

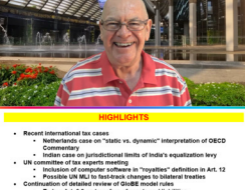
Want to learn more about ITB? Sign up for a free trial by emailing us

[Free Trial](#)

Check out our sale of subscription plans: individual (standard), student, university faculty, young professional, and enterprise

[Subscribe](#)

21 October 2022



### HIGHLIGHTS

- Recent international tax cases
  - Netherlands case on "static vs. dynamic" interpretation of OECD Commentary
  - Indian case on jurisdictional limits of India's equalization levy
- UN committee of tax experts meeting
  - Inclusion of computer software in "royalties" definition in Art. 12
  - Possible UN MLI to fast-track changes to bilateral treaties
- Continuation of detailed review of GloBE model rules
  - Today: Art. 6.3 on transfers of assets and liabilities

### HAPPY FRIDAY!

Liz Truss is beaten by a lettuce; but Jeremy Hunt is refreshingly boring!

Meanwhile, in the tax world...

France & Germany renew their vows; the UN has 5 views; the Netherlands remains static; Google doesn't equalize India; Korea advances; Sri Lanka increases rates; Maryland advertises a defeat; and Portugal is allowed to participate in discrimination!

But at the end of the week, the most important question is this: "Do you think the Brits will bring back Boris?"

Have a great weekend!

Steve

### THIS WEEK'S PODCAST

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

- Pillar Two
- UN Committee of Tax Experts
- International tax cases
- GloBE model rules: detailed review
- Asia Pacific
  - Korea, Sri Lanka
- Europe
  - Austria, ECJ, UK
- Americas
  - Peru, US
- Treaty news

### ITB series on Pillars One & Two

- GloBE model rules:
  - Art. 6.3 on transfers of assets and liabilities (ITB, 21 October 2022)
  - Art. 6.2.2 on deemed transfers of underlying assets and liabilities (ITB, 14 October 2022)
  - Art. 6.2.1 on Constituent Entities joining and leaving an MNE Group (ITB, 30 September; 7 October 2022)
  - Art. 6.1: application of consolidated revenue threshold to group mergers and demergers (ITB, 23 September 2022)
  - Scope (parts 1 & 2) (ITB, 24 June; 1 July 2022)
  - Charging Provisions (parts 1 to 5) (ITB, 8, 13 & 28 May; 10 & 17 June 2022)
  - Computation of Effective Tax Rate and Top-up Tax (Parts 1 to 4) (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)
- 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

Jessie Coleman, Thomas D. Berigo, Alistair Pepper and Guyen Huynh  
"The Arm's-Length Standard After the Pillars"  
Tax Notes Today International, Tax Analysts, 12 October 2022 (subscription service)

Daniel Gutmann and Stéphane Austry  
"France – Tax Treaties and Beneficial Ownership: The SM Planet Decision (Conseil d'Etat, 20 May 2022, Case No. 444451)"  
European Taxation, IBFD, 2022 (Vol. 62), No. 11 (subscription service)

Felipe Thé Freire  
"Economic Substance for Holding Companies in the post-BEPS World and After Recent ECJ Case-Law: An Analysis of Developments in Europe"  
Intertax, Kluwer, Volume 61 (2023), Issue 1 (subscription service)

### INTERNATIONAL TAX QUIZ

#### THIS WEEK'S NEW QUIZ

XCo (located in jurisdiction X) is a Constituent Entity in an MNE Group, which is "within scope" of the GloBE rules. The MNE Group uses the calendar year as its fiscal year.

XCo owns 100% of the shares in YCo, which is located in jurisdiction Y.

On 30 June in year 1, XCo sells 100% of the shares in YCo to ZCo, which is an unrelated company located in jurisdiction Z. ZCo is a member of a group which is not an MNE Group "in scope" of the GloBE rules.

