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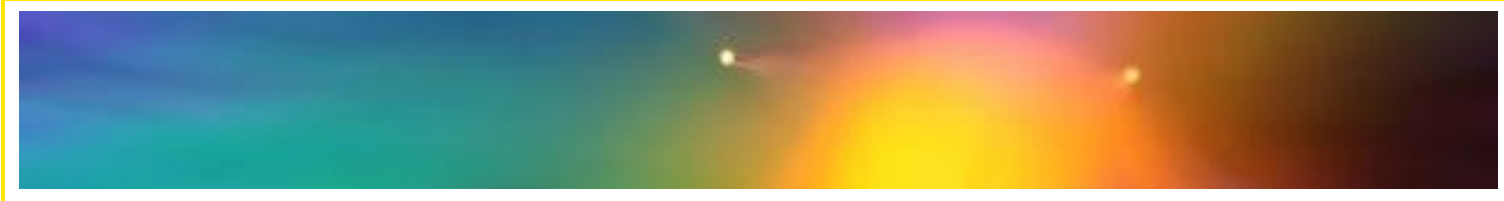
Malaysian developments

Updated Guideline for application of research and development (R&D) status and tax incentives for R&D services

The Malaysian Investment Development Authority (MIDA) has recently published on its website the “Guideline for application by Contract R&D companies or R&D companies for (i) R&D status company; or (ii) tax incentive for R&D services, under the Promotion of Investments Act 1986 (PIA)” (Guideline), which is effective from 1 January 2022. This new Guideline updates the earlier Guideline dated 31 March 2021.

Some of the key changes are outlined below.

- ▶ Pursuant to the Finance Act 2021, with effect from 1 January 2022, an “R&D company” or a “Contract R&D company” under the PIA is required to apply for and obtain approval from the Minister of International Trade & Industry (MITI) to qualify as a company approved as an ‘R&D status company’. The approval, if granted, will be for a period of five years, and is extendable for a further five years (subject to approval).



Under the savings and transitional rules, a grace period of six months (i.e., from 1 January 2022 to 30 June 2022) is given to existing R&D companies and Contract R&D companies. If the companies intend to retain their R&D status after the grace period, they are required to notify MITI of such intention within the grace period, for MITI's consideration.

Following the above, MIDA issued a media release on 3 February 2022 to state that the notification by the existing R&D companies and Contract R&D companies are to be submitted to MIDA for consideration (see *Tax Alert No. 4/2022*).

The Guideline has now been updated to reflect the abovementioned changes and provide further guidance on the application procedures, notification requirements and forms to be submitted (where necessary).

- ▶ The updated Guideline stipulates the conditions for an existing R&D company or Contract R&D company to be eligible for a second round of tax incentives (i.e., pioneer status or investment tax allowance).
- ▶ The updated Guideline clarifies that one of the eligibility criteria is for an R&D company or Contract R&D company to hire a minimum number of full-time employees in Malaysia with a degree in science and technical fields, or diploma in science and technical field with a minimum of five years' experience in the relevant field.

The earlier Guideline stated that the employees were to hold a degree or diploma in technical fields with relevant experience.

The Guideline is available at the following link: [Guideline for application of R&D status and tax incentives for R&D services](#)

List of participating jurisdictions for the Common Reporting Standard (CRS)

Following the enactment of the relevant rules by the Malaysian Government for the Automatic Exchange of Information under the CRS, Malaysian Financial Institutions (FIs) are required to collect financial account information from all non-Malaysian tax residents and report information in relation to account holders who are tax resident in "reportable jurisdictions" to the Inland Revenue Board (IRB). The IRB will exchange this information with the competent tax authorities from the "reportable jurisdictions". Please see the latest list of "[reportable jurisdictions](#)" dated 13 January 2023 (see *Tax Alert No. 3/2023*).

