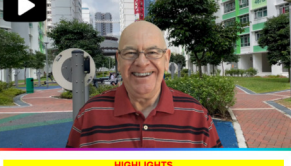


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18 February 2022


HIGHLIGHTS

- Continuation of detailed review of GloBE model rules
 - Today: computation of Adjusted Covered Taxes (Part 2)
- Recent international tax cases
 - Whether domestic law GAAR can deny treaty benefits
 - Interpretation of residence definition in treaty

HAPPY FRIDAY!

Masi is no longer in the driver's seat; Tim Cook gets a pay rise; and it's (almost) déjà vu in Munich!

Meanwhile, in the tax world ...

Pillar One is complex (no kidding!); **Methanex** is artificial; **GRI** self-executes a win; expenses win by 5% in **France**; **TBL** exports IP and imports a tax liability; and although **Chile** loses credit, **Peru** loses interest!

But at the end of a depressing week on financial markets, do you think that your stock market investments are as safe as houses?

Have a great weekend!

Steve

THIS WEEK'S PODCAST

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

1. Pillar One
2. GloBE model rules
3. International tax cases
4. Asia Pacific
 - Australia, China, India
5. Europe
 - France
6. Americas
 - Chile, Colombia, Peru, US
7. Treaty news

ITB series on Pillars One & Two

- GloBE model rules: Computation of Adjusted Covered Taxes (Part 2) (ITB, 18 February 2022)
- GloBE model rules: Computation of Adjusted Covered Taxes (Part 1) (ITB, 11 February 2022)
- GloBE model rules: Computation of GloBE Income or Loss (Part 4) (ITB, 28 January 2022)
- GloBE model rules: Computation of GloBE Income or Loss (Part 3) (ITB, 21 January 2022)
- GloBE model rules: Computation of GloBE Income or Loss (Part 2) (ITB, 14 January 2022)
- GloBE model rules: Computation of GloBE Income or Loss (Part 1) (ITB, 7 January 2022)
- Draft model rules for Amount A in Pillar One: Nexus and revenue sourcing (ITB, 11 February 2022)
- Inclusive Framework's final agreement on Pillars One & Two (ITB, 15 October 2021)

Pillar One

- Scope (Parts 1, 2 & 3) – ITB (22, 29 Jan & 5 Feb 2021)
- Nexus – ITB (19 Feb 2021)
- Revenue sourcing rules (Parts 1 & 2) – ITB (26 Feb & 5 Mar 2021)
- Tax base determinations (Parts 1 & 2) – ITB (12 & 19 Mar 2021)
- Profit allocation (Parts 1 & 2) – ITB (26 Mar & 9 Apr 2021)
- Elimination of double taxation (Parts 1 & 2) – ITB (16 & 23 Apr 2021)
- Amount B (Parts 1 & 2) – ITB (30 Apr & 7 May 2021)
- Tax Certainty (Parts 1 to 4) – ITB (21, 28 May & 4, 11 Jun 2021)
- Implementation and administration – ITB (18 Jun 2021)

Pillar Two

- GloBE rules
 - Scope – ITB (9 Oct 2020)
 - Calculating the ETR (Parts 1 & 2) – ITB (16 & 23 Oct 2020)
 - Carry-forwards – ITB (30 Oct 2020)
 - Carve-out, and computation of the ETR and top-up tax – ITB (6 Nov 2020)
 - Income Inclusion Rule – ITB (13 Nov 2020)
 - Switch-Over Rule, and Undertaxed Payments Rule (Parts 1 & 2) – ITB (20 & 27 Nov 2020)
 - Associates, joint ventures and orphan entities; and Simplification options – ITB (4 Dec 2020)
- Other topics
 - Subject to Tax Rule – ITB (2 Oct 2020)
 - Implementation and Rule Co-ordination – ITB (11 Dec 2020)
 - Unresolved issues, GILTI & hub jurisdictions – ITB (18 Dec 2020)

WORTH READING

Mark L. Brabazon

["Non-Discrimination and Transparent Entities"](#)

Bulletin for International Taxation, 2022 (Volume 76), No. 3 (subscription service)

Joseph L. Andrus and Richard S. Collier

["Transfer Pricing and the Arm's-Length Principle After the Pillars"](#)

Tax Notes Today International, Tax Analysts, 16 February 2022 (subscription service)

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo, a Constituent Entity resident in A, has these financial items for a Fiscal Year:

