

For information

Legislative Council Panel on Financial Affairs

**Outcome of the Consultation on the Implementation of
Global Minimum Tax and Hong Kong Minimum Top-up Tax**

PURPOSE

The Government launched a consultation exercise¹ between December 2023 and March 2024 to gauge public views on the implementation of the global minimum tax and the Hong Kong Minimum Top-up Tax (“HKMTT”), as well as their corresponding changes to Hong Kong’s tax administration regime. This paper provides a summary of the stakeholders’ feedback received and the Government’s follow-up.

GLOBAL MINIMUM TAX AND HKMTT

2. In July 2021, Hong Kong joined more than 130 jurisdictions in accepting the international tax reform framework of a two-pillar solution announced by the Organisation for Economic Co-operation and Development (“OECD”) to tackle base erosion and profit shifting (“BEPS”) risks arising from digitalisation of economy (commonly known as “BEPS 2.0”). According to the Pillar Two of the BEPS 2.0 package, a global minimum tax of 15% will be imposed on multinational enterprise (“MNE”) groups with annual consolidated revenue of EUR 750 million or above (“in-scope MNE groups”) through two interlocking rules, namely the Income Inclusion Rule (“IIR”)² and the Undertaxed Profits Rule

¹ The consultation paper is annexed to the discussion paper for the panel meeting of 5 February 2024 and can be found at: <https://www.legco.gov.hk/yr2024/english/panels/fa/papers/fa20240205cb1-123-7-e.pdf>.

² The IIR imposes top-up tax on the parent entity of an in-scope MNE group in respect of its constituent entities that are taxed at an effective tax rate below 15% (i.e. low-taxed constituent entities) outside the jurisdiction where the parent entity is located. The ultimate parent entity (“UPE”) will be chargeable to the top-up tax if it is located in a jurisdiction that has introduced the IIR.

(“UTPR”)³, collectively referred to as the Global Anti-Base Erosion (“GloBE”) rules.

3. As an international financial centre and a responsible member of the international community, Hong Kong has all along been supportive of international efforts to enhance tax transparency and combat tax evasion. After implementing the global minimum tax, if the effective tax rate (“ETR”) of an in-scope MNE group in Hong Kong is lower than 15%, other relevant jurisdictions have the right to collect top-up tax in respect of the low-taxed Hong Kong MNE entities concerned through application of the IIR or the UTPR. To preserve Hong Kong's taxing rights over these enterprises instead of ceding them to other jurisdictions, the Financial Secretary announced in the 2024-25 Budget that Hong Kong would apply the HKMTT on in-scope MNE groups in Hong Kong starting from 2025 so that the effective tax rate of these enterprises will be brought up to 15%. By introducing the HKMTT, in-scope MNE groups in Hong Kong will be spared the need to pay top-up tax in other jurisdictions in which they operate. This will help reduce their tax compliance burden.

CONSULTATION

4. As mentioned in the consultation paper submitted to this Panel in February 2024, the GloBE rules have been finalised based on the international consensus and there is hence no room for deviation. This consultation mainly sought to explain the policy rationale and key features of the GloBE rules that are relevant to Hong Kong, and invited views on the design and administration of the HKMTT. We sought views on the following issues specifically, i.e. charging provisions, calculation of the ETR and top-up tax, transition rules, design of the HKMTT, safe harbours, tax compliance and administration, and mandatory electronic filing of profits tax returns.

5. The Financial Services and the Treasury Bureau and the Inland Revenue Department (“IRD”) conducted 13 engagement sessions with the relevant stakeholders during and after the consultation period. On

³ The UTPR serves as a backstop to ensure that all top-up tax is paid where any of such tax is not brought into charge under the IIR. It requires constituent entities in jurisdictions implementing the UTPR (“UTPR jurisdictions”) to pay their share of the top-up tax remaining after the application of the IIR, with the share calculated in proportion to the relative share of tangible assets and employees in the UTPR jurisdiction.

5 February 2024, we briefed this Panel and Members were generally supportive of the proposed legislative amendments to the Inland Revenue Ordinance (Cap. 112) (“IRO”).

6. We received written submissions from 26 respondents (at **Annex A**). Given the technical nature of the issues involved, the respondents were mainly from business chambers, professional bodies, tax professionals, MNE groups, etc. In general, the respondents supported the Government’s proposal to implement the global minimum tax from 2025 onwards so as to safeguard Hong Kong’s taxing rights. They also supported the implementation of the HKMTT that would qualify as a Qualified Domestic Minimum Top-up Tax (“QDMTT”) under the GloBE rules such that in-scope MNE groups may benefit from the QDMTT safe harbour. Where the QDMTT safe harbour is applicable, the top-up tax payable by these MNE groups under the GloBE rules in Hong Kong would be deemed as zero.

