

# Hong Kong Tax Alert

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## Hong Kong publishes legislative bill for the implementation of the global and domestic minimum taxes in 2025

- *Under the proposed legislation, while the Income Inclusion Rule (IIR) will take effect in respect of a fiscal year commencing on or after 1 January 2025 and the effective date of the Undertaxed Profits Rule (UTPR) will be deferred to a date to be announced later, the definition of "Hong Kong resident entity" will take retrospective effect from 1 January 2024*

*On 27 December 2024, the Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024 (the Bill) was gazetted. The Bill introduced the global minimum tax and Hong Kong Minimum Top-up Tax (HKMTT) for multinational enterprise (MNE) groups in Hong Kong.*

*This alert summarizes the key features of the Global Anti-Base Erosion (GloBE) rules and HKMTT and their implementation in Hong Kong.*

*Clients who have any views on the implementation of the GloBE rules and HKMTT in Hong Kong can contact their tax executives. We will convey the same to the Government in an appropriate manner.*

## Global minimum tax and HKMTT

A global minimum tax of 15% would be imposed on MNE groups with annual consolidated revenue of EUR 750 million or above in at least two of the four fiscal years immediately preceding the current fiscal year through two interlocking rules, namely:

- ▶ IIR - the primary rule which imposes top-up tax on the parent entity of an in-scope MNE group in respect of its constituent entities which are taxed at an effective tax rate (ETR) below 15% (i.e. low-taxed constituent entities) outside the jurisdiction where the parent entity is located; and
- ▶ UTPR - a backstop to IIR which ensures that all top-up tax is charged where any of such tax is not brought into charge under IIR.

The GloBE rules allow jurisdictions to introduce their own qualified domestic minimum top-up (QDMTT) based on the GloBE mechanics. A jurisdiction in which an in-scope MNE group operates and for which the ETR is below the minimum rate (i.e. a low-tax jurisdiction) has the first priority to collect the top-up tax in respect of the low-taxed constituent entities in its own jurisdiction if it has implemented its own QDMTT prior to the imposition of IIR or UTPR. That is the reason why Hong Kong would impose HKMTT in 2025, otherwise the taxing right over low-taxed Hong Kong constituent entities could be ceded to other jurisdictions.

The enactment of these two interlocking rules, together with the HKMTT, form the implementation framework for the GloBE and HKMTT regimes in Hong Kong. The GloBE Model Rules promulgated by the Organisation for Economic Co-operation and Development (OECD) would be directly incorporated in the Inland Revenue Ordinance (IRO) with adaptations that are necessary in the context of implementing the GloBE rules and HKMTT in Hong Kong.

Certain Commentaries and Administrative Guidance issued by the OECD up to June 2024 have already been reflected in the legislative provisions of the Bill.

To allow for swift adoption, further Commentaries and Administrative Guidance issued by the OECD in the future can be incorporated into the IRO through subsidiary legislation, by way of the Secretary for Financial Services and the Treasury making a notice published in the Gazette.

The legislative provisions contained in the Bill are to be construed in accordance with the Commentaries and Administrative Guidance issued by the OECD in a way that best serves the purpose of making provision for the following, within the meaning of the OECD Model Rules: (a) a qualified IIR; (b) a qualified UTPR; a qualified domestic minimum top-up tax; and (d) safe harbours.

### Structure of the proposed legislation

(1) The main provisions of the Bill are as follows -

- (a) Clause 8 of the Bill adds a new Part 4AA (new sections 26AD to 26AH) to the IRO.
- (b) The new sections 26AD and 26AE introduce Schedules 60 to 63 to the IRO.
- (c) In the new Schedule 60 -
  - (i) Part 1 reproduces most provisions of the GloBE Model Rules;
  - (ii) Part 2 makes minor modifications to those rules contained in Part 1; and
  - (iii) Part 3 provides for the transitional and permanent safe harbours provided for under the GloBE and HKMTT regimes.
- (d) The new Schedule 61 contains provisions for charging the HKMTT.
- (e) The new Schedule 62 contains provisions on the administration of the IIR and UTPR top-up taxes and HKMTT, including -
  - (i) Requirements for the filing of returns and notices and provision of information relevant to the determination of liability for any top-up taxes; and
  - (ii) Provisions modifying provisions of the IRO in their application in relation to top-up taxes.
- (f) The new Schedule 63 lists out the Commentaries, Administrative Guidance and related documents published by the OECD which are to be given effect to in a way that supplements, and clarifies the interpretation and operation of, the new Part 4AA and Schedules 60 to 62.