1. Current tax expense: 25,000
2. Country B royalty withholding tax (recorded as debit to royalty income): 100
3. Country C digital services tax (recorded as debit to sales revenue): 500
4. Current tax expense in regard to uncertain tax positions:
 - a. Accrued during current year: 1,000
 - b. Paid during current year (accrued in prior year): 1,500
 - c. Reversed during current year (accrued in prior year): 800
5. Income tax credit (refundable in cash for 3 years): credited to current tax expense
6. Current tax expense in regard to "Excluded Dividends": 1,200

Based on these numbers, what is ACo's Adjusted Covered Taxes for the Fiscal Year?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

XCo, a Constituent Entity resident in X, is liable for several taxes imposed in X and one tax imposed in Y:

1. Income tax of 25% imposed on XCo's taxable income.
 - a. In computing the taxable income, actual expenses are taken into account, but some expenses are denied deduction (e.g., entertainment expenses), and some other expenses qualify for a 200% deduction (e.g., R&D expenses).
 - b. XCo's taxable income includes (under the X CFC rules) its share of certain profits derived by XCo's foreign subsidiary.
2. Special tax of 30% imposed by Y on XCo's share of Amount A allocated to Y under Pillar One.
3. Resource levy of 20% imposed on the value (determined according to a government schedule) of iron ore extracted in XCo's mining operations.
4. Withholding tax of 10% imposed on gross amount of rent received from leasing of X real estate owned by XCo. No deductions are available in calculating the withholding tax, which is a final tax.
5. A Qualified Domestic Minimum Top-Up Tax.
6. Wealth tax of 5% imposed on XCo's shareholders' equity as shown in its most recent balance sheet.
7. Capital duty of 1% imposed on the issue of new shares.
8. Top-up Tax imposed on XCo by X's "income inclusion rule", which is not a Qualified IIR.

Which of these taxes qualify as Covered Taxes?

LAST WEEK'S ANSWER

1. Income tax of 25% imposed on XCo's taxable income.
 - a. The denial of deduction for some expenses, and the fact that some other expenses qualify for a 200% deduction, should not prevent the income tax from being a tax "with respect to [XCo's] income or profits" (Art. 4.2.1(a)). See October 2020 blueprint report (Commentary to GloBE rules has not yet been released!)
 - b. The income tax on the CFC inclusion will be a tax "with respect to ... its share of the income or profits of a Constituent Entity in which it owns an Ownership Interest" (Art. 4.2.1(a)), if the foreign subsidiary is a direct subsidiary. However, if the foreign subsidiary is indirectly owned by XCo, it's doubtful whether the phrase, "owns an Ownership Interest", is satisfied.

Thus, Covered Tax, subject to the issue concerning the foreign subsidiary.

2. Special tax of 30% imposed by Y on XCo's share of Amount A allocated to Y under Pillar One: This should be a tax "with respect to [XCo's] income or profits" (Art. 4.2.1(a)). Also, see October 2020 blueprint report.

3. Resource levy of 20% imposed on value (determined according to government schedule) of iron ore extracted in XCo's mining operations: Not a tax "with respect to [XCo's] income or profits" (Art. 4.2.1(a)); and not a tax "in lieu of a generally applicable corporate income tax" (Art. 4.2.1(c)), if it is imposed in addition to, and not in substitution for, income tax: see October 2020 blueprint report.

4. Withholding tax of 10% imposed on gross amount of rent: If 25% income tax does not apply to the rent, the withholding tax should be a tax "in lieu of a generally applicable corporate income tax" (Art. 4.2.1(c)).

5. Qualified Domestic Minimum Top-Up Tax: Excluded by Art. 4.2.2(b).

6. Wealth tax of 5% imposed on XCo's shareholders' equity: This would be a tax "levied by reference to retained earnings and corporate equity" (Art. 4.2.1(d)).

7. Capital duty of 1% imposed on issue of new shares: this does not fall into any category of Covered Tax.

8. Top-up Tax imposed on XCo by X's "income inclusion rule", which is not a Qualified IIR: Not excluded by Art. 4.2.2(a), which is limited to a Qualified IIR. This will be a tax "with respect to ... its share of the income or profits of a Constituent Entity in which it owns an Ownership Interest" (Art. 4.2.1(a)), if XCo directly owns shares in the Constituent Entity (i.e., direct subsidiary). However, if the Constituent Entity is indirectly owned by XCo, the same issue as mentioned above applies.

- Thus, Covered Tax, subject to the issue concerning the Constituent Entity.



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