7. We have carefully considered the respondents’ specific comments towards the legislative proposals and largely taken on board their views on the implementation timeline of the UTPR, design of the HKMTT, as well as issues in relation to tax compliance and administration. Having regard to the feedback received, we will –

- (a) implement the IIR and the HKMTT from 2025, while the UTPR will be implemented later subject to further studies, having regard to the implementation timelines of other jurisdictions;
- (b) introduce a definition for “Hong Kong resident entity” for the general purposes of the IRO to determine whether an entity is located in Hong Kong for the purpose of collecting top-up tax;
- (c) exclude investment entities and insurance investment entities from the scope of HKMTT to preserve tax neutrality for these entities;
- (d) allow annual designation of one or more than one paying entity for top-up tax under the UTPR and HKMTT regimes to provide flexibility to in-scope MNE groups; and

- (e) extend the payment due date of the top-up tax and the objection period of the top-up tax assessment so as to ease compliance burden. We will also provide for a longer limitation period for raising assessments under the GloBE rules.

A summary of the views on major issues received and the Government's responses are at **Annex B**. During the consultation exercise, some stakeholders raised a number of technical taxation issues. The IRD will continue to engage them and provide advice as appropriate.

- 8. We are finalising the amendments to the IRO, and plan to introduce an amendment bill into the Legislative Council by January 2025 for implementing the global minimum tax and the HKMTT.

ADVICE SOUGHT

- 9. Members are invited to note this paper.

**Financial Services and the Treasury Bureau
Inland Revenue Department
October 2024**

List of Respondents with Written Submissions¹

1. Association of Chartered Certified Accountants
2. BDO Tax Limited
3. The British Chamber of Commerce in Hong Kong
4. The Capital Markets Tax Committee of Asia
5. CPA Australia Ltd
6. Deloitte Advisory (Hong Kong) Limited
7. Ernst & Young Tax Services Limited
8. Federation of Hong Kong Industries
9. Goodman Group
10. Hong Kong Association of Banks
11. The DTC Association
12. The Hong Kong Chartered Governance Institute
13. The Hong Kong Federation of Insurers
14. Hong Kong General Chamber of Commerce
15. Hong Kong Institute of Certified Public Accountants
16. Hong Kong Securities & Futures Professionals Association
17. Joint Liaison Committee on Taxation
18. KPMG Tax Services Limited
19. Mr Matthew W H Young

¹ Among the 26 respondents, three wish to remain anonymous.

20. Prudential PLC
21. PricewaterhouseCoopers Ltd
22. The Taxation Institute of Hong Kong
23. Zurich Insurance Hong Kong

Annex B

Summary of the Views on the Major Relevant Issues Received and the Government's Responses

Item	Summary of the Views	The Government's Responses
(A) General		
1.	The implementation of the UTPR should be deferred for at least one year. This approach aligns with the practice adopted by some jurisdictions, which have opted to postpone the implementation of the UTPR to a later date.	The suggestion is accepted. The UTPR will be implemented in Hong Kong on a date to be specified by the Secretary for Financial Services and the Treasury at a later stage. The Government will consider all relevant factors, including the position of in-scope MNE groups operating in Hong Kong after the implementation of the IIR and HKMTT, as well as the practice of other jurisdictions before deciding on the timeline for the implementation of the UTPR.
2.	While most respondents supported incorporating the GloBE rules and the rules for implementing HKMTT ("HKMTT rules") into the IRO, a few expressed concerns about treating them as profits tax and suggested that the GloBE rules and HKMTT rules should be legislated under a separate Ordinance as the GloBE and HKMTT regimes are significantly different from the existing profits tax.	<p>Since the top-up tax payable under the GloBE rules or HKMTT regime is an income tax by nature, we maintain that it should be more appropriate to provide for such tax under the IRO, of which the purpose is to impose tax on, among others, earnings and profits. By treating the top-up tax as a profits tax, various existing tax administration mechanisms, such as tax collection, handling of objections and appeals, etc., could be applied to the top-up tax. In-scope MNE groups could also ride on the mechanisms under Hong Kong's comprehensive avoidance of double taxation agreements or arrangements ("CDTAs") for resolving any cross-border disputes in relation to their top-up tax liabilities in Hong Kong and jurisdictions of the CDTAs concerned.</p> <p>Given the distinctive nature of the top-up tax, relevant rules will be added under a new Part of the IRO which is separate from the</p>

