New regulations on Top-up Corporate Income Tax and Investment Support

Tax Alert | December 2023

This Alert is to update about the Top-up Corporate Income Tax and Investment Support per Resolutions passed by the National Assembly on 29 November 2023

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A – Additional corporate income tax policy in accordance with the Global Anti-Base Erosion Model (GloBe) Rules

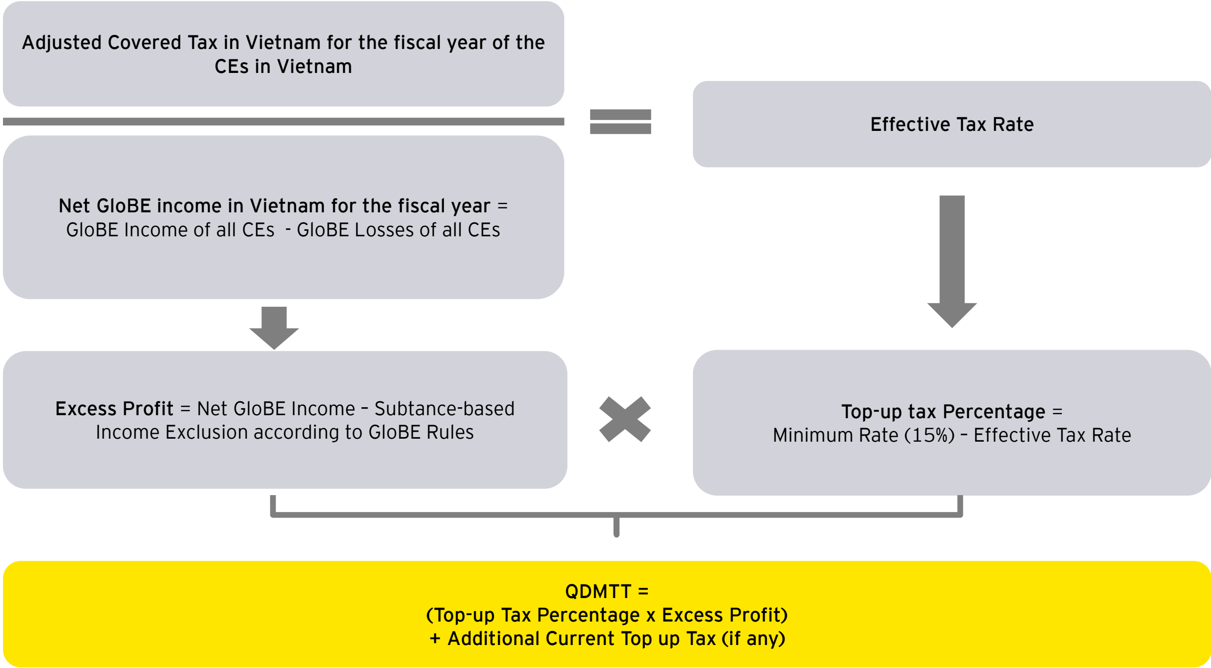
On 29 November 2023, the National Assembly passed a Resolution on the application of top-up Corporate Income Tax (CIT) in accordance with the global anti-base erosion model rules. The resolution takes effect from 1 January 2024, applying from fiscal year 2024.

1. Taxpayers

Taxpayers subject to this tax are constituent entities (CE) of multinational enterprise (MNE) whose revenue in the consolidated financial statements of the ultimate parent entity equivalent to €750m or more for at least 2 years out of 4 years preceding the fiscal year, except for certain regulated exclusions.

