



GLOBAL MINIMUM TAX INSIGHTS

Episode 01: Transitional CbCR Safe Harbour

September 2024



Transitional CbCR Safe Harbour



Introduction and overview

- On 29 November 2023, the National Assembly of Vietnam has issued Resolution No. 107/2023/QH15 ("**Resolution 107**") on the application of additional Corporate Income Tax ("**CIT**") in accordance with the Global Anti-Base Erosion ("**GloBE**") Rules. Currently, the General Department of Taxation is developing and finalizing **the Decree** guiding a number of articles of Resolution 107, which is expected to be issued in October 2024.
- The OECD guidelines and the provisions of Resolution 107 include provisions on **Transitional CbCR Safe Harbour ("TCSH")** during the transition period on the basis of Country-by-Country Reporting ("**CbCR**"). This is a crucial mechanism as interpreted by the OECD to help reducing the burden of administrative procedures for multinational enterprises ("**MNE**") groups in the initial years during which the Global Minimum Tax ("**GMT**") come into effect. The TCSH can be applied to both the Income Inclusion Rule ("**IIR**") and Qualified Domestic Minimum Top-up Tax ("**QDMTT**").
- Specifically, during the transition period (cover all of the fiscal years ("**FY**") beginning **on or before 31 December 2026** but not including the FY that ends after **30 June 2028**), the **Top-up tax** in Vietnam or in another jurisdiction in which the Group operates, will be deemed **to be 0 (zero)** if the tested jurisdiction meets one of the three tests on Safe Harbour including:
 - (i) De Minimis Test
 - (ii) Simplified Effective Tax Rate ("**ETR**") Test
 - (iii) Routine Profit Test
- The OECD introduces that TCSH is a temporary mechanism to help the MNE Group gradually familiarize with the principles of GMT; therefore, it is not necessary to have detailed and complex calculations in accordance with GloBE Rules, but to based solely on the data sources available on the CbCR and the separate financial statements ("**FS**") of the Constituent Entities ("**CE**"). However, the OECD's Commentaries provide many specific situations and complex conditions to ensure that data sources are considered "**qualified**" and thus meet the conditions for TCSH.
- This publication is provided to help MNE Groups (including Vietnamese MNE Groups having foreign investment and foreign MNE Groups having CEs in Vietnam) to understand the main principles of Safe Harbour in accordance with OECD guidelines, thereby having the best preparation for the first year of application (FY 2024) in accordance with the provisions of Resolution 107 and the forthcoming Decree.



Roadmap for consideration

Deloitte recommends the roadmap for the application of TCSH for the FY 2024 as follows:

To-do now

To-do upon the availability of FY24's accounting data

1

PRELIMINARY ASSESSMENT

- ✓ Assess the readiness of database (i.e. Qualified CbCR, Qualified FS of the CEs, etc.);
- ✓ Conduct assessment on TCSH qualification based on the latest available data i.e. of FY 2023.

2

RE-ASSESSMENT

- ✓ Re-assess the qualification based on the audited financial data of FY 2024;
- ✓ Consider and select the appropriate tests for each jurisdiction in which the Group having operation.

3

CALCULATION

- ✓ Collect relevant data from Qualified CbCR and Qualified FS;
- ✓ Perform calculations for each test;
- ✓ Assess and select the TCSH application based on the calculation results.

4

FILING

- ✓ Elect the application of TCSH by declaring relevant information on the GloBE Information Return and the supplementary CIT return to submit to the Tax authority by due date.

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference purposes only, not for distribution or sale

