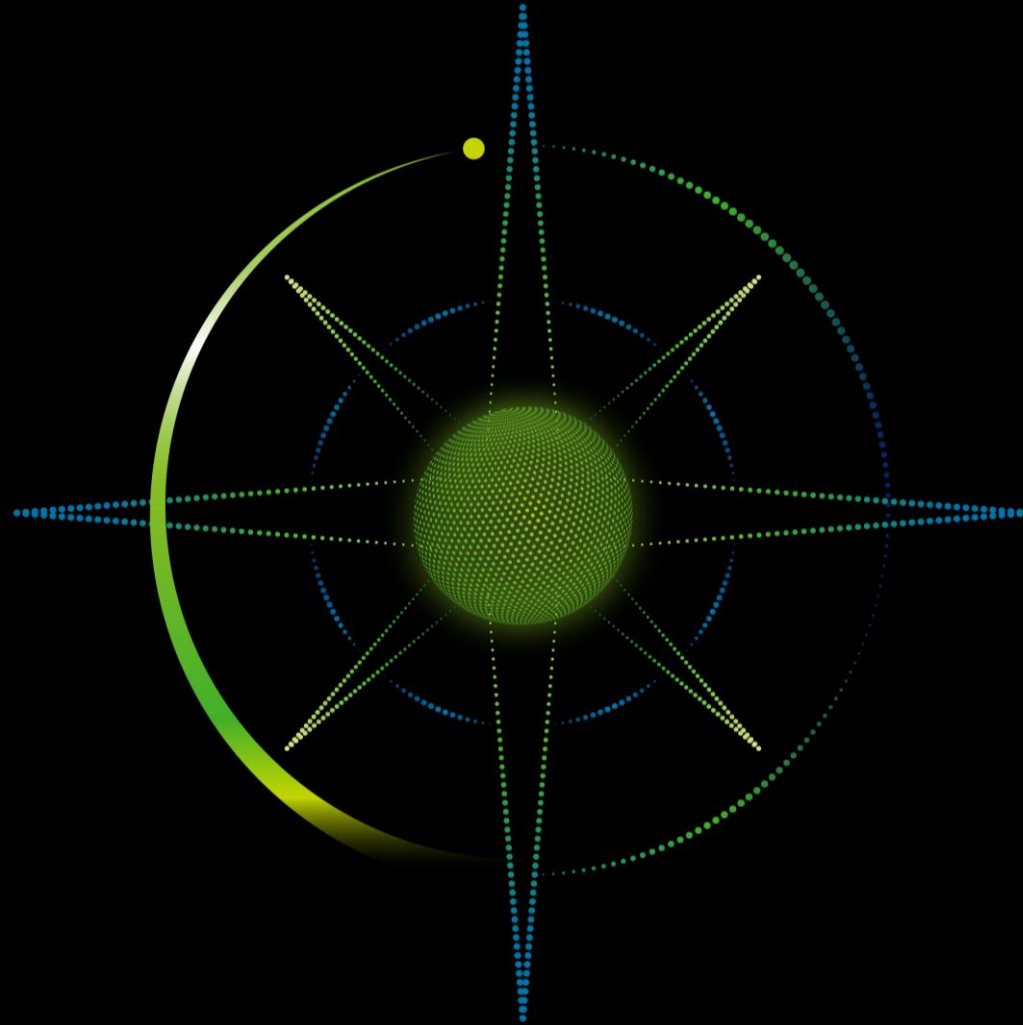


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Tan Hooi Beng | 16 November 2023





