

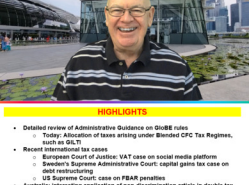
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3 March 2023



**HIGHLIGHTS**

- **Detailed review of Administrative Guidance on GloBE rules**
  - **Today: Allocation of taxes arising under Blended CFC Tax Regimes, such as GILTI**
- **Recent international tax cases**
  - **European Court of Justice: VAT case on social media platform**
  - **Sweden's Supreme Administrative Court: capital gains tax case on debt restructuring**
  - **US Supreme Court: case on FBAR penalties**
- **Australia: interesting application of non-discrimination article in double tax treaties**

**HAPPY FRIDAY!**

**Dilbert is fired, Windsor frames success, and the Moon wants its own time zone!**

Meanwhile, in the tax world...

The **OECD** puts on a brave face for Pillar One; **Australia** discriminates in a subtle manner; **Only Fans** lose; **Baxter** changes debtors; **Bittner** is penalised only once; and the **EU** wants to tax **Netflix**, one way or another!

But the most interesting thing I learnt this week is that **clocks run faster on the Moon!**

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. Trade
3. Administrative Guidance on GloBE rules: Allocation of taxes arising under Blended CFC Tax Regimes
4. Asia Pacific
  - Australia, Malaysia, Vietnam
5. Europe
  - ECJ, EU, Ireland, Sweden
6. Middle East & Central Asia
  - UAE
7. Americas
  - Brazil, US
8. Treaty news

**ITB series on Pillar One**

- **Draft MLC provisions for commitments on DSTs 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, 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:**
  - **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:**
  - **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)**
  - **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, 16 & 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; 16 September 2022)**
  - **Computation of GloBE Income or Loss (Parts 1 to 4) (ITB, 7, 14, 21 & 28 January 2022)**

**WORTH READING**

Mindy Herzfeld "Developing Countries: Victims or Victors?" Tax Notes Today International, Tax Analysts, 27 February 2023 (subscription service).

Muhammad Ashtag Ahmed "The UHL-Sponsored Multilateral Fast Track Instrument – A Tale of Sound and Fury, Signifying Nothing?" Talking Points, IBFD, 2023, No. 26 (subscription service).

Jessie Coleman, Orest Pazuniak, Lorie Srivastava, and Jessica W. Tien "Intercompany Fees for Internal Carbon Pricing: The Next Frontier?" Tax Notes Today International, Tax Analysts, 1 March 2023 (subscription service).

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

An MNE Group's UPE, which is located in jurisdiction U, is subject to the jurisdiction U CFC rules. Those CFC rules qualify as a Blended CFC Regime, as defined in the Administrative Guidance. Under the CFC rules, the foreign effective tax rate must be 13.125% in order to generate sufficient foreign tax credits (ignoring any foreign tax credit limitation) to prevent the imposition of a tax charge.

In a Fiscal Year, UPE has a tax charge of 50 under the CFC rules.

UPE directly owns 100% of the shares in 4 CFCs. For the Fiscal Year, the CFCs have this financial information:

1. XCo-1 (located in jurisdiction X)
  - Net income (P&L): 220
  - GloBE Income: 200
  - Attributable Income: 80
  - Constituent Entity for GloBE purposes
2. XCo-2 (located in jurisdiction X)
  - Net income (P&L): 100
  - GloBE Income: Nil
  - Attributable Income: 70
  - Non-Constituent Entity for GloBE purposes
3. YCo (located in jurisdiction Y)
  - Net income (P&L): 150
  - GloBE Income: 150
  - Attributable Income: 100
  - Constituent Entity for GloBE purposes
4. ZCo (located in jurisdiction Z)
  - Net income (P&L): 200
  - GloBE Income: 150
  - Attributable Income: 50
  - Constituent Entity for GloBE purposes

The MNE Group has these GloBE Jurisdictional ETRs for the Fiscal Year:

- X: 8%
- Y: 11%
- Z: 14%

Based on this information, what will be the allocation of CFC tax under Art. 4.3.2(c)? Please ignore any possible cap under Art. 4.3.3.