**Transfer Pricing
Firm of the Year**

**Tax Firm
of the Year**

I. TRANSITIONAL CbCR SAFE HARBOUR

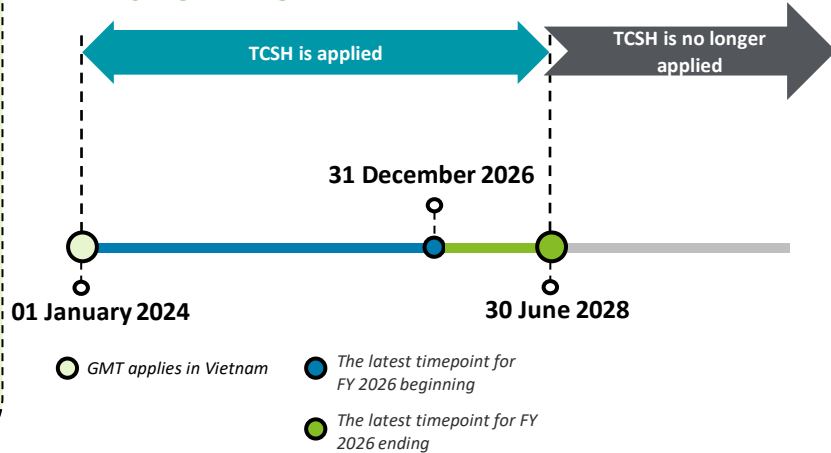


Principles and transition period

OVERVIEW

- TCSH is a mechanism designed to help MNE Groups reduce compliance burden in the initial years during which GMT come into effect;
- During the transition period, the **Top-up tax in a jurisdiction** for a FY shall be deemed to be 0 (zero) if satisfying one of the three tests calculated based on the data available in the Qualified CbCR and the Qualified FS.

TRANSITION PERIOD



“ONCE OUT, ALWAYS OUT” PRINCIPLE

The provision on TCSH apply to **all CEs and permanent establishments** in a jurisdiction according to the principle of “Once out, always out”.

“ONCE OUT, ALWAYS OUT”

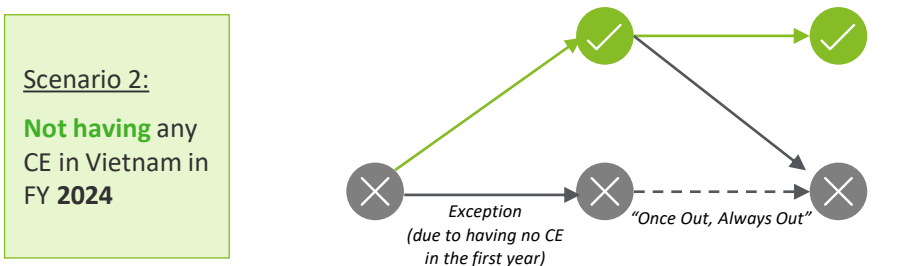
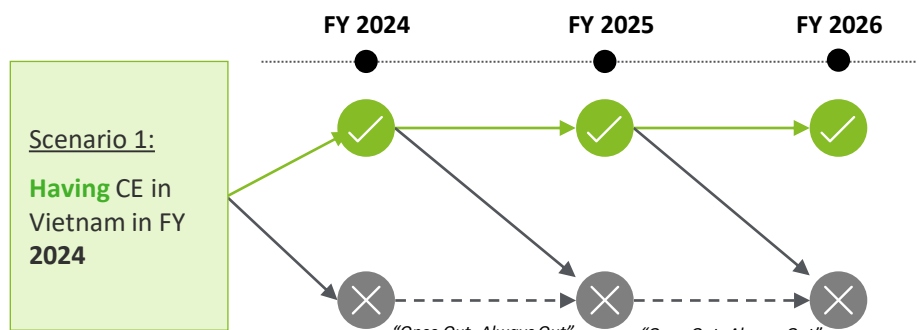
If an MNE Group **has not applied** TCSH with respect to a jurisdiction in a FY in which the MNE Group is subject to the GloBE Rules, the MNE Group **can not qualify for that safe harbour for that jurisdiction in the subsequent year**, except where the Group has no CEs located at a jurisdiction in the previous FY.

Assuming a MNE Group:

- Has a FY that begins on 01 January and ends on 31 December annually; and
- Subject to the GloBE Rules in the FY 2024, 2025 and 2026.

How will the TCSH applied to CEs located in Vietnam?