Under the CRS, a professionally managed investment entity that is not an FI in the list of "participating jurisdictions" will be treated as a passive non-financial entity rather than a financial entity for due diligence and reporting purposes. Malaysian FIs will be required to "look through" the passive non-financial entity when undertaking the due diligence procedures to identify its controlling person(s) who are tax resident in reportable jurisdictions and report them accordingly. In this regard, the IRB has recently published on its website the updated list of participating jurisdictions dated 5 April 2023, which is available at the following link: [CRS List of Participating Jurisdictions](#)

On 17 April 2023, the IRB has also announced the availability of an alternative method for Malaysian FIs in filing FATCA nil returns (where there are no US reportable accounts) via e-mail, in lieu of the XML returns via the US IDES (International Data Exchange System) portal. The FATCA nil return template is available at <https://www.hasil.gov.my/en/international/automati>

[c-exchange-of-information-aeoi/foreign-account-tax-compliance-act-fatca/guidance-notes/](#) and the completed FATCA nil return(s) should be submitted to fatca@hasil.gov.my.

Overseas developments

Ireland launches consultation on the European Union (EU) Minimum Tax Directive and proposed legislative approach

On 31 March 2023, the Irish Department of Finance released a [Feedback Statement](#) (FBS) on the transposition of the [EU Minimum Tax Directive](#) (the Directive). Building on the May 2022 public consultation, this FBS launches the next phase of Ireland's consultation process on the implementation of the Organisation for Economic Co-operation and Development's (OECD) Pillar Two framework under Base Erosion and Profit Shifting (BEPS) 2.0.

Minister for Finance Michael McGrath confirmed that Ireland will bring forward implementing the legislation later this year. As required by the EU Minimum Tax Directive, the law will be effective for accounting periods beginning on or after 31 December 2023.

The introduction to the FBS emphasizes that the Irish authorities have not lost sight of competitiveness in implementing the Directive:

The Pillar Two framework will have quite significant impacts for Ireland. We have engaged extensively at both OECD and EU level to ensure the agreed rules allow continued support for economic growth and prosperity, and also safeguarding our competitive tax regime for real and substantive activities in the State.

The FBS outlines Ireland's approach to transposing the Directive and includes more than 100 pages of possible legislative approaches in this regard.

Stakeholders are invited to respond to various queries raised throughout the document on how the Directive will be implemented in Irish legislation. The consultation period will run to the close of business, 8 May 2023.

Detailed discussion

Key elements

Approach to Transposition

The FBS notes that Ireland's transposition of the Directive will involve four key elements:

1. Income inclusion rule
2. Undertaxed profits rule
3. Qualified Domestic Top-Up Tax (QDTT)
4. Administration

Structure of FBS

The FBS is structured as follows:

- General approach to legislation
- QDTT
- Administration
- Other issues

General approach to legislation

It is proposed that the transposition of the Directive will largely follow the structure of the Directive itself with references to certain aspects of the OECD Model Rules, Commentary and Administrative Guidance where appropriate. An appendix to the FBS outlines possible legislative approaches to the transposition of the Directive. Comments are invited on this proposed legislative approach.

QDTT

The FBS notes that it is "considered appropriate" to introduce a QDTT as part of the Pillar Two implementation process and the FBS proposes two possible approaches:

1. "Prepare a detailed part of the legislation to set out all of the elements required to calculate and implement a QDTT, separate and stand-alone

- from the parts of the legislation required to implement the income inclusion rule (IIR) and undertaxed payments rule (UTPR), or
2. Prepare shorter provision(s) which would reference the detailed provisions relating to the IIR with any necessary modifications."

Comments are invited on these possible approaches to implementing a QDTT in Irish legislation.

Administration

The FBS invites stakeholders to provide responses on a range of questions relating to the administration of the Global anti-base Erosion (GloBE) rules including:

- ▶ Registration and deregistration requirements
- ▶ GloBE information return filings and notifications
- ▶ Domestic return filing requirements
- ▶ Payments
- ▶ Record keeping obligations
- ▶ Group filings or payments.

It is noteworthy that the proposed approach would keep the administration of the GloBE rules and the associated top-up taxes separate from Ireland's existing corporate tax regime.

Other issues

Stakeholders are invited to provide comments on any issues relevant to the Directive that are not covered in the FBS. We note that the FBS does not deal with the Transitional CbCR Safe Harbour in detail.

