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# EY Tax Alert

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## Malaysian developments

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- ▶ 2023 Tax Investigation Framework (TIF)

## Overseas developments

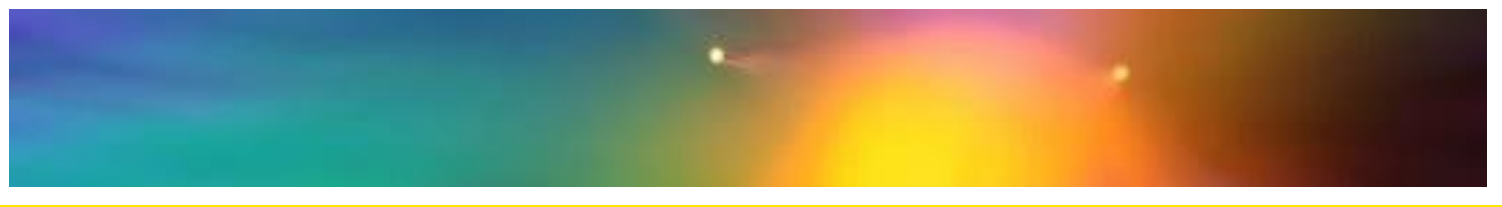
- ▶ Korea enacts 2023 tax reform bill
- ▶ Korea enacts new global minimum tax rules in line with Pillar Two of the Organisation for Economic Co-operation and Development's (OECD's) Base Erosion and Profit Shifting (BEPS) 2.0 Project

## Malaysian developments

### Updated Real Property Gains Tax (RPGT) Guidelines

The Inland Revenue Board (IRB) recently published on its website the RPGT Guidelines dated 6 January 2023 (2023 Guidelines) in Bahasa Malaysia, titled "Garis Panduan Cukai Keuntungan Harta Tanah". These new 81-page 2023 Guidelines contain the following 27 sections and set out 19 examples:

1. Introduction
2. Objective
3. Scope of imposition
4. Rate of tax
5. Date of disposal and acquisition
6. Disposal price and acquisition price
7. Non-allowable expenditure
8. Chargeable gains or allowable losses
9. Deduction of allowable losses
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11. Gifts
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Appendix 2

The 2023 Guidelines state that the earlier Guidelines dated 13 June 2018 (2018 Guidelines) and 18 June 2013 remain applicable for transactions where the disposal date falls within the period of the earlier Guidelines.

Some of the key changes are outlined below.

- ▶ The 2023 Guidelines outline / update the definition of the following terms:
  - Asset
  - Chargeable asset
  - Chargeable gain
  - Dispose
  - Land
  - Real property

- ▶ The 2023 Guidelines incorporate, explain and provide examples to demonstrate the legislative changes introduced to the RPGTA since the previous 2018 Guidelines, including the following:

- (a) The RPGT rates that apply, depending on the category of taxpayer (see Appendix 1 to the 2023 Guidelines)
- (b) The rates that apply in relation to the retention sum by acquirers under Section 21B of the RPGTA (see Paragraph 25.1(a) to the 2023 Guidelines)
- (c) Effective 1 January 2019, for disposals of assets acquired prior to 1 January 2000 by taxpayers categorized under Part 1 of Schedule 5 of the RPGTA (which include individuals who are Malaysian citizens), the acquisition price will be deemed to be the market value as at 1 January 2000.

Effective 12 October 2019, for disposals of assets acquired prior to 1 January 2013 by taxpayers categorized under Part 1 of Schedule 5 of the RPGTA, the acquisition price will be deemed to be the market value as at 1 January 2013. This however does not apply to the disposal of shares under Paragraphs 34 and 34A of Schedule 2 of the RPGTA.

