

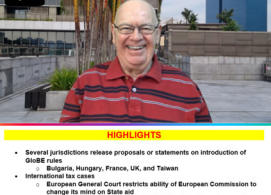
Want to learn more about ITB? Sign up for a free trial by emailing us

Free Trial

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

Subscribe

29 September 2023



**HIGHLIGHTS**

- Several jurisdictions release proposals or statements on introduction of **GloBE rules**
  - Bulgaria, Hungary, France, UK, and Taiwan
- International tax cases
  - European General Court restricts ability of European Commission to change its mind on **State aid**
  - Turkish Constitutional Court rules that blocking internet access is disproportionate penalty for not complying with **DST**
- Continuation of detailed review of July 2023 Administrative Guidance on **GloBE rules**
  - Today: **QDMTTs (part 3)**

**HAPPY FRIDAY!**

Travis King is deported; Antony Blinken sings the blues; and the Philippines cuts through Chinese barriers!

Meanwhile, in the tax world ...

US Congress blames Canada; China goes to 220%; Japan copies the US; the European Commission is not allowed to change its mind; and Turkey unblocks the internet!

But at the end of the week, the most important question is this: "Would you rely on AI for your own personal tax advice?"

Have a great weekend!  
Steve

**THIS WEEK'S PODCAST**

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

1. GloBE rules
2. Other global developments
3. July 2023 Administrative Guidance on GloBE rules: QDMTTs (part 3)
4. Asia Pacific
  - Australia, China, India, Japan, Singapore
5. Europe
  - EGC, Italy, Romania, Turkey
6. Americas
  - US
7. Treaty news

**ITB series on Pillar One**

- Consultation document on **Amount B in Pillar One (ITB, 28 July 2023)**
- 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:**
  - GloBE Information Return (ITB, 28 July 2023)
  - 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:**
  - July 2023 Administrative Guidance on GloBE rules: QDMTTs (Parts 1 to 3) (ITB, 15, 22 & 29 September 2023)
  - July 2023 Administrative Guidance on GloBE rules: Substance-based Income Exclusion (Parts 1 & 2) (ITB, 18 & 25 August 2023)
  - July 2023 Administrative Guidance on GloBE rules: Tax credits (Parts 1 to 3) (ITB, 4, 11 & 18 August 2023)
  - July 2023 Administrative Guidance on GloBE rules: overview (ITB, 28 July 2023)
  - Administrative Guidance on GloBE rules: Transition (Parts 1 to 3) (ITB, 16 & 23 June; 14 July 2023)
  - Administrative Guidance on GloBE rules: Income & taxes (Parts 1 to 8) (ITB, 31 March; 14, 21 & 28 April; 5, 12 May; 2 & 9 June 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)
- **Subject to Tax Rule (STTR):**
  - Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

**WORTH READING**

Hans Pijl  
"Scope, Mergers and Demergers in the G20/OECD Minimum Tax (GloBE) Rules"  
Bulletin for International Taxation, IBFD, 2023 (Vol. 77), No. 10 (subscription service).

Jinyan Li, Marshall Rothstein, Steve Suarez, and Jeffrey Trossman  
"Deeper into the Knight: Exploring Deena Knight and Its Effects on the Canadian GAAR"  
Tax Notes Today International, Tax Analysts, 25 September 2023 (subscription service).

Femke van der Zijden  
"Groupe Steris or Lexis?"  
European Taxation, IBFD, 2023 (Vol. 63), No. 10 (subscription service).

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

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

ACo owns 100% of the shares in BCo, a company located in jurisdiction B. BCo is only Constituent Entity located in jurisdiction B.

Both ACo and BCo use the calendar year as their fiscal year.

For the year ending 31 December 20X1, BCo derives a significant after-tax profit.

In March 20X2, BCo's board of directors accept the audited 20X1 financial statements, and resolve that a final dividend of 100 (from the 20X1 profit) be paid to ACo on 1 May 20X2.

That dividend of 100 is paid on 1 May 20X2. In accordance with the jurisdiction B law, BCo deducts withholding tax of 10 from the dividend, and pays the remainder of 90 to ACo. The jurisdiction B withholding tax is a final tax.

