Government responds positively to most concerns raised on the bill for global minimum tax (GMT) and Hong Kong minimum top-up tax (HKMTT)

By way of Committee Stage Amendments[1] (CSAs) to the Bill[2], except for item (vii) below which will be achieved through other means, the major concerns addressed include:

(i) The main purpose test (MPT) as a general anti-avoidance rule (GAAR) being replaced by the sole or dominant test under section 61A of the Inland Revenue Ordinance (IRO) with additional safeguards before it can be invoked.

(ii) Instead of an effectively indefinite time for raising assessments in certain situations, the time limit now being fixed at eight years for non-tax evasion cases and 12 years for tax evasion cases.

(iii) The time limit for re-opening an assessment for refund of excessive top-up taxes paid because of an error or omission committed under section 70A or in other situations under section 79 of the IRO being correspondingly increased to eight years.

(iv) The personal liabilities imposed on responsible directors or officers of GMT/HKMTT entities or their service providers for failing tax reporting obligations of the entities involved being removed.

(v) The time for record keeping for GMT/HKMTT being reduced from 12 years to nine years.

(vi) The tax-neutral effect for reimbursement of top-up taxes among group companies being extended to cover all types of top-up taxes, i.e., those paid under the Income Inclusion Rule now also included.

(vii) HKMTT entities being legally required to file profits tax returns based on accounts prepared under local accounting standards if such accounts have been prepared so as to comply with the local accounting standard rule for HKMTT.

(viii) Tax credit being granted in Hong Kong generally for qualified domestic minimum top-up tax (QDMTT) paid in overseas jurisdictions when the same income e.g., dividends, is also subject to tax in Hong Kong. In addition, the QDMTT paid would be regarded as a qualifying similar tax but not counted in considering the applicable rate under the "subject to tax" condition for the foreign-sourced income exemption regime.

(ix) In-scope multinational enterprise (MNE) groups being required to perform mandatory e-filing of profits tax returns starting from the year of assessment 2025/26.

Clients who have any questions regarding the above and other amendments or issues discussed below should contact their tax executives.

[1] The government's responses and the proposed CSAs can be retrieved from the links below:
https://www.legco.gov.hk/yr2025/english/bc/bc101/papers/bc101cb3-487-1-e.pdf
https://www.legco.gov.hk/yr2025/english/bc/bc101/papers/bc101cb3-567-1-e.pdf

[2] The Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024 can be retrieved from the link below:
https://www.legco.gov.hk/yr2024/english/bills/b202412271.pdf

Replacing the MPT by the sole or dominant purpose test as the GAAR

The Government has not adopted the strong advocate made by certain stakeholders that the MPT as a GAAR in the Bill should be removed without any substitution of any alternative form of GAAR. In support of their submission, they cited that the GMT and QDMTT legislation of both Australia and Singapore apparently do not contain any GAAR.

The Government however indicated that jurisdictions implementing the GMT/QDMTT are expected to demonstrate how their legislation addresses arrangements that could undermine the integrity of the Global Anti-Base Erosion (GloBE) model rules promulgated by the Organisation for Economic Co-operation and Development (OECD).

Therefore, it is necessary for Hong Kong to contain a GAAR in its legislation to safeguard its GMT and HKMTT regimes and prevent any unintended outcomes that are not consistent with the GloBE model rules, including the Commentary and Administrative Guidance on the rules promulgated by the OECD.

The Government also justified its adoption of the sole or dominant test under section 61A with certain modifications as the proposed revised GAAR instead of specifying in the law that the GAAR will only apply to arrangements specified by the OECD as giving rise to avoidance or abusive concerns.

This is because the OECD has yet to publish a list of specified arrangements that will potentially undermine the integrity of the GloBE rules, and such a list is unlikely to be exhaustive.

Nevertheless, the Government indicated that the Inland Revenue Department (IRD) will publish guidance on the application of the proposed revised GAAR. The guidance will include clarification that transactions entered into on or before 30 November 2021 in general will not be considered as having the sole or dominant purpose of enabling a person to obtain a tax benefit under the GMT and HKMTT regimes.

