporate income tax (CIT) law, and it also causes ACo to become a resident under jurisdiction Y CIT law.

Under the jurisdiction X CIT law, ACo is deemed to sell and re-acquire all its assets for fair market value (FMV) at the time of the residence change. Also, under the jurisdiction Y CIT law, ACo is deemed to acquire all its assets for FMV at the time of the residence change.

Please assume that, at the time of the residence change, ACo's assets had:

- FMV of 500
- Accounting carrying value of 280
- GloBE carrying value of 250
- Jurisdiction X tax basis of 200

Please also assume that all of ACo's assets are depreciated at 10% per annum for accounting purposes.

Neither jurisdiction X nor jurisdiction Y has implemented a QDMTT.

In regard to both jurisdiction X and jurisdiction Y, the MNE Group qualifies for the Transitional CbCR Safe Harbour in 2024, 2025, and 2026.

Based on these limited facts, what will be the GloBE impact of the residence change?

LAST WEEK'S ANSWER

The change of residence is treated as a "transfer of assets" for the purposes of Art. 9.1.3; para. 10.3 of Comm to Art. 9.1.3.

The Transitional CbCR Safe Harbour (TCSH) applies in jurisdictions X and Y in 2024, 2025, and 2026. This means that the "Transition Year" for both jurisdictions is 2027; para. 25 of TCSH chapter in Annex A of Comm.

At the time of the residence change (1 January 2026), the GloBE carrying value of the assets is 250. That carrying value is then depreciated at 10% per annum straight line; para. 10 of Comm to Art. 9.1.3. Thus, at 1 January 2027 (the start of the Transition Year), the GloBE carrying value will be 250 x 90% = 225.

For juris. X CIT purposes, the residence change causes ACo to recognise a taxable gain of 500 - 200 = 300. The resulting tax liability gives ACo the right to recognise a deferred tax asset (DTA) at the time of the residence change; para. 10.8.1 of Comm to Art. 9.1.3. Prima facie, the amount of the DTA will be equal to the juris. X tax paid on the residence change, plus any DTA which was reversed or not created by ACo because of the gain. However, the amount of the DTA will be capped at 15% x (difference between (1) "local tax basis", and (2) GloBE carrying value); para. 10.8.2 of Comm to Art. 9.1.3. Based on the IF's Examples document, "local tax basis" refers to the stepped-up tax basis (500). If this is correct, then the cap will be: 15% x 250 = 37.5.

Assuming the DTA is 37.5 as at 1 January 2026, it will be reduced by 10% per annum. Thus, at 1 January 2027, the DTA will be 37.5 x 90% = 33.75.

Final answer: At 1 January 2027 (start of the Transition Year): (1) GloBE carrying value = 225; (2) DTA = 33.75.



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