

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

15 March 2024



HIGHLIGHTS

- Detailed review of Singtel transfer pricing case in Australia
- 3 other international tax cases
 - GAAR case in Australia
 - VAT case in European Court of Justice
 - Double tax treaty case in Peru
- Biden Administration's FY 2025 Budget
 - Review of major corporate tax proposals

HAPPY FRIDAY!

US time is running out for TikTok, while Chuck calls time on Ben, but Kategate is ridiculous!

Meanwhile, in the tax world ...

Singtel picks the wrong hypothetical; Feudi toasts a win; Spotify changes the number; Nigeria has second thoughts; and in Australia, a stapled structure is a tax-effective Minerva!

But at the end of the week, the most important question is this: "Should all mothers (including princesses!) have the right to photoshop their kids' pictures?"

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. Singtel transfer pricing case
3. Asia Pacific
 - Australia, Malaysia
4. Europe
 - ECJ, France
5. Africa
 - Namibia, Nigeria
6. Americas
 - Barbados, Peru, US
7. Treaty news

ITB series on Pillar One

- Report on Amount B in Pillar One (ITB, 23 February 2024)
- 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:**
 - December 2023 Administrative Guidance on GloBE rules: Transitional CbCR Safe Harbour (Parts 1 to 4) (ITB, 19 January; 16 February; 1 & 8 March 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 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):**
 - 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

Reuven S. Avi-Yonah
"Should Digital Services Taxes Be Creditable?"
Tax Notes International, Tax Analysts, 11 March 2024.

Michael Butler, Liyao Wang and Cathy Chen
"Australia – Federal Court Hands Down First Decision on Embedded Royalties and Diverted Profits Tax"
International Transfer Pricing Journal, IBFD, 2024 (Vol. 31), No. 2.

Michael N. Kandeiv
"Canadian Court Changes Course on Beneficial Ownership"
Tax Notes International, Tax Analysts, 4 March 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

Can a Qualified Refundable Tax Credit of EUR 100 cause a larger increase in Top-up Tax under the GloBE rules, than a Non-Qualified Refundable Tax Credit (which is not transferable) of EUR 100?

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.

BCo, a company located in jurisdiction B, is also a Constituent Entity in the MNE Group. It is the only Constituent Entity located in jurisdiction B.

ACo directly owns 100% of the shares in BCo.

For the 2024 fiscal year, an amount of income is included in ACo's jurisdiction A taxable income, under the jurisdiction A CFC rules. The income inclusion relates to certain CFC income derived by BCo during 2024. The jurisdiction A corporate income tax caused by this income inclusion is EUR 100,000.

Question 1: Based on this limited information, what impact (if any) will the EUR 100,000 have on the 2024 Simplified ETR computation (for the purposes of the Transitional CbCR Safe Harbour) for: (1) jurisdiction A; and (2) jurisdiction B?

Question 2: In 2024, ACo recharges the EUR 100,000 to BCo. Therefore, for the 2024 consolidation reporting packages (which are used to prepare the MNE Group's CbCR report), the recharged EUR 100,000 is reflected as an income (or negative expense) item in ACo's accounting profit, and as an expense item in BCo's accounting profit. Based on this limited information, do your answers for Question 1 change?

LAST WEEK'S ANSWER

Safe Harbours and Penalty Relief (SHPR) report's definitions:

- "Simplified ETR": "is calculated by dividing the jurisdiction's Simplified Covered Taxes by its Profit (Loss) before Income Tax as reported on the MNE Group's Qualified CbC Report".
- "Simplified Covered Taxes": "is a jurisdiction's income tax expense as reported on the MNE Group's Qualified Financial Statements, after eliminating any taxes that are not Covered Taxes and uncertain tax positions in the MNE Group's Qualified Financial Statements".

Q1:

1. The EUR 100,000 would be included in jurisdiction A's (i.e., ACo's) income tax expense. It is thus included in jurisdiction A's Simplified Covered Taxes (SCT). Allocation of CFC tax under Art. 4.3.2 is not required for the purposes of the Simplified ETR computation: para. 74.23, SHPR report (as inserted by the December 2023 AG).
2. The EUR 100,000 would not be included in jurisdiction B's (i.e., BCo's) income tax expense. It is thus not included in jurisdiction B's SCT. Also, no allocation is done under Art. 4.3.2 (see above).

Q2:

1. If the recharged EUR 100,000 is reflected as a negative expense item in ACo's income tax expense, then (presumably) the EUR 100,000 would not be included in jurisdiction A's SCT. However, if the EUR 100,000 is reflected as an income item (not in the income tax expense), the EUR 100,000 recharge should have no impact on jurisdiction A's SCT - i.e., the EUR 100,000 would remain as part of jurisdiction A's SCT.
2. There would be no impact on jurisdiction B's SCT, because ACo's CFC tax does not qualify as a "Covered Tax" for BCo (see definition in Art. 4.2.1(a): "with respect to its income or profits").

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!

