Hong Kong Tax Alert

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Bill implementing the global minimum tax initiative passed its third reading in the Legislative Council today

Today, on 28 May 2025, the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024 (the bill), after incorporating various Committee Stage Amendments (CSAs), passed its second and third readings in the Legislative Council.

The bill, as passed, is expected to be gazetted this or next Friday and then formally become law (the new law).

Clients who have any questions about the new law, how to gear up for the filing of the top-up tax returns or wish to explore their eligibility for the transitional Country-by-Country Reporting Safe Harbor (transitional CbCR Safe Harbor) can contact their tax executive.

New law

The new law is to implement in Hong Kong the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR), the two interlocking rules under the global anti-base erosion (GloBE) rules, as part of the Model Rules promulgated by the Organization for Economic Co-operation and Development (OECD).

In addition, the new law will impose a domestic minimum top-up tax named as Hong Kong Minimum Top-up Tax (HKMTT), the design and features of which mirror those of the GloBE rules.

The HKMTT will have priority over the IIR and UTPR, thereby ensuring that any low-taxed profits of Hong Kong constituent entities (CEs) of in-scope multinational enterprise (MNE) groups will be subject to the HKMTT first. Thus, the taxing right of Hong Kong over economic activities undertaken in Hong Kong will be preserved.

The HKMTT intends to qualify for the Qualified Domestic Minimum Top-up Tax Safe Harbor (QDMTT SH), thereby any top-up taxes payable under the IIR and UTPR will be deemed zero.

The top-tax tax under the HKMTT is charged on an in-scope MNE group in respect of the difference between the global minimum tax rate of 15% and the effective tax rate (ETR) of the group on a jurisdiction basis in Hong Kong in respect of its excess profits. As such, there could be some blending of the ETRs among the CEs of such a group in Hong Kong.

For the purposes of the HKMTT, where the conditions are met, the GloBE income is to be ascertained based on the local accounting standards, which cover both (a) the International Financial Reporting Standards and (b) accounting standards prescribed by the Hong Kong Institute of Certified Public Accountants, including the Hong Kong Financial Reporting Standards.

The new law will apply to fiscal years commencing on or after 1 January 2025 to MNE groups whose consolidated revenue for two of the four years preceding the fiscal year concerned is or above EUR 750 million.

The imposition of the UTPR by Hong Kong will however be deferred to a date to be specified by the Secretary for Financial Services and Treasury.

Legislative approach

The new law has directly incorporated the Model Rules into the Inland Revenue Ordinance (IRO) with limited adaptations, in the new part Part 4AA together with the new Schedules 61 to 65 to the IRO.

There are specific provisions specifying that the enacted GloBE rules will have to be read and applied in the way that best secures consistency with the requirements and guidance in the Commentary and Administrative Guidance (AG) on the Model Rules as published by the OECD.

There are also specific provisions to deal with the interaction between the enacted GloBE rules and the existing provisions of the IRO.

This includes how (i) any QDMTT paid overseas would be creditable or deductible in Hong Kong if the foreign income e.g. dividend is also taxable in Hong Kong under the foreign-sourced income exemption (FSIE) regime of Hong Kong; (ii) the existing general anti-avoidance provisions contained in section 61A of the IRO would apply to transactions for top-up taxes under the IIR/UTPR and HKMTT with additional safeguards; and (iii) the existing tax administrative mechanisms such as those regarding objection, time limitation for assessments and the penal provisions of the IRO are to apply to IIR/UTPR and HKMTT assessments with modifications.

CSAs

The CSAs have (i) addressed most of the concerns of stakeholders regarding the tax administrative mechanisms such as time limitation for IIR/UTPR and HKMTT assessments; (ii) replaced the main purpose test as a general anti-avoidance rule proposed in the bill with section 61A of the IRO with additional safeguards; and (iii) specified the interaction between QDMTT paid overseas with the FSIE regime in Hong Kong.

Other CSAs are mostly technical or clarification in nature such that the proposed legislation can better reflect its intent of adopting all the relevant GloBE rules, particularly all the safe harbor rules specified therein.

In addition, certain CSAs also incorporate the AGs that have been published by the OECD after the gazettal of the bill, including (i) an additional disqualifying condition for the QDMTT SH; and ii) the exclusion of certain deferred tax expense attributable to the pre-regime tax loss from the calculation of covered taxes for the transitional CbCR Safe Harbor).

In fact, given the Commentary and AGs on the Model Rules may be updated and issued by the OECD from time to time in the future, there is a provision in the new law allowing such updated and new Commentary and AGs to be adopted in Hong Kong by way of subsidiary legislation, which is a swift legislative process by way of negative vetting.

Clients who wish to understand the provisions of the bill, the GloBE rules, the safe harbor rules and the CSAs in more detail can refer to our previous alerts dated 23 January 2025[1] and 17 April 2025[2].

What to do now

Gear-up for the collation of information and human resources required

For MNE groups with calendar year-end, they will need to file notifications of them being in-scope within six months after the year-end, i.e. on or before 30 June 2026.