- (d) Effective 1 January 2022, Paragraph 2 of Schedule 4 of the RPGTA was amended to provide a formula to compute the amount of exemption allowed for a partial disposal of shares under Paragraphs 34 and 34A of Schedule 2 of the RPGTA, by an individual. The exempted amount is to be the higher of 10% of the chargeable gain, or the amount calculated based on the formula below:

## A / B x C

Where:

A = the number of shares disposed which are deemed to be a chargeable asset under Paragraphs 34 or 34A of Schedule 2

B = the total number of issued shares deemed to be a chargeable asset in relation to shares deemed to be a chargeable asset under Paragraphs 34 or 34A of Schedule 2

C = ten thousand

(e) Effective 1 January 2022, Paragraph 3(1)(b) of Schedule 2 of the RPGTA was amended to expand the scope of transactions in which the disposal price is deemed to be equal to the acquisition price, to include transactions involving the disposal of chargeable assets by a nominee or trustee of an individual, the wife of the individual or both, to a company controlled by the nominee or trustee for the individual, the wife of the individual or both.

- ▶ The 2023 Guidelines include an additional example to determine the date of disposal and/or acquisition in a situation where there is no written agreement for the disposal of the asset.
- ▶ The 2023 Guidelines explain and provide additional examples to demonstrate the following:
  - (a) Expenditure and/or costs to be included or excluded in determining the disposal price of an asset under Paragraph 5(1) of Schedule 2 of the RPGTA
  - (b) Incidental costs to be included or excluded in determining the acquisition price and disposal price of an asset under Paragraph 6 of Schedule 2 of the RPGTA.
- ▶ The 2023 Guidelines provide additional explanations on non-allowable expenditure for the purpose of computing the acquisition price and/or disposal price, including:

- Input tax that is creditable and output tax that is borne by the disposer
- Interest on loans to purchase the asset
- Fees incurred to complete and submit the RPGT form

- ▶ The 2023 Guidelines stipulate that for the purpose of ascertaining the acquisition price of an asset acquired by way of gift, where the donor and recipient are husband and wife, parent and child, or grandparent and grandchild, the recipient's acquisition price is as follows:

- (a) Gift is made within five years from the donor's acquisition date: An amount equal to the acquisition price paid by the donor plus permitted expenses incurred by the donor
- (b) Gift is made after five years from the donor's acquisition date: Market value of gift received
- (c) Gift is made between 1 January 2019 to 31 December 2021: Same as (a) above

### Note:

Based on Paragraph 12(2) of Schedule 2 of the RPGTA, effective from 1 January 2019, the recipient's acquisition price will be the "amount equal to the acquisition price paid by the donor plus permitted expenses incurred by the donor", regardless of the donor's period of ownership. It is hoped that the guidelines will be updated accordingly.

- ▶ The 2023 Guidelines include a new section to explain the tax implications of disposals transacted via a PoA. The 2023 Guidelines stipulate that the grant of an irrevocable PoA for valuable consideration is a "disposal" as there is an "assignment". Generally, the disposal date will be the date the PoA is granted to the Donee (recipient of the PoA), and the disposal price will be the market value or consideration given for the grant of the PoA.

The 2023 Guidelines go on to state that the ascertainment of whether the interest or right in

or over an asset has been granted to the Donee will depend on the terms and conditions of the PoA. An example has also been provided in the 2023 Guidelines to provide further guidance on this.

- ▶ The 2023 Guidelines provide more guidance on the responsibilities of disposers / acquirers (e.g., the types of forms to be completed and submitted, how the forms are to be completed). However, the details of supporting documents required from disposers / acquirers, which were outlined in the 2018 Guidelines, have been removed from the 2023 Guidelines.

The 2023 Guidelines also explain the penalties that may be imposed on disposers (under Sections 29(3), 30(2) and 14(5) of the RPGTA) and acquirers (Sections 29(1) and 36 of the RPGTA) for non-compliance.

- ▶ The 2023 Guidelines outline the latest procedure for RPGT payments (e.g., by e-TT system) and provide an updated list of authorized banks and available services.
- ▶ The 2023 Guidelines explain the penalties that may be imposed in relation to RPGT payments under Sections 21B(2) and 21(4) of the RPGTA.

