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21 March 2025



HIGHLIGHTS

- Latest on tariff wars
  - From steel and aluminum to bourbon and soybeans
- GloBE rules
  - Developments in Bahrain, Switzerland, Liechtenstein, Finland, Germany, EU, and OECD
- 3 international tax cases
  - From European Court of Justice and France

HAPPY FRIDAY!

Ugliness wins in New Zealand; autopen seeks a pardon; and Putin shows Trump the art of the deal!

Meanwhile, in the tax world...

PPT is quarantined in India; Denmark extends; Belgium's DRD is troublesome; ECOFIN wants to declutter; Estonia changes its mind; Brazil withholds, but gives you credit; and Libya wants unlimited time!

But at the end of the week, the most important question is this: "If there were a 200% tariff on French wine, would you still buy it?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. Tariff wars
2. GloBE news
3. Other global developments
4. Asia Pacific
  - Australia, India
5. Europe
  - Denmark, ECJ, EU, OECD, France, Estonia, Malta, Norway, Poland, Turkey
6. Africa
  - Libya, Malawi, South Africa, Tunisia
7. Middle East & Central Asia
  - Kazakhstan, UAE
8. Americas
  - Brazil, Canada, Chile, Jamaica, 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 CDTs 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 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, 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 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

Raffaele Russo and Gaia Magliore, "The Trump Memoranda and the Future of International Taxation" Tax Notes Today International, Tax Analysts, 14 March 2025.

Xiaorong Li, "An Analysis on Expropriation Risks of Top-Up Tax under Pillar Two" Intertax, Kluwer, 2025 (Vol. 53), Issue 4.

Robert Goulder, "Royal Bank of Canada: Should Economic Substance Be Read Into Tax Treaties?" Tax Notes Today International, Tax Analysts, 14 March 2025.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

An MNE Group which is "within scope" of the GloBE rules, includes 2 subsidiaries, ACo and BCo.

Situation 1: (a) ACo is incorporated and tax-resident in China (i.e., Mainland China); (b) BCo is incorporated in Hong Kong.

Situation 2: (a) ACo is incorporated in State A of Country X, a federation of states; ACo is tax-resident in State A for State A CIT purposes; (b) BCo is incorporated in State B of Country X; BCo is tax-resident in State B for State B CIT purposes. The federal government of Country X does not levy CIT.

Situation 3: Same as Situation 2, except that the federal government of Country X does levy CIT. However, both ACo and BCo are exempt from federal CIT.

Situation 4: Same as Situation 3, except that ACo and BCo both pay federal CIT (in addition to state CIT).

In each of these 4 situations, what is the relevant jurisdiction for the purposes of determining the Jurisdictional Top-up Tax?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

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.

Jurisdiction A has a corporate income tax (CIT) rate of 10%, and it also imposes a 15% QDMTT.

Jurisdiction A allows a resident Constituent Entity to elect to be exempt from CIT and to be subject to the 15% QDMTT only.

Please assume that ACo's taxable income for CIT purposes and its GloBE Income for QDMTT purposes are both 1,000.

Would ACo pay less or more total jurisdiction A tax if it makes the election?

LAST WEEK'S ANSWER

The question intentionally omits an important fact: the amount of ACo's Substance-based Income Exclusion (SBIE).

I will initially assume that the SBIE is 0 ...

If the election is not made, then ACo will pay: (1) CIT of 1,000 x 10% = 100; and (2) QDMTT of 1,000 x 5% = 50, which gives total tax of 100 + 50 = 150.

If the election is made, then ACo will pay: (1) CIT of 0; and (2) QDMTT of 1,000 x 15% = 150. Thus, total tax = 150.

I will now assume that the SBIE is relatively low: say, 200 ...

If the election is not made, then ACo will pay: (1) CIT of 1,000 x 10% = 100; and (2) QDMTT of (1,000 - 200) x 5% = 40, which gives total tax of 100 + 40 = 140.

If the election is made, then ACo will pay: (1) CIT of 0; and (2) QDMTT of (1,000 - 200) x 15% = 120. Thus, total tax = 120.

I will now assume that the SBIE is relatively high: say, 600 ...

If the election is not made, then ACo will pay: (1) CIT of 1,000 x 10% = 100; and (2) QDMTT of (1,000 - 600) x 5% = 20, which gives total tax of 100 + 20 = 120.

If the election is made, then ACo will pay: (1) CIT of 0; and (2) QDMTT of (1,000 - 600) x 15% = 60, which gives total tax of 60.

Therefore, based on this analysis, ACo will always pay less tax by making the election, if there is some amount of SBIE.

But there is another issue to consider: in the scenario where the election is not made (i.e., ACo will pay both CIT and QDMTT), will the CIT qualify as a Covered Tax?

To qualify as a Covered Tax, there must first be a Tax. The Art. 10, 1.1 definition of "Tax" is "a compulsory unrequited payment to General Government". Is the CIT "compulsory", if an exemption from CIT is available by election?

If the availability of the election causes the CIT not to be a Tax (and therefore not a Covered Tax), ACo's QDMTT liability (in the context where the election is not made) would increase, as it would reflect a Top-up Tax Percentage of 15%. This would be an additional reason why ACo would generally pay less tax by making the election.

Do you agree?



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