

18 June 2024

Tax alert

Singapore releases draft legislation on BEPS 2.0 Pillar Two for public consultation

On 10 June 2024, the Ministry of Finance (MOF) released the draft legislation to implement a Qualifying Domestic Minimum Top-up Tax (QDMTT) and the Income Inclusion Rule (IIR) under Pillar Two of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) 2.0 initiative, as announced in the 2024 Budget Statement on 16 February 2024.

The draft legislation contains a bill to enact a new act in Singapore called the Multinational Enterprise (Minimum Tax) Bill (the proposed Bill) and subsidiary legislation called the Multinational Enterprise (Minimum Tax) Regulations 2025.

The MOF is seeking public feedback on the draft legislation from 10 June 2024 to 5 July 2024.

This tax alert summarises the key observations from the draft legislation that has been released.

Overview of the draft legislation

Scope

- ▶ The draft legislation will introduce the following key changes that apply to in-scope multinational enterprise (MNE) groups, defined as those with consolidated group revenue of €750 million or more in at least two of the four preceding financial years:
 - (a) Apply a QDMTT, which is referred to as the Domestic Top-up Tax (DTT) in the proposed legislation, to in-scope MNE groups in respect of any low-taxed profits of their group entities that are operating in Singapore, to ensure that the effective tax rate imposed on an in-scope MNE group's constituent entities located in Singapore is at least 15%.
 - (b) Apply the IIR, which is referred to as the Multinational Enterprise Top-up Tax (MTT) in the proposed legislation, to in-scope MNE groups that are parented in Singapore, in respect of any low-taxed profits of their group entities that are operating outside Singapore. This is to ensure that the effective tax rate imposed on an in-scope MNE group's constituent entities located outside Singapore is at least 15%.
- ▶ Details on the timing and design of Singapore's Undertaxed Profits Rule (UTPR) are not included. An update on the UTPR is expected to be issued later, in light of wider developments internationally.

Effective date

- ▶ The DTT and MTT are proposed to be effective for financial years commencing on or after 1 January 2025.

Structure

- ▶ The proposed Bill, if passed into law, will be construed as one with the Income Tax Act 1947 (ITA). Certain provisions, such as administration, enforcement and appeals that apply under the ITA, will also apply to DTT and MTT, with modifications set out under the proposed Bill.
- ▶ The proposed subsidiary legislation provides details on the adjustments to the financial accounting net income or loss (FANIL) and the qualifying tax expenses, for the purposes of calculating the effective tax rate and top-up tax based on the Global Anti-Base Erosion (GloBE) Model Rules. This also includes details on the exclusion of international shipping income and ancillary international shipping income. Subsidiary legislation on other details of DTT and MTT (including information required in the GloBE information return (GIR), GloBE Safe Harbours and adjustments to be made to the substance-based income exclusion) are expected to be issued at a later date.
- ▶ The draft legislation generally only contains content from the GloBE Model Rules and has yet to reflect content in the administrative guidance released to-date. That said, the draft legislation acknowledges the intent to take into account the administrative guidance as well as supplementary material

published (or to be published) by the OECD that are relevant to the interpretation of the rules in the future. Hence, there are uncertainties on how Singapore will implement the administrative guidance and future guidance to be published.

Technical considerations

DTT accounting standard

- ▶ Singapore will be adopting the local financial accounting standard as an exception to the financial accounting standard used for preparation of the consolidated financial statements of the ultimate parent entity (UPE) of the MNE group, to determine the FANIL for DTT purposes. This is provided that all Singapore constituent entities meet the following conditions:
 - (a) Have the same financial year as the UPE of the MNE group
 - (b) Prepare their financial statements for that financial year in accordance with the relevant accounting standards, where either:
 - (i) They are required to do so under any written law in Singapore.

Or

 - (ii) The financial statements are audited by an external auditor.

GloBE Safe Harbours

- ▶ The draft legislation contains general provisions relating to GloBE Safe Harbours, which would treat the top-up tax amounts for a financial year of specified constituent entities as nil. However, Singapore-specific details on the GloBE Safe Harbours (e.g., the transitional country-by-country reporting (CbCR) safe harbours (TCSH)) remain unknown at this stage and are expected to be reflected in subsequent regulations to be issued.