For jurisdiction A tax purposes, ACo is entitled to a 90% participation exemption, and a foreign tax credit for 5% of the withholding tax. After applying both of these reliefs, ACo is liable for 1 of jurisdiction A tax on the dividend.

Question 1: For the purpose of computing the jurisdiction B Top-up Tax under the GloBE rules, will any tax in respect of the dividend be taken into account: (a) for the 20X1 fiscal year; or (b) for the 20X2 fiscal year?

Question 2: For the purpose of computing the jurisdiction B Top-up Tax under jurisdiction B's QDMTT, will any tax in respect of the dividend be taken into account: (a) for the 20X1 fiscal year; or (b) for the 20X2 fiscal year?

Answer in next ITB email alert!

**LAST WEEK'S QUESTION**

XCo, a general partnership formed under jurisdiction A law, has 2 partners: UCo (75% interest) and Third Party (25% interest). UCo, a company located in jurisdiction U, is the UPE of an MNE Group which is "within scope" of the GloBE rules. Third Party is also located in jurisdiction U.

XCo is treated as tax transparent in jurisdictions A, B and U.

UCo owns 100% of the shares in ACo, a company located in jurisdiction A.

XCo owns 100% of the shares in several companies located in jurisdiction B.

Jurisdictions U and A have each implemented the GloBE rules, including a QDMTT. Jurisdiction B has not implemented a QDMTT.

In the relevant fiscal year, the MNE Group has an amount of Top-up Tax in jurisdiction B.

Question 1: (a) Will IIR apply in respect of the jurisdiction B Top-up Tax?; (b) if so, on which entity or entities will the IIR tax be imposed?

Question 2: (a) In determining whether the MNE Group has a QDMTT liability in jurisdiction A, will the ETR and Top-up Tax be calculated on a jurisdictional basis or not?; (b) if there is a QDMTT liability in jurisdiction A, on which entity or entities will the tax be imposed?

**LAST WEEK'S ANSWER**

1. **Introduction**
  - i. XCo is an Entity (defined in Art. 10.1.1).
  - ii. XCo is a Constituent Entity (defined in Art. 1.3.1).
  - iii. XCo is a Flow-through Entity and Tax Transparent Entity (both terms defined in Art. 10.2.1).
  - iv. Due to its requirement to apply an IIR under Art. 2.1 (see below), XCo is located in jurisdiction A (Art. 10.3.2).
  - v. XCo is a POPE (defined in Art. 10.1.1), on the assumption that it is not an Investment Entity.
2. **IIR**
  - i. XCo will be liable for IIR tax (in jurisdiction A) equal to 100% of the jurisdiction B Top-up Tax (Art. 2.1.4).
  - ii. Prima facie, UPE will be liable for IIR tax (in jurisdiction U) equal to 75% of the jurisdiction B Top-up Tax (Art. 2.1.1). However, Art. 2.3.2 will reduce that IIR tax to nil.
3. **QDMTT**
  - i. In principle, the ETR and Top-up Tax for QDMTT purposes will be calculated on a jurisdictional blending basis (i.e., XCo plus ACo): see para. 118.8.3 of Comm to definition of QDMTT in Art. 10.1.1 (introduced by July 2023 AG).
  - ii. However, XCo itself probably has no GloBE Income and no Covered Taxes. It should have no GloBE Income, due to the allocation of all its Financial Accounting Net Income or Loss to UPE and Third Party (Arts. 3.5.1, 3.5.3 & 3.5.5). And it should have no Covered Taxes, due to the fact that it is tax transparent in jurisdictions A and B, and also because of Art. 4.3.2(b).
  - iii. So, the only GloBE Income and Covered Taxes which will be available for jurisdictional blending should be ACo's.
  - iv. If there is a QDMTT liability, jurisdiction A is permitted to impose the QDMTT tax charge on ACo, or XCo, or "introduce a different mechanism to ensure that the tax liability ... is enforceable"; see para. 118.8.3 of Comm to definition of QDMTT in Art. 10.1.1.

Do you agree?



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!