(2) Clause 13 of the Bill adds new sections 800 to 80R to, and clauses 14 and 15 amend existing sections in, the IRO, to create offences for non-compliance with obligations under the Schedules.

(3) The Bill also makes minor textual amendments to the IRO (clauses 5,10 and 11).

## Determining the top-up tax

The top-up tax payable by an in-scope MNE group for a low-tax jurisdiction is the product of:

- ▶ the excess profits – the result of the aggregate GloBE income or loss for all constituent entities in the low-tax jurisdiction less a substance-based income exclusion for the low-tax jurisdiction; and
- ▶ the top-up tax percentage – the difference between the ETR in the low-tax jurisdiction and the minimum rate of 15%.

## Definition of “Hong Kong resident entity” introduced into the IRO for general purposes

Under the GloBE rules, the jurisdiction in which an entity is located (i.e. where it is a tax resident or was created) is entitled to the top-up tax. To facilitate top-up tax collection under the GloBE rules, a definition of “Hong Kong resident entity” is introduced for general purposes of the IRO.

An entity is a “Hong Kong resident entity” if:

- ▶ where an entity is a company – the entity is incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong; or
- ▶ in any other case – the entity is constituted under the laws of Hong Kong or, if otherwise constituted, normally managed or controlled in Hong Kong.

The above definition takes retrospective effect from 1 January 2024, which allows an entity that falls within the definition to be regarded as located in Hong Kong throughout the fiscal year 2024, thereby minimising its exposure to top-up tax in other jurisdictions which have implemented the GloBE rules for an accounting period beginning on or after 1 January 2024.

## Charging mechanism of GloBE rules and HKMTT

### *IIR*

Under the IIR, top-up tax is imposed on (i) the ultimate parent entities (UPEs) of in-scope Hong Kong-headquartered MNE groups, (ii) Hong Kong intermediate parent entities of in-scope foreign-headquartered MNE groups the UPEs of which are located in jurisdictions that do not implement IIR, or (iii) Hong Kong partially-owned parent entities of in-scope MNE groups irrespective of whether the UPEs or the intermediate parent entities are required to apply IIR.

These parent entities are charged the IIR top-up tax based on their ownership interests in their low-taxed constituent entities located outside Hong Kong. Apart from the low-taxed constituent entities located outside Hong Kong, joint ventures (JV), subsidiaries of JVs and stateless constituent entities (collectively other entities) of in-scope MNE groups located or operated in low-tax jurisdictions outside Hong Kong may render the MNE groups liable to the IIR top-up tax in Hong Kong.

The IIR top-up tax is payable in relation to a fiscal year beginning on or after 1 January 2025.

### *UTPR*

Under the UTPR, top-up tax is imposed by way of an equivalent adjustment in the form of an additional tax. The UTPR top-up tax allocated to Hong Kong is charged on Hong Kong constituent entities of an in-scope MNE group, based on the respective proportion of the employee headcount and the value of tangible assets, unless the group designates one or more than one Hong Kong constituent entities to pay the UTPR top-up tax.

The UTPR is to be implemented on a date to be specified by the government at a later stage.

### *HKMTT*

The HKMTT is introduced to impose top-up tax on low-taxed constituent entities and other entities of in-scope MNE groups located or operating in Hong Kong, in priority over the IIR and UTPR. Investment entities and insurance investment entities are excluded from the scope of HKMTT to preserve their tax neutrality. The HKMTT is allocated among and charged on the Hong Kong constituent entities of an in-scope MNE group in proportion to each entity’s GloBE income, unless the group designates one or more than one Hong Kong constituent entities to pay the HKMTT.