In addition, in applying section 61A in the context of the GMT and HKMTT regimes, the IRD will refer to the OECD's guidance, if any, in relation to arrangements the outcomes of which are considered to be inconsistent with the intended outcomes under the GloBE model rules, Commentary and Administrative Guidance. Such a reference is an additional safeguard built into the proposed revised GAAR.

Time for raising a top-up assessment be restricted to eight years for non-tax evasion cases

Under the Bill, the time limit for raising a top-up tax assessment or additional assessment is to be six years after the later of (i) the end of the fiscal year concerned; or (ii) the time when the non-assessment or under-assessment for the fiscal year has come to the assessor's knowledge.

However, the non-assessment or under-assessment of a previous year could come to the knowledge of the assessor any time long after the end of the year concerned. Thus, the stakeholders submitted that the latter time limit in (ii) above for raising an assessment is too open-ended or indefinite, rendering the finality of an assessment not subject to a fixed period of time, thereby causing a lot of tax uncertainty.

In response, the Government now proposes that the time limit for raising a top-up tax assessment be fixed at eight years after the end of the year of assessment in which the fiscal year ends for non-tax evasion case and 12 years for tax evasion cases.

As compared with the corresponding time limits for raising an assessment for existing taxes charged under the IRO, the additional two years in the time limits for raising a top-up tax assessment is to allow for the fact that the GloBE Information Return (GIR) and/or top-up tax return in Hong Kong will only be due for filing much later than other types of tax returns under the IRO.

Consequently, the Government also proposes that the time limit for re-opening a top-up tax assessment for refund of excessive top-up taxes paid because of an error or omission committed under section 70A or in other situations under section 79 of the IRO be extended from six years to eight years.

Removing the personal liabilities imposed on responsible directors and officers

The stakeholders submitted that the Bill should not impose personal liabilities on responsible directors or officers of GMT/HKMTT entities and their service providers for failing to perform certain tax reporting obligations. They argued that such an imposition does not seem to be an international norm and could deter persons from acting in such capacities.

Addressing their concerns, the Government proposes to remove section 80Q of the Bill under which personal liabilities would be imposed.

Requiring adopting the local accounting standard rule for HKMTT purposes

The Bill specifies that to calculate the HKMTT for a Hong Kong constituent entity, the financial accounting net income or loss must be determined in accordance with local accounting standards (i.e., HKFRS or IFRS) if such accounts have been prepared and certain other conditions are met. The other conditions include such accounts are either (a) "required" for determining its liability to tax in Hong Kong or to comply with other law of Hong Kong or (b) subject to external financial audit.

However, no law in Hong Kong "requires" non-Hong Kong incorporated companies including their branches in Hong Kong to prepare their accounts based on the HKFRS or IFRS, including for tax filing purposes in Hong Kong.

As such, even if such Hong Kong constituent entities have prepared their accounts based on the local accounting standards, they would still have to arrange for external financial audit of such accounts, if they wish to avail themselves of the local accounting standard rule for the HKMTT.

To relieve their compliance burden of subjecting such accounts to external financial audit, the Government indicates that the requirement will be imposed on in-scope MNE groups for profits tax returns starting from the year of assessment 2025/26.

Specifically, subject to the approval of the Board of Inland Revenue, the notes and instructions of the profits tax returns will then set out the requirement that Hong Kong constituent entities of in-scope MNE groups must submit their returns together with accounts prepared in accordance with the local accounting standards, if such accounts have been prepared.

This requirement facilitates compliance with the local accounting standard rule, while allowing flexibility for constituent entities. Additionally, this approach ensures that the majority of taxpayers remain unaffected.

Other proposed CSAs

In addition to the above, the Government also proposes certain other CSAs including the following:

(i) The time limit for Hong Kong constituent entities to file GIR if exchange mechanisms fail be extended from 30 days to at least 60 days.

(ii) Specifying that a Hong Kong constituent entity is not required to file a GIR if another Hong Kong entity, which is either the ultimate parent entity or the designated local entity of the group has complied with the requirement.

(iii) The proposed section 80R of the Bill be amended to restrict the time limit for initiating proceedings in respect of the relevant tax offences to eight years after the date on which the offence was committed (i.e., the provision that proceedings can be initiated within two years after the offence was discovered by the Commissioner of Inland Revenue will be removed).

