



MOORE Advent

TAX FLASH

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Highlights on the Implementation of the Global Minimum Tax in Malaysia

Introduction

In 2024 Budget, the Government has announced the adoption of the Global Anti-Base Erosion ["GloBE"] Rules for the implementation and operation of Global Minimum Tax ["GMT"] in Malaysia, as recommended under Pillar Two of the Base Erosion and Profit Shifting ["BEPS"] measures in order to align with the global direction on international tax. The objective of the GloBE Rules is to ensure that large Multinational Enterprises ["MNE"] Group would be subject to a minimum tax (i.e. at the rate of 15%) in every country in which they operate.

With the gazette of the Finance (No. 2) Act 2023, the legislative provisions of the GloBE Rules have now been incorporated into the Income Tax Act 1967, Petroleum (Income Tax) Act 1967 and Labuan Business Activity Tax Act 1990 to take effect the implementation of GMT in Malaysia. The provisions of the GloBE Rules in Malaysia are closely aligned with the Organisation for Economic Cooperation and Development Model Rules which provides for Income Inclusion Rule ["IIR"] and Qualified Domestic Minimum Top-up Tax ["QDMTT"] regime that consist of 3 key elements as follows:-

- The Multinational Top-up Tax ["MTT"];
- Domestic Top-up Tax ["DTT"]; and
- Minimum tax.

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Implementation Timeline

The GloBE Rules come into effect for the financial years beginning on or after 1st January 2025.

Scope of Application

The GloBE Rules shall apply to Constituent Entities that are members of a MNE Group operating in at least 2 jurisdictions with annual revenue of EUR 750 million or more in the consolidated financial statements of the Ultimate Parent Entity [“UPE”] in at least 2 out of the 4 immediately preceding financial years. An entity would be regarded as a Constituent Entity if its accounts are consolidated into the UPE’s consolidated financial statements. In the case where the MNE Group undertakes merger or demerger exercise, additional tests would be needed to determine the applicability of the GloBE Rules.

From Malaysian perspective, GMT shall apply on large Malaysian based MNEs that have foreign operations and foreign-based MNEs that have operations in Malaysia.

Entities which are excluded from the application of GloBE Rules are as follows:-

- Government entity;
- International organisation;
- Non-profit organisation;
- Pension fund;
- Investment fund that is an UPE;
- Real estate investment vehicle that is an UPE; and
- An entity where at least 85% or 95% owned by one or more of the above excluded entities other than a Pension Service Entity (subject to conditions).

Position and General Characteristics of the Tax

- The mechanism to implement the GMT is through Top-up Tax, namely DTT and MTT.
- Top-up Tax is a mechanism intended to ensure that MNE Groups pay a minimum tax rate of 15% in each jurisdiction in which they operate. This Top-up Tax can be collected through MTT and DTT.
- A DTT shall be charged on a low-taxed Constituent Entity located in Malaysia of a MNE Group if the jurisdictional effective tax rate [“ETR”] is less than the minimum tax rate of 15%.
- A MTT shall be charged on a parent entity located in Malaysia of a MNE Group for its low-taxed Constituent Entity located in other jurisdiction with ETR of less than the minimum tax rate of 15%.
- Generally, Top-up Tax would need to be calculated on a jurisdictional basis, alongside the jurisdictional ETR. If the MNE Group’s ETR in a jurisdiction is below 15%, Top-up Tax will be imposed on the adjusted chargeable income (known as Excess Profit in the GloBE Rules).
- The ETR for GMT purposes is different from the typical accounting effective rate of tax, where the latter is usually arrived at by dividing the tax expense with profit before tax. Based on the GloBE Rules, the ETR is the total covered taxes (known as Adjusted Covered Taxes in the GloBE Rules) divided by the total profit in the jurisdiction (known as Net GloBE Income in the GloBE Rules).

- Excess Profit on the other hand is the Net GloBE Income less Substance-based Income Exclusion. The Substance-based Income Exclusion amount for a jurisdiction is the sum of 5% of the eligible payroll costs and 5% of the carrying value of eligible tangible assets in the jurisdiction, with higher percentages for the eligible payroll costs and eligible tangible assets in the first 8 years of implementation (i.e. from years 2025 to 2032).
- Based on the foregoing, in-depth understandings are required to arrive at each of the components like ETR, Adjusted Covered Taxes, Net GloBE Income, Excess Profit, Substance-based Income Exclusion, etc. in view that each component has various adjustments and direct impact to the computation of Top-up Tax.
- Besides, in accordance with an agreed rule order that is embedded in the design of the GloBE Rules, the Top-up Tax operates as follows:-
 - The low-taxed profit is first subject to tax in the local jurisdiction of the Constituent Entity under the QDMTT;
 - Secondary taxing rights are allocated to the parent entity's jurisdiction via the IIR.
- A jurisdiction that implement QDMTT such as Malaysia grants itself the right to collect Top-up Tax (i.e. DTT) in respect of entities located in its jurisdiction instead of ceding the taxing right to other countries. Under the GloBE Rules, a Top-up Tax (e.g. DTT in Malaysian context) imposed by the source jurisdiction could be creditable against any Top-up Tax (e.g. MTT in Malaysian context) computed on the parent entity.

De Minimis Exclusion

- MNE Groups may elect to apply GloBE Safe Harbour such that the MTT for the Constituent Entities located in a jurisdiction is deemed to be zero for a financial year if for such financial year:-
 - the average of the GloBE revenue of such jurisdiction for the current and the 2 preceding financial years is less than EUR 10 million; and
 - the average of the GloBE income or loss of such jurisdiction for the current and the 2 preceding financial years is a loss or is less than EUR 1 million.

Filing of Information Return and Top-up Tax Return

- A Constituent Entity of a MNE Group is required to furnish to the Inland Revenue Board the Information Return and a Top-up Tax Return in the prescribed form on an electronic medium or by way of electronic transmission not later than 15 months from the last day of the Reporting Financial Year on a self-assessment basis.
- Amended Top-up Tax Return may be made after the due date for the furnishing of the return, but not later than 6 months from that day.

DTT or MTT Assessments / Additional Assessments

- Under the self-assessment system, an assessment in respect of the Constituent Entity in the amount of DTT or MTT as specified in the Top-up Tax Return is deemed to have been made on the day when the Top-up Tax Return is furnished. The tax payable under an assessment for a financial year shall be due and payable on the due date i.e. not later than 15 months from the last day of the Reporting Financial Year.

- Where a Constituent Entity has furnished an amended return, an assessment or additional assessment is deemed to have been made on the day on which the amended return is furnished. The tax or additional tax payable under the amended return shall be due and payable on the day the amended return is furnished.

Offences and Penalties

- The key offences and penalties for non-compliance are:-

Offences	Penalties
Failure to pay the tax or additional payable by due date	10% penalty on the unpaid tax amount.
Failure to furnish Information Return	RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months or both.
Failure to furnish Top-up Tax Return	- RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months or both; and/or - a special penalty of treble the amount of tax payable.
Incorrect Information Return	RM20,000 to RM100,000 or imprisonment for a term not exceeding 6 months or both.
Incorrect Top-up Tax Return	RM20,000 to RM100,000 and a special penalty of double the amount of tax undercharged or would have been undercharged.
Wilful intention to evade or assist to evade tax	- RM20,000 to RM100,000 or imprisonment for a term not exceeding 3 years or both; and/or - a special penalty of treble the amount of tax undercharged or would have been undercharged.

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