**International Tax Bytes** *by Steve Towers*

"International tax news, explained"



## 26 May 2023


## HIGHLIGHTS

- **Latest developments on GloBE rules**
  - **proposed legislation in New Zealand**
  - **final amendments to IAS 12**
  - **Guernsey, Jersey, Isle of Man, Bahamas, and Switzerland take action**
  - **US Republicans plan to retaliate against UTPR**
- **Takeda and NTC Parent "beneficial ownership" cases in Denmark**
- **India relaxes its "Angel Tax"**

## HAPPY FRIDAY!

**Twitter** has a **#DeSaster**; **Nvidia** is worth a trillion; and what happens if the **US** defaults on its debts?

Meanwhile, in the tax world...

**IAS 12** is finalized and not deferred; **Republicans** take aim at the **UTPR**; **India** becomes an angel; **Saudi Arabia** requires presence; **Ireland** adopts a similarity approach; **Takeda** accrues a loss; and **Costa Rica** goes global!

But finally, this week's worst pun: **Britain would like to forget about Liz Truss – but she just won't lettuce!**

**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. Pillar One
3. Asia Pacific
   - Australia, India
4. Europe
   - Czech Republic, Denmark, EU, Ireland, UK
5. Middle East & Central Asia
   - Saudi Arabia, UAE
6. Americas
   - Chile, Costa Rica, US
7. 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: Income & taxes (Parts 1 to 6) (ITB, 31 March; 14, 21 & 28 April; 5, 12 May 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 CFC Tax Regimes (ITB, 3 March 2023)**
  - **Administrative Guidance on GloBE rules: QDMTTs (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

Mindy Herzfeld
"International Tax Stability? The China Factor"
Tax Notes Today International, Tax Analysts, 22 May 2023 (subscription service).

Rita Szudoczky
"Foreign Permanent Establishment Losses Under the Fundamental Freedoms: Does *W AG* Bring an End to a Rollercoaster Ride?"
Intertax, Kluwer, 2023 (Vol. 51), Issue 5 (subscription service).

Robert Goulder
"Let's Get Salty: The World Is Watching *Maryland v. Comcast*"
Tax Notes Today International, Tax Analysts, 23 May 2023 (subscription service).

## INTERNATIONAL TAX QUIZ

## THIS WEEK'S NEW QUIZ

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

The UPE has a 100% Ownership Interest in BCo.

BCo has the following financial income for a fiscal year (determined in accordance with the Acceptable Accounting Standard used by the UPE in preparing its Consolidated Financial Statements):

1. Profit (i.e., net income, after tax) (in P&L): 50,000
2. Equity accounting method in respect of associated company, CCo (BCo holds 30% Ownership Interest in CCo):
   a. Included in Profit: share of income from CCo: 10,000
   b. Not included in Profit: gross dividend received from CCo: 7,000 (this dividend is taxable in Jurisdiction B)
   c. Included as expense in computing Profit: Jurisdiction C withholding tax on dividend: 1,400
   d. Included as expense in computing Profit: BCo's management expenses relating to investment in CCo: 1,000
3. Other foreign sourced income (not derived from CCo):
   a. Included in Profit: Jurisdiction D gross interest: 2,000
   b. Included as expense in computing Profit: Jurisdiction D withholding tax on interest: 200
   c. Included in Profit: Jurisdiction D digital services income: 3,000
   d. Included as expense in computing Profit: Jurisdiction D digital services tax: 900
   e. Included as expense in computing Profit: BCo's employment expenses relating to Jurisdiction D digital services income: 2,000
4. Jurisdiction B taxes (all included as expense in computing BCo's Profit):
   a. Alternative Minimum Tax (AMT) (not computed on GloBE Income): 10,000 [Note: BCo is subject to AMT because its Jurisdiction B regular income tax liability has fallen below the AMT threshold, due to timing differences.]
   b. In computing AMT, foreign tax credits have been subtracted:
      i. Dividend from CCo: 1,200
      ii. Interest from Jurisdiction D: 200
      iii. Digital services income from Jurisdiction D: 200

Based on this information, what is BCo's GloBE Income or Loss for the fiscal year?