Questions

The FBS contains a series of questions, which are outlined below:

1. *Transposition of EU Minimum Tax Directive*
Comments are invited on the possible draft legislative approach as provided for in Appendix 1 to the FBS.

2. *OECD Model Rules, Commentary and Administrative Guidance*
Comments are invited on what reference, if any, should be made to the OECD Model Rules, Commentary and Administrative Guidance (and any future Guidance) in the legislation.

3. *QDTT*
Comments are invited on the possible approaches to legislative implementation of a QDTT in Ireland.

4. *Administration*

- 4.1. *Proposed approach to administration*

- 4.1.1. Comments are invited on the proposed approach that the administration of the GloBE rules and the associated top-up taxes will be kept separate to the existing corporation tax regime.
 - 4.1.2. Do stakeholders foresee any issues/challenges in treating the top-up taxes as separate to corporation tax?

- 4.2. *Registration and de-registration*

- 4.2.1. Comments are invited on the overall approach to registration/de-registration proposed in the FBS.

- 4.3. *Filing of GloBE information returns and notifications*

- 4.3.1. Comments are invited on the proposed approach for GloBE Information Returns and associated notifications.

- 4.4. *Filing of domestic returns/self-assessment*

- 4.4.1. Comments are invited on the overall approach to domestic returns/self-assessment in relation to the GloBE rules.
 - 4.4.2. Comments are invited in relation to the proposed approach of having an additional return, separate return to the Form CT1, which will cover all three top-up taxes arising.

- 4.4.3. Do stakeholders have any views on the interaction of GloBE Information Return ('GIR') and GloBE Top-Up Tax return?
- 4.4.4. Do stakeholders have any views on the information to be contained in the GloBE Top-Up Tax return?

4.5. *Payments*

- 4.5.1. Comments are invited on the proposed approach to payments.

4.6. *Record keeping*

- 4.6.1. Comments are invited regarding the proposed record keeping requirements.

4.7. *Other administrative provisions*

- 4.7.1. Comments are requested regarding the proposed approach to other administration provisions.
- 4.7.2. Comments are requested regarding the general approach to administration of the GloBE rules.

4.8. *Group filings-/payments*

Registration

- 4.8.1. Should it be possible for one Constituent Entity within a group to register on behalf of other Constituent Entities within the group? If so, how should this operate in practice? How would the appropriate permissions (e.g., for an entity to act as a Designated Local Entity on behalf of another Constituent Entity) be granted?

GloBE Top-Up Tax Return

- 4.8.2. Should it be possible for one Constituent Entity within a group (a "group filer") to file a GloBE Top-Up Tax Return on behalf of other Constituent Entities within the group?

If so, how should this operate? Should there be:

- i. One "joint return" filed by the group filer which covers numerous entities?
- ii. Separate returns for each Constituent Entity within the group but filed by the group filer?
- iii. Other "group filer" approach used? If so, please provide details of same.

- 4.8.3. If some form of "group filer" approach were available, how should it operate from a compliance perspective? If returns are filed late or filed incorrectly how should any surcharges /penalties be applied (e.g., which entities should be liable)? Which entity(ies) should be liable for any top-tax liabilities arising? Please provide an answer based on the possible options to group filing outlined at question 4.8.2 above.

Payments

- 4.8.4. Should it be possible for one Constituent Entity within a group (a "group payer") to pay top-up tax liabilities on behalf of other Constituent Entities within the group? If so, how should this operate?
- 4.8.5. If a group payment option were available, how should it operate from a compliance perspective? If payments are made late or incorrectly how should any interest be applied (e.g., which entities should be liable)?

Next steps

EY will continue our extensive engagement with the Department of Finance on Pillar Two implementation, including seeking maximum flexibility for taxpayers to avoid unintended consequences and to simplify administration and compliance.

Australian Treasury releases Exposure Draft Bill – Multinational tax transparency public country-by-country reporting

The Australian Treasury has released Exposure Draft (ED) legislation and Explanatory Materials (EM) for consultation that includes a proposal requiring certain large multinational enterprises to publish specified tax information on a country-by-country (CbC) basis.