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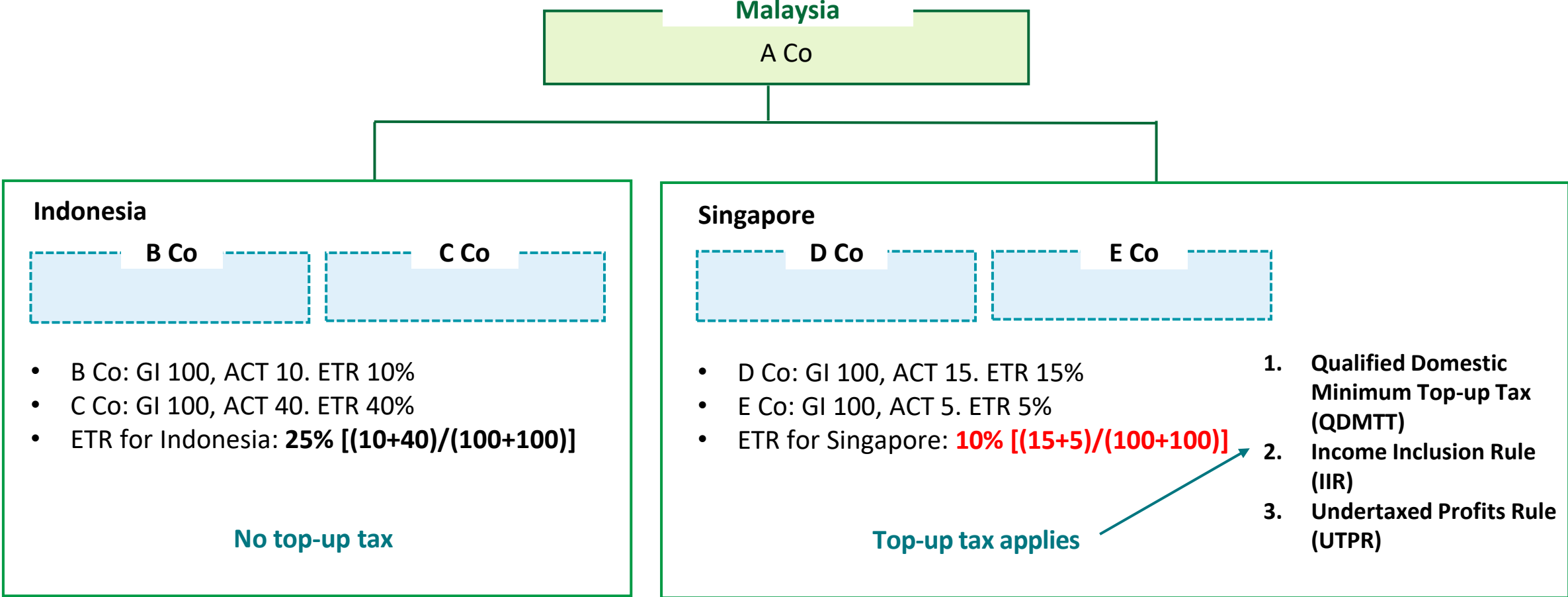
Anis Sabirin Binti Jaapar
Director
Tax Certainty And Mutual Agreement
Division Department of International
Taxation, Inland Revenue Board of
Malaysia