2. How to determine Qualified Domestic Minimum Top-up Tax (QDMTT)

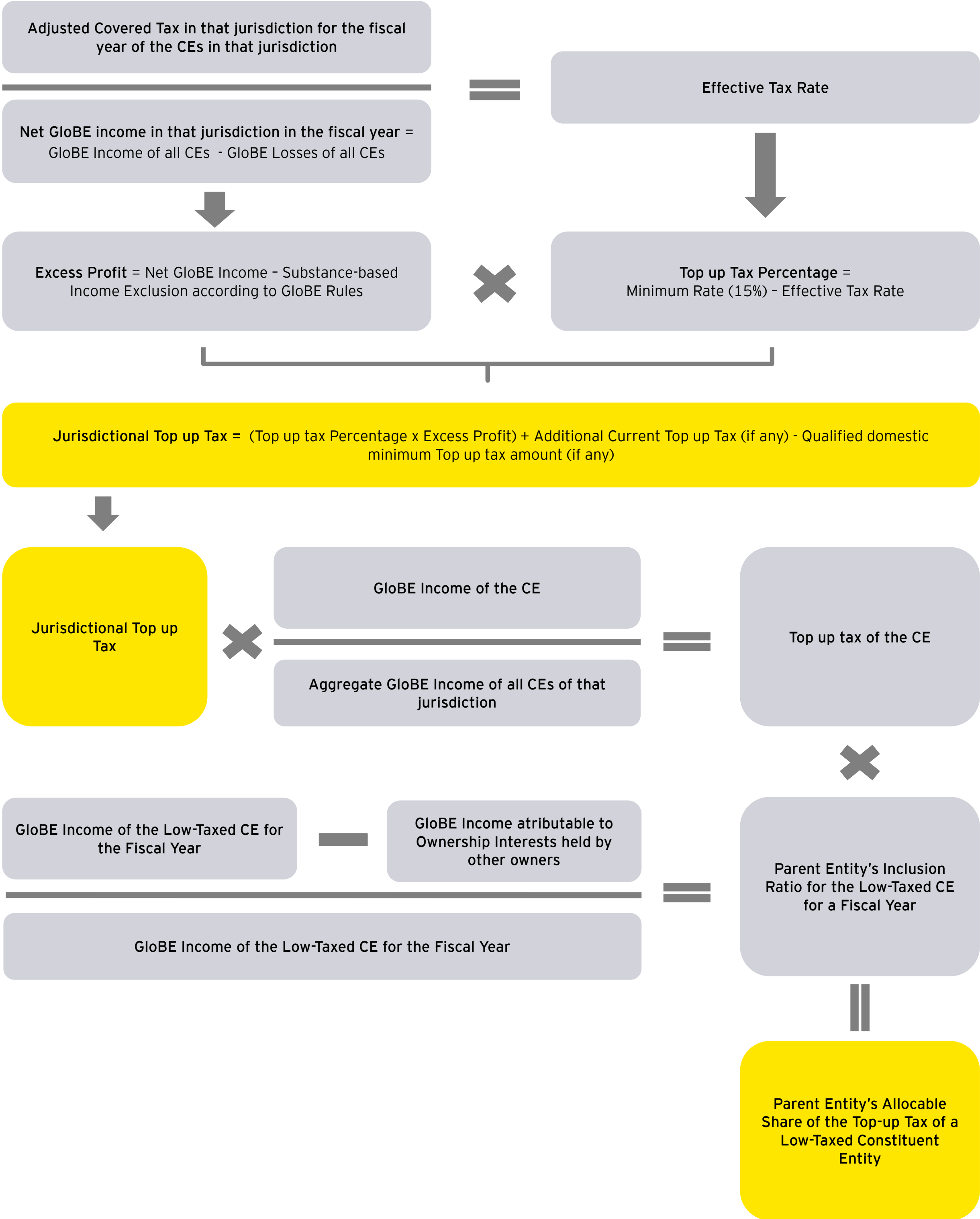
The CE or a group of CEs of the MNE who are within scope and have business activities in Vietnam during the fiscal year must apply the QDMTT regulations. If a CE, or a group of CEs, in Vietnam has income according to GloBe Rules and the effective tax rate in Vietnam is below the minimum tax rate, the QDMTT in Vietnam shall be determined as follows:



- Substance-based Income Exclusion is calculated as 5% of the total annual average tangible asset value and 5% of the total payroll costs of all CEs in Vietnam. In the transitional period from 2024, the values of tangible assets and payroll to be excluded for each year are provided in the Appendix promulgated together with the Resolution, starting from 9.8% and 7.8% for tangible assets and payroll costs, respectively, and reducing annually.
- De minimis exclusion: The QDMTT will be determined to be NIL in a fiscal year if the CE, or a group of CEs, in the related fiscal year satisfies the following conditions.
  - The average GloBE Revenue in Vietnam is less than €10m
  - The average GloBE Income in Vietnam is less than €1m or loss

3. How to determine Tax in accordance with the Income Inclusion Rules (IIR)

An ultimate parent entity, partially owned parent entity, or intermediary parent entity in Vietnam that is a CE meeting the taxpayer regulations under the above provisions that directly or indirectly holds ownership (at any time during the fiscal year) of a CE subject to low tax rates abroad (Low-Taxed CE) in accordance with the GloBE Rules shall declare and pay tax in accordance with the IIR corresponding to the allocable share of the top-up tax under the GloBE Rules of the Low-Taxed CE during the fiscal year, unless such top-up tax has been given priority to be paid in another jurisdiction under the GloBE Rules.



