Whether enterprises still have sufficient time to assess the impact of the Global Minimum Tax for inclusion in their 2024 financial statements

Tax Alert | July 2024

This Alert emphasizes the need for prompt action in relation to the Global Minimum Tax as mandated by Resolution No. 107/2023/QH15, issued on 29 November 2023.

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More than 140 jurisdictions participating in the Organization for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) 2.0 Inclusive Framework have agreed to a two-pillar solution to address the challenges of digitization and globalization in income taxation. Pillar Two of this solution mandates a global minimum tax (GMT) of 15% for multinational corporations with group revenues exceeding €750 million in at least two of the past four years.

On 29 November 2023, the Vietnam National Assembly passed Resolution No. 107/2023/QH15 regarding the implementation of Pillar Two (Resolution 107). It took effect on 1 January 2024, and applies from the fiscal year 2024 onwards. This marks Vietnam as one of the frontrunners in implementing the GMT. Currently, the Government is preparing a draft decree to provide guidance on the implementation of Resolution 107, which is expected to be signed in October of this year.

With the issuance of Resolution 107, Vietnam headquartered companies with subsidiaries operating in foreign jurisdictions and, Vietnam constituent entities of multinational enterprises (MNEs), with group revenues greater than €750 million will need to evaluate whether they are subject to Resolution 107 and account for interim and annual tax provisions, if applicable, as well as ensure compliance with the new tax regulations.

This necessitates finance teams assessing whether they have access to, or if their current systems are capable of generating, the necessary data for estimating any tax liability in order to make the appropriate tax provisions. Even if no tax liability arises, or is expected to arise, your independent auditors may want to see evidence to support this conclusion.

We have started working with a number of MNEs in analyzing the potential impact of the new rules, running models to evaluate various elections and safe harbors, and evaluating data, system and process requirements of the new tax. It has been observed that there can be challenges right from the outset at the data collection and setup stage. Examples of some of these challenges are as follows:

- Identifying the "Tested Jurisdiction". This Tested Jurisdiction is essential because the Effective Tax Rate (ETR) to be compared with the GMT of 15% is a combined ETR, meaning it is computed based on data from all constituent entities of the same Tested Jurisdiction. However, Tested Jurisdiction in the context of the draft decree and the OECD Model rules does not refer to Vietnam. For this purpose, Constituent Entities, standalone joint ventures, and joint venture groups in Vietnam are treated as separate Tested Jurisdictions.

- Access to the accounts used to prepare the consolidated financial statements (CFS) of the ultimate parent entity for top-up tax computation. While this is believed to already exist and thus expected to reduce compliance costs, not all constituent entities have such accounts. Consequently, these constituent entities need to adjust their financial reports to account for significant differences.

Numerous complex adjustments to information in the financial statements to compute the GLoBE Income or Loss and adjusted covered taxes, which are necessary inputs in determining any tax liability. These adjustments require the collection of data from different sources. For instance, for transactions between related parties such as transfer of assets, the reporting constituent entity must gather information on the values recorded in the affiliates' books. Another example is the determination of the adjustment for pension funds, which requires reporting the difference between the accrued amount and the actual contribution made to the pension fund for the fiscal year. This necessitates that the reporting constituent entity obtain information on any actual contributions made offshore by its parent company.

Despite the complexity of the new rules and requirements, we still observe some MNEs continuing to adopt a wait-and-see approach. However, with about five months left until the fiscal year-end on 31 December 2024 and the complexity of the new requirements under these new rules, delaying is no longer an option. Instead, timing has become a pressing concern, i.e. whether the finance teams still have enough time to analyze the impact that must be reported in the 2024 financial statements.

This is also true for MNEs that anticipate qualifying for the safe harbor rules, which deem the top-up tax to be zero. These MNEs will still need to document their calculations and analysis to justify that they qualify for a safe harbor. While the safe harbor tests primarily rely on Country-by-Country Report (CbCR) data to lessen the immediate compliance burden there is a requirement that the CbCR must be "qualifying" for the purposes of the safe harbor test

At the EY organization, we have formed a dedicated team of professionals ready to assist you in navigating through the complicated requirements emerged from the Pillar Two. Please contact us should you need any assistance.

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