Surin Segar
Executive Vice President/Group
Head of Tax
Maybank

Global Minimum Tax

Minimum tax rate of 15% on a jurisdictional basis




● EURO 750m, MNEs

● GI = GloBE Income; ACT = Adjusted Covered Taxes

Other Burning Issues



Capital Gains Tax



Foreign Source Income

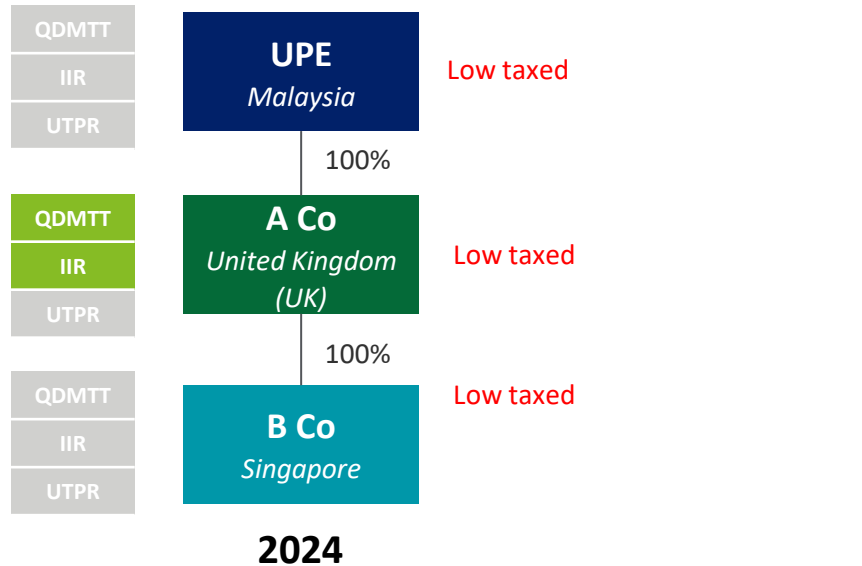


Transfer Pricing

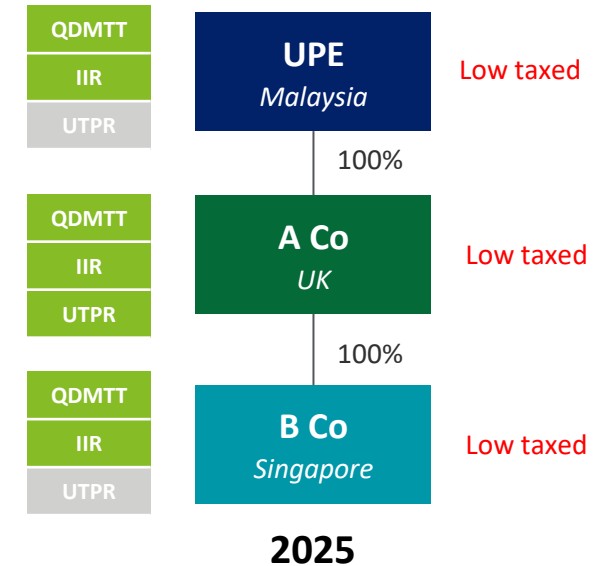
Implication of Different Implementation Timelines



Implication of Different Implementation Timelines

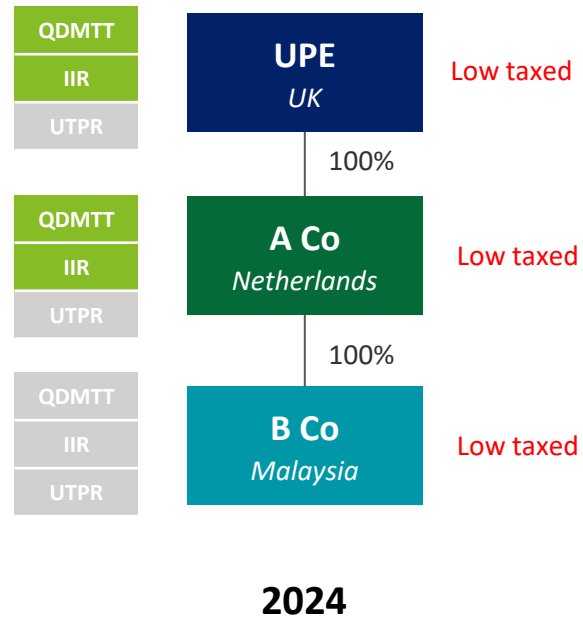


- Top-up Tax in Malaysia in respect of its low taxed profits would be uncollectible as the UK QDMTT and IIR are inapplicable
- Top-up Tax in the United Kingdom would be collected via UK QDMTT
- Top-up Tax in Singapore would be collected by UK via IIR by virtue of A Co being the foreign parent of B Co, instead of the UPE in Malaysia (which does not have an IIR in 2024)