- Substance-based Income Exclusion is calculated as 5% of the total annual average tangible asset value and 5% of the total payroll costs of all CEs in a jurisdiction according to GloBE Rules. In the transitional period from 2024, the values of tangible assets and payroll to be excluded for each year are provided in the Appendix promulgated together with the Resolution, starting from 9.8% and 7.8% for tangible assets and payroll costs, respectively, and reducing annually.
- De minimis exclusion: IIR in a jurisdiction will be calculated as zero in a fiscal year if the CE or a group of CEs in the related fiscal year satisfies the following conditions.
  - The average GloBE Revenue in this jurisdiction is less than €10m
  - The average GloBE Income in this jurisdiction is less than €1m or loss

4. Tax declaration and payment

Declarations to be filed	▶ GloBE Information Return; and ▶ Top-up tax declaration attached with an Explanation of any discrepancies due to differences in financial accounting standards.
Deadline for tax declaration and payment	▶ **QDMTT:** no later than 12 months after the end of the fiscal year. ▶ **IIR:** no later than 18 months after the end of the fiscal year (for the first year in which the MNE is subject to tax) or 15 months after the end of the fiscal year (for subsequent years).
Determining the Filing CE	▶ If the MNE has only one CE in Vietnam then that CE shall be in charge of tax filing and payment. ▶ If the MNE has more than one CE in Vietnam, within 30 days from the end of the fiscal year, the MNE shall issue a written notice appointing one of the CEs as its Designated Filing Entity to be in charge of tax filing and payment. If the above time limit expires without the MNE notifying the appointment, within 30 days from the expiry of the notice deadline, the tax authority shall appoint a CE to be in charge of tax filing and payment.
Exchange Rate	▶ The foreign currency exchange rate for determining the revenue and income threshold specified in the Resolution is the average of the central exchange rate announced by the State Bank of Vietnam of the 12th month of year preceding the year in which the related revenue and income is generated.
Others	▶ Top-up tax shall be paid to Central Budget. ▶ The top-up tax is offset when determining the CIT payable in Vietnam corresponding to the income received from investments abroad.
Transitional Safe Habour	**Applicable for fiscal years beginning on or before 31 December 2026 but not including a Fiscal Year that ends after 30 June 2028.** The amount of top-up tax in a jurisdiction for a fiscal year will be considered NIL when one of the following criteria is met: ▶ In the fiscal year, the MNE has a qualified Country by Country Report (CbCR) where it has total revenues less than €10m and pre-tax profit of less than €1m or incurs a loss in that jurisdiction ▶ In the fiscal year, the MNE has a Simplified ETR in that jurisdiction equivalent to at least 15% for 2023 and 2024; 16% for 2025 and 17% for 2026 ▶ The profit before income tax of the MNE in that jurisdiction is equal to or less than the Substance-based Exclusion calculated under GloBE Rules with respect to the CEs resident in that jurisdiction according to the CbCR During the transition period, there shall be no administrative tax penalties for violations of filing and submission of the above-mentioned declaration and explanation forms.

B – Investment support policy

Also on 29 November 2023, the National Assembly passed a Resolution of the 6th session, the XV National Assembly. Accordingly, the National Assembly resolved:

Agree in principle and assign the Government in 2024 to develop a draft Decree on the establishment, management and use of the Investment Support Fund from global minimum tax revenues and other lawful sources to stabilize the investment environment, encourage and attract strategic investors, MNEs and support domestic enterprises in a number of sectors that need investment promotion, and to report to The Standing Committee of the National Assembly for comments before promulgation. At the same time, the overall review shall be conducted to synchronously complete the system of policies and laws on investment promotion, meeting the requirements of national development in the new context.

This content reflects the direction of the National Assembly and the Government on developing new investment incentives policies, replacing tax incentives that will no longer be effective in practice.

C – Recommended action plan

Considered the policy development, investors are advised to promptly undertake the following actions:

- Confirm whether the enterprise falls within the scope of application
- Evaluate and estimate the tax implications
- Explore opportunities to mitigate the impacts and create an action plan
- Collaborate with the Parent Company to be ready for compliance
- Identify and organize necessary data
- Assess the current system's capacity to implement BEPS 2.0

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