

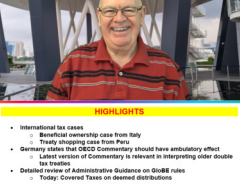
Want to learn more about ITB? Sign-up for a free trial by emailing us

Free Trial

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

Subscribe

28 April 2023



**HIGHLIGHTS**

- **International tax cases**
  - **Beneficial ownership case from Italy**
  - **Treaty shopping case from Peru**
- **Germany states that OECD Commentary should have ambulatory effect**
  - **Latest version of Commentary is relevant in interpreting older double tax treaties**
- **Detailed review of Administrative Guidance on GloBE rules**
  - **Today: Covered Taxes on deemed distributions**

**HAPPY FRIDAY!**

**Ed** sings to the jury; **Dominic** is bullied out; and **Joe** keeps running!

Meanwhile, in the tax world ...

**Germany** stays current; **Electrabel** is beaten by its structure; the **Netherlands** provides a windfall for companies; **Saudi Arabia** is in the zone; **Peru** allows a domicile of choice; and the **Swiss** are asked to vote in favour of a new tax!

But at the end of the week, the most important question is this: "Should the OECD change its name to the **CMRC** – the Club of Mostly Rich Countries?"

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 Two
2. Administrative Guidance on GloBE rules: Income & taxes (part 4)
3. Asia Pacific
  - Australia, Philippines
4. Europe
  - Denmark, EU, Germany, Italy, Netherlands
5. Africa
  - South Africa
6. Middle East & Central Asia
  - Saudi Arabia
7. Americas
  - Peru, US

**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: Income & taxes (Parts 1 to 4) (ITB, 31 March; 14, 21 & 28 April 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 CPC Tax Regimes (ITB, 3 March 2023)**
  - **Administrative Guidance on GloBE rules: GDMTTs (Parts 1 & 2) (ITB, 10 & 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; 16 September 2022)**
  - **Computation of GloBE Income or Loss (Parts 1 to 4) (ITB, 7, 14, 21 & 28 January 2022)**

**WORTH READING**

Michelle Marham  
"The Timely Resolution of Mutual Agreement Procedure Disputes – Secrets of Success"  
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 5 (subscription service).

Aditya Singh Chandel and Sarvagya Bilgaiyan  
"The Unsteady Connection Between Tax Treaties and Domestic Law Deeming Provisions"  
Tax Notes Today International, Tax Analysts, 20 April 2023 (subscription service).

Björn Heidecke, David Sauer, Janis Sussick, and Conrad Marburg  
"New German Transfer Pricing Regulations on Business Restructurings, Documentation Deadlines and Rules for Tax Audits: Overview and Practical Implications"  
International Transfer Pricing Journal, IBFD, 2023 (Vol. 30), No. 3 (subscription service).

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

An MNE Group which is "within scope" of the GloBE rules, has this simplified structure:

- UPE (located in jurisdiction U) owns 100% of the shares in ACo (located in jurisdiction A)
- ACo owns 100% of the shares in each of 2 sister subsidiaries: BCo (located in jurisdiction B) and CCo (located in jurisdiction C)
- CCo is the only Constituent Entity located in jurisdiction C

BCo manufactures goods and sells them to CCo, which distributes the goods to third party customers in jurisdiction C.

In Year 1, CCo has these (prima facie) financial numbers:

- FANIL: 1,000
- Purchases from BCo: 400
- Adjusted Covered Taxes: 120

In Year 2, the jurisdiction C tax authorities claim that the purchases from BCo exceed the arm's length price. They therefore make a primary transfer pricing adjustment for Year 1: CCo's deductions for purchases from BCo are reduced by 100. The jurisdiction C corporate income tax rate is 15%.

The jurisdiction C tax authorities also make a secondary transfer pricing adjustment for Year 1: the "extra" cash of 100 which has been paid by CCo to BCo is deemed to be a dividend paid by CCo to ACo, followed by a deemed capital contribution by ACo to BCo. Dividend withholding tax of 20% is imposed on the deemed dividend.

CCo accepts that both of these adjustments are appropriate.

In Year 2, CCo has these (prima facie) financial numbers:

- FANIL: 1,200
- Purchases from BCo: 450
- Adjusted Covered Taxes: 200

CCo expects that there will be no transfer pricing adjustment in Year 2 in regard to its purchases from BCo, because the intercompany price was changed in Year 2 in accordance with the Year 1 adjustment.