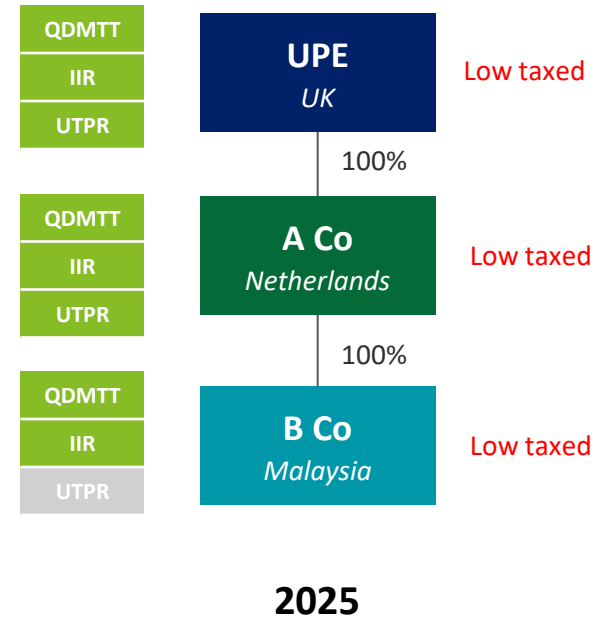
- Top-up Tax in Malaysia, UK and Singapore would be collected via the QDMTT of the respective countries

Implication of Different Implementation Timelines



2024

- Top-up Tax in the UK and Netherlands would be collected via QDMTT of both countries
- Top-up Tax in Malaysia would be collected by UK via IIR by virtue of UPE being the ultimate parent of B Co.



2025

- Top-up Tax in UK, Netherlands and Malaysia would be collected via QDMTT of the respective countries

Transfer pricing development - Roadmap



1. Transfer Pricing Guidelines July 2003

First introduction to transfer pricing requirements in Malaysia. Effected via s. 140 of the Malaysian Income Tax Act, 1967



2. Introduction of S140A January 2009

Statutory rules legislative reference to transfer pricing in Malaysia can be found in s. 140A of the Malaysian Income Tax Act, 1967



3. TP/APA Rules & TP/APA Guidelines May/July 2012

Introduction of the Income Tax (Transfer Pricing) Rules 2012 and Income Tax (Advance Pricing Arrangement) Rules 2012 and the revised TP Guidelines and APA Guidelines



5. Effective January 2021:

- New subsections 140A(3A) and (3B)
- New subsections 140A(3C) and (3D)
- New Section 113B



6. New disclosure requirement in Form C (Item F8), effective YA 2022

The updated Form C effective YA 2022 requires significant additional transfer pricing disclosures (as per Item F8). The updated Form C would apply to returns of taxpayers with financial years ending in or after 1 Jan 2022



7. Income Tax (Transfer Pricing) Rules 2023 & Income Tax (Advanced Pricing Arrangement) Rules 2023, effective FY 2023

The IRB introduced key amendments in these new rules which replaced the previous version of Income Tax (Transfer Pricing) Rules 2012 and Income Tax (Advance Pricing Arrangement) Rules 2012.



4. Transfer Pricing disclosure requirement in Form C May 2014

The revised Form C starting YA 2014 embeds an item requiring the taxpayer to indicate whether transfer pricing documentation has been prepared for the relevant YA

July 2011
Issuance of Form MNE

April 2013
TP Audit framework released

July 2017 (APA Rules & TP Guidelines)
Release of Income Tax (Advance Pricing Arrangement) (Amendment) Rules 2017 and update of TP Guidelines in line with selected changes in the OECD TP Guidelines

2015
Decentralisation of income tax files

November 2018
Update of TP Guidelines with FAQs

December 2019
Update of TP Audit framework

Transfer pricing updates - TP Rules 2023 (released on 29 May 2023)



- New TP Rules are effective any financial year ending on or after 1 January 2023;
- TPD must be completed before return is lodged, and must mention “date of completion”;
- Year-ends in January-March had limited time to prepare TPD based on new TP Rules (return due within 7 months from year-end; generally, one month’s extension is available);
- TPD must be submitted within 14 days upon request; and
- Contents (Schedule 1,2,3 & index) must comply with new TP Rules.



