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Tax Alert

Notable Development of Pillar Two

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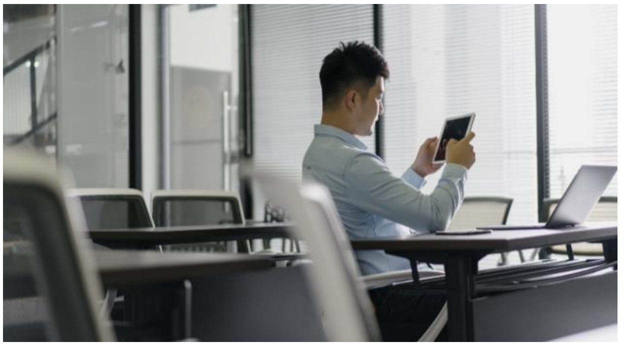
International Tax

Notable Development of Pillar Two - Global Minimum Tax

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

GMT is a fundamental change to the international tax framework, meant to end tax competition and profit shifting. The purpose of the GMT is to ensure that large multinational enterprises ("MNEs") (i.e., enterprises operating in at least two jurisdictions with annual consolidated group revenue of at least €750 million in at least two of the four immediately preceding fiscal years) pay a minimum effective tax of 15%.

Two categories of MNEs need to be fully aware of the impact of the GMT: (i) large Vietnamese-based corporations that have foreign operations, and (ii) foreign-based MNEs that have operations in Vietnam.



Recent critical move - EU reached agreement to implement Pillar Two at EU level

On 16 December 2022, the Council of the European Union ("EU") issued a press release confirming the formal adoption of the GMT. The directive must be transposed into member states' national law by the end of 2023 to apply from 2024. By this, the EU would be a front-runner in applying the G20/ OECD global agreement on Pillar Two.

Furthermore, progress continues towards the implementation of Pillar Two where the OECD Inclusive Framework on BEPS ("IF") on 20 December 2022 released an implementation package consisting of the following elements:

- Guidance on Safe Harbours and Penalty Relief;
- A public consultation document on the GloBE Information Return; and
- A public consultation document on Tax Certainty for the GloBE Rules.

Going forward, the IF expects to release administrative guidance on interpretation or administration of the GMT on a rolling basis, with the first package to be released in early 2023.

What this means to Vietnam?

Since the introduction of Pillar Two, there have been various discussions and controversial debates among countries on how and when to apply the GMT. Several countries have indicated their intention of adopting the policy, however they do not yet have a concrete plan and roadmap of implementation.

The EU move and the progress in the IF's implementation plan lately are expected to strongly drive other countries toward the decision of domestic policy reform to cope with the changes in global tax landscape.

For Vietnam, while Vietnam is not a member of the OECD, it is a member of the IF. Hence, there is an expectation that the country will support and implement GMT. As such, now is also the critical time for the Government to seriously consider the amendment of domestic regulations in line with the inevitable global trend, and they may soon have practical measures to put into practice.

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The way forward

The clock is ticking - it is crucial for companies to form a strategy and have an action plan to efficiently manage the upcoming changes. These are our recommendations:

1) Prepare ahead – assess the impact

(i) Perform impact assessment on a group-wide perspective and identify risk areas.

(ii) Identify entities within the group that would be obliged to pay the top-up tax (whether to the Vietnam or foreign tax authorities).

(iii) Assess the impact on additional tax costs, cash-flows, and dividend distribution to shareholders.

(iv) Quantify potential impact by undergoing a modelling exercise.

(v) Analyze if the present accounting system could generate the data required for GMT purposes.

(vi) Be prepared to lodge GMT filing, as this is required regardless of whether there is a top-up tax or not.

2) Stay close to Pillar Two development

Understand how the competent authorities in the different jurisdictions where the group operates may respond (e.g., whether they will introduce their own Qualified Domestic Minimum Top-up Tax or revamp their tax incentive regimes) and analyze the different scenarios.

3) Take strategic action via incentive claim and petition

(i) Consider seizing the available tax incentives as soon as possible to secure the benefit for the years before GMT is officially activated.

(ii) Analyze whether there is a need to renegotiate granted tax incentives or to claim alternative incentives and have strategic policy advocacy with the Government where appropriate.

(iii) Initiate planning on minimizing the effect of Top-up tax – e.g., utilizing the substance-based income exclusion by investing with intensive substance (payroll, tangible assets, etc.)

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