The Guidelines are available at the following link:  
[Garis Panduan Cukai Keuntungan Harta Tanah](#)

## 2023 Tax Investigation Framework (TIF)

The IRB has issued on its website the updated TIF in Bahasa Malaysia, titled “Rangka Kerja Siasatan Cukai”. This 14-page TIF takes effect from 1 January 2023 and replaces the previous TIF that was effective 1 January 2020 (see *Tax Alert No. 1/2020*). The updated TIF comprises the following paragraphs:

1. Introduction
2. Legal provisions
3. Investigation activity
4. Objectives of the investigation
5. Period of the investigation
6. Selection of cases
7. Investigation procedures
8. Rights and responsibilities
9. Confidentiality of information
10. Offences and penalties
11. Closure of cases
12. Appeals
13. Investigation under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA)
14. Effective date

The contents of the new TIF are broadly similar to those of the earlier framework. It outlines the IRB’s procedures and practices in conducting tax investigations, as well as the rights and responsibilities of the IRB, the taxpayer and the tax agent in a tax investigation.

Some of the key changes are outlined below.

- ▶ The 2023 TIF stipulate that the factors taken into consideration in the selection of tax investigation cases include cases where a person intentionally fails to report his income and those making fraudulent claims.
- ▶ The following, which were included in the 2020 TIF, have been removed from the 2023 TIF:
  - (a) Upon completion of the IRB’s investigation, the IRB will issue a letter to the taxpayer confirming the finalization of the investigation. If the settlement is agreed upon, an agreement or letter of undertaking will be signed. The investigation will be considered finalized after the case is approved by the Director General of Inland Revenue, and an assessment will be raised.
  - (b) The penalties that may be imposed by the IRB under Sections 112(3) and 113(2) of the

Income Tax Act 1967 (ITA) in cases where no prosecution has been instituted for taxpayers who fail to furnish return or give notice of chargeability, or furnish incorrect returns.

- (c) The procedures and avenues for appeals against an assessment raised by the IRB.

The 2023 TIF is available at the following link: [2023 TIF](#)

Taxable income (KRW)	Previous rate	Enacted rate
Up to 200 million (approx. US\$139k)	10%	9%
Over 200 million to 20 billion (approx. US\$14m)	20%	19%
Over 20 billion to 300 billion (approx. US\$208m)	22%	21%
Over 300 billion and above	25%	24%

## Overseas developments

### Korea enacts 2023 tax reform bill

On 31 December 2022, Korea enacted the 2023 Tax Reform Bill (the 2023 Tax Reform) after it was passed by Korea's National Assembly on 23 December 2022. Unless otherwise specified, the 2023 Tax Reform will generally become effective for the fiscal years beginning on or after 1 January 2023. The Enforcement Decrees, which provide more specific guidance on the laws, are expected to be enacted in early 2023.

The key features of the new and amended tax laws are summarized below.

#### Detailed discussion

#### Changes in the Corporate Income Tax (CIT) Rate

The 2023 Tax Reform introduced a one percentage point cut in each of the four CIT brackets as below. As a result, the corporate rates will be reduced from 10%, 20%, 22%, and 25%, to 9%, 19%, 21%, and 24%, effective for the fiscal years beginning on or after 1 January 2023.

The following table summarizes the previous and enacted rates:

Local income tax at a rate of 10% is to be imposed in addition to the above rates.

#### Expansion of the annual deductibility limit for net operating losses (NOLs)

The 2023 Tax Reform expands the annual deductibility limit for NOLs from 60% to 80% of taxable income for domestic corporations. The deductibility limits for small and medium enterprises (SMEs) remain the same.

#### Limits the scope of accumulated earnings tax application

The 2023 Tax Reform limits the scope of the application to corporations that are members of an enterprise group with restrictions on cross-shareholding by excluding large corporations whose net equity exceeds KRW50 billion (approx. US\$40m). In addition, the 2023 Tax Reform extends the accumulated earnings tax until 31 December 2025 after the expiration of the sunset clause on 31 December 2022.

#### Changes in the securities transaction tax rate

The 2023 Tax Reform adjusts the timing of reducing securities transaction tax rates on securities traded on Korea's stock exchange to revitalize the capital market.

The following table summarizes the proposed changes:

Stock exchange	Previous rate	2023	2024
KOSPI Market	0.08%	0.05%	0.03%
KOSDAQ Market	0.23%	0.20%	0.18%

However, the current tax rules remain to be applied to securities transaction tax rates for KONEX and others (e.g., securities traded over the counter, non-listed securities traded).