The HKMTT to which a Hong Kong constituent entity of an MNE group is chargeable for a fiscal year is in the amount that would, by applying the GloBE rules, except that the ownership interests that the MNE group has in the constituent entity will not be considered. That means, the low-taxed profits of the constituted entities will be chargeable to the HKMTT in full, regardless of whether it is a wholly owned constituent entity of the MNE group.

Where a JV or a Hong Kong member of a JV group (i.e. a JV entity) as defined under the GloBE Model Rules is involved, the JV entity could belong to two in-scope MNE groups. Each of the two in-scope MNE groups would be subject to HKMTT in respect of the full or part of the full amount of the low-taxed profits of the JV entity, that means double taxation of the low-taxed profits of the JV entity would be involved.

The Bill contains provisions for relieving double taxation of a JV entity in the situation as described above in the following manner:

- (a) when a JV entity belongs to two in-scope MNE groups, the HKMTT chargeable in respect of each of the MNE groups is to be reduced by 50%; or
- (b) when a JV entity belongs to one in-scope MNE group and a Hong Kong constituent entity of another in-scope MNE group, the HKMTT chargeable in respect of each of the in-scope MNE groups is to be relieved in a manner that is reasonable in the circumstances.

Hong Kong intends its HKMTT to qualify as a QDMTT Safe Harbour, which will deem the GloBE top-up tax payable by an in-scope MNE groups in Hong Kong to be zero, thereby relieving the group from undertaking GloBE computation for Hong Kong and reducing its tax compliance burden. To qualify for the QDMTT Safe Harbour, the design of the HKMTT would need to satisfy certain conditions including the adoption of the local accounting rule, the conditions of which are incorporated into the provisions of the Bill as follows:

- (a) If each HK constituent entity of the MNE group has financial accounts (each entity's accounts) prepared in accordance with the local accounting standard;
- (b) the accounting period of each entity's accounts is the same as the fiscal year of the financial statements of the UPE of the MNE group; and
- (c) for the fiscal year -
  - (i) each HK constituent entity of the MNE group is required to prepare or use the entity's accounts for determining its liability to tax in Hong Kong or to comply with any other law of Hong Kong; or
  - (ii) each entity's accounts are subject to external financial audit.

Then the computation of the top-up tax liability of HKMTT will need to be based on a local accounting standard. Under Schedule 61, local accounting standard means either the International Financial Reporting Standards or the Hong Kong Financial Reporting Standards.

Under the rule, if the above conditions are not satisfied, the computation of the top-up tax liability of HKMTT will then need to be based on the accounting standard adopted in the consolidated financial statement of the UPE.

The HKMTT is payable in relation to a fiscal year beginning on or after 1 January 2025.

### **Nature of top-up tax**

The top-up tax imposed under the GloBE rules and HKMTT is regarded as profits tax. This allows the relevant tax administration mechanisms under the IRO to be applied to the top-up tax. In addition, the Inland Revenue Department (IRD) considers that in-scope MNE groups can then also ride on the mutual agreement procedure mechanisms under Hong Kong's Comprehensive Avoidance of Double Taxation Agreements or Arrangements for resolving relevant cross-border disputes on the top-up taxes where applicable.

### **Safe harbour rules**

To reduce compliance burden for in-scope MNE groups, the transitional Country-by-Country Reporting (CbCR) Safe Harbour, the transitional UTPR Safe Harbour, the QDMTT Safe Harbour and the Simplified Calculations Safe Harbour for non-material constituent entities (NMCEs) are provided in Hong Kong.

Details of the safe harbour rules are reproduced in Appendix I to this alert.

## **Tax compliance and administration**

### *Filing of top-up tax return*

Each Hong Kong constituent entity of an in-scope MNE group is required to furnish a single top-up tax return for the purposes of the GloBE rules and HKMTT (top-up tax return) in a prescribed manner and form no later than 15 months after the last day of the reporting fiscal year. The filing deadline for the first transition year of any constituent entities of the MNE group is extended to 18 months.

However, if the MNE group already enjoyed the extension in other jurisdictions which implemented the GloBE rules for fiscal years beginning on or after 1 January 2024, then the three-month extension to 18 months would not be available in Hong Kong in 2025.

