



Tax Espresso – Special Alert

Malaysia's Direction on Global Minimum Tax (GMT) and BEPS 2.0

Greetings from Deloitte Malaysia Tax Services

What is Global Minimum Tax (GMT) and who will be affected?

GMT under Pillar Two is a once-in-a-lifetime global tax reform, meant to end tax competition and profit shifting. It is aimed at ensuring that multinational companies (MNCs) pay the right amount of taxes, that is at 15%, regardless of where they operate. While an MNC group can operate in low-tax, high-tax, zero-tax country or in a country that offers tax incentives, the universal GMT rules would kick in to ensure 15% tax is paid.

GMT applies to MNCs operating in at least two jurisdictions, with an annual consolidated group revenue of at least €750 million in at least two of the four

immediately preceding fiscal years. Two categories of MNCs that need to be fully aware of the impact of GMT - large Malaysian-based MNCs that have foreign operations and foreign-based MNCs that have operations in Malaysia.

Will Malaysia implement GMT?

While Malaysia is not a member of the Organisation for Economic Co-operation and Development (OECD), it is a member of the OECD's Inclusive Framework. There is thus an expectation that it will support and implement the GMT. From the very outset, we were clear that there is also no reason for Malaysia to avoid GMT implementation as the taxes that could have been collected here will be ceded to other jurisdictions.

On 3 June 2022, the Ministry of Finance (MOF) Malaysia released a pre-budget statement which shared that Malaysia is currently reviewing the technical details of the GMT. Malaysia acknowledges the OECD's original plan of implementing GMT in 2023. The OECD has a very ambitious timeline in GMT implementation. The Income Inclusion Rule (IIR), being the main rule, is to be rolled out in 2023, while the backstop rule – the Undertaxed Payments Rule (UTPR) - is targeted to be implemented the following year. All rules operate as “top-up” to a minimum tax of 15%. Malaysia will need to amend its domestic tax legislation to implement this. A point to note is that there is a plan for the European Union to defer this by one year and it remains to be seen as to how this will affect Malaysia's roadmap on GMT.

Similar to Hong Kong and Singapore, the possibility of Malaysia introducing Qualified Domestic Minimum Top-up Tax (QDMTT), being part and parcel of the GMT, was also mentioned. This is not unexpected as QDMTT serves as a mechanism which will enable Malaysia to absorb the potential top-up taxes payable that may otherwise be ceded to other countries.

In our view, the MOF's statement is useful and timely as it sheds light on Malaysia's direction on GMT. It provides some level of certainty for the large Malaysian-based MNCs and foreign-based MNCs that operate in our country.

Pillar One

Concurrently, Malaysia is also reviewing the technical details of Pillar One which introduces a new mechanism for allocating profit, which applies to MNEs with global revenue above €20 billion, and profit before tax above 10%, with 25% of profit above the 10% threshold (i.e., Amount A) to be reallocated to market jurisdictions. Pillar One also contemplates simplifying the application of the arm's length principle to in-country baseline marketing and distribution activities (Amount B), with further details to be developed. Pillar One also outlines a proposed approach to mandatory binding dispute prevention and resolution for Amount A.

What is next for large businesses?

With the pre-budget statement, the key question as to whether Malaysia will ever implement GMT, including QDMTT, has now been answered to a certain degree. The two categories of MNCs mentioned earlier should start to prepare for this. Early understanding of the impacts of GMT and preparation will be key to an effective and efficient implementation.

These are our recommendations:

- Perform impact assessment on a group-wide perspective and identify risk areas.
- Identify entities within the group that would be obliged to pay the top-up tax (whether to the Malaysian or foreign tax authorities) and determine the impact on cash-flows and functions.
- Assess the impact on dividend distribution to shareholders.
- Quantify potential impact by undergoing a modelling exercise.
- Understand how local authorities in the different jurisdictions where the group operates may respond (e.g., whether they will introduce their own domestic minimum tax or revamp their tax incentive regimes) and analyse the different scenarios.
- Analyse if there is a need to renegotiate tax incentives granted or to replace them with non-tax incentives such as grants. A company in a country that enjoys tax incentive is likely to have an effective tax rate (ETR) that is below 15%. However, this does not mean that there will be a top-up tax as one needs to compute ETR on a jurisdictional basis, meaning ETRs of other companies in the same country will also need to be factored in. The significance of economic substance needs to be understood as it is useful to minimise the top-up tax.
- Analyse if the present accounting system of the Group would be able to generate the data required for the purposes of GMT.
- Be prepared to lodge GMT filing, as this is required regardless of whether there is a top-up tax or not. While the first GMT filing is only due 18 months after the financial year end, there is a critical need to understand the full impact of GMT.

The way forward

There is no reason for Malaysia not to adopt GMT. It is just a matter of timing and certainly, the MOF's pre-budget statement has shed some light on Malaysia's direction. GMT is just around the corner. Upon understanding the impact of GMT, time will be needed to configure the accounting system so that it can generate the data required for GMT, followed by trial run. All in all, the time is now for affected MNCs to act. A wait and see approach may no longer be tenable.

Get in touch

We trust that you find this bulletin useful and welcome your feedback.

Should you have any comments or questions arising from the newsletter, please speak to your usual Deloitte contact or any member of the International Tax Services Group listed below.

GMT/Pillar Two

Tan Hooi Beng

Southeast Asia / Malaysia
International Tax Leader
+603 7610 8843
hooitan@deloitte.com

Kelvin Yee Rung Hua

Director
+603 7610 8621
keyee@deloitte.com

Ashley Lim Siew Fern

Consultant
+603 7610 8234
siewflim@deloitte.com

Chew Chen Wah

Consultant
+603 7610 8274
chechew@deloitte.com

Pillar One

Subhabrata Dasgupta

Malaysia Transfer
Pricing Leader
+603 7610 8376
sudagupta@deloitte.com

Gagan Deep Nagpal

Executive Director
+603 7610 8876
gnagpal@deloitte.com



Dbriefs

A series of live, on-demand and interactive webcasts focusing on topical tax issues for business executives.

Power of With

Focus on the power humans have with machines.

Tax@hand

Latest global and regional tax news, information, and resources.

Get in touch



Deloitte Tax Services Sdn Bhd
Level 16, Menara LGB
1, Jalan Wan Kadir
Taman Tun Dr Ismail
60000 Kuala Lumpur
Malaysia

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Malaysia

In Malaysia, services are provided by Deloitte Tax Services Sdn Bhd and its affiliates.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organisation”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

© 2022 Deloitte Tax Services Sdn Bhd

To no longer receive emails about this topic please send a return email to the sender with the word “Unsubscribe” in the subject line.