### Extension of the application period for special taxation for foreign workers

Under the current *Restriction of Special Taxation Act*, a foreign worker who starts to work in Korea before 31 December 2023, may elect to have the 19% flat tax rate (20.9% including local income tax) applied for five consecutive tax years, without deductions.

The 2023 Tax Reform extends the application period from 5 years to 20 years from the start date of domestic services.

### Deferral of taxation on virtual assets

Under the current Korean tax law, gains derived from the disposal of virtual assets by a foreign individual or foreign corporation are categorized as “other income” subject to withholding tax at the lesser of 11% of the transfer price or 22% of the net capital gains.

The 2023 Tax Reform provides the deferral of taxation on virtual assets from 1 January 2023 to 1 January 2025.

### Revival of tax relief on bonds

The 2023 Tax Reform reintroduces the tax exemption on interest and capital gains earned from transactions related to government bonds and monetary stabilization bonds by foreign individuals and corporate investors. This relief is available for

both direct investments and indirect investments through qualified foreign financial institutions.

The above rule will be applied to interest payments or relevant bonds sold on or after 1 January 2023.

### Introduction of special tax treatment on foreign flow-through entities

To prevent Korean investors from facing adverse tax implications arising from investments made through reverse hybrid entities, the 2023 Tax Reform introduces a special tax regime whereby a foreign entity treated as a foreign flow-through entity for Korean tax purposes may also be treated as a flow-through entity for Korean tax purposes to eliminate the hybrid mismatch between two countries. This application can be elected by filing a statutory application with the Korean tax authorities by Korean investors.

**Korea enacts new global minimum tax rules in line with Pillar Two of the OECD's BEPS 2.0 Project the Organisation for Economic Co-operation and Development's (OECD's)**

Model Rules for the Global Minimum Tax (GloBE or OECD BEPS 2.0 Pillar Two) were released by the OCED on 20 December 2021, as approved by the Inclusive Framework on BEPS.

The GloBE Rules apply to Constituent Entities that are members of a Multinational Enterprise (MNE) Group that has annual revenue of €750 million or more in the Consolidated Financial Statements of the Ultimate Parent Entity (UPE) in at least two of the four fiscal years immediately preceding the tested fiscal year.

On 31 December 2022, Korea enacted new global minimum tax rules to align with OECD BEPS 2.0 Pillar Two after it was passed by Korea's National Assembly on 23 December 2022. The regulation will be

included in the *Adjustment of International Taxes Act* (AITA) and will be effective for the fiscal years beginning on or after 1 January 2024. The Enforcement Decrees, which provide more specific guidance on the laws, are expected to be enacted within 2023.

Details regarding the GloBE rules in the 2023 Tax Reform are outlined in the Appendix to this alert.