Based on this limited information, what will be the amount of Jurisdictional Top-up Tax (if any) for jurisdiction C in each of Year 1 and Year 2?

Please assume: (1) there are no adjustments in computing CCo's GloBE Income, except those which follow from the facts stated above; and (2) there is zero Additional Current Top-up Tax for jurisdiction C.

**Answer in next ITB email alert!**

**LAST WEEK'S QUESTION**

XCo is a company located in jurisdiction X. It is a Constituent Entity in an MNE Group, which is "within scope" of the GloBE rules.

XCo has established a "defined benefit" Pension Fund in jurisdiction X to provide retirement benefits for most of its employees.

XCo's most senior employees, however, are not covered by the Pension Fund. Instead, their individual employment contracts require XCo to pay "defined benefit" pensions directly to them after they leave XCo's employment (provided they satisfy a "minimum employment period" condition).

In Year 1:

- XCo has an accounting profit of 200 (before tax and before pension expenses)
- XCo accrues 30 of pension expenses: (1) 20, in regard to contributions to the Pension Fund; and (2) 10, in regard to the pension benefits to be provided to the senior employees
- XCo makes no "pension related" payments
- The jurisdiction X corporate income tax law (20% tax rate) allows deductions for: (1) contributions paid to pension funds; and (2) pension benefits paid directly to pension beneficiaries – in both cases, the deduction is allowed in the fiscal year in which the payment is made

In Year 2:

- XCo has an accounting profit of 300 (before tax and before pension expenses)
- XCo does not accrue either of the 2 pension expenses – instead, XCo pays (1) a contribution of 12 to the Pension Fund; and (2) pension benefits of 8 directly to (former) senior employees

In Year 3:

- XCo has an accounting profit of 400 (before tax and before pension expenses and pension income)
- The Pension Fund earns income of 80, and XCo's pension liabilities for Year 3 are 20; thus, the Pension Fund has a net pension surplus of 60
- The net pension surplus: (1) is retained in the Pension Fund, (2) is included as income in XCo's profit and loss statement, and (3) is not taxable under the jurisdiction X corporate income tax law
- XCo accrues 20 of pension expenses regarding pension benefits to be provided to senior employees
- XCo pays pension benefits of 10 directly to (former) senior employees

Based on this limited information, what is XCo's (1) Financial Accounting Net Income or Loss, and (2) GloBE Income or Loss, for each of Years 1, 2, and 3?

**LAST WEEK'S ANSWER**

Year 1

1. Current tax expense: 200 x 20% = 40
2. Deferred tax income: 30 x 20% = 6
3. Income tax expense: 40 – 6 = 34
4. FANIL: 200 – 34 = 136
5. Accrued Pension Expense (AEP) (Art. 10.1.1 definition; AG, section 2.5 formula): (-20 + 0) x (-1) = +20
6. GloBE Income or Loss: 136 + 34 (Tax Expense) + 20 (Accrued Pension Expense) = 190

Year 2

1. Current tax expense: (300 – 20) x 20% = 58
2. Deferred tax expense: 20 x 20% = 4
3. Income tax expense: 58 + 4 = 60
4. FANIL: 300 – 60 = 240
5. AEP: (0 + 12) x (-1) = -12
6. GloBE Income or Loss: 240 + 60 (Tax Expense) – 12 (AEP) = 288

Year 3

1. Current tax expense: (400 – 10) x 20% = 78
2. (i) Deferred tax expense: 8 x 20% = 1.6 (i.e., due to the net pension surplus, XCo does not need to make the further 8 of contributions to the Pension Fund, based on the pension expense accrued in AG); (ii) Deferred tax income: (10 x 20%) = (2); (iii) Net deferred tax income: (0.4)
3. Income tax expense: 78 – 0.4 = 77.6
4. FANIL: 400 + 60 – 77.6 – 20 = 362.4
5. AEP: (60 + 0) x (-1) = -60
6. GloBE Income or Loss: 362.4 + 77.6 (Tax Expense) – 60 (AEP) = 380

Do you agree?



Tax Quiz Archives



Email Alert Archives



Ask Steve



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

© 2023 International Insights Pte Ltd. All rights reserved.

UNSUBSCRIBE

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