The consideration for the sale is in 2 parts: (1) the issue of new shares by ZCo to XCo (this represents 90% of the value of the total consideration), and (2) cash (this represents 10% of the value of the total consideration). The issue of shares does not cause ZCo to become a member of XCo's MNE Group – i.e., the MNE Group does not control ZCo.

In XCo's financial statements, it reports a gain of 100 on the sale of the shares in YCo. The gain is computed as: value of consideration (300) minus carrying value of shares in YCo (200) = 100. XCo's carrying value of the shares is equal to its tax basis in the shares, for X tax law purposes.

Under the jurisdiction X tax law, XCo recognizes a gain of 10, which represents the gain referable to the cash component of the consideration. XCo is liable for jurisdiction X Covered Tax of 2.5 on that gain. The remainder of the gain is exempt.

Under the jurisdiction Y tax law, the sale of the 100% shares in YCo is treated as a sale, and re-acquisition, of YCo's assets and liabilities. The deemed sale price and the deemed re-acquisition price of the assets are both equal to the value of the consideration paid to XCo (i.e., 300), plus the value of the liabilities deemed to be transferred and re-acquired (200) – i.e., total consideration of 500. At the date of the transaction, YCo has assets with a carrying value (and tax basis) of 250. The jurisdiction Y corporate income tax rate of 20% applies to any gain deemed to be derived by YCo. Based on these facts, what are the consequences, under the GloBE rules, for XCo's MNE Group?

Answer in next ITB email alert on 4 November!

### LAST WEEK'S QUESTION

XCo is the LPE of an MNE Group which is "within scope" of the GloBE rules. XCo and all (except one) of the subsidiaries within the group, are located in jurisdiction X. Jurisdiction X has not implemented the GloBE rules.

Z Sub is one of XCo's subsidiaries, and is located in jurisdiction Z. Z Sub owns IP, which it licenses to third parties in return for royalties. Z Sub has no employees (it receives services from a sister subsidiary located in jurisdiction X), and it owns no assets other than the IP. Z Sub is not an Investment Entity. Jurisdiction Z has implemented the GloBE rules, but it has not implemented a QDMTT.

In year 1, Z Sub derives 100 of royalties, and incurs an IP amortisation expense of 18 and intra-group service fees of 2, resulting in a pre-tax profit of 80. Z Sub qualifies for a tax incentive in jurisdiction Z, which is a corporate income tax rate of 5%. Z Sub is not subject to any royalty withholding tax in other jurisdictions.

Ignoring any permanent or timing differences between financial accounting net income, GloBE income, and taxable profits in jurisdiction Z, Z Sub has GloBE income of 80 in year 1, and Adjusted Covered Taxes of 4 in year 1.

On 30 September in year 2, XCo sells 100% of the shares in Z Sub to YCo, which is the LPE of another MNE Group which is "within scope" of the GloBE rules. YCo is located in jurisdiction Y. Although jurisdiction Y has not implemented the GloBE rules, several jurisdictions where the YCo group has subsidiaries have done so. Z Sub is the YCo group's only subsidiary in jurisdiction Z.

YCo records Z Sub's IP at fair value in its consolidated financial statements for year 2. That fair value is significantly higher than the carrying value of the IP in Z Sub's financial statements.

Assume that, in year 2, Z Sub's financial statements report the same financial information as in year 1 – i.e., royalty income of 100, amortisation expense of 18 and intra-group service fees (paid to YCo subsidiaries after 30 September) of 2, pre-tax profits of 80, no royalty withholding tax, jurisdiction Z corporate income tax rate of 5%. Please ignore any permanent or timing differences between financial accounting net income, GloBE income, and taxable profits in jurisdiction Z. Also assume that both XCo and YCo use the calendar year as the fiscal year.

Based on this information, will Z Sub have a tax liability under the GloBE rules in year 1 and/or year 2?

### LAST WEEK'S ANSWER

1. Year 1

Z Sub is the only member of the XCo MNE Group which is located in jurisdiction Z.