(iv) Clarifying that Article 9.3 of the GloBE model rules that the relief for MNE groups in the initial phase of their international activity also applies in the context of the HKMTT.

(v) Incorporating the additional guidance on safe harbors and HKMTT provided in the June 2024 and January 2025 Administrative Guidance issued by the OECD into the proposed Schedule 60 and proposed Schedule 61 of the Bill before the CSAs.

(vi) Incorporating the Administrative Guidance issued by the OECD in January 2025 in the proposed Schedule 63 of the Bill before the CSA.

Mandatory e-filing of profits tax returns starting from the year of assessment 2025/26

Instead of making a separate notice in the Gazette as subsidiary legislation specifying that in-scope MNE groups are to be required to e-file their profits tax returns starting from the year of assessment 2025/26 and onwards, a CSA to the Bill will be made to mandate such a requirement.

This requirement has been widely expected given that such MNE groups will need to file their GIR and top-up tax returns electronically for a financial year commencing on or after 1 January 2025.

In this regard, it may also be of note that the IRD is set to launch the three interconnected portals under eTax services portal, namely Individual Tax Portal, Business Tax Portal (BTP) and Tax Representative Portal (TRP) in July 2025.

These new portals aim to provide electronic services for the individuals, businesses and tax representatives to view and manage the tax matters.

The IRD will pre-launch the BTP and TRP to allow businesses and tax representatives to pre-register their dedicated accounts on 22 April 2025.

Commentary

We welcome the Government making the necessary amendments to address most of the major concerns raised by the stakeholders including those made by EY.

The Government's insistence of including a GAAR in our legislation appears in part to be based on its view that the corresponding legislation of Australia and Singapore would not pass the peer review by the OECD and that they would eventually also be required to do so.

The raising of the bar for invoking the proposed revised GAAR from the MPT to the sole or dominant purpose of a transaction is to obtain a tax benefit is welcome, if a GAAR is indeed required by the OECD.

The clarification that the proposed revised GAAR will generally have no retrospective effect and, as an additional safeguard, will not go beyond what the OECD considers to be avoidance or abusive arrangements is very helpful.

However, given that the list of avoidance or abusive arrangements, if any, to be issued by the OECD could not conceivably be exhaustive, it remains to be seen how this safeguard would operate in practice. Clarification on this point in the guidance to be issued by the IRD would be much appreciated by taxpayers.

The clarification on certain issues raised by the stakeholders in their submission to the Bills Committee of the Legislative Council is also very helpful.

These issues include (i) reference will be made to the OECD guidance on transitional penalty relief when considering whether prosecution or penal action is to be initiated against a failure to comply with the relevant tax reporting obligations and (ii) the clarification that the transitional Country-by-Country Reporting safe harbor applies even if the overseas jurisdictions concerned have not implemented the GloBE rules for an initial year.

Clients who have any questions regarding the above and any other issues on the GMT and HKMTT regimes should contact their tax executives.

Hong Kong office

Jasmine Lee, Managing Partner, Hong Kong & Macau
27/F One Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong
Tel: +852 2846 9888 Fax: +852 2868 4432

Non-financial Services

Wilson Cheng
Tax Leader for Hong Kong and Macau
+852 2846 9066
wilson.cheng@hk.ey.com

