



## GLOBAL MINIMUM TAX INSIGHTS

### Episode 02: Navigating cross-border M&A transactions in GMT world

October 2024



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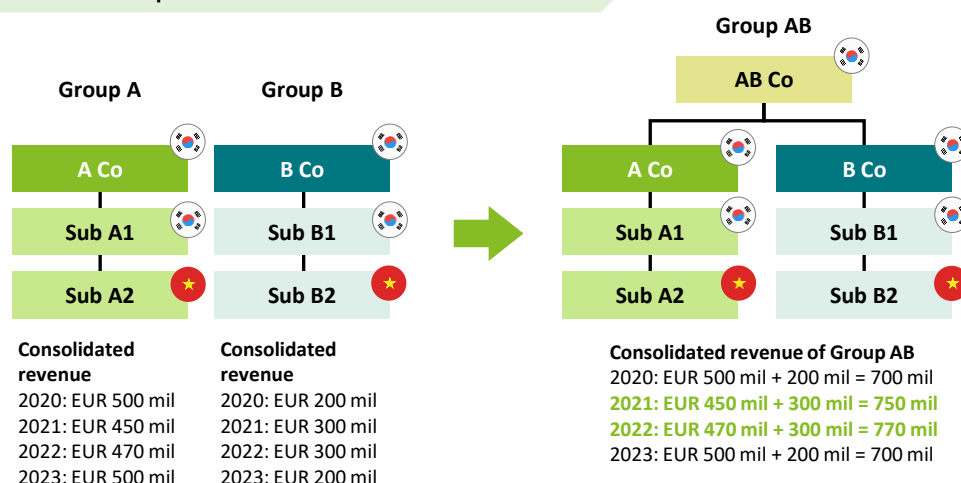
### Introduction and overview

- On 29 November 2023, the National Assembly of Vietnam 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 Global Minimum Tax ("**GMT**") rules will apply where:
  - at least one entity or permanent establishment of the group is located in a different jurisdiction from the ultimate parent entity ("**UPE**"); and
  - the consolidated group revenues within the consolidated financial statements prepared by the UPE are at least EUR 750 million in two out of the previous four financial years. Specific rules apply where groups are combined, merged, or demerged.
- Mergers and acquisitions ("**M&A**") transactions happening now may, therefore, already impact the multinational enterprise's ("**MNE**") future GMT position and potential GMT (top-up tax) liabilities.
- This publication is provided to help MNE Groups (including Vietnamese MNE Groups having foreign investment and foreign MNE Groups having constituent entities in Vietnam) to understand the main key points to note further from the Vietnamese tax perspective relating to the cross-border M&A transactions in the current GMT context.



### What GMT M&A considerations are top-of-mind?

Acquisitions and divestitures may influence a group's GMT profile and whether it falls within the scope of the GMT rules



✓ In-scope GMT given the revenue threshold met in two out of four immediately preceding years

Under the above scenario, for the M&A transactions happening before the first GMT reporting timeline, impact of GMT to the group effective tax rate ("**ETR**") and the potential top-up tax should be taken into account for financial modeling purpose while the GMT compliance should also be carefully considered during the tax due diligence process for those transactions happening after the first GMT reporting timeline (*i.e. generally after 31 December 2025 for those acquired MNE with financial year ending 31 December 2024 and the involved constituent entity jurisdiction adopts Qualified Domestic Minimum Top-up Tax rules from 2024 onwards*).

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### What GMT M&A considerations are top-of-mind? (cont.)

**The new GMT regime may significantly impact future jurisdictional ETRs, cash taxes, and compliance obligations; such impact should be considered by buyers and sellers early in the process of preparing for a transaction.** These implications may even impact the return on investment in a transaction. By incorporating GMT considerations into due diligence, deal modeling, and structuring, buyers and sellers can better understand GMT implications and mitigate the impact of the GMT or even identify potential benefits that might have been overlooked. Both parties must navigate the timing differences and mismatches in recognition of income, particularly the losses in accounting and tax books. In some cases, an acquisition could have a positive GMT impact for an MNE. For instance, from the acquiring entity's perspective, if the target group has a higher ETR in a particular jurisdiction than the acquiring group, post-acquisition, such higher ETR may potentially increase the lower ETR of the acquiring group in the same jurisdiction due to jurisdictional blending rule.

**There will be new risks to be allocated and negotiated between the parties.** Contractual protections will be highly dependent on the structure of the transaction, jurisdictions involved in the transaction, and any due diligence considerations that arise. The buyers, at the minimum, would want to structure indemnities to protect their interests with regard to any top-up taxes incurred during the pre-closing period and any potential secondary tax liability, both of which may arise where an acquired target entity bears joint and several liability for the top-up tax obligations of the other seller's constituent entities.

Pillar Two specific representations and warranties may include assurances regarding the accuracy of financial statements, the recognition of deferred tax assets and deferred tax liabilities, GMT elections made by the seller and establish appropriate information-sharing rights in the post-close period. By carefully considering GMT specific indemnities, representations, warranties, and information-sharing mechanisms, stakeholders can navigate the GMT complexities in M&A transactions with greater confidence

**Tax modeling and due diligence is more complex with GMT.** Due diligence will be needed to gather the appropriate information in order to identify jurisdictions with potentially low ETR (for instance, for those incentivized investment projects in Vietnam) and to model top-up taxes. Engaging tax teams with GMT knowledge early in the transaction process is essential for collecting data required for due diligence of GMT positions, assessing potential top-up tax liabilities, estimating the economic value of a potential tax shield, and determining the deal's pricing strategy.

**Finally, after the acquisition is complete, the entities should be integrated by the group into a comprehensive data reporting and compliance system.** The burden and cost of such integration efforts should be considered early and factored into the deal negotiations.

For a deeper understanding of Pillar Two aspects in M&A and insights into how Pillar Two could affect your transaction process, please refer to Deloitte's full article via [Link](#).

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### What can you do today?

The GMT rules will continue to evolve. There will be more administrative guidance in the future and more countries will introduce GMT rules in their legislation, probably with differences from country to country. Consequently, the parties will likely require more time to negotiate deal terms and transactional documents before the common-market standards for GMT are widely established in cross-border deals.

To effectively address these challenges, it is advisable to initiate GMT discussions early on with the companies' internal tax teams and external tax advisors. Aligning your M&A pre-deal planning and structuring with the overall group's GMT considerations and integrating it into due diligence and deal modelling process can help the companies better navigate the impact of GMT rules on deal economics and enhance efficiency and value of your investment.

### Key Points

1

Acquisitions and dispositions may significantly impact a group's GMT profile both positively and negatively.

2

Acquisitions can accelerate a company falling within the scope of GMT.

3

GMT considerations should be factored into a deal's cost, contractual documentation, and information sharing.

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