The top-up tax return includes information required in the standardised GloBE Information Return (GIR). Hong Kong constituent entities of an in-scope MNE group will be relieved from the obligation to file the GIR information if such information is filed in a jurisdiction that will be able to exchange GIR information with Hong Kong under a qualifying competent authority agreement.

To provide flexibility for filing of returns, an in-scope MNE group is allowed to designate one Hong Kong constituent entity (designated local entity) to file the top-up tax return to the IRD such that all other Hong Kong constituent entities of the group will be relieved from their filing obligation. The designated local entity needs to be appointed annually and the appointment remains valid in respect of the reporting fiscal year concerned.

### *Filing of top-up tax notification*

Each Hong Kong constituent entity of an in-scope MNE group is required to file an annual notification (top-up tax notification) relating to its obligations of filing top-up tax return in a prescribed form and manner. The top-up tax notification is required for notifying the IRD that an MNE group has come within the scope of the global minimum tax and HKMTT, as well as identifying the entity and jurisdiction from which Hong Kong will receive the GIR.

A top-up tax notification is required to be filed within six months after the last day of the reporting fiscal year.

Similar to the arrangement provided in the filing of top-up tax return, an in-scope MNE group is allowed to appoint one designated local entity to file a top-up tax notification so as to relieve other Hong Kong constituent entities from the filing obligation.

### *Assessment and demand for top-up tax*

A notice of assessment and demand for top-up tax is to be issued based on the information declared upon the filing of the top-up tax return. No provisional top-up tax will be charged. The payment due date is one month after the expiry of the return filing deadline or the date of the notice of assessment, whichever is the later.

The time limit for raising a tax assessment under the GloBE rules is six years from the later of (i) the end of the fiscal year or (ii) the time when the non-assessment or under-assessment has come to the knowledge of the assessor.

In accordance with the GloBE rules, the IIR top-up tax is charged on the parent entities of in-scope MNE groups. In respect of the UTPR top-up tax or HKMTT, under the default allocation mechanism for top-up tax, each constituent entity is only liable for its share of top-up tax. To provide flexibility for payment of UTPR top-up tax or HKMTT, the group is allowed to designate one paying entity or more. However, if any of the designated paying entity does not pay the top-up tax payable, all Hong Kong constituent entities will be jointly and severally liable for the whole amount of top-up tax payable of the group.

The objection period to a top-up tax assessment is extended from the normal one-month after the date of the notice of assessment under profits tax to two months.

### *Penalty for non-compliance*

A comparable level of penalty is imposed for non-compliance with the reporting and administrative requirements, including the failure to file a top-up tax return or top-up tax notification, and wrongdoings in relation to incorrect return and notification, etc., as currently imposed under the existing penal provisions in relation to profits tax.

### *Anti-avoidance provision*

The general anti-avoidance provisions under sections 61 and 61A of the IRO were specifically enacted to tackle tax avoidance within the existing framework of the IRO and do not apply to the GloBE and HKMTT regimes.

To tackle abusive or avoidance schemes for the purposes of the GloBE or HKMTT regime, the main purpose test is introduced. If a person enters into any arrangements for the main purpose of avoiding the relevant obligations such as filing and payment of top-up tax, those arrangements will be treated as if they had never been entered into.

### *Application to MNE entities other than Hong Kong constituent entities*

In general, the tax administration framework also applies to other entities (i.e. JVs, subsidiaries of JVs or stateless constituent entities) of in-scope MNE groups located or operating in Hong Kong in the same way as it applies to Hong Kong constituent entities.

## **Commentary**

We welcome the publication of the Bill which provides much-needed clarification and confirmation of Hong Kong's approach to implementing the GloBE and HKMTT regimes, including the proposed adoption of all the safe harbour rules and the relevant options provided for in the GloBE Model Rules.

Equally welcome is the Government's decision to defer the implementation of the UTPR to maintain the tax competitiveness of Hong Kong, given that some of our competitors have decided not to implement UTPR in 2025.

However, the inclusion of the "main purpose" test as an anti-avoidance provision under the GloBE and HKMTT regimes may create some uncertainties when MNE groups undertake transactions that can be said to serve both business and tax purposes, given that an element of subjectivity may be involved in the test.