Business Tax Services/Global Compliance and Reporting

Hong Kong Tax Services

Wilson Cheng
+852 2846 9066
wilson.cheng@hk.ey.com

Jacqueline Chow
+852 2629 3122
jacqueline.chow@hk.ey.com

Ryan Dhillon
+852 3752 4703
ryan.dhillon@hk.ey.com

Tracy Ho
+852 2846 9065
tracy.ho@hk.ey.com

Ada Ma
+852 2849 9391
ada.ma@hk.ey.com

Jennifer Kam
+852 2846 9755
jennifer.kam@hk.ey.com

May Leung
+852 2629 3089
may.leung@hk.ey.com

Karina Wong
+852 2849 9175
karina.wong@hk.ey.com

Leo Wong
+852 2849 9165
leo.wong@hk.ey.com

Ricky Tam
+852 2629 3752
ricky.tam@hk.ey.com

Susan Kwong
+852 2629 3117
susan.tm.kwong@hk.ey.com

China Tax Services

Ivan Chan
+852 2629 3828
ivan.chan@hk.ey.com

Payroll Operate

Vincent Hu
+852 3752 4885
vincent-wh.hu@hk.ey.com

Accounting Compliance and Reporting

Linda Liu
+86 21 2228 2801
linda-sy.liu@cn.ey.com

Cecilia Feng
+852 2846 9735
cecilia.feng@hk.ey.com

International Tax and Transaction Services

International Tax Services

Winnie Kwan
+852 2629 3211
winnie.yw.kwan@ey.com

Transfer Pricing Services

Sangeeth Aiyappa
+852 2629 3989
sangeeth.aiyappa@hk.ey.com

Martin Richter
+852 2629 3938
martin.richter@hk.ey.com

Kenny Wei
+852 2629 3941
kenny.wei@hk.ey.com

Transaction Tax Services

Jane Hui
+852 2629 3836
jane.hui@hk.ey.com

Jasmine Tian
+852 2629 3738
jasmine.tian@hk.ey.com

Emma Campbell
+852 2629 1714
emma.ef.campbell@hk.ey.com

People Advisory Services

William Cheung
+852 2629 3025
william.cheung@hk.ey.com

Christina Li
+852 2629 3664
christina.li@hk.ey.com

Emily Chan
+852 2629 3250
emily-my.chan@hk.ey.com

Winnie Walker
+852 2629 3693
winnie.walker@hk.ey.com

Paul Wen
+852 2629 3876
paul.wen@hk.ey.com

Financial Services

Paul Ho
Tax Leader for Hong Kong
+852 2849 9564
paul.ho@hk.ey.com

Business Tax Services/Global Compliance and Reporting

Hong Kong Tax Services

Paul Ho
+852 2849 9564
paul.ho@hk.ey.com

Ming Lam
+852 2849 9265
ming.lam@hk.ey.com

Sunny Liu
+852 2846 9883
sunny.liu@hk.ey.com

Helen Mok
+852 2849 9279
helen.mok@hk.ey.com

Customer Tax Operations and Reporting Services

Paul Ho
+852 2849 9564
paul.ho@hk.ey.com

Francis Tang
+852 2629 3618
francis-ks.tang@hk.ey.com

US Tax Services

Camelia Ho
+852 2849 9150
camelia.ho@hk.ey.com

International Tax and Transaction Services

International Tax Services

Sophie Lindsay
+852 3189 4589
sophie.lindsay@hk.ey.com

Maggie Mang
+852 3471 2759
maggie.mang@hk.ey.com

Karen Lui
+852 2232 6455
karen.sy.lui@hk.ey.com

Steve Strathdee
+852 2629 3378
steve.strathdee@hk.ey.com

Transfer Pricing Services

Ka Lok Chu
+852 2629 3044
kalok.chu@hk.ey.com

Justin Kyte
+852 2629 3880
justin.kyte@hk.ey.com

Transaction Tax Services

Sunny Liu
+852 2846 9883
sunny.liu@hk.ey.com

Tax Technology and Transformation Services

Robert Hardesty
+852 2629 3291
robert.hardesty@hk.ey.com

Asia-Pacific Tax Center

Tax Technology and Transformation Services

Albert Lee
+852 2629 3318
albert.lee@hk.ey.com

International Tax and Transaction Services

US Tax Desk

Jeremy Litton
+852 3471 2783
jeremy.litton@hk.ey.com

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

About EY's Tax services

Your business will only succeed if you build it on a strong foundation and grow it in a sustainable way. At EY, we believe that managing your tax obligations responsibly and proactively can make a critical difference. Our 50,000 talented tax professionals, in more than 150 countries, give you technical knowledge, business experience, consistency and an unwavering commitment to quality service — wherever you are and whatever tax services you need.

APAC no. 03022668
ED None

ey.com/china

Follow us on WeChat
Scan the QR code and stay up to date with the latest EY news.