

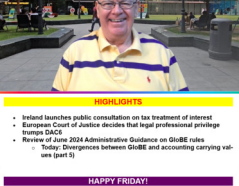
Want to learn more about ITB? Sign up for a free trial by emailing us

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

Free Trial

Subscribe

4 October 2024



HIGHLIGHTS

- Ireland launches public consultation on tax treatment of interest
- European Court of Justice decides that legal professional privilege trumps DAC6
- Review of June 2024 Administrative Guidance on GloBE rules
 - Today: Divergences between GloBE and accounting carrying values (part 5)

HAPPY FRIDAY!

A Weep-off, a haka world record; and the Italy / Switzerland border melts away!

Meanwhile, in the tax world...

Lawyers trump DAC6; Germany cuts bureaucracy; Ireland consults with interest; Peru rolls back bilaterally; and Poland finally welcomes the GloBE!

But at the end of the week, the most important question is this: "Is inflation about to spike again?"

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 news
2. Other global developments
3. June 2024 Administrative Guidance on GloBE rules: Divergences between GloBE and accounting carrying values (part 5)
4. Asia Pacific
 - Australia, Malaysia, Philippines
5. Europe
 - Cyprus, ECJ, EOC, France, Germany, Ireland
6. Africa
 - South Africa, Zambia
7. Americas
 - Chile, Peru
8. 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:
 - June 2024 Administrative Guidance on GloBE rules: Divergences between GloBE and accounting carrying values (Parts 1 to 5) (ITB, 23 & 30 August; 6 & 13 September; 4 October 2024)
 - June 2024 Administrative Guidance on GloBE rules: DTL recapture (Parts 1 to 4) (ITB, 28 June; 5, 12 & 19 July 2024)
 - December 2023 Administrative Guidance on GloBE rules: Transitional filing deadlines, and Simplified Calculation Safe Harbour (ITB, 26 April 2024)
 - December 2023 Administrative Guidance on GloBE rules: Allocation of blended CFC taxes (Parts 1 & 2) (ITB, 5 & 12 April 2024)
 - December 2023 Administrative Guidance on GloBE rules: Additional guidance on application of GloBE rules (ITB, 22 March 2024)
 - 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

Ryan Finley
"Apple May Change the Equation for EU Transfer Pricing Directive"
Tax Notes International, Tax Analysts, 30 September 2024.

Alexis Telelepis
"EU – The 'Broken' Fixed Establishment Concept"
International VAT Monitor, IBFD, 2024 (Vol. 35), No. 5.

J. Harold McClure
"Intercompany Royalties: Arago v. Mexican Revenue Authority"
Tax Notes International, Tax Analysts, 9 September 2024.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

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

XCo moves its place of effective management to jurisdiction Y. This has the effect of causing XCo to cease to be a resident under jurisdiction X corporate income tax (CIT) law, and it also causes XCo to become a resident under jurisdiction Y CIT law.

Under the jurisdiction X CIT law, XCo is deemed to sell and re-acquire all its assets for fair market value (FMV) at the time of the residence change. Also, under the jurisdiction Y CIT law, XCo is deemed to acquire all its assets for FMV at the time of the residence change.

Please assume that, at the time of the residence change, XCo's assets had:

- FMV of 300
- Accounting carrying value of 220
- GloBE carrying value of 200
- Jurisdiction X tax basis of 180

Based on these limited facts, what will be the GloBE impact of the residence change?

Answer in next ITB email alert!

LAST WEEK'S QUESTION

The UPE of an MNE Group, a bank, has these figures in its consolidated income statement for each of years 1 to 4 (in EUR millions):

Interest income: 1,200
Interest expense: (900)
Net interest income: 300

Net fee and commission income: 100

Other income: 40

Total operating income: 440

This presentation is in accordance with the Acceptable Financial Accounting Standard (as defined in Art. 10.1.1) which applies in the UPE's home jurisdiction.

Based on this limited information, does the MNE Group satisfy the revenue threshold test in Art. 1.1.1, in respect of year 5?

LAST WEEK'S ANSWER

The key issue is the interpretation of para. 10.5 in the Comm to Art. 1.1.1:

"For financial entities, which may not record gross amounts from transactions in their financial statements with respect to certain items, the item(s) considered similar to revenue under the [UPE's] financial accounting standards should be used in the context of financial activities. Those items could be labelled as 'net banking product', 'net revenues', or others depending on the financial accounting standard. For example, if the income or gains from a financial transaction, such as an interest rate swap, is appropriately reported on a net basis under the [UPE's] financial accounting standards, the term 'revenue' means the net amount from the transaction."

Based on para. 10.5, the net fee and commission income of 100 should be counted on a net basis - i.e., 100. Clearly, the other income of 40 should also be counted.

But what about interest? The UPE's consolidated income statement (1) does not report only gross interest income and (2) does not report only net interest income: it reports BOTH gross and net. How does para. 10.5 apply when a bank reports both gross and net interest income? The Comm on Art. 1.1.1 does not provide a clear answer.

The IF's Guidance on Implementation of CbC Reporting (May 2024) says:

"For example, if the income statement prepared in accordance with the applicable accounting rules shows sales revenue, net capital gains from sales of assets, unrealized gains, interest received, and extraordinary income, the amount of those items reported in the income statement should be aggregated and reported as Revenues in Table 1. ... The amount of any income items shown on the income statement need not be adjusted from a net amount."

This guidance was not clearly written with financial entities in mind. Also, the last sentence does not address the situation where both gross and net interest income is reported.

I don't think we can definitively say whether this UPE should count gross or net interest income, for the purposes of Art. 1.1.1.

If I had to express a preference for one view or the other, I would prefer the view that the net interest income should be counted.



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!

