ITB International Tax Bytes by Steve Towers

"International tax news, explained"

11 April 2025

HIGHLIGHTS

- **Tariff wars**
  - **Rollercoaster ride continues**
- **European Court of Justice**
  - **Case on EU Parent-Subsidiary Directive**
- **Review of June 2024 Administrative Guidance on GloBE rules**
  - **Today: Allocation of profits and taxes in structures including Flow-through Entities (part 3)**

HAPPY FRIDAY!

Bond markets cause **Trump** to blink; **TikTok** gets a reprieve; and **"boys will be boys"**!

Meanwhile, in the tax world...

The **tariff** rollercoaster ride continues; **Nordcurrent** wins the game; **Germany's** coalition will cut taxes; and **Arcomet** proves that transfer pricing adds value!

But at the end of the week, the most important point is that **Trump "will make America's showers great 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. Tariff wars
2. GloBE news
3. June 2024 Administrative Guidance on GloBE rules: Allocation of profits and taxes in structures including Flow-through Entities (Part 3)
4. Asia Pacific
   - New Zealand
5. Europe
   - ECJ, EU, Germany, Ireland, Netherlands, Norway
6. Africa
   - Ghana, Namibia, Rwanda

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 February 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 profits and taxes in structures including Flow-through Entities (Parts 1 to 3) (ITB, 28 March; 4 & 11 April 2025)**
  - **June 2024 Administrative Guidance on GloBE rules: Allocation of Cross-border Deferred Taxes (Parts 1 to 3) (ITB, 24 January; 14 & 21 February 2025)**
  - **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: 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

Jarrod Hepburn and Sunita Jogarajan
"Denial of Justice: International Investment Agreements and the Implementation of the Global Minimum Tax"
Intertax, Kluwer, Vol. 53, Issue 5.

J. Harold McClure
"Arm's-Length Royalties and the Role of Licensee Risk"
Tax Notes Today International, Tax Analysts, 8 April 2025.

Jacques Malherbe
"DAC 6 and the European Rejection of Professional Secrecy Beyond That of Lawyers: The CJEU Judgment of 29 July 2024"
EC Tax Review, Kluwer, 2025-2.

INTERNATIONAL TAX QUIZ

THIS WEEK'S NEW QUIZ

ACo and BCo are sister subsidiaries in an MNE Group which is "within scope" of the GloBE rules.

ACo is formed in jurisdiction A, where it is treated as opaque for tax purposes.

BCo is formed in jurisdiction B, where it is treated as opaque for tax purposes.

ACo owns a 40% interest in CCo, which is formed in jurisdiction C. BCo owns the remaining 60% interest in CCo.

CCo is treated as opaque under the jurisdiction B tax law, but as transparent under the jurisdictions A and C tax laws.

CCo has Financial Accounting Net Income of 100, on which it incurs C tax of 20.

Q1: What will be the allocation of CCo's FANIL of 100 and tax of 20?

Q2: Now assume that, under the jurisdiction B CFC rules, BCo incurs tax of 5 (after foreign tax credit for CCo tax) in respect of BCo's interest in CCo. What will be the allocation of CCo's FANIL of 100 and tax of 20, and BCo's tax of 5?

Answer in next ITB email alert on 25 April 2025!

LAST WEEK'S QUESTION

XCo, a company which is treated as a tax resident entity (i.e., opaque) under Jurisdiction X tax law, is the UPE of an MNE Group which is "within scope" of the GloBE rules.

XCo owns 80% of YCo, which is formed in Jurisdiction Y. YCo is treated as fiscally transparent under the Jurisdictions X and Y tax laws. The other 20% of YCo is owned by ACo, a company which is formed in Jurisdiction A. YCo is treated as a non-resident entity (i.e., opaque) under Jurisdiction A tax law.

YCo owns 100% of ZCo, which is formed in Jurisdiction Z. ZCo is treated as fiscally transparent under the Jurisdictions X, Y and Z tax laws.

ZCo has $1 million of Financial Accounting Net Income or Loss (FANIL). For GloBE purposes, how will the FANIL of $1 million be allocated?

LAST WEEK'S ANSWER

ZCo is a Flow-through Entity: Art. 10.2.1.

ZCo's Reference Entity is XCo: para. 154.1 of Comm to Art. 10.2.1.

Thus, ZCo is a Tax Transparent Entity (Art. 10.2.1(a)) and its Constituent Entity-owner is XCo.

ZCo's FANIL is allocated to XCo "in accordance with [its] Ownership Interests": Art. 3.5.1(b).

However, prior to the application of Art. 3.5.1, Art. 3.5.3 requires ZCo's FANIL to be reduced "by the amount allocable to its owners that are not Group Entities and that hold their Ownership Interest in [ZCo] directly or indirectly through a Tax Transparent Structure."

ACo is not a Group Entity, in regard to ZCo (Art. 10.1.1).

According to para. 231 of Comm to Art. 3.5.3: "An Entity that is not a Group Entity is considered to indirectly own its interest in [ZCo] through a Tax Transparent Structure where the non-Group Entity owns an interest in a Flow-through Entity that sits between the Reference Entity and [ZCo] in the MNE Group's ownership structure."

ACo satisfies that condition: it owns an interest in YCo (a Flow-through Entity) which sits between XCo (Reference Entity) and ZCo in the MNE Group.

Thus, Art. 3.5.3 will require that ZCo's FANIL to be reduced by $200,000. According to the June 2024 AG, the fact that jurisdiction A treats YCo as opaque for tax purposes, is irrelevant.

What is the amount of FANIL allocated to XCo? If you apply Art. 3.5.1(b) and Art. 3.5.3 literally, you might conclude that $640,000 (i.e., 80% x $800,000) would be allocated to XCo. However, it is clear from the discussion in the June 2024 AG that the amount allocated to XCo would be $800,000.

Do you agree?