- TCSH is applicable
- TCSH is not applicable due to failure of the tests
- TCSH is not applicable because of no TCSH is applied in previous year



Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference purposes only, not for distribution or sale

Transfer Pricing Firm of the Year

Tax Firm of the Year

I. TRANSITIONAL CbCR SAFE HARBOUR



TCSH Tests

TCSH shall be applied when one of the following three tests is met:

Tests	Condition	Data Source	Notes
<p>(1)</p> <p>De Minimis Test</p>	<p>(i) Total revenue of less than EUR 10 million; and</p> <p>(ii) Profit before tax of less than EUR 1 million or there has a loss</p>	<ul style="list-style-type: none"> Qualified CbCR 	<p>De Minimis Test cannot be applied where the Group include an Entity held for sale (these entities are usually not included in the Group's consolidated FS and CbCR) and the total revenue of these entities combined with total revenue reported on the Group's CbCR equals or exceeds EUR 10 million.</p>
<p>(2)</p> <p>Simplified ETR Test</p> $\text{Simplified ETR test} = \frac{\text{Aggregate Simplified Covered Taxes}}{\text{Profit (or Loss) before Income tax}}$	<p>A country's Simplified Effective Tax Rate is at least equal to:</p> <ul style="list-style-type: none"> ✓ 15% for FY24; ✓ 16% for FY25; ✓ 17% for FY26 	<ul style="list-style-type: none"> Qualified CbCR Qualified FS 	<p>Income tax expense on the income of permanent establishment:</p> <ul style="list-style-type: none"> Allocated exclusively to the permanent establishment in its location; and Can only be included in the Simplified ETR test for the permanent establishment's location, and not the Main Entity's location
<p>(3)</p> <p>Routine Profit Test</p>	<p>Profit before tax is equal to or less than the Substance-based Income Exclusion ("SBIE") amount</p>	<ul style="list-style-type: none"> Qualified CbCR Calculation according to the GloBE Rules 	<ul style="list-style-type: none"> SBIE amount shall not include the payroll and tangible assets of Entities held for sale and Excluded Entities under GloBE rules; If a CE is located in different jurisdictions under CbCR and GloBE, its payroll and tangible assets are excluded from the SBIE amount of both jurisdictions for Routine Profit Test. A jurisdiction with a loss in a FY will always meet the Routine Profit Test and is not required to calculate the jurisdiction's SBIE

Qualified CbCR Report	Qualified Financial Statements
<ul style="list-style-type: none"> A report prepared and filed using Qualified FS In case the MNE Group is not required to file CbCR, it is still eligible to apply TCSH, using data of total revenue and profit before tax from Qualified FS. 	<ol style="list-style-type: none"> Financial accounts used to prepare the Consolidated FS of the UPE; Separate FS of each CE provided they are prepared in accordance with either: <ul style="list-style-type: none"> Acceptable Financial Accounting Standard; or Authorised Financial Accounting Standard and the information contained in such statements is reliable Financial accounts used for preparation of the MNE Group's CbCR in case of a CE that is not consolidated into the MNE Group's Consolidated FS solely due to size or materiality grounds

Special notes:

- The Qualified FS need to meet the requirements of accurate and consistent use of data.
- Making adjustments to the data drawn from Qualified FS in a CbCR would disqualify a Tested Jurisdiction from TCSH, only except for adjustments that are explicitly required in the OECD's Commentary or under Agreed Administrative Guidance.
- The effect of PPA adjustments under the financial accounts/separate FS of a CE is basically disallowed, except for certain circumstance.

Contact

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference purposes only, not for distribution or sale

Transfer Pricing Firm of the Year

Tax Firm of the Year

I. TRANSITIONAL CbCR SAFE HARBOUR

Special rules

SPECIAL CASES

Joint Ventures and Joint Venture Subsidiaries

Shall apply TCSH as if they were **CEs of a separate MNE Group**, using data reported on Qualified FS.

UPE jurisdiction where UPE is a Flow-through Entity

Shall not apply, unless all the Ownership Interests in the UPE are held by Qualified Persons.

Net Unrealised Fair Value Loss

Shall be excluded from profit (loss) before income tax if **exceeds EUR 50million** in a jurisdiction

Investment Entities

Investment entities separately apply the GloBE Rules; however, it does not affect the application of TCSH in the investment entities jurisdiction and the jurisdiction of the investment entities owner.

