

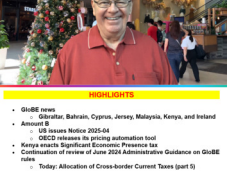
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20 December 2024



HIGHLIGHTS

- GloBE news
o Gibraltar, Bahrain, Cyprus, Jersey, Malaysia, Kenya, and Ireland
Amount B
o US Issues Notice 2025-04
o OECD releases its pricing automation tool
Kenya enacts Significant Economic Presence tax
Continuation of review of June 2024 Administrative Guidance on GloBE rules
o Today: Allocation of Cross-border Current Taxes (part 5)

HAPPY FRIDAY!

Trudeau is on thin ice; US government tries to avoid a shutdown; and Dow Jones sets a 46 year record!

Meanwhile, in the tax world...

US allows a safe harbour, Amount B will be automatic, OECD wants to ring-fence, EU calls a loss of EUR 89 billion a good result, Weatherford necessarily wins, Kenya takes a SEP forward, and Canada changes the actor, but the play carries on!

But at the end of the week, the most important question is this: "Why is Trump picking on Canada?"

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. Amount B
3. Other global developments
4. June 2024 Administrative Guidance on GloBE rules: Allocation of Cross-border Current Taxes (part 5)
5. Asia Pacific
o Australia, Indonesia
6. Europe
o ECJ, EU, Germany, Netherlands
7. Africa
o Guinea-Bissau, Kenya
8. Americas
o Canada
9. 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: Allocation of Cross-border Current Taxes (Parts 1 to 5) (ITB, 15 & 22 November; 6, 13, 20 December 2024)
- June 2024 Administrative Guidance on GloBE rules: Divergences between GloBE and accounting carrying values (Parts 1 to 7) (ITB, 23 & 30 August; 6 & 13 September; 4, 11 & 18 October 2024)
- June 2024 Administrative Guidance on GloBE rules: OTL 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 CPC 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 6) (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 & 29 October; 3 November 2023)
- Subject to Tax Rule (STTR): overview (ITB, 28 July 2023)

WORTH READING

Valentin Bendinger
Does Pillar 2 Qualify Transparent Entities and PEs as Residents Under Tax Treaties?
Tax Notes Today International, Tax Analysts, 19 December 2024.

Raouan S. Avi-Yonah and Doron Narobski
The Tariffs Are Coming! The Tariffs Are Coming!
Tax Notes Today International, Tax Analysts, 6 December 2024.

Prita Subramanian and Thomas Zollo
The Commensurate With Income Standard in Transfer Pricing
Tax Notes Today International, Tax Analysts, 12 December 2024.

INTERNATIONAL TAX QUIZ

LAST WEEK'S QUESTION

XCo 1, a company located in jurisdiction X, has a branch located in jurisdiction Y. The branch operates a business.

In a particular fiscal year:

- The branch derives 1,000 of revenue, and it has expenses of 600.
Included in the 1,000 of revenue are: (i) 100 of interest income derived from ACo, a related company located in jurisdiction A; (ii) 150 of royalties derived from XCo 2, an unrelated company located in jurisdiction X; and (iii) 200 of service fees derived from the XCo 1 head office in jurisdiction X.
100 of interest income derived from ACo: 10% interest withholding tax (IWT) is deducted in jurisdiction A. The branch claims a full foreign tax credit for the IWT in its branch income tax return in jurisdiction Y.
150 of royalties derived from XCo 2: The 150 is treated as domestic source income in jurisdiction A. 10% royalty withholding tax (RWT) is deducted in jurisdiction X. The branch claims a full foreign tax credit for the RWT in its branch income tax return in jurisdiction Y.
200 of service fees derived from XCo 1 head office: The 200 is not recognised under the jurisdiction X corporate income tax (CIT) law.
In its jurisdiction Y income tax return, the branch reports taxable income of 400, and an income tax liability (after claiming the 2 foreign tax credits) of 50.

For the same fiscal year:

- XCo 1 derives revenue of 2,000, and it has directly related expenses of 1,600.
Included in the 2,000 of revenue is 300 of royalties derived from ZCo, a related company located in jurisdiction Z. 10% RWT is deducted in jurisdiction Z. XCo 1 claims a full foreign tax credit for the RWT in its CIT return.

Under the jurisdiction X CIT law:

- Tax (20% rate) is imposed on both domestic source income and foreign source income
Credit is given for foreign tax paid on foreign source income
Cross-crediting is allowed and there is only one "basket" - i.e., credit is calculated on total foreign tax paid on total foreign source income
Credit is limited to the lower of foreign tax paid and X CIT on foreign income (credit limitation)
In determining the credit limitation, only expenses which directly relate to foreign source income are taken into account
Credit cannot be used against X CIT on domestic source income

Based on this limited information, what are the "Cross-Crediting Allocation Keys" (for the purposes of the allocation of cross-border current taxes under Art. 4.3.2) for the branch and XCo 1 head office for this fiscal year?

LAST WEEK'S ANSWER

For the purposes of the GloBE rules, the branch is a PE and the XCo 1 head office is a Main Entity.

References are to paras. 52.1 to 52.34 of Comm to Art. 4.3.2, and to section 3.1 of June 2024 AG.

(1) Cross-Crediting Allocation Key for PE = (A x B) - C, where A = Main Entity taxable income arising from the PE; B = applicable tax rate; and C = creditable foreign taxes accrued with respect to PE's income.

A ...
PE has revenue of 1,000, and expenses of 600.
150 royalties are treated as foreign source income (FSI) (para. 52.6); thus, no adjustment.
200 service fees are treated as FSI (para. 52.8); thus, no adjustment.

Therefore, A = 1,000 - 600 = 400.

B = 20%.
C ...
Creditable foreign taxes with respect to PE's income = 10 (juris. A IWT) + 15 (juris. X RWT) + 50 (juris. Y tax) = 75; para. 23.

Thus, Cross-Crediting Allocation Key for PE = (400 x 20%) - 75 = 5.

(2) Cross-Crediting Allocation Key for Main Entity = (D x E) - F, where D = Main Entity taxable income arising directly from FSI; E = applicable tax rate; and F = creditable foreign taxes accrued with respect to the FSI.

D = 300 (para. 24).
E = 20%.
F = 30.

Thus, Cross-Crediting Allocation Key for Main Entity = (300 x 20%) - 30 = 30.

Do you agree?



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