**Answer in next ITB email alert!**

## LAST WEEK'S QUESTION

ACo, a company located in jurisdiction A, is a Constituent Entity in an MNE Group which is "within scope" of the GloBE rules. It is the only Constituent Entity located in jurisdiction A. Jurisdiction A has a corporate income tax rate of 25%.

ACo directly owns 100% of the shares in 2 subsidiaries: BCo (located in jurisdiction B) and CCo (located in jurisdiction C).

(1) Year 1:

ACo's jurisdiction A corporate income tax computation has these financial numbers:

- Domestic source tax loss: (300)
- Income inclusion under jurisdiction A CFC rules, in respect of BCo: 100
- Foreign tax credit (FTC) in respect of that CFC inclusion: 20
- Dividend income received from CCo: 100 (such dividend income is taxable under jurisdiction A law)
- FTC in respect of that dividend income: 22
- Royalties received from DCo, an unrelated company resident in jurisdiction D: 100 (such royalties are treated as foreign source income under jurisdiction A law)
- FTC in respect of those royalties: 10

Please assume that under the jurisdiction A corporate income tax law: (1) for FTC purposes, all foreign source income is placed in the same "basket"; (2) for FTC purposes, no expenses are allocated against foreign source income; (3) all foreign source income numbers described above include the "gross-up" for the relevant FTC; (4) a domestic source tax loss is offset against foreign source income, before application of FTCs; and (5) all excess FTCs are carried forward to future years, to be offset against tax on domestic source income which is recharacterized (i.e., "re-sourced") as foreign source income.

Also in Year 1, ACo has a GloBE Loss: (300).

(2) Year 2:

ACo's jurisdiction A corporate income tax computation has these financial numbers:

- Domestic source taxable income: 300
- Actual foreign source income (from CFC inclusions, foreign source dividends, foreign source royalties, or other): 0

Also, in Year 2, ACo has GloBE Income of 300 (and its Substance-based Income Exclusion is zero).

Based on this limited information, what is ACo's jurisdiction A corporate income tax and Top-up Tax for Year 1 and Year 2?

## LAST WEEK'S ANSWER

(1) Year 1

(a) Corporate income tax (CIT):

Domestic source loss: (300)
Foreign source income: 100 + 100 + 100 = 300
Taxable income: (300) + 300 = 0
CIT payable: 0
Carry-forward loss: 0
Carry-forward FTCs: 20 + 22 + 10 = 52

(b) GloBE rules:

GloBE Loss: (300)
Current tax expense: 0
Substitute Loss Carry-forward DTA recognised : 30 (52 of carry-forward FTCs, recast at 15%; adjusted to 30 by Art. 4.4.1(a): see note 1 below)
Adjusted Covered Taxes: (30)
No ETR and no Top-up Tax (see note 2 below)

Note 1:

i. AG, section 2.8 sets out an exception to Art. 4.4.1(e).
ii. The amount of the Substitute Loss Carry-forward DTA is (prima facie) the lesser of (1) Carry-forward FTCs (52), and (2) domestic source tax loss x tax rate (75) – i.e., 52.
iii. However, Art. 4.4.1(a) applies to exclude the deferred tax expense with respect to the FTC on the dividend from CCo (which would qualify as an "Excluded Dividend").
iv. Thus, the Substitute Loss Carry-forward DTA should be: 20 + 10 = 30 (which happens to equal 15% x 200).

Note 2: There will be no ETR because jurisdiction A does not have Net GloBE Income: Art. 5.1.1. In regard to Top-up Tax: Art. 4.1.5 will not apply, because the Adjusted Covered Taxes is not less than the Expected Adjusted Covered Taxes.

(2) Year 2

(a) CIT:

Domestic source income (prima facie): 300
Actual foreign source income: 0
Domestic source income re-sourced as foreign source income: 300
Tax (prima facie): 25% x 300 = 75
FTCs: 52
CIT payable: 75 – 52 = 23

(b) GloBE rules:

GloBE Income: 300
Current tax expense: 23
Deferred tax expense on reversal of Substitute Loss Carry-forward DTA: 30
Adjusted Covered Taxes: 23 + 30 = 53
ETR: 53 / 300 = 17.7%
Top-up Tax: 0

Do you agree?