## Details of the GloBE Rules in Korea's 2023 tax reform

Provisions	AITA
Article 61 [Definition]	<ul style="list-style-type: none"> <li>• <u>MNE Group</u>: Group with companies or permanent establishments in multiple countries.</li> <li>• <u>Constituent Entities</u>: Entities belonging to an MNE group.</li> <li>• <u>UPE</u>: A company that ultimately owns a controlling interest in any other entity.</li> <li>• <u>Ownership interest</u>: Equity shares accompanying the right to the company's profits/capital/reserve.</li> </ul>
Article 62 [Scope of Applications]  Article 63 [Taxpayer]  Article 64 [Location of Enterprises], and  Article 65 [Location of Tax payment of Enterprises]	<ul style="list-style-type: none"> <li>• <u>Consolidated revenue test</u>: Constituent Entities of an MNE Group are in scope of the GloBE rules if their annual revenue is €750 million or more in the consolidated financial statement of the UPE in at least two of the four fiscal years immediately preceding the tested fiscal years.</li> <li>• <u>Excluded entities</u>: (i) government entities, international organizations, non-profit organizations, and pension funds, (ii) investment funds and real estate investment vehicles but only when they are the UPE of an MNE Group, and (iii) entities directly or indirectly owned by (i) or (ii).</li> <li>• <u>Taxpayer</u>: Domestic Constituent Entities located in Korea pay a top-up tax in accordance with the Income Inclusion Rule (IIR) and supplementary rules for income inclusion (known as Under Taxed Payment Rule (UTPR)).</li> <li>• <u>Identify the location of each constituent entity</u>: Entity is located where it is tax resident. A flow-through entity is treated as a stateless entity or located in the jurisdiction where it was created. The location of the permanent establishment is determined in consideration of tax treaties, etc.</li> <li>• <u>Location of tax payment</u>: Place of tax payment under the Corporate Income Tax Law.</li> </ul>
Article 66 [Calculation of Globe income or loss]	<ul style="list-style-type: none"> <li>• The amount of GloBE income or loss of a Constituent Entity is determined by taking the financial accounting net income or loss for the Constituent Entity for the fiscal year adjusted by certain items (e.g., net tax expense, dividends) prescribed in the Enforcement Decree.</li> <li>• International shipping income and related qualifying international shipping incidental income are excluded from the GloBE income and loss calculation.</li> <li>• Financial accounting net income or loss of Constituent Entities that are permanent establishments are not included in the calculation of GloBE income or loss of the main entity.</li> <li>• Financial accounting net income or loss of flow-through entities is allocated to the permanent establishment in which the business is carried out or to shareholder constituent entities.</li> </ul>
Article 67 [Computation of Adjusted Covered Taxes]	<ul style="list-style-type: none"> <li>• The starting point for the computation of covered taxes is the current tax expense accrued for financial accounting net income or loss. Adjustments are made to covered taxes by reflecting the total deferred tax adjustment as well as other adjustments prescribed by the Enforcement Decree.</li> </ul>



Article 68 [Post-filing adjustments and Tax Rate Changes]	<ul style="list-style-type: none"> <li>• Special rules apply when there is an adjustment to a tax liability for a prior year.</li> <li>• To the extent an increase in tax liability results from the adjustment, it is added to the covered tax when calculating the effective tax rate (ETR) for the current fiscal year.</li> <li>• To the extent a decrease in tax liability results from the adjustment, the ETR is recalculated by deducting it from the covered tax for the previous fiscal year.</li> </ul>
Article 69 [Computation of ETR]	<ul style="list-style-type: none"> <li>• The ETR is calculated by dividing the total adjusted covered taxes of Constituent Entities located in the relevant country by the net GloBE income.</li> <li>• Among Constituent Entities, the adjusted covered taxes and GloBE income or loss of investment companies such as funds are excluded from the calculation of the ETR.</li> </ul>
Article 70 and Article 71 [Computation of Top-Up Tax]	<ul style="list-style-type: none"> <li>• <u>Jurisdictional Top-Up Tax</u> = (Top-up Tax Percentage of the country of the Constituent Entity x excess profit of the country of the Constituent Entity) + the additional Current Top-up Tax of the country of the Constituent Entity - Qualified Top-Up Tax of the country of the Constituent Entity)</li> <li>• <u>Top-Up Tax for Constituent Entity</u> = Top-Up Tax for each fiscal year in the country where the Constituent Entities of the MNE group are located x (GloBE income of the corresponding Constituent Entities for each fiscal year/sum of GloBE income of each Constituent Entity located in the relevant country)</li> </ul>
Article 72 [Application of the IIR]	<ul style="list-style-type: none"> <li>• <u>Top-down approach:</u> The UPE of the MNE Group is primarily liable for the Top-Up Tax of all low-taxed Constituent Entities. If the UPE is not required to apply an IIR, the Top-Up Tax is imposed on the next intermediate parent entity in the ownership chain that is subject to the IIR.</li> <li>• A Partially-owned Parent Entity is a Constituent Entity that is held directly or indirectly by low-taxed Constituent Entities. In this case, the Top-Up Tax is imposed on the Partially-owned Parent Entities that are subject to the IIR.</li> <li>• The allocable share of Top-Up Tax is determined based on a Parent Entity's inclusion ratio.</li> </ul>
Article 73 [Application of the UTPR]	<ul style="list-style-type: none"> <li>• If the low-taxed income of the UPE or Parent Entity in the MNE group is not subject to the Top-Up Tax under an IIR, then the Top-Up Tax will be charged under the application of the UTPR at the level of Constituent Entities across all qualifying UTPR jurisdictions.</li> <li>• The Top-Up Tax for the UTPR of an MNE group for each fiscal year shall be equal to the sum of the top-up tax calculated for all low-taxed Constituent Entities of an MNE group.</li> <li>• The UTPR Top-up Tax Amount of the MNE group for each fiscal year allocated to Korea shall be determined by multiplying the UTPR Top-up Tax Amount by the UTPR percentage of Korea determined by the following: <ul style="list-style-type: none"> <li>○ 50% x (total number of employees of each Constituent entity of the corresponding MNE Group / the total number of employees of the corresponding Constituent Entities of the MNE group that has a qualified UTPR in force), plus 50% x (sum of the net book values of the tangible assets of the corresponding Constituent Entities of the MNE group/ the sum of the net book values of the tangible assets of the corresponding Constituent Entities of the MNE Group that has a qualified UTPR in force)</li> </ul> </li> </ul>

