

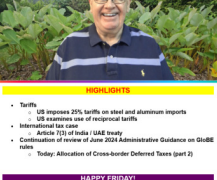
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14 February 2025



HIGHLIGHTS

- **Tariffs**
 - US imposes 25% tariffs on steel and aluminum imports
 - US examines use of reciprocal tariffs
- **International tax case**
 - Article 7(3) of India / UAE treaty
- **Continuation of review of June 2024 Administrative Guidance on GloBE rules**
 - Today: Allocation of Cross-border Deferred Taxes (part 2)

HAPPY FRIDAY!

Musk disrupts everything except the deficit; **Le Chat** is France's big hope; and "any quick fix is a dirty deal for Ukraine"

Meanwhile, in the tax world...

Tariffs, tariffs, and more tariffs; India rewrites history, in half the words; tax is an expensive business in the UK; **Mashreq** avoids the cap; the UK wants to teach the world **CBAM**; and Canada receives tax revenue from non-taxors!

But at the end of the week, the most important question is this: "If the US imposes tariffs on all countries which levy a VAT, how many countries will avoid the tariff?"

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. June 2024 Administrative Guidance on GloBE rules: Allocation of Cross-border Deferred Taxes (part 2)
5. Asia Pacific
 - India
6. Europe
 - France, UK
7. Africa
 - Botswana
8. Americas
 - Canada, Chile
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, 8 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 & 2) (ITB, 24 January & 14 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, 19 & 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; 18 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

- Abhishek Padwalkar and Stefan Grel**
"Unravelling Risk Control in Intragroup Loans, A Case Study Approach"
Tax Notes Today International, Tax Analysts, 12 February 2025.
- Gautham S. Mukundan**
"The Illusion of Inclusivity: Analysing the Psychological Factors Affecting Developing Countries in Consensus-Driven International Tax Negotiations"
Bulletin for International Taxation, IBFD, 2025 (Vol. 79), No. 3.
- Ryan Finley**
"IRS Memo Marks a Major Shift in Transfer Pricing Approach"
Tax Notes International, Tax Analysts, Vol. 117, 10 February 2025.

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.

XCo owns 100% of the shares in YCo, a company located in jurisdiction Y. YCo is the only Constituent Entity in the MNE Group 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.

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

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.

The MNE Group is a major operator of ports.

ACo enters into a concession contract with the government of jurisdiction A 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. The concession contract is confirmed in legislation enacted by jurisdiction A.

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

LAST WEEK'S ANSWER

This question relates to paras. (a) and (c) of Art. 4.2.1, which defines "Covered Taxes". The other paragraphs in Art. 4.2.1 are irrelevant, and the exclusions in Art. 4.2.2 do not apply.

Para. (a) can be immediately eliminated: even if the USD 50 million is a "tax" (see below), it is not "with respect to its income or profits ...".

Para. (c) applies to "Taxes imposed in lieu of a generally applicable corporate income tax".

First issue: is the USD 50 million a "tax"?

Art. 10.1.1: "Tax means a compulsory unrequited payment to General Government."

The confirmation of the concession contract in legislation enacted by jurisdiction A possibly causes the USD 50 million to be "compulsory". The concession contract, without such legislation, might not satisfy the "compulsory" (cf. contractual) condition.

Assuming it is compulsory, is the payment "unrequited"? Para. 24 of Comm to Art. 4.2.1: "Taxes are unrequited in the sense that any benefits provided by government to the taxpayer are not in proportion to their payments. Thus, fees and payments for privileges, services, property, or other benefits provided by government do not qualify as Taxes."

In return for the USD 50 million payment, ACo receives 2 benefits from the government: (1) the granting of the concession (i.e., to operate the port) for 50 years; and (2) a corporate income tax holiday for 5 years. The proportion of the payment which is allocable to (1) would not be "unrequited". However, it is possible that the proportion of the payment which is allocable to (2) could be considered to be "unrequited" - on the basis that the term, "benefits", in para. 24 should not cover reduced or zero corporate income tax payments, because otherwise the "in lieu of" limb in Art. 4.2.1(c) would have no operation.

Second issue: is the USD 50 million payment "in lieu of a generally applicable corporate income tax"?

The proportion of the payment which is allocable to (1) would not satisfy this second issue.

However, the proportion of the payment which is allocable to (2) would possibly do so. Para. 31 of Comm to Art. 4.2.1: "The 'in lieu of' test includes Taxes that are not described in the generally applicable income tax definition but which operate as substitutes for such taxes. ... The 'in lieu of' concept also covers Taxes that are imposed on an alternative basis (i.e. other than net income) ...". The proportion of the payment allocable to (2) is, arguably, a substitute for the generally applicable corporate income tax, and it is imposed on an alternative basis.

Final answer: (assuming an independent valuation identifies the proportion of the payment which is allocable to each of (1) and (2)), the proportion allocable to (2) would possibly qualify under Art. 4.2.1(c) (but it is an aggressive argument), but the proportion allocable to (1) would not.

Do you agree?



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