In addition, the proposed time allowed for raising an assessment or additional assessment, which is six years after information is received by the IRD for a non-assessment or under-assessment, also appears to be too indefinite. This may create uncertainties as to the finality of an assessment and the time for record keeping.

Instead, the Government may consider reducing the time limit for raising an assessment or additional assessment to six months after the relevant information is received, subject to the overall limitation that in no case can an assessment or additional assessment be raised ten years after the relevant year of assessment.

The justification for this proposal is that six months should be enough for the IRD to raise a protective assessment or additional assessment where necessary. The ten-year is the current time limitation for raising an assessment or additional assessment for taxes imposed under the IRO, where wilful tax evasion is involved.

Clients who have any views on the implementation of GloBE and HKMTT regimes in Hong Kong can contact their tax executives. We will convey the same to the Government in an appropriate manner.



## Appendix I - Safe Harbour Rules<sup>1</sup>

### *Transitional CbCR Safe Harbour*

Under the transitional CbCR Safe Harbour, an in-scope MNE group's top-up tax for a particular jurisdiction will be deemed to be zero if any of the three specified criteria in relation to total revenue, ETR or routine profits is met. It operates through the use of jurisdictional total revenue and profit or loss before income tax information contained in the MNE group's qualified Country-by-Country report and jurisdictional tax information contained in its qualified financial statements. It only applies to a transition period covering all the fiscal years beginning on or before 31 December 2026 and ending on or before 30 June 2028. This Safe Harbour adopts a "once out, always out" approach, meaning that if an in-scope MNE group has not applied this Safe Harbour in respect of a jurisdiction in a previous fiscal year, the group cannot qualify for this Safe Harbour for that jurisdiction in a subsequent fiscal year.

### *Transitional UTPR Safe Harbour*

The UTPR Safe Harbour provides relief to the UPE jurisdiction from the application of UTPR during the transition period, which means fiscal years which run no longer than 12 months that begin on or before 31 December 2025 and end before 31 December 2026. This Safe Harbour is only available for UPE jurisdictions with a corporate income tax rate of at least 20%. Where this Safe Harbour applies, at the election by an in-scope MNE group, the UTPR top-up tax amount calculated for the UPE jurisdiction will be deemed to be zero for each fiscal year that falls within the transition period.

### *QDMTT Safe Harbour*

Under the QDMTT Safe Harbour, an in-scope MNE group will only need to undertake one QDMTT calculation in respect of its constituent entities in the QDMTT jurisdiction and be relieved from the need to perform an additional GloBE calculation in the same jurisdiction. Where this Safe Harbour applies, the top-up tax payable in respect of the QDMTT jurisdiction under the GloBE rules will be deemed to be zero.

### *Simplified Calculations Safe Harbour*

Under the Simplified Calculations Safe Harbour for NMCEs, a filing constituent entity may make an annual election to use simplified calculation methods to determine the GloBE income or loss, GloBE revenue and adjusted covered taxes of an NMCE provided that specified conditions are met.



<sup>1</sup> The details of the safe harbour rules are reproduced from Annex C of the Legislative Council Brief, which can be retrieved from the link below:  
[https://www.legco.gov.hk/yr2024/english/brief/tsybr20080010c\\_20241224-e.pdf](https://www.legco.gov.hk/yr2024/english/brief/tsybr20080010c_20241224-e.pdf)

**Hong Kong office**

Jasmine Lee, Managing Partner, Hong Kong & Macau  
 27/F One Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong  
 Tel: +852 2846 9888 Fax: +852 2868 4432