Article 74 [De minimis exclusion]	<ul style="list-style-type: none"> <li>• When the jurisdiction meets the de minimis threshold (which will be the case when the average GloBE revenue and GloBE income or loss in the jurisdiction are below €10 million and the average sales are below €1 million), the top-up tax of each of the Constituent Entities may be zero.</li> </ul>
Article 75 and Article 77 [Special rules for Minority-owned constituent entities and Joint Ventures]	<ul style="list-style-type: none"> <li>• Minority-owned Constituent Entities are required to calculate the ETR and top-up tax.</li> <li>• Joint ventures (JVs) which are at least 50% owned by the MNE group are considered Constituent Entities. However, the ETR and Top-Up Tax of the JV Group (JV and its subsidiaries) are calculated separately from the rest of the MNE Group.</li> </ul>
Article 76 (Special rules for restructuring)	<ul style="list-style-type: none"> <li>• The disposing entity includes the gain or loss on disposition in the computation of its GloBE income or loss, and the acquiring entity determines its GloBE income or loss based on the carrying value of assets and liabilities.</li> <li>• However, if the transfer is part of a qualified global reorganization, the transfer is effectively disregarded, with the disposing entity disregarding any gain or loss, and the acquiring entity adopting the carrying values from the disposing entity.</li> </ul>
Article 81 [Special rule for the first year of application]	<ul style="list-style-type: none"> <li>• All deferred tax assets and liabilities are reflected in the financial statements when calculating the total deferred tax adjustment amount.</li> </ul>
Article 83 [The GloBE Information Return]	<ul style="list-style-type: none"> <li>• A Domestic Constituent Entity must file a GloBE Information Return with the Korean tax authorities no later than 15 months (18 months in the case of the first year of application) after the last day of the reporting fiscal year. This obligation, however, will be exempt when Overseas Constituent Entities file the GloBE Information Return with another jurisdiction.</li> <li>• In the above cases, a Domestic Constituent Entity shall notify the Korean tax authorities of the identity of the entity that is filing the GloBE Information Return.</li> </ul>
Article 84 [Report and payment of allocated additional Top-Up Taxes]	<ul style="list-style-type: none"> <li>• Reporting and payment of the allocated additional Top-Up Taxes by the month when the deadline for filing a GloBE Information Return is reached.</li> <li>• One-month installment is possible if the additional Top-Up Tax exceeds KRW10 million.</li> </ul>

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## Important dates

31 January 2023	6 <sup>th</sup> month revision of tax estimates for companies with July year-end
31 January 2023	9 <sup>th</sup> month revision of tax estimates for companies with April year-end
31 January 2023	Statutory deadline for filing of 2022 tax returns for companies with June year-end. A blanket extension of time has been provided until 28 February 2023.
31 January 2023	Extended 2022 tax return filing deadline for companies with May year-end.
15 February 2023	Due date for monthly instalments
28 February 2023	6 <sup>th</sup> month revision of tax estimates for companies with August year-end
28 February 2023	9 <sup>th</sup> month revision of tax estimates for companies with May year-end
28 February 2023	Statutory deadline for filing of 2022 tax returns for companies with July year-end. A blanket extension of time has been provided until 31 March 2023.
28 February 2023	Extended 2022 tax return filing deadline for companies with June year-end.

### EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

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