EXCLUSIONS

TCSH **does not apply** to:

1	Stateless Constituent Entities
2	Multi-parented MNE where a single Qualified CbCR does not include information of the combined groups
3	Jurisdictions with CEs that have elected to be subject to Eligible Distribution Tax System
4	Jurisdictions that have not applied TCSH in the previous year (" <i>Once out, always out</i> ")

TREATMENT OF HYBRID ARBITRAGE ARRANGEMENTS

- In case the MNE Group has a **Hybrid Arbitrage Arrangement** that is executed **after 15 December 2022**, adjustments must be made to the Tested Jurisdiction's **profit before tax and income tax expense**.
- Types of Hybrid Arbitrage Arrangement and adjustment method are as follows:

(1) Deduction/Non-inclusion Arrangement

When a **CE (A) provides a credit or makes investment in another CE (B)** that results in an expense or loss in the FS of (A) to the extent that:

- There is no commensurate increase in revenue or gain in the FS of (B); or
- (B) is expected not to have a commensurate increase in taxable income

(2) Duplicate Loss Arrangement

When an **expense or loss being included in the FS of a CE (A)** to the extent that:

- It is also being included as an expense or loss in the FS of CE (B); or
- It gives rise to a deductible amount for purpose of determining the taxable income of CE (B) located in another jurisdiction.

(3) Duplicate Tax Recognition Arrangement

When **both CE (A) and CE (B) include same income tax expense** in its:

- Adjusted Covered Taxes; or
- Simplified ETR for purpose of applying TCSH

Excluding any expense or loss arising as a result of the above agreements from the Tested Jurisdiction's **profit before tax**

Excluding any income tax expense arising as a result of the above agreement from the Tested Jurisdiction's **income tax expense**

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference purposes only, not for distribution or sale

Transfer Pricing Firm of the Year

Tax Firm of the Year

II. PERMANENT SAFE HARBOUR



PERMANENT SAFE HARBOUR (SIMPLIFIED CALCULATIONS SAFE HARBOUR)

According to the OECD guidelines, where a MNE Group does not meet the requirements of a transitional safe harbour, they may still qualify for the terms of a Permanent Safe Harbour, which also allows the MNE Group to perform Simplified Calculations to determine that the Top-up tax for a jurisdiction is deemed to be 0 (zero) if satisfying one of the three tests. However, the provision on permanent safe harbour mechanisms have not been fully guided by the OECD. Below are the current basic guidelines:

OVERVIEW ON PERMANENT SAFE HARBOUR

- According to the regulation on **Permanent Safe Harbour**, the Top-up Tax for a jurisdiction (other than Additional Current Top-up Tax) shall be deemed to be 0 (zero) for a FY if satisfying one of the three tests:
 - (1) Routine Profits Test
 - (2) De Minimis Test
 - (3) Effective Tax Rate Test
- A CE may elect to use **Simplified Calculation method** for the purposes of determining whether any of the above tests are met. Details on the simplified calculation method will be further guided by the OECD in upcoming documents.

NON-MATERIAL CONSTITUENT ENTITY

For Non-material Constituent Entity (“NMCE”), to determine the eligibility to apply Simplified Calculation method, the Filing CE may make an **Annual Election** to determine the GloBE Income or Loss and Adjusted Covered Tax of a NMCE **using the NMCE Simplified Calculations.**

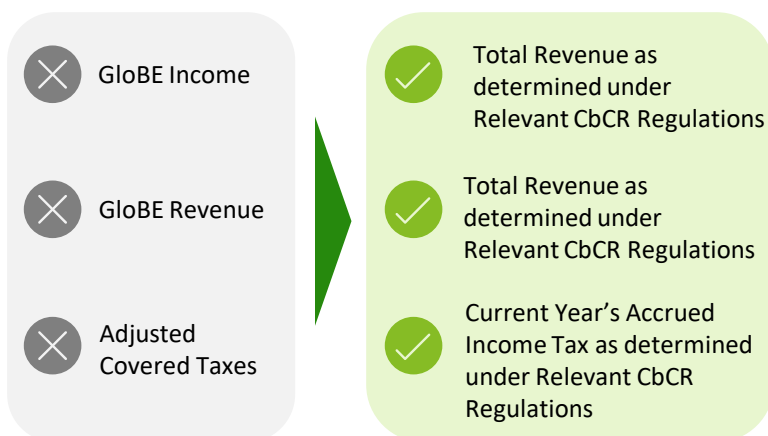
Definition:

