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15 November 2024



HIGHLIGHTS

- Australian Federal Court decides case on meaning of "market value"
- Can a "special or synergistic value" recognised by only one buyer determine the market value?
- 2 cases from Kenya on whether 2023 tax legislation and regulations are constitutional
- Continuation of detailed review of June 2024 Administrative Guidance on GloBE rules
- Today: Allocation of Cross-border Current Taxes (part 1)

HAPPY FRIDAY!

Biden welcomes Trump back; woke is cancelled, but is RFK Jr a healthy choice?

Meanwhile, in the tax world ...

Kilgour is one-sided; the Netherlands provides comparability; the government draws 1-1 in Kenya; and Indonesia reminds holidaymakers to pay GloBE tax!

But at the end of the week, the most important question is this: "Will the US dollar strengthen under Donald Trump?"

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: Allocation of Cross-border Current Taxes (part 1)
4. Asia Pacific
- Australia, Indonesia, New Zealand
5. Europe
- EU, Germany, Greece, Italy, Netherlands, UK
6. Africa
- Kenya
7. Middle East & Central Asia
- UAE
8. Americas
- US
9. 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 DcTs 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: Allocation of Cross-border Current Taxes (Part 1) (ITB, 15 November 2024)
- June 2024 Administrative Guidance on GloBE rules: Divergences between GloBE and accounting carrying values (Parts 1 to 7) (ITB, 23 & 29 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 CPC 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 CoCR 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, 10, 17 & 24 March 2023)
- Administrative Guidance on GloBE rules: Allocation of taxes arising under Blended CPC 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 8) (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 8) (ITB, 11, 18 & 25 February; 29 July; 5, 12, 19 & 26 August; 18 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

Elizabeth J. Stevens and H. David Rosenbloom "Original Sin: Cost Sharing in the United States" Tax Notes Today International, Tax Analysts, 7 November 2024.

Sohum Dua "Delhi [TAT on US Disregarded Entities, Correct Result, Wrong Route" Tax Notes Today International, Tax Analysts, 12 November 2024.

Craig Elfrle "The Quiet Evolution in International Tax: Domestic Law and Double Taxation" World Tax Journal, IBFD, 2024 (Vol. 16), No. 4.

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 has a business in jurisdiction A. It also has 3 PEs, one in each of jurisdiction B, C, and D respectively.

In a particular fiscal year:

- The B PE derives 1,000 of gross income, and it incurs 800 of expenses. It is subject to a 22% jurisdiction B CIT rate - therefore, it pays 44 of jurisdiction B CIT.
- The C PE derives 2,000 of gross income, and it incurs 1,600 of expenses. It is subject to a 12% jurisdiction C CIT rate - therefore, it pays 48 of jurisdiction C CIT.
- The D PE derives 1,500 of gross income, and it incurs 1,200 of expenses. It is subject to a 17% jurisdiction D CIT rate - therefore, it pays 51 of jurisdiction D CIT.
- ACo's business in jurisdiction A derives 10,000 of gross income, and it incurs 8,000 of expenses. It is subject to a 20% jurisdiction A CIT rate - therefore, in regard to its business in jurisdiction A, it pays 400 of A CIT
- ACo derives 500 of royalty income from jurisdiction D, and incurs 10% (i.e., 50) of jurisdiction D royalty withholding tax.
- ACo incurs 1,000 of interest expense (not included in the expenses described above).

Under the jurisdiction A CIT law, the profits made by the PEs and the royalties derived from jurisdiction D are taxable, and a credit is given for the foreign tax paid on those profits and royalties.

In computing the credit: (1) cross-crediting is allowed - i.e., the credit is calculated on the total foreign tax incurred on the total profits of the PEs and royalties; (2) the credit is limited to the lower of the foreign tax and the jurisdiction A tax on the foreign income; (3) in determining the jurisdiction A tax on the foreign income, ACo's interest expense allocated to the foreign income (i.e., on a pro rata basis) is first deducted.

Based on this information, what amounts (if any) of jurisdiction A tax will be allocated to each PE under Art. 4.3.2?

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. 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.

XCo has a significant business located in jurisdiction X. Also, for many years, XCo has had a branch located in jurisdiction Y. The branch has a significant business located in jurisdiction Y. The branch constitutes a PE under the X/Y double tax treaty. Please assume that the corporate income tax (CIT) rate in both jurisdiction X and jurisdiction Y is 15%.

Neither jurisdiction X nor jurisdiction Y has implemented a QDMTT.

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

On 1 July 2024, XCo's head office "transferred" valuable IP to the branch. The "transaction" was reflected in the financial accounts of both the head office and the branch as occurring for a consideration equal to fair market value (which was 1,000 on 1 July 2024). For accounting and tax purposes, the branch depreciates the IP at 10% p.a.

At the time of the "transaction", the IP had (1) accounting carrying value, (2) GloBE carrying value, and (3) jurisdiction X tax basis, all equal to nil.

Under the jurisdiction Y CIT law, the branch obtains a tax basis of 1,000 in the IP. The jurisdiction X CIT law does not tax capital gains - thus, the "transaction" is not taxable for the XCo head office.

Based on these limited facts, what is the GloBE carrying value of the IP as at 31 December 2024?

LAST WEEK'S ANSWER

For GloBE purposes: (1) XCo's head office is a "Main Entity"; (2) the branch is a "Permanent Establishment" (PE); and (3) the Main Entity and the PE are both Constituent Entities.

The Transitional CoCR Safe Harbour (TCSH) applies in jurisdiction X in 2024, 2025, and 2026. This means that the "Transition Year" for jurisdiction X is 2027; para. 25 of TCSH chapter in Annex A of the Comm. As the TCSH does not apply in jurisdiction Y, the Transition Year for jurisdiction Y is 2024.

Art. 6.3.2 (GloBE Reorganisation) does not apply, due to the "transfer" occurring before jurisdiction X's Transition Year; para. 70.1 of Comm on Art. 6.3.

However, as 2024 is before jurisdiction X's Transition Year, Art. 9.1.3 can apply; para. 10.1.1 of Comm to Art. 9.1.3.

The issue is: is the "transfer" of IP from the Main Entity to the PE (i.e., an intra-entity "transfer") a "transfer of assets", for the purposes of Art. 9.1.3?

Such a "transfer" is not expressly referred to in the Comm on Art. 9.1.3. However, para. 10.3 of that Comm says that "Article 9.1.3 also applies to a transfer or deemed transfer of assets within the same entity" - as the "transfer" is accounted for as a transfer by both the head office and the branch (see para. 10.2 of that Comm), the "transfer" should qualify as a "transfer of assets", for the purposes of Art. 9.1.3.

If that is correct, then Art. 9.1.3 would apply to treat the GloBE carrying value of the IP, immediately after the "transfer" (i.e., 1 July 2024), as nil. As no further facts are provided in the question, the GloBE carrying value as at 31 December 2024 would also be nil.

Do you agree?



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