**ITB International Tax Bytes by Steve Towers**

**"International tax news, explained"**



22 November 2024

## HIGHLIGHTS

- **GloBE news**
  - **Switzerland and Vietnam**
- **3 international tax cases**
  - **Switzerland, UK, and US**
- **Continuation of detailed review of June 2024 Administrative Guidance on GloBE rules**
  - **Today: Allocation of Cross-border Current Taxes (part 2)**

## HAPPY FRIDAY!

**Gaetz** fails; **Trumponomics** tees off; and **Brazil**'s first lady says what she really thinks of **Elon Musk**!

Meanwhile, in the tax world...

**Australia** discloses; **Hong Kong** is kind to dividends; **Pascal** bites the **Apple**; **Denmark** earns a hedged success in **Switzerland**; **Mukhi** is a circuit breaker; and **Refinitiv** wants to have a never-ending agreement!

But at the end of the week, the most important question is this: **"How many other Trump nominations will fall?"**

**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 2)
4. Asia Pacific
   - Australia, Hong Kong, Malaysia
5. Europe
   - ECJ, EU, Hungary, Ireland, Italy, Switzerland, UK
6. Middle East & Central Asia
   - UAE
7. Americas
   - Colombia, US, Uruguay
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)**
  - **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 (Parts 1 & 2) (ITB, 15 & 22 November 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

Ronald Bernstein and Yves Hervé
"Thoughts on the Amount B Framework: Considerations for Contributions within and beyond the Baseline Scope"
International Transfer Pricing Journal, IBFD, 2025 (Vol. 32), No. 1.

Monique T. Malan
"The *De Minimis* Exclusions in the ATAD's CFC Rules: A Normative Analysis"
Intertax, Kluwer, 2024 (Vol. 52), Issue 12.

Marco Adda and Matteo Viani
"Arm's Length Remuneration for Limited-Risk Distributors: Is There Still Room for a Traditional Transfer Pricing Analysis?"
International Transfer Pricing Journal, IBFD, 2025 (Vol. 32), No. 2.

## INTERNATIONAL TAX QUIZ

## THIS WEEK'S NEW QUIZ

Parent Entity, a company located in jurisdiction P, owns 100% of the shares in (1) ACo, a company located in jurisdiction A; and (2) BCo, a company located in jurisdiction B.

ACo is treated as a disregarded entity for jurisdiction P corporate income tax (CIT) purposes.

Under the jurisdiction P CIT law:

- Tax is imposed on both domestic source income and foreign source income
- Credit is given for foreign tax paid on foreign source income
- Cross-crediting is allowed and there is only one "basket" - i.e., credit is calculated on total foreign tax paid on total foreign source income
- Credit is limited to the lower of foreign tax paid and P CIT on foreign income (credit limitation)
- Credit cannot be used against P CIT on domestic source income

In a particular fiscal year, ACo has gross revenue of 1,000, and gross expenses of 700.

Included in ACo's gross revenue of 1,000 are 2 receipts:

- 100 service fee income received from Parent Entity. This receipt is disregarded under the P CIT.
- 150 royalty income received from PCo, an unrelated company located in jurisdiction P. This 150 is treated as domestic source income under P CIT law.

In the same fiscal year, BCo pays 500 of service fees to Parent Entity. This 500 is treated as domestic source income under P CIT law.

Based on this limited information, what amount of "foreign source income" (for the purposes of the allocation of cross-border current taxes under Art. 4.3.2) does Parent Entity have for this fiscal year?

**Answer in next ITB email alert on 6 December 2024!**

## 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 has a business in jurisdiction A. It also has 3 PEs, one in each of jurisdiction B, C, and D, respectively. None of jurisdictions A, B, C or D has implemented the GloBE rules.

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 (included in 8,000 of expenses of ACo's business in jurisdiction A).

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, in a single "basket"; (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 which is allocated to the foreign income is first deducted – the interest expense is apportioned between the domestic income and the foreign income (on a pro rata basis).

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

## LAST WEEK'S ANSWER

See paras. 52 to 54 of Comm to Art. 4.3.2.

1. Step 1: identify foreign source income (FSI):

A threshold issue is whether the allocated interest expense is deducted in computing FSI (GloBE concept) of each PE.

This will depend on whether the allocated interest expense is recognised as an expense in calculating the GloBE Income or Loss of each PE: paras. 52.11 & 52.12 of Comm. In the absence of any indication in the question that it is, I will assume that the allocated interest expense is not recognised for that purpose. This will mean that the allocated interest expense is not deducted in computing FSI (GloBE concept) of each PE.

Thus, the FSI is: (i) PE in B: 200; (ii) PE in C: 400; (iii) PE in D: 300; (iv) royalties: 500 (I assume the royalties are treated as foreign source under the jurisdiction A tax law).

Total FSI: 200 + 400 + 300 + 500 = 1,400.

2. Step 2: Allocable Covered Taxes (ACT):

ACo's prima facie jurisdiction A corporate income tax (CIT): [2,000 + 1,400] x 20% = 680.

Interest allocated to FSI: 5,000 / 15,000 x 1,000 = 333 (allocation according to gross income).
FSI: 1,400 – 333 = 1,067.

FTC limitation = 1,067 x 20% = 213 (rounded).

Foreign tax = 44 + 48 + 51 + 50 = 193.

Thus, FTC = 193.

ACo's actual jurisdiction A CIT: 680 – 193 = 487.

ACT = 487 – [2,000 x 20%] – 0 = 87.

3. Step 3: Cross-Crediting Allocation Key (CCAK):

CCAK for PEs: (i) B: [200 x 20%] – 44 = 0; (ii) C: [400 x 20%] – 48 = 32; (iii) D: [300 x 20%] – 51 = 9.

CCAK for ACo: [500 x 20%] – 50 = 50.

Sum of all CCAKs: 0 + 32 + 9 + 50 = 91.

4. Step 4: Allocation to PEs and ACo / Main Entity:

Allocations to PEs: (i) B: 87 x 0 / 91 = 0; (ii) C: 87 x 32 / 91 = 31 (rounded); (iii) D: 87 x 9 / 91 = 9 (rounded).

Allocation to ACo / Main Entity: 87 x 50 / 91 = 48 (rounded).

Thus, the allocations under Art. 4.3.2: (i) PE B: 0; (ii) PE C: 31; (iii) PE D: 9.

Do you agree?