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2 February 2024



**HIGHLIGHTS**

- Countdown of top 10 international tax cases in 2023
- **GloBE rules:** Hungary plans its way around "Covered Tax" definition
- **Pakistan case** on "profits from the operation of ships in international traffic", in Art. 8 of double tax treaties

**HAPPY FRIDAY!**

**Musk gets a pay cut, MAGA distrusts Swift, and Chew insists he's Singaporean!**

Meanwhile, in the tax world...

**Hungary** is covered; **India** ignores the **GloBE**; **Gibraltar** takes interest; **Pakistan** follows the **OECD**; everyone issues TP guidance; and **Smith-Wyden** gets to first base!

But at the end of the week, the most important question is this: "Would you like to receive a brain implant from **Elon Musk**?"

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. **Top 10 international tax cases of 2023**
4. **Asia Pacific**
  - o Australia, India, Indonesia
5. **Europe**
  - o EU, Gibraltar, Switzerland, UK
6. **Middle East & Central Asia**
  - o Pakistan
7. **Americas**
  - o US
8. **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 D&Ts 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:**
  - **December 2023 Administrative Guidance on GloBE rules: Transitional CbCR Safe Harbour (Part 1)** (ITB, 19 January 2024)
  - **GloBE rules commence operation in 2024** (ITB, 12 January 2024)
  - **December 2023 Administrative Guidance on GloBE rules: overview** (ITB, 22 December 2023)
  - **July 2023 Administrative Guidance on GloBE rules: Transitional UTPR Safe Harbour & Summary of Safe Harbours** (ITB, 8 December 2023)
  - **July 2023 Administrative Guidance on GloBE rules: QDMTT Safe Harbour (Parts 1 & 2)** (ITB, 10 & 17 November 2023)
  - **July 2023 Administrative Guidance on GloBE rules: QDMTTs (Parts 1 to 6)** (ITB, 15, 22 & 29 September; 6 & 27 October; 3 November 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 GPC 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 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)
- **Subject to Tax Rule (STTR):**
  - **STTR (Part 4)** (ITB, 15 December 2023)
  - **STTR (Parts 1 to 3)** (ITB, 6 & 20 October; 3 November 2023)
  - **Subject to Tax Rule (STTR): overview** (ITB, 28 July 2023)

**WORTH READING**

Vikram Chand and Kinga Romanovska  
"The Impact of Pillar Two on Corporate Tax Incentives and Incentives (Post Pillar Two – The Potential Rise of Tax Credits and Subsidies)"  
International Tax Studies, IBFD, 2023 (Vol. 6), No. 6.

Kasper Dolandt  
"The Concept of the 'Object and Purpose' in Tax Treaty Law Based on the Vienna Convention (1989) and the Principal Purpose Test Rule"  
Bulletin for International Taxation, IBFD, 2024 (Vol. 78), No. 3.

Michelle Markham  
"The Quest for Tax Certainty: Improving Multilateral Dispute Resolution"  
Tax Notes International, Tax Analysts, 29 January 2024.

Vijai T. Patel, Suresh Dhoot, and Anvesha Gupta  
"India – Concept of Pass-Through Costs and Their Treatment in Transfer Pricing"  
International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 2.

**INTERNATIONAL TAX QUIZ**

**THIS WEEK'S NEW QUIZ**

The jurisdiction X corporate income tax has a standard rate of 20%. However, for qualifying companies, a reduced income tax rate of 5% is imposed.

The government is concerned about the adverse impact of the GloBE rules on inbound investment.

It has suggested this proposal for companies which currently qualify for the 5% corporate income tax rate:

- An additional income tax (called an extra-profit tax) will be imposed on these companies. The extra-profit tax will have the same tax base as the corporate income tax, and it will have a 10% tax rate.
- The extra-profit tax will not be deductible or creditable for corporate income tax purposes, and vice versa.
- However, the extra-profit tax will reduce the company's jurisdiction X tax liabilities, other than corporate income tax, on a euro for euro basis – i.e., property tax, excise tax, and VAT. However, the extra-profit tax will not be refundable, in whole or part.

Based on this limited information: will the extra-profit tax qualify as a Covered Tax, under the GloBE rules?

Answer in next ITB email alert on 16 February 2024!

**LAST WEEK'S QUESTION**

ACo 1 and ACo 2 are both Constituent Entities in an MNE Group which is "within scope" of the GloBE rules. They are both located in jurisdiction A.

ACo 1 and ACo 2 are the only partners in a partnership formed under jurisdiction B law. They each have a 50% interest in the partnership. The partnership is tax-transparent in both jurisdiction A and jurisdiction B.

The partnership conducts a trading business in jurisdiction B.

In the 2030 fiscal year, these financial numbers are produced by the partnership's business:

- GloBE Income: 100
- Adjusted Covered Taxes (i.e., jurisdiction B taxes): 5
- Payroll costs of employees: 40
- Carrying value of tangible assets: 80

The A/B double tax treaty is identical to the OECD model treaty.

The MNE Group has no operations in jurisdiction B, other than the partnership.

Based on this limited information, what will be the amount (if any) of jurisdiction B Top-up Tax for the MNE Group for the 2030 fiscal year?

**LAST WEEK'S ANSWER**

(1) Definitions

The partnership is an "Entity" (Art. 10.1.1), a "Flow-through Entity" (Art. 10.2.1), a "Tax Transparent Entity" (Art. 10.2.1(a)), a "stateless Entity" (Art. 10.3.2(b)), and a "Constituent Entity" (Art. 1.3.1(a)).

Its business in jurisdiction B is a "Permanent Establishment" (para. (a) of Art. 10.1.1 definition). (There is an issue as to whether there is 1 PE (i.e., a PE of the partnership) or 2 PEs (i.e., a PE of each of ACo 1 and ACo 2). IMHO: the better view is 1 PE.) The PE is "located" in jurisdiction B (Art. 10.3.3(a)), and therefore the PE can have a payroll carve-out (Art. 5.3.3) and a tangible asset carve-out (Art. 5.3.4).

The PE is not an "Entity" (Art. 10.1.1 – arguably), but it is a "Constituent Entity" (Art. 1.3.1(b)). Therefore, the partnership is a "Main Entity" (Art. 10.1.1).

(2) GloBE Income (GI)

The FANIL of the partnership is allocated to the PE (Arts. 3.4 & 3.5.1(a)). This causes the FANIL of the partnership to be nil (Art. 3.5.5).

Therefore, the PE has GI of 100, and the partnership has nil GI.

(3) Adjusted Covered Taxes (ACT)

The ACT of 5 is allocated to the PE (Art. 4.3.2(a)).

(4) SBIE

The payroll carve-out and tangible asset carve-out are determined for the PE (Art. 5.3.6).

Payroll carve-out: 7.4% x 40 = 2.96 (Art. 9.2).

Tangible asset carve-out: 6.2% x 80 = 4.96 (Art. 9.2).

Thus, SBIE for jurisdiction B = 2.96 + 4.96 = 7.92 (Art. 5.3.2).

(5) Top-up Tax (TUT)

ETR = 5 / 100 = 5%

TUT % = 10%

Excess Profit = 100 – 7.92 = 92.08

TUT = 10% x 92.08 = 9.208

Do you agree?