Administration

Registration requirements

- ▶ An MNE group that comes within the scope of MTT and/or DTT must be registered. There will be a one-time requirement for the UPE of an MNE group to notify the Comptroller within six months after the end of the relevant financial year when the MNE group first come into scope.
- ▶ In addition, as part of the notification, the MNE group needs to designate a local GIR filing entity and a local DTT filing entity.
- ▶ To illustrate, the registration due date for in-scope MNE groups with financial year ending on 31 December 2025, will be 30 June 2026.

Filing due dates

- ▶ The GIR, MTT return and DTT return have to be filed within 15 months after the end of the financial year (or 18 months after the end of the transition year).

Payment of MTT and DTT

- ▶ Payment of MTT and DTT must be made in Singapore dollars to the Comptroller no later than one month after the relevant filing due dates.
- ▶ Subject to conditions being met, an MNE group may make an election for the amount of top-up tax attributable to a constituent entity, to be paid separately by that constituent entity.

Surcharges and penalties

- ▶ In the event of a failure to register, the Comptroller may impose a surcharge on the UPE an amount equal to 10% of the total of the MTT and the DTT to be assessed by the Comptroller.
- ▶ In the event of a failure to furnish a GIR, MTT return or DTT return, a fine not exceeding S\$5,000 will be imposed upon conviction, with an additional fine of S\$100 per day in the case of a continuing offence.
- ▶ A fine not exceeding S\$10,000 will be imposed upon conviction for mistakes in GIR that are known to be false or misleading, whilst the penalties for furnishing an incorrect MTT return or DTT return may range from one to four times the amount of MTT or DTT that has been omitted or understated, depending on the severity of the offence from negligence to serious fraudulent tax evasion.

Observations

- ▶ Globally, two broad approaches have been observed with respect to the transposition of the OECD GloBE Model Rules into domestic law namely: (i) by direct reference to the GloBE Model Rules or (ii) by drafting separate legislation. The Singapore MOF has adopted the latter approach.
- ▶ The former approach minimises the risk of differences in interpretation since it is a direct reference to the GloBE Model Rules. Having said that, there are merits in the latter approach as it provides the tax administration the opportunity to provide clarity during the legislative drafting and refine the language in accordance with the Singapore legislative framework.
- ▶ While some differences in the legislative drafting as compared to the GloBE Model Rules have been identified from an initial review of the draft legislation, it is too early to tell if these differences will lead to material deviations in the interpretation

and application of the rules. We expect that such differences may be clarified as part of the consultation process, although some uncertainty around the application of the rules to specific fact patterns should be expected.

- ▶ The legislative proposal to use the local financial accounting standard (where relevant conditions are met) as the basis for DTT computation purposes is in line with other jurisdictions (e.g., Ireland, Switzerland and Hong Kong) that have designed (or are designing) their domestic minimum top-up tax with the intention to obtain “qualified status” under the peer review process and to be eligible for the QDMTT Safe Harbour guidance mandated by the OECD Inclusive Framework.
- ▶ A timely release of the Singapore-specific rules regarding the TCSH will be helpful as MNE groups are looking for clarity to ensure compliance with these safe harbour rules within the Singapore context and to make informed decisions regarding their tax strategies and reporting practices.
- ▶ When considering the imposition of any penalties for error or mistake made in GIR, MTT return or DTT return, it is hoped that the Comptroller will accord due consideration to the OECD’s publication regarding transitional penalty relief on whether an MNE group has taken reasonable measures to ensure the correct application of the GloBE rules in the initial years.

Next steps

- ▶ Interested parties are requested to submit their comments to the MOF by 5 July 2024. Thereafter, the MOF is expected to publish a summary of the main comments received on the MOF’s website, together with the responses, in September 2024.
- ▶ The comments received during this public consultation, if accepted, will be incorporated in the proposed Bill and subsidiary legislation. We expect the final version of the legislation to be enacted in last quarter of 2024, with the accompanying regulations to be issued in 2025.
- ▶ In-scope MNE groups should no longer take a wait and see approach, but rather take proactive steps towards progressing their readiness in terms of knowledge, resources, processes and solutions to respond effectively to the new tax landscape and reduce the risk of non-compliance.

If you would like to know more about the issues discussed or EY services, please contact one of the following or your usual EY contact:

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