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7 February 2025



HIGHLIGHTS

- Tariff wars between US, Canada, Mexico, and China
- India's 2025 Budget
- 4 international tax cases
 - From India, Mauritius, and European Court of Justice

HAPPY FRIDAY!

Tariff wars start; Trump plans a major real estate development in Gaza; and Elon Musk shreds the government!

Meanwhile, in the tax world...

The US walks out; India is presumptive, but Tiger is stayed; Volvo is caught in a circle; ECJ tells Harley-Davidson to get on its bike; Mauritius expands; Canada announces 2 postponements in 1 week; and where has all the UK DPT revenue gone?

But at the end of the week, the most important question is this: "Will the EU be next for US tariffs?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. Tariffs
2. GloBE news
3. Other global developments
4. Asia Pacific
 - Australia, India, Japan, Malaysia, Thailand
5. Europe
 - Belgium, Denmark, ECJ, Lithuania, Slovak Republic, Switzerland, UK
6. Africa
 - Mauritius, South Africa
7. Middle East & Central Asia
 - Saudi Arabia
8. Americas
 - Canada, 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 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, 23 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 Deferred Taxes (ITB, 24 January 2024)
 - June 2024 Administrative Guidance on GloBE rules: Allocation of Cross-border Current Taxes (Parts 1 to 5) (ITB, 15 & 22 November; 6, 13 & 20 December 2024)
 - 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: 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, 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: 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, 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

Tatiana Falco
"Significant Economic Presence Taxation: A Concept Without Practice?"
Tax Notes Today International, Tax Analysts, 4 February 2025.

Bart le Blanc and Daan Goedemoed
"Infrastructure Investments under Pillar Two: A Substitute for Tax Payments?"
Finance and Capital Markets, IBFD, 2025 (Vol. 26), No. 1.

Ryan Finley
"Denmark's Misguided Fixation on Transfer Pricing Documentation?"
Tax Notes Today International, Tax Analysts, 5 February 2025.

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.

The MNE Group is a major investor in infrastructure projects.

ACo enters into a contract with the government of jurisdiction A to obtain the right to operate a port in the jurisdiction, for 50 years. Under the contract, ACo agrees to pay USD 50 million to the government, and the government agrees to provide ACo with a corporate income tax holiday for 5 years.

Will ACo's USD 50 million payment qualify as a "Covered Tax" for the purposes of the GloBE rules?

Note: This question has been adapted from Bart le Blanc and Daan Goedemoed, "Infrastructure Investments under Pillar Two: A Substitute for Tax Payments?", Finance and Capital Markets, IBFD, 2025 (Vol. 26), No. 1.

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.

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.

XCo operates as a "principal company" in a supply chain structure. YCo is a limited risk buy-sell distributor in jurisdiction Y. It buys goods from XCo and sells them to unrelated retailers in jurisdiction Y.

Jurisdiction Y has implemented Amount B, on a mandatory basis. Amount B is applied to YCo to determine its taxable profits in a particular year, for the purposes of jurisdiction Y corporate income tax (CIT).

Q1: Must the jurisdiction Y tax authorities accept the taxable profits as determined under Amount B, for the purposes of determining YCo's GloBE Income?

Q2: Jurisdiction Y has implemented the UTPR. In the particular year, a jurisdiction Y UTPR liability arises for the MNE Group. Can the jurisdiction Y tax authorities impose that UTPR liability on YCo, despite the existence of Amount B?

LAST WEEK'S ANSWER

OECD / IF's Amount B report, para. 6: "The design of the simplified and streamlined approach [SSA] simplifies pricing of in-scope transactions by providing a solution that approximates an arm's length outcome within the jurisdiction of the tested party. In jurisdictions that choose to apply the [SSA], such approach will be treated as providing an arm's length outcome. In jurisdictions that do not choose to apply the [SSA], such approach will not be treated as providing an arm's length outcome (including for the purposes of Article 9 of the MTC and by extension Article 25). The outcome determined under the [SSA] by a jurisdiction is non-binding on the counter-party jurisdiction."

Thus, the SSA does not produce an arm's length outcome – it "approximates an arm's length outcome". Nevertheless, in a jurisdiction which applies the SSA, "such approach will be treated as providing an arm's length outcome".

Q1: Must the jurisdiction Y tax authorities accept the taxable profits as determined under Amount B, for the purposes of determining YCo's GloBE Income?

This depends on the jurisdiction Y tax law. It is possible that that law merely requires that Amount B be used for the purposes of the jurisdiction Y corporate income tax (CIT), with no reference to the GloBE rules. If that is the situation, then there does not appear to be any legal obstacle to the jurisdiction Y tax authorities ignoring Amount B when computing YCo's GloBE Income – in particular, there is no statement in the Commentary to the GloBE model rules on the applicability of Amount B.

From a policy perspective, it is difficult to understand why the Commentary would not require Amount B to be used for GloBE purposes, if it is used for CIT purposes.

Q2: Amount B is relevant to determining the taxable profits of YCo for jurisdiction Y CIT purposes (and, possibly, YCo's GloBE Income – see Q1). However, it does not place a cap on YCo's other jurisdiction Y tax liabilities, including under the UTPR. Thus, the jurisdiction Y tax authorities can impose a UTPR liability on YCo, despite the existence of Amount B.

Do you agree?



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