Is an Entity, including its PE, that is **not consolidated** in the UPE’s Consolidated FS of solely on **size or materiality grounds**, provided that:

- ✓ The Consolidated FS are those that are in accordance with GloBE Rules;
- ✓ The Consolidated FS are externally audited;
- ✓ The financial accounts that are used to complete the CbCR are prepared in accordance with an Acceptable or Authorised Financial Accounting Standard (if the CE’s revenue exceeds EUR 50 million)

Application of Simplified Calculations Safe Harbour for NMCE:

Use of parameters as accordance with **Relevant CbCR Regulations** instead of GloBE Rules to determine the eligibility for safe harbour:



Relevant CbCR Regulations means:

- The CbCR regulation of the UPE Jurisdiction; or
- The CbCR regulation of the surrogate parent entity jurisdiction if it submits CbCR on behalf of the UPE; or
- The OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of CbCR Reporting, if the UPE jurisdiction does not have CbCR requirements and a MNE Group is not required to file CbCR in any jurisdiction.

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference purposes only, not for distribution or sale

Transfer Pricing
Firm of the Year

Tax Firm
of the Year

Contact us



Bui Tuan Minh
National Tax Leader
+84 24 7105 0022
mbui@deloitte.com



Thomas McClelland
Tax Partner
+84 28 7101 4333
tmcclelland@deloitte.com



Bui Ngoc Tuan
Tax Partner
+84 24 7105 0021
tbui@deloitte.com



Phan Vu Hoang
Tax Partner
+84 28 7101 4345
hoangphan@deloitte.com



Dinh Mai Hanh
Tax Partner
+84 24 7105 0050
handinh@deloitte.com



Vo Hiep Van An
Tax Partner
+84 28 7101 4444
avo@deloitte.com



Vu Thu Nga
Tax Partner
+84 24 7105 0023
ngavu@deloitte.com



Tat Hong Quan
Tax Partner
+84 28 7101 4341
quantat@deloitte.com



Vu Thu Ha
Tax Partner
+84 24 710 50024
hatvu@deloitte.com



Dang Mai Kim Ngan
Tax Partner
+84 28 710 14351
ngandang@deloitte.com



Tran Quoc Thang
Tax Partner
+84 28 710 14323
qthang@deloitte.com



Pham Thi Quynh Ngoc
Legal Partner
+84 24 710 50070
ngocpham@deloitte.com

Office

Hanoi Office

15th Floor, Vinaconex Building,
34 Lang Ha Street, Dong Da District,
Hanoi, Vietnam
Tel: +84 24 7105 0000
Fax: +84 24 6288 5678

Ho Chi Minh City Office

18th Floor, Times Square Building, 57-
69F Dong Khoi Street, District 1,
Ho Chi Minh City, Vietnam
Tel: +84 28 7101 4555
Fax: +84 28 3910 0750

Contact

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference purposes only, not for distribution or sale

**Transfer Pricing
Firm of the Year**

**Tax Firm
of the Year**



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 is a member firm of Deloitte Global. Deloitte Asia Pacific members and affiliates provide services to clients in more than 100 cities in the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo. In member countries, business activities are carried out independently by separate legal entities.

About Deloitte Vietnam

In Vietnam, services are provided by separate and independent legal entities, each of which may be referred to or known as Deloitte Vietnam.

This document contains general information and is for informational purposes only, therefore, no DTTL company, or any of its affiliates or subsidiaries and their employees shall be deemed to, within the scope of the content of this document, provide services or give opinions, professional advice for readers. This document does not constitute advice to the reader and shall not affect other advice provided by any employee of the Deloitte Foundation. The information presented in this document does not apply to the individual cases of the enterprise. Before making any decision or action that may affect your financial or business situation, you should consult a professional advisor.

No representations, warranties or undertakings (express or implied) are made as to the accuracy or completeness of the information contained herein, and no member of the Deloitte Companies Network shall be liable for any damages, losses incurred directly or indirectly as a result of the reader’s use, publication, dissemination of, or reliance on this material to act, inaction, or make any decisions.