Jurisdiction Z's ETR (Art. 5.1.1): 4 / 80 = 5%.

Substance-based Income Exclusion (Art. 5.3): zero (Z Sub has no Eligible Employees and no Eligible Tangible Assets).

Z Jurisdictional Top-up Tax (assuming no Additional Current Top-up Tax) (Art. 5.2): 80 x 10% = 8.

X has not implemented the GloBE rules, but Z has done so.

Can Z's UTPR apply to the Z Jurisdictional Top-up Tax?

Except for one issue, the answer is "yes". But that issue might prevent the UTPR applying. Art. 2.6.1 allocates the UTPR Top-up Tax Amount to UTPR Jurisdictions, according to a formula which uses "Number of Employees" and "Total value of Tangible Assets". However, Z has zero for both of these items. Specifically, the formula in Art. 2.6.1, in this case, would be: 50% x 0.0 + 50% x 0.0 – which presumably is equal to zero!

Therefore, Z Sub should not have a UTPR tax liability in year 1.

2. Year 2

2.1 Preliminary point

Z Sub will be a member of both the XCo Group and the YCo Group in Year 2: Art. 6.2.1(a).

2.2 XCo Group

XCo Group's status as an MNE Group is dependent on the membership of Z Sub, which is the only group member which is not located in jurisdiction X: Art. 1.2.1. As Z Sub will be included in XCo's consolidated financial statements for Year 2, the XCo Group should retain its status as an MNE Group in Year 2, despite Z Sub's departure part-way through the year.

It should be unnecessary to compute the Jurisdictional Top-up Tax for Z for Year 2 – because, just as in year 1, the allocation of the UTPR Top-up Tax Amount to Z in year 2 should be zero.

Thus, in regard to the XCo Group, Z Sub should not have a UTPR tax liability in year 2.

2.3 YCo Group

In computing the ETR and Top-up Tax for jurisdiction Z in year 2, YCo Group will take into account only the Financial Accounting Net Income or Loss and Adjusted Covered Taxes of Z Sub that are taken into account in YCo's consolidated financial statements for year 2: Art. 6.2.1(b).

Accordingly, Z Sub's GloBE Income should be 20 (i.e., 80 x 3/12) and its Adjusted Covered Taxes should be 1 (i.e., 4 x 3/12). In computing Z Sub's GloBE Income, Z Sub will retain the historical carrying value of the IP – i.e., there will be no step-up to fair value: Art. 6.2.1(c).

Jurisdiction Z's ETR should be 1 / 20 = 5%.

Substance-based Income Exclusion (Art. 5.3): zero (Z Sub has no Eligible Employees and no Eligible Tangible Assets; and the YCo Group has no other Constituent Entities in Z).

Z Jurisdictional Top-up Tax (assuming no Additional Current Top-up Tax) (Art. 5.2): 20 x 10% = 2.

That Top-up Tax will be allocated, as a UTPR Top-up Tax Amount, to the various UTPR Jurisdictions in which the YCo Group has members – but not jurisdiction Z. For the same reason as discussed above, the formula in Art. 2.6.1 should allocate zero UTPR Top-up Tax Amount to Z.

Thus, in regard to the YCo Group, Z Sub should not have a UTPR tax liability in year 2.

3. Final answer

Z Sub should not have a UTPR tax liability in either year 1 or year 2.



[Tax Quiz Archives](#)



[Email Alert Archives](#)



[AskSteve](#)



[Referral Program](#)



[What is ITB?](#)

If you have a friend or colleague who you think might find this email alert interesting, please forward it to them.

Watch ITB video podcasts anytime, anywhere with our App!



[HOME](#) [CONTACT US](#) [TERMS & CONDITIONS](#) [PRIVACY POLICY](#) [FAQS](#) [DISCLAIMER](#)

© 2022 International Insights Pte Ltd. All rights reserved.

[UNSUBSCRIBE](#)

If you no longer wish to receive emails from us, please click [here](#)