

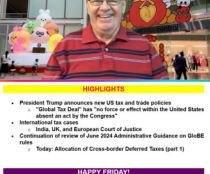
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24 January 2025



HIGHLIGHTS

- **President Trump announces new US tax and trade policies**
 - "Global Tax Deal" has "no force or effect within the United States absent an act by the Congress"
- **International tax cases**
 - India, UK, and European Court of Justice
- **Continuation of review of June 2024 Administrative Guidance on GloBE rules**
 - Today: Allocation of Cross-border Deferred Taxes (part 1)

HAPPY FRIDAY!

Trump hits the ground running; the pope writes his memoirs; and Putin should stop "his ridiculous war"

Meanwhile, in the tax world...

Trump shakes up the OECD; Hong Kong re-domiciles; India takes a reasonable PPT stance; Scottish Power turns a penalty into a deduction; and the IRS admits that periodic adjustments do not satisfy the arm's length standard!

But at the end of the week, the most important question is this: "How many of Trump's trade threats will be implemented, and how many are negotiating tactics?"

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. President Trump announces new US tax and trade policies
2. Other GloBE news
3. June 2024 Administrative Guidance on GloBE rules: Allocation of Cross-border Deferred Taxes
4. Asia Pacific
 - Hong Kong, India, Philippines
5. Europe
 - ECJ, UK
6. Americas
 - Mexico, US
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 DGTs 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, 19 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 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: GDMTT Safe Harbour (Parts 1 & 2) (ITB, 16 & 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, 16 & 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)
 - Changing Provisions (Parts 1 to 5) (ITB, 6, 13 & 20 May; 16 & 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 8) (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

Grahame Jackson
"The Interpretation of Multilateral Instruments, and the Status of Commentary: The Definition of 'Permanent Establishment' in the GloBE Pillar Two Model Rules"
Bulletin for International Taxation, IBFD, 2025 (Vol. 79), No. 2.

J. Harold McClure
"Illustrations and Critiques of Amount B and the New OECD Expat Tool"
Tax Notes Today International, Tax Analysts, 21 January 2025.

Iacopo A. Accolla
"Towards a Clear and Autonomous Definition of Tax Measures in International Investment Agreements"
International Tax Studies, IBFD, 2025 (Vol. 8), No. 1.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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.

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?

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.

ACo owns 100% of the shares in BCo, a company located in jurisdiction B. BCo is treated as transparent for jurisdiction A corporate income tax (CIT) purposes.

The CIT rate in jurisdiction A is 17.5%, and the CIT rate in jurisdiction B is 20%. In both jurisdictions, the CIT base exactly matches GloBE income (except for the jurisdiction A treatment of BCo as transparent). The jurisdiction A CIT law imposes tax on all foreign source income, and it also provides foreign tax credits (FTCs). For FTC purposes, all foreign source income is placed in the same "basket", and no expenses are allocated against foreign source income.

In year 1:

1. ACo incurs a domestic source loss (i.e., excluding foreign source income) of 100.
2. BCo derives taxable income of 100, on which BCo pays 20 of jurisdiction B tax.
3. ACo derives 40 of royalty income from jurisdiction C. 10% (i.e., 4) of jurisdiction C withholding tax is deducted.

The jurisdiction A CIT law requires ACo's domestic source loss to be offset against its foreign source income, before the application of FTCs. However, it allows unused FTCs to be carried forward, to be used against future years' tax on domestic source income (which is recharacterized as foreign source income, for that purpose).

In year 2, ACo derives taxable income of 100. It derives no foreign source income in that year.

Based on this limited information, what is ACo's Top-up Tax for year 1 and year 2?

LAST WEEK'S ANSWER

Threshold issue: Paras. 80 to 82.7 of Comm to Art. 4.4.1 appear to limit the Substitute Loss Carry-forward DTA (SLCDTA) to FTCs on foreign income of CFCs, foreign branches, PEs, or foreign subsidiaries treated as Hybrid Entities or Reverse Hybrid Entities under the GloBE rules. Does this mean that the SLCDTA excludes the FTCs related to ACo's royalties? I have assumed "yes".

That raises a secondary issue: how to determine which carried forward FTCs relate to BCo (Hybrid Entity) and which relate to royalties. I have used a pro rata approach.

Year 1:

1. CIT:
Taxable income = 40 (i.e., 100 - 60).
CIT (before FTCs) = 40 x 17.5% = 7.
FTCs = 20 - 4 = 24.
CIT (after FTCs) = 0.
Excess FTCs = 24 - 7 = 17.
On pro rata basis, the 17 of excess FTCs represent 14.2 of FTCs related to BCo and 2.8 of FTCs related to royalties.

2. GloBE rules:

GloBE Income = 40 - 100 = (60).
Current tax expense = 0.
SLCDTA recognized: [Lesser of (i) 14.2 and (ii) 17.5], recast at 15% = 12.2 (para. 82.3, Comm to Art. 4.4.1).
Adjusted Covered Taxes: (12.2).
No ETR, as jurisdiction A does not have Net GloBE Income: Art. 5.1.1.
Expected Adjusted Covered Taxes Amount (Art. 4.1.5) = (60) x 15% = (9).
Top-up Tax under Art. 4.1.5 = (12.2) - (9) = 3.2.

Year 2:

1. CIT:
Taxable income = 100.
Recast to foreign source income = 97.1.
CIT (before FTCs) = 17.5.
CIT (after FTCs) = 0.5.

2. GloBE rules:

GloBE Income = 100.
Current tax expense = 0.5.
Deferred tax expense (on reversal of SLCDTA): 12.2
Adjusted Covered Taxes: 12.7.
ETR = 12.7%
Top-up Tax = 100 x 2.3% = 2.3.

Do you agree?



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