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21 February 2025



HIGHLIGHTS

- First small cracks appear in Pillar Two
- Royal Bank of Canada case on Art. 6 of Canada / UK treaty
- Confirmation of review of June 2024 Administrative Guidance on GloBE rules
 - Today: Allocation of Cross-border Deferred Taxes (part 3)

HAPPY FRIDAY!

Trump attacks Zelensky (but wants his minerals); Canada and US play hockey on the ice; and Jack's back in Beijing!

Meanwhile, in the tax world...

Hungary loses faith, while Jamaica reassesses; Singapore puts 3 billion aside for MNEs; the UK Supreme Court shows how to avoid Article 6; and South Africa delays the show while it reviews the script!

But at the end of the week, the most important question is this: "What does Putin really want?"

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. June 2024 Administrative Guidance on GloBE rules: Allocation of Cross-border Deferred Taxes (part 3)
3. Asia Pacific
 - Australia, Malaysia, Philippines, Singapore, Sri Lanka
4. Europe
 - EU, France, Italy, Romania, UK
5. Africa
 - South Africa
6. Middle East & Central Asia
 - Saudi Arabia, UAE
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 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, 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: Allocation of Cross-border Deferred Taxes (Parts 1 to 3) (ITB, 24 January; 14 & 21 February 2025)
 - 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, 6 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, 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: 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

Adam Kern
"Reports of Pillar 2's Death Are Greatly Exaggerated"
Tax Notes Today International, Tax Analysts, 20 February 2025.

Robert Goulder
"Trump, Harley-Davidson, and the EU: A Tale of Tariff-Skipping Gone Wrong"
Tax Notes International, Tax Analysts, Vol. 117, 17 February 2025

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

XCo is a Constituent Entity in an MNE Group, and is located in jurisdiction X.

Jurisdiction X imposes a 25% CIT rate and has a CFC tax regime (not a Blended CFC Tax Regime).

The jurisdiction X CFC tax regime provides for taxation of CFC income by including such income in the taxable income of the shareholder in the tax year immediately following the tax year in which the income is derived by the CFC. For the purposes of the CFC tax regime, "CFC income" is equal to Passive Income (as defined in Art. 10.1.1). A foreign tax credit is given for any tax incurred by the CFC in deriving the CFC income.

XCo owns 100% of the shares in YCo, which is located in jurisdiction Y.

Jurisdiction Y imposes a 5% CIT rate on Passive Income (as defined in Art. 10.1.1) and a 0% CIT rate on other income. YCo is the only Constituent Entity located in jurisdiction Y.

In year 1, YCo derives GloBE Income of 1,000, of which 500 is Passive Income (as defined in Art. 10.1.1) and 500 is other income.

In year 2, YCo derives GloBE Income of 1,500, of which 1,000 is Passive Income (as defined in Art. 10.1.1) and 500 is other income.

Based on these limited facts, how much of XCo's CFC tax is allocated to (1) YCo and (2) XCo, in each of years 1 and 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.

XCo owns 100% of the shares in YCo, a company located in jurisdiction Y.

In year 1, YCo derives: (1) pre-tax profits of 1,000; (2) GloBE Income of 900; (3) GloBE Income which is Passive Income (as defined in Art. 10.1.1) of 200; and (4) GloBE Income which is not Passive Income of 700. In respect of year 1, YCo's pre-tax profits of 1,000 are subject to a jurisdiction Y corporate income tax (CIT) rate of 10% - i.e., 100 of tax.

In year 2, all of YCo's year 1 pre-tax profits of 1,000 are included in XCo's taxable income under the jurisdiction X CFC rules. XCo is subject to a 25% tax rate on that amount for year 2 - i.e., 250 tax. However, XCo can claim a credit for the full amount of YCo's tax of 100.

In year 1, the Top-up Tax Percentage for jurisdiction Y (calculated without regard to XCo's CFC tax on YCo's Passive Income) is 3%.

Based on this limited information, what amounts of XCo's CFC tax will be allocated to (1) YCo, and (2) XCo, under Art. 4.3?

LAST WEEK'S ANSWER

See paras. 71.4 to 71.17 of Comm to Art. 4.4.1.

5-step process must be applied: para. 71.4.

Step 1:

1. Income / not GloBE Income (GI): 100.
2. GI / not Passive Income (PI): 700.
3. GI / PI: 200.

Step 2:

Pre-ETC CFC DTE:

1. Income / not GI: 100 x 25% = 25.
2. GI / not PI: 700 x 25% = 175.
3. GI / PI: 200 x 25% = 50.

Relevant Creditable Foreign Taxes (RCFT):

1. Income / not GI: 100 x 10% = (10).
2. GI / not PI: 700 x 10% = (70).
3. GI / PI: 200 x 10% = (20).

Step 3:

Income / not GI:
Recast DTE: 25 x 15/25 = 15.
RCFT: (10) (not recast).

Net 5 allocated to YCo, then excluded by Art. 4.4.1(a). Thus, not taken into account by either XCo or YCo: para. 71.8.

Step 4:

GI / not PI:
Recast DTE: 175 x 15/25 = 105.
RCFT: (70) (not recast).

Net 35 allocated to YCo.

Step 5:

GI / PI:
Recast DTE: 50 x 15/25 = 30.
RCFT: (20) (not recast).

Art. 4.3.3 limitation: 200 x 3% = 6.
Thus, 6 allocated to YCo, and 4 allocated to XCo.

Final answer: (1) YCo: 35 + 6 = 41; (2) XCo: 4.

Do you agree?



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