



Hong Kong Tax Newsflash

Updates on implementation of Global Minimum Tax and Hong Kong Minimum Top-up Tax

【Global Tax Reset II Series】

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The Government has recently published the [outcome of the consultation on the implementation of Global Minimum Tax \(GloBE Rules\) and Hong Kong Minimum Top-up Tax \(HKMTT\)](#), following the consultation exercise¹ launched in December 2023.

Background

The GloBE Rules, applicable to large multinational (MNE) groups with an annual consolidated group revenue of at least EUR 750 million, will result in “top-up” tax amounts to bring the overall tax on profits in each jurisdiction where a group operates up to a minimum effective tax rate of 15%. The key components of the GloBE Rules are: qualified domestic minimum top-up taxes (QDMTT), which allow jurisdictions to charge any top-up taxes due in respect of local profits; the income inclusion rule (IIR), under which parent company jurisdictions apply the top-up tax rules on a top-down basis; and the undertaxed profits rule (UTPR), which will apply as a secondary (backstop) rule where the other rules have not been fully applied. Jurisdictions have to incorporate the GloBE Rules into their domestic legislation for implementation.

Hong Kong would implement the IIR and UTPR as part of its domestic implementation of the GloBE Rules, as well as implementing what is intended to be a QDMTT, which will be known in Hong Kong as HKMTT.

We summarize the latest updates on the implementation of GloBE Rules and HKMTT in Hong Kong below:

General policy

- **Deferral of UTPR implementation:** The UTPR² will be implemented on a date to be specified at a later stage with the transitional UTPR safe harbour³. The IIR and HKMTT will be implemented for fiscal years beginning on or after 1 January 2025, as per the consultation paper.
- **Definition of tax resident:** A definition of “Hong Kong resident entity”⁴ for the general purpose of the Inland Revenue Ordinance (IRO) (instead of specifically for GloBE Rules purposes, as suggested in the consultation paper) will be introduced with retrospective effect from 1 January 2024, as accepted by the OECD.
- **Scope of HKMTT:** Investment entities and insurance investment entities will be excluded.
- **General anti-avoidance:** While the existing general anti-avoidance provisions under the IRO (i.e. Sections 61 and 61A) will not apply, the Government plans to introduce a main purpose test as a general anti-avoidance rule for these top-up tax regimes. General grandfathering of the transactions entered into before the operation of the GloBE and HKMTT appears unlikely to be provided.

Legislative approach

- **Top-up tax treated as profits tax:** The GloBE Rules and HKMTT will be incorporated into the IRO, but within a separate part of the IRO. Top-up tax will be treated as a profits tax. Various existing tax administration mechanisms included in the IRO, as well as the mechanisms under comprehensive avoidance of double taxation agreements for resolving cross-border disputes, will be applicable.
- **OECD administrative guidance:** Future administrative guidance issued by the OECD will be incorporated into the IRO through subsidiary legislation.
- **Local guidance:** The Inland Revenue Department will also publish its own guidance on implementation issues on its website.

Tax compliance and administration

- **Top-up tax liability:** Annual designation of one or more Hong Kong constituent entities as the payment entities for top-up tax under HKMTT (and UTPR when implemented) will be allowed.
- **Joint and several liability:** Under the payment designation mechanism, all Hong Kong constituent entities of the MNE group will be jointly and severally liable to the top-up tax payable. However,

this is only expected to be invoked where a designated payment entities defaults on its obligation to pay taxes in respect of another group entity. The Government will explore administrative arrangements for allowing a “clean exit” from the joint and several liability for entities that intended to leave the group.

- **Payment due date:** One month after the expiry of the top-up tax return filing deadline or the date of the notice of assessment, whichever is later (extended from two weeks as originally suggested in the consultation paper)
- **Objection period:** Two months after the date of the notice of assessment (extended from the normal one-month period)
- **Time limit for raising assessments:** Six years from (a) the end of the fiscal year; or (b) the time when the non-assessment or under-assessment has come to the assessor’s knowledge, whichever is later (slightly different from normal limitation period to cater for the adjustments made by a jurisdiction outside Hong Kong)
- **Penalty:** Similar approach as the existing penalty mechanism for profits tax, including those to service providers, will be adopted. Transitional penalty relief suggested by the OECD will be considered.

Legislative timeline

The Government plans to introduce the amendment bill into the Legislative Council by January 2025.

Our observations

We welcome the Government’s release of their responses to stakeholder feedback on the consultation exercise, which reflect their transparency in policy making. We are also pleased to note that some measures will be introduced to provide flexibility and ease the compliance burden for taxpayers, e.g. the annual designation of the paying entity and extended payment and objection due dates.

Nevertheless, the proposed introduction of a main purpose test will insert anti-avoidance legislation into Hong Kong’s legislative framework that is not required under the GloBE Rules and that could be more onerous than in many other countries. Depending on its drafting, a main purpose test could also be more onerous than the existing Sections 61 and 61A anti-avoidance legislation, which the Government has indicated it will not impose on taxpayers under the GloBE Rules and HKMTT.

In our view, this legislation could unnecessarily diminish Hong Kong’s fiscal competitiveness and erode certainty for those considering whether to invest in Hong Kong or one of its regional competitors. In contrast, Singapore has recently published its final proposed legislation and has sought to reduce the impact on MNE groups operating in Singapore by refraining from introducing any further measures that could create uncertainty or harm investment, such as additional anti-avoidance rules.

The IRO has seen a proliferation of main purpose tests in recent years, often aimed directly at new tax incentive measures that the Government has sought to introduce. Hong Kong is arguably one of the targets of the GloBE Rules, and its impacts are already evident as MNE groups have restructured away from Hong Kong in recent years. The introduction of a main purpose test could exacerbate this trend and should be urgently reconsidered by the Government.

¹ Please refer to our [Hong Kong Tax Newsflash Issue 204](#) for details.

² Originally planned to be implemented in 2025 as suggested in the consultation paper.

³ Under the transitional UTPR safe harbour, the UTPR top-up tax amount calculated for the jurisdiction of the ultimate parent entity (UPE jurisdiction) shall be deemed to be zero for each fiscal year during the transition period if the corporate income tax rate of the UPE jurisdiction is at least 20%.

⁴ Hong Kong does not tax based on residency and therefore, does not have a generally applicable definition of residency currently.

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