The GloBE information return (GIR) requiring more than 200 data points will be due for filing 18 months after the year-end, i.e., by 30 June 2027 for calendar year-end in-scope MNE groups, if 2025 is the first or transitional year that the group is subject to the GloBE rules.

However, if the group has already been subject to the GloBE rules in 2024 in any overseas jurisdictions, the GIR will need to be filed 15 months after the year-end, i.e., by 31 March 2027 for calendar year-end in-scope MNE groups.

For UPEs of Hong Kong, the information required for the GIR and the top-up tax returns in Hong Kong is voluminous, the collation of which would require inputs and efforts from across all their CEs located in Hong Kong and overseas that the group has operations.

Furthermore, the Model Rules are a set of complicated rules for the calculation of the jurisdictional ETRs and excess profits. which requires a lot of information that may not be readily available or retrievable from the financial accounting systems. e.g. the information required for the adjustments to the deferred tax account for the calculation of covered taxes under the GloBE rules.

As such, in addition to being conversant with the Model Rules, the Commentary and AGs, in-scope MNE may also need to review and, if necessary, build into their financial and other information systems new features or functions that facilitate the collation of information required.

Another issue that may need to be considered may be how the co-ordination in terms of human resources and expertise on the GloBE matters within the group is to be arranged.

Exploring the eligibility for the transitional CbCR Safe Harbor

For the transitional years, in-scope MNE groups should in particular explore whether they can avail themselves of the transitional CbCR Safe Harbor. The satisfaction of the transitional CbCR Safe Harbor would then avoid the necessity to calculate the ETR for a jurisdiction based on the complicated Model Rules.

Under the transitional CbCR Safe Harbor, an in-scope MNE group's top-up tax for a particular jurisdiction will be deemed to be zero if any of the three specified criteria in relation to total revenue, ETR or routine profits is met. It operates through the use of jurisdictional total revenue and profit or loss before tax information contained in the MNE group's qualified Country-by-Country report and jurisdictional tax information contained in its qualified financial statements. It only applies to a transitional period covering all the fiscal years beginning on or before 31 December 2026 and ending on or before 30 June 2028. The Safe Harbor adopts a "once out, always out" approach, meaning that if an in-scope MNE group has not applied this Safe Harbor in respect of a jurisdiction in a previous year, the group cannot qualify for this Safe Harbor for that jurisdiction in a subsequent fiscal year.

Influencing Government to grant tax incentives based on the QRTC

Currently, many of the preferential tax regimes of Hong Kong, e.g. those for qualifying ship or aircraft lessors and leasing managers, grant a concessionary tax rate of 8.25% or 0% in some cases.

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[1] The Tax Alert (2025 Issue No. 2) can be accessed from the link below:
https://www.ey.com/en_cn/technical/hong-kong-tax-alerts/hk-publishes-legislative-bill-for-the-implementation-of-the-global-and-domestic-minimum-taxes-in-2025

[2] The Tax Alert (2025 Issue No. 4) can be accessed from the link below:
https://www.ey.com/en_cn/technical/hong-kong-tax-alerts/government-responds-positively-to-most-concerns-raised-on-the-bill-for-global-minimum-tax-and-hk-minimum-top-up-tax

However, if such taxpayers belong to in-scope MNE groups, they will need to top up their tax payable in Hong Kong to the 15% threshold under the HKMTT, if after blending their ETRs with those of other CEs of the group in Hong Kong would still render the jurisdictional ETR in Hong Kong below 15%.

In fact, instead of granting a concessionary tax rate, the Government may consider granting the tax incentives by way of a tax credit, e.g. the credit granted being based on relevant expenses incurred.

Such a tax credit would then offset against the tax payable in respect of the profits that are to be charged at the normal corporate tax rate of 16.5%. After the offsetting, the actual tax payable by such taxpayers in Hong Kong could still be equivalent to a concessionary tax rate being granted.

If the tax incentives in Hong Kong are granted by way of a tax credit, the tax credit would be treated as a GloBE income rather than a reduction in the covered taxes in calculating the ETR. The condition for such a treatment is that the tax credit qualifies as a qualified refundable tax credit (QRTC) under the Model Rules.

Thus, as compared with granting a concessionary tax rate, granting a tax incentive by way of a QRTC would then have a much less significant effect on dragging down the ETR.

Essentially, to qualify as a QRTC, the tax credit must be provided in cash or cash equivalents within four years from the date a taxpayer meets the eligibility criteria set by the jurisdiction granting the credit.

While the Government may have concern with the revenue implications for granting tax incentives by way of a QRTC, including the potential for abuse given that actual cash outlay would be involved, stakeholders may consider assuring and influencing the Government's decision in this regard.

Clients who have any questions about the new law, how to gear up for the filing of the GIR and top-up tax returns or wish to explore their eligibility for the transitional CbCR Safe Harbor can contact their tax executive.

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