Non-financial Services			Financial Services		
<b>Wilson Cheng</b> Tax Leader for Hong Kong and Macau +852 2846 9066 wilson.cheng@hk.ey.com			<b>Paul Ho</b> Tax Leader for Hong Kong +852 2849 9564 paul.ho@hk.ey.com		
Business Tax Services/Global Compliance and Reporting			Business Tax Services/Global Compliance and Reporting		
Hong Kong Tax Services			Hong Kong Tax Services		
<b>Wilson Cheng</b> +852 2846 9066 wilson.cheng@hk.ey.com	<b>Jacqueline Chow</b> +852 2629 3122 jacqueline.chow@hk.ey.com	<b>Ryan Dhillon</b> +852 3752 4703 ryan.dhillon@hk.ey.com	<b>Paul Ho</b> +852 2849 9564 paul.ho@hk.ey.com	<b>Ming Lam</b> +852 2849 9265 ming.lam@hk.ey.com	
<b>Tracy Ho</b> +852 2846 9065 tracy.ho@hk.ey.com	<b>Ada Ma</b> +852 2849 9391 ada.ma@hk.ey.com	<b>Jennifer Kam</b> +852 2846 9755 jennifer.kam@hk.ey.com	<b>Sunny Liu</b> +852 2846 9883 sunny.liu@hk.ey.com	<b>Helen Mok</b> +852 2849 9279 helen.mok@hk.ey.com	
<b>May Leung</b> +852 2629 3089 may.leung@hk.ey.com	<b>Karina Wong</b> +852 2849 9175 karina.wong@hk.ey.com	<b>Leo Wong</b> +852 2849 9165 leo.wong@hk.ey.com	<b>Customer Tax Operations and Reporting Services</b>		
<b>Ricky Tam</b> +852 2629 3752 ricky.tam@hk.ey.com	<b>Susan Kwong</b> +852 2629 3117 susan.tm.kwong@hk.ey.com		<b>Paul Ho</b> +852 2849 9564 paul.ho@hk.ey.com		
<b>China Tax Services</b>			<b>Francis Tang</b> +852 2629 3618 francis-ks.tang@hk.ey.com		
<b>Ivan Chan</b> +852 2629 3828 ivan.chan@hk.ey.com			<b>US Tax Services</b>		
<b>Payroll Operate</b>		<b>Accounting Compliance and Reporting</b>			
<b>Vincent Hu</b> +852 3752 4885 vincent-wh.hu@hk.ey.com	<b>Linda Liu</b> +86 21 2228 2801 linda-sy.liu@cn.ey.com	<b>Cecilia Feng</b> +852 2846 9735 cecilia.feng@hk.ey.com			
<b>International Tax and Transaction Services</b>			<b>International Tax and Transaction Services</b>		
<b>International Tax Services</b>		<b>Transfer Pricing Services</b>			
<b>Winnie Kwan</b> +852 2629 3211 winnie.yw.kwan@ey.com	<b>Sangeeth Aiyappa</b> +852 2629 3989 sangeeth.aiyappa@hk.ey.com	<b>Martin Richter</b> +852 2629 3938 martin.richter@hk.ey.com			
	<b>Kenny Wei</b> +852 2629 3941 kenny.wei@hk.ey.com	<b>Transfer Pricing Services</b>			
<b>Transaction Tax Services</b>			<b>Transaction Tax Services</b>		
<b>Jane Hui</b> +852 2629 3836 jane.hui@hk.ey.com	<b>Jasmine Tian</b> +852 2629 3738 jasmine.tian@ey.com	<b>Emma Campbell</b> +852 2629 1714 emma.ef.campbell@ey.com			
<b>People Advisory Services</b>			<b>Tax Technology and Transformation Services</b>		
<b>William Cheung</b> +852 2629 3025 william.cheung@hk.ey.com	<b>Christina Li</b> +852 2629 3664 christina.li@hk.ey.com	<b>Emily Chan</b> +852 2629 3250 emily-my.chan@hk.ey.com			
<b>Winnie Walker</b> +852 2629 3693 winnie.walker@hk.ey.com	<b>Paul Wen</b> +852 2629 3876 paul.wen@hk.ey.com	<b>Robert Hardesty</b> +852 2629 3291 robert.hardesty@hk.ey.com			
<b>Asia-Pacific Tax Center</b>					
Tax Technology and Transformation Services			International Tax and Transaction Services		
<b>Albert Lee</b> +852 2629 3318 albert.lee@hk.ey.com		<b>US Tax Desk</b>		<b>Operating Model Effectiveness</b>	
		<b>Jeremy Litton</b> +852 3471 2783 jeremy.litton@hk.ey.com		<b>Edvard Rinck</b> +852 9736 3038 edvard.rinck@hk.ey.com	



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