The proposed measure forms part of the Government's Multinational Tax Integrity and Tax Transparency package (see Global Tax Alert, [Australian Treasury releases Discussion Paper on new thin cap rules, royalty deduction rules and public tax disclosure rules](#), dated 5 August 2022) and follows the recent release of ED law for the transparency measure requiring Australian public companies to disclose the number of subsidiaries and their country of tax domicile (see Global Tax Alert, [Australian Treasury releases Exposure Draft Bills on thin cap changes and tax transparency disclosure of information](#), dated 17 March 2023). The Government is still to release ED law for its remaining tax transparency measure, which requires tenderers for Australian Government contracts worth more than \$200,000 to disclose their country of tax domicile.

Proposal

The proposed amendments apply to a CbC reporting parent (applying the current law definition – i.e., certain entities that are not controlled by another CbC reporting group entity, with annual global income of \$1 billion or more) that meets all of the following criteria:

- ▶ Is a constitutional corporation, a partnership in which all partners are constitutional corporations, or a trust in which all trustees are constitutional corporations
- ▶ Is a member of a CbC reporting group

- ▶ For which, at any time during the income year, the entity or another member of the CbC reporting group is either an Australian resident or a foreign resident who operates an Australian permanent establishment (PE)
- ▶ Is not otherwise excluded (certain government related entities may be specifically excluded and other entities may be excluded specifically or as part of a class of entities)

Where the rules apply, the CbC reporting entity will be required to publish selected tax information on an Australian government website in an approved form and the Commissioner of Taxation will facilitate publication. Penalties will apply for noncompliance.

The CbC reporting parent is required to publish the names of each entity in the CbC reporting group and a description of the group's approach to tax.

For each jurisdiction in which the CbC reporting group operates, the CbC reporting parent must also publish, at a group level:

- ▶ A description of main business activities
- ▶ Its number of employees
- ▶ Revenue from unrelated parties
- ▶ Revenue from related parties
- ▶ Expenses from related-party transactions
- ▶ Profit and loss before income tax
- ▶ A list (including the value) of intangible assets
- ▶ A list (including the value) of tangible assets
- ▶ Income tax paid (on cash basis)
- ▶ Income tax accrued (current year)
- ▶ Effective tax rate
- ▶ The reasons for the difference between income tax accrued (current year) and the amount of income tax due if the income tax rate applicable to the jurisdiction were applied to profit and loss before income tax
- ▶ The currency used in calculating and presenting the above information
- ▶ Additional requirements as added by regulation

The Commissioner may exempt some entities from providing particular information.

Key dates

The selected tax information must be published within 12 months after the end of the income year to which it relates, although the Commissioner may, by written notice, approve an alternative 12-month period.

The amendments are proposed to apply to reporting obligations for income years commencing on or after 1 July 2023 (2023/24 income year).

Comments on the ED legislation are due by 28 April 2023.

Implications

The proposed changes are very wide in scope and may apply to both Australian and foreign groups that meet the CbC reporting conditions if any group member (under the expanded CbC reporting group definition) is resident in or with a PE in Australia. As such, the proposed changes will require careful review, including to determine their potential application. Impacted groups will need to ensure systems are in place to comply with the new reporting obligations.

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Important dates

30 April 2023	6 th month revision of tax estimates for companies with October year-end
30 April 2023	9 th month revision of tax estimates for companies with July year-end
30 April 2023	Statutory deadline for filing of 2022 tax returns for companies with September year-end. A blanket extension of time has been provided until 31 May 2023.
30 April 2023	Extended 2022 tax return filing deadline for companies with August year-end.
15 May 2023	Due date for monthly instalments
31 May 2023	6 th month revision of tax estimates for companies with November year-end
31 May 2023	9 th month revision of tax estimates for companies with August year-end
31 May 2023	Statutory deadline for filing of 2022 tax returns for companies with October year-end. A blanket extension of time has been provided until 30 June 2023.
31 May 2023	Extended 2022 tax return filing deadline for companies with September year-end.

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