- As per section 113B(1) of the Income Tax Act 1967, where a company fails to furnish Contemporaneous TP Documentation, it would be subject to penalties of MYR 20,000 to MYR 100,000 in addition to any surcharge for TP adjustment and/ or imprisonment of up to six month per year of assessment imposed by the IRBM; and
- As per section 140A(3C), a surcharge of up to 5% of the total transfer pricing adjustment is imposed whether or not the adjustment results in additional tax payable.



- New Arm’s Length Range from 37.5 to 62.5 percentile;
- Median is an average of 37.5 and 62.5 percentile;
- Adjustment **at least to** year-on-year median;
- Lesser degree of comparability may require adjustment to a point higher than median up to 62.5 percentile;
- Use of foreign comparables may be viewed as “lesser degree of comparability”; and
- Inter-quartile Range may be used in MAP/BAPA.



- Offsetting adjustments removed from new TP Rules;
- It Impacts domestic controlled transactions;
- Offsetting adjustments may continue to be available through operational guidelines, but would be at the discretion of IRBM;
- Special voluntary disclosure plan (“SVDP 2.0”) is available from 06 June 2023 to 31 May 2024; and
- SVDP 2.0 is available up to YA 2021 for existing taxpayers.

Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 1 Documentation – Similar to master file contents



1. The Multinational Enterprise Group's **worldwide organizational structure** that shows the location and ownership linkages among all entities in the Multinational Enterprise Group transacting with the person in the basis period;
2. A description of the Multinational Enterprise **Group's businesses** that are relevant to the business of the person in the basis period;
3. A description of the Multinational Enterprise Group's **intangible property** that are used in or applied to the business of the person in Malaysia in that basis period;
4. The Multinational Enterprise Group's **financial activities** that are connected to the business of the person in Malaysia in the basis period; and
5. **Financial and tax position** of the Multinational Enterprise Group.

Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 2 Documentation – Similar to local file contents

1. Corporate shareholding structure and organizational structure;
2. Nature of business, industry and market conditions;
3. **Controlled transactions** such as nature, terms (including prices), conditions of transaction (where applicable), quantum of each transaction (including names and addresses) and relationship with each such associated person;
4. Details of the **pricing policies**;
5. **Functional, asset and risk analysis**; and
6. **Economic analysis**.



Key amendments – Significant additional disclosure requirements (Full TPD)

Schedule 3 Documentation – Information on CCA with associated person



1. Copy of the cost contribution arrangement and any other **agreements**;
2. List and identity of **participants**, any other **associated person** that will be **involved** or that are **expected to exploit or use** the results of the cost contribution arrangement activity;
3. **Scope of the activities and specific projects** covered by the cost contribution arrangement, and how the cost contribution arrangement activities are managed and controlled including **any intangible property or class of intangible property** in existence or intended to be developed;
4. **Duration**, total amount of **contribution** incurred, **allocation of tasks and responsibilities**;
5. **Method used to determine each participant's share of the contributions** including projections used to estimate benefits, any rationale and assumptions underlying the projections and an explanation of why that method was elected;
6. Each participant's **effective ownership interest**; manner or **basis on which proportionate shares of the expected benefits** are to be measured;
7. **Rationale** and any assumptions underlying the **projections of expected benefits**;
8. **Procedures for entering or withdrawing** from the arrangement and the **consequences**;
9. Policies and **procedures governing balancing payments** or for **adjusting the terms** of the arrangement;
10. Where **material differences arise** between projected and actual benefits, the **assumptions made to project future benefits need to be amended** for future years and the **revised assumptions**;
11. Extent of the use of the cost contribution arrangement property by associated person who are not the cost contribution arrangement participants, including the amounts of **consideration paid or payable by these non-participants** for use of the cost contribution arrangement property;
12. Anticipated **allocation of responsibilities and tasks**, and the mechanisms for managing and controlling those responsibilities and tasks (relating to the development, enhancement, maintenance, protection or exploitation (“**DEMPE**”) of tangible or intangibles assets used); and
13. All **material changes** to the arrangement.



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