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26 August 2022



### HIGHLIGHTS

- Latest developments on Pillars One & Two
  - Including release of over 70 public comments on Progress Report on Amount A in Pillar One
- 2 recent international tax cases
  - Medtronic transfer pricing case from US (application of unspecified method)
  - Spanish case on double non-taxation under Brazil / Spain treaty
- Continuation of detailed review of GloBE model rules
  - Today: Art. 4.6.1 on carry back of tax losses, and Arts. 4.6.2 to 4.6.4

### HAPPY FRIDAY!

Sanna passes a drugs test (how many other world leaders could do that?); Russia burns gas; and it's a good time to be a student in the US!

Meanwhile, in the tax world...

Medtronic bridges the gap by splitting the difference; Colombia plans a digital currency so it can collect tax; Kenya and Nigeria want political commitment, but that's all; Ethiopia hasn't heard of Pillar Two; Argentina imposes a new tax by advancing the payment of an existing one; and double non-taxation is alive and well in Spain!

But at the end of the week, the most important question is this: "Do you know a Quiet Quitter? ... Or are YOU a Quiet Quitter?"

Have a great weekend!  
Steve

### THIS WEEK'S PODCAST

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

1. Pillars One & Two
2. International tax cases
3. Other global developments
4. GloBE model rules: detailed review
5. Asia Pacific
  - Australia, Singapore
6. Europe
  - Denmark
7. Africa
  - Ethiopia
8. Americas
  - Argentina, Chile, Colombia, Peru, US

### ITB series on Pillars One & Two

- GloBE model rules:
  - Art. 4.6.1 on carry back of tax losses, and Arts. 4.6.2 to 4.6.4 (ITB: 26 August 2022)
  - Art. 4.6.1: Post-filing adjustments (ITB: 19 August 2022)
  - GloBE Loss Election in Art. 4.5 (ITB: 12 August 2022)
  - Deferred tax liability recapture rules in Arts. 4.4.4 and 4.4.5 (ITB: 5 August 2022)
  - Art. 4.4: mechanism to address temporary differences (ITB: 29 July 2022)
  - Scope: Art. 1.5 (definition of "Excluded Entity") (ITB: 1 July 2022)
  - Scope: Arts. 1.1 to 1.4 (ITB: 24 June 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 3) (ITB, 11, 18 & 25 February 2022)
  - Computation of GloBE Income or Loss (Parts 1 to 4) (ITB, 7, 14, 21 & 28 January 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 (ITB, 22 April 2022)
  - Scope (ITB, 8 April 2022)
  - Tax base determination (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)

### WORTH READING

Pascal Saint-Amans, Achim Pross, and John Peterson  
"Special Commentary: Let's Use Balance to Help Make Pillar Two Work"  
Daily Tax Report: International, Bloomberg BNA, 19 August 2022 (subscription service).

William Byrnes  
"Medtronic I, II, and III – Who won? The IRS or the Taxpayer?"  
Kluwer International Tax Blog, 22 August 2022 (freely available).

Dongmei Qiu  
"Assessing the Impact of the OECD's Multilateral Instrument on China's Tax Treaties (2017-2022)"  
Bulletin for International Taxation, IBFD, 2022 (Vol. 76), No. 9 (subscription service).

Guillermo O. Tejero  
"Argentina: Taxation without Representation or how to disguise a new tax under the form of an additional prepayment of Income Tax"  
Kluwer International Tax Blog, 25 August 2022 (freely available).

### INTERNATIONAL TAX QUIZ

#### THIS WEEK'S NEW QUIZ

XCo is the only Constituent Entity (within an "in-scope" MNE Group), which is located in jurisdiction X.

Jurisdiction X's corporate income tax has a 10% rate and allows the carry back of tax losses.

In Year 1, XCo derives:

- GloBE Income: 100
- Taxable profits: 100

In Year 2, XCo has:

- GloBE Loss: 80
- Tax loss: 100

XCo carries back all of the Year 2 tax loss to apply against the Year 1 taxable profits.

What amounts of Top-up Tax (if any) will arise for XCo in Year 1 and Year 2?

Answer in next ITB email alert on 9 September 2022!

#### LAST WEEK'S QUESTION

BCo is the only Constituent Entity (within an "in-scope" MNE Group) which is located in jurisdiction B.

The jurisdiction B corporate income tax has a 15% rate and allows the indefinite carryforward of tax losses.

In Year 1, BCo incurs:

- GloBE Loss of 100,
- Pre-tax accounting loss of 100 in its financial statements, and
- Tax loss of 150

For financial accounting purposes, BCo does not recognise a deferred tax asset.

The difference of 50 between the pre-tax accounting loss and the tax loss is due to a permanent difference: 200% deductions for certain expenses.

In Year 2, BCo derives:

- GloBE Income of 150,
- Pre-tax accounting profit of 150 in its financial statements, and
- Taxable profits of 150 (before deduction of the carried forward tax loss)

Jurisdiction B has no Substance-based Income Exclusion and no Qualified Domestic Minimum Top-up Tax in either Year 1 or Year 2.

What amounts of Top-up Tax (if any) will arise for jurisdiction B in Year 1 and Year 2?

#### LAST WEEK'S ANSWER

Year 1

Current tax expense: nil  
Total Deferred Tax Adjustment Amount, after applying Art. 4.4.2(c): (150) x 15% = (22.5)  
Adjusted Covered Taxes: (22.5)

No ETR, as no GloBE Income (Art. 5.1)

Expected Adjusted Covered Taxes (defined in Art. 4.1.5): (100) x 15% = (15)  
Additional Current Top-up Tax: (15) – (22.5) = 7.5 (Art. 4.1.5)

Thus, Jurisdictional Top-up Tax (Art. 5.2.3): 0 + 7.5 – 0 = 7.5

Year 2

Current tax expense: nil  
Total Deferred Tax Adjustment Amount: 22.5  
Adjusted Covered Taxes: 22.5

ETR: 22.5 / 150 = 15%  
Top-up Tax: nil

Final answer

7.5 (Year 1) + 0 (Year 2)



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