Answer in next ITB email alert!

**LAST WEEK'S QUESTION**

Jurisdiction X has implemented the GloBE rules.

Jurisdiction X has a corporate income tax with a 25% tax rate. Jurisdiction X also has a minimum tax with a 20% tax rate. The computation of the minimum tax is identical to the computation of Top-up Tax under the GloBE rules, with 3 exceptions: (1) the tax rate (already noted); (2) the Top-up Tax formula for the minimum tax does not subtract a GDMTT; and (3) there is no jurisdictional blending of income and taxes – i.e., each company's minimum tax liability (if any) is calculated separately. If there is a minimum tax liability for a company, that is a current tax liability for the company, even if it exceeds the amount of Top-up Tax which would otherwise apply under the GloBE rules – i.e., no part of the minimum tax is carried forward or back to other years.

XCo, a company located in jurisdiction X, is a Constituent Entity within an MNE Group which is "within scope" of the GloBE rules. XCo is the only Constituent Entity located in jurisdiction X. XCo carries on a major manufacturing business in jurisdiction X, and therefore it qualifies for a 100% exemption from jurisdiction X corporate income tax. However, XCo is subject to the jurisdiction X minimum tax.

For a Fiscal Year, XCo (1) has GloBE Income of 3,000; (2) has Substance-based Income Exclusion of 1,800; and (3) does not qualify for a safe harbour or de minimis exclusion (either under the GloBE rules or under the minimum tax).

Based on this information:

- Q1: Does the jurisdiction X minimum tax qualify as a GDMTT?
- Q2: Assuming the answer to Q1 is "yes", what amount of GDMTT will be imposed on XCo?
- Q3: Assuming the answer to Q1 is "no", what amount of Top-up Tax (under the GloBE rules) will arise for jurisdiction X?

**LAST WEEK'S ANSWER**

1. Does jurisdiction X minimum tax qualify as a GDMTT?

Exception (1) (tax rate is 20%) does not cause disqualification: AG, para. 118.38.

Exception (2) (Top-up Tax formula does not subtract GDMTT) does not cause disqualification: AG, para. 118.34.

Exception (3) (no jurisdictional blending of income and taxes) is more difficult to analyse. Para. 118.33 says: "For GDMTT purposes, ... a jurisdiction could have stricter limitations on blending of income and taxes across the ordinary Constituent Entities in the jurisdiction provided that the limitations on blending produce outcomes that are functionally equivalent to the GloBE Rules." Outcomes will be functionally equivalent to the GloBE rules if the variations "systemically produce a greater incremental tax liability or do not systematically produce lower tax liability than would be expected under the GloBE Rules and Commentary". AG, para. 10. No jurisdictional blending (i.e., separate calculation for each Constituent Entity located in a jurisdiction) will generally lead to either the same or a greater tax liability than under the GloBE rules – however, I'm not sure that it can be stated that such an outcome will occur in all situations.

Note that, for the exception (3), it is irrelevant that XCo is the only Constituent Entity located in jurisdiction X. The issue is whether the minimum tax qualifies as a GDMTT – not its application to XCo.

With some hesitation, I would conclude that the minimum tax should qualify as a GDMTT.

2. If a GDMTT: what amount of GDMTT will be imposed on XCo?

Gt: 3,000  
ACT: nil  
ETR: 0%  
TUT%: 20% (i.e., minimum tax rate is 20%)  
Excess Profits: 3,000 – 1,800 = 1,200  
GDMTT: 20% x 1,200 = 240

[GloBE Top-up Tax: (15% x 1,200) – 240 = 180 – 240 Thus, nil]

3. If not a GDMTT: what amount of GloBE Top-up Tax will arise for jurisdiction X?

Gt: 3,000  
ACT: 240  
ETR: 8%  
TUT%: 7%  
Excess Profits: 3,000 – 1,800 = 1,200  
TUT: 7% x 1,200 = 84

[Total tax: 240 (minimum tax) + 84 (GloBE Top-up Tax) = 324]

Note how the disqualification of the minimum tax as a GDMTT causes an increase of 84 in total tax.

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