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		<p>rules for normal profits tax under Part 4. We will also review all existing references to profits tax under the IRO to ensure that the relevant rules will have no application to the normal profits tax.</p>
3.	<p>It is unclear whether defining the term “Hong Kong resident entity” only for the purposes of the GloBE rules and HKMTT rules with effect from 1 January 2024 would be acceptable to the OECD since the definition will not generally apply to the IRO and will take effect before the GloBE rules and HKMTT rules come into operation.</p>	<p>Having consulted the OECD, we will introduce a definition for “Hong Kong resident entity” for the general purposes of the IRO. This aligns with the approach commonly adopted by other jurisdictions in defining “tax resident” in their separate tax laws. The definition will take effect retrospectively from 1 January 2024, such that an entity that falls within the definition can be regarded as located in Hong Kong throughout the fiscal year 2024.</p>
(B) Calculation of effective tax rate		
4.	<p>A qualified refundable tax credit (“QRTC”) regime should be introduced, or the existing tax incentives should be replaced with QRTCs as the existing tax incentives, which have the effect of reducing the ETR, may no longer provide benefits to in-scope MNE groups after the implementation of the GloBE rules and HKMTT.</p>	<p>Under the GloBE rules, a QRTC is a tax credit so designed that it must be refundable in cash or cash equivalents within four years from the year in which the constituent entity satisfies the conditions for receiving the credit. Given that a QRTC regime involves not only a reduction of tax payable but also a cash outlay, there will be major policy and financial implications to the Government.</p> <p>Due consideration should also be given to various factors, including the policy objective of introducing a QRTC regime for specific activities or industries, the scope of qualifying activities for QRTC purposes, cost of administration and the risk of abuse.</p> <p>The Government needs to carefully consider the feasibility of introducing a QRTC regime when implementing the global minimum tax and the HKMTT.</p>

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(C) Design of the HKMTT		
5.	To preserve tax neutrality for investment funds and their asset holding vehicles, investment entities and insurance investment entities should be excluded from the scope of the HKMTT.	Having regard to the practice adopted by other jurisdictions, we agree to exclude investment entities and insurance investment entities from the scope of HKMTT.
(D) Simplification and safe harbours		
6.	Hong Kong should provide the transitional UTPR safe harbour as transitional relief to the UPE jurisdiction of a foreign-headquartered MNE group with corporate income tax rate of at least 20%.	We will include the transitional UTPR safe harbour in our legislation.
(E) Tax compliance and administration		
7.	The top-up tax liability of a constituent entity under the joint and several liability should be limited to its allocable share of the top-up tax attributable to a partially-owned constituent entity.	<p>Under the default allocation mechanism for top-up tax under the UTPR and the HKMTT, each constituent entity will only be liable for its share of top-up tax. Joint and several liability will only be applied when the MNE group chooses to dis-apply the default allocation mechanism and designate one or more than one constituent entities to pay the top-up tax, and that the designated paying entity does not pay the top-up tax payable. In such case, all Hong Kong constituent entities of the group will be jointly and severally liable for the whole amount of the top-up tax payable of the group. The group should internally coordinate the arrangement among its members.</p> <p>In any case, an in-scope MNE group is free to adopt the default allocation mechanism instead of appointing designated paying entity or entities if the group has concern on the potential joint and several liability.</p>

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8.	A "clean exit" mechanism should be implemented for a constituent entity of an in-scope MNE group that intends to leave the group, where the group has elected to dis-apply the default allocation mechanism for top-up tax under the UTPR and the HKMTT.	We agree to explore administrative arrangements for allowing "clean exit" of constituent entities subject to the satisfaction of specified conditions.
9.	The designation of one or more than one paying entity for the top-up tax under the UTPR and the HKMTT regimes should be allowed to be made on a year-by-year basis.	We agree to enable the annual election.
10.	The payment due date of the top-up tax should be extended from two weeks to one month from the date of the notice of assessment.	We agree to extend the payment due date to one month after the expiry of the return filing deadline or the date of the notice of assessment, whichever is the later.
11.	A constituent entity should be allowed to object to a top-up tax assessment within two months from the date of the notice of assessment.	We agree to extend the objection period to two months after the date of the notice of assessment.
12.	A limitation period for raising assessments under the GloBE rules as distinct from the normal six-year time limit under section 60 of the IRO should be provided, having regard to the possible need for re-calculating an in-scope MNE group's top-up tax payable for a previous fiscal year, for example where there is a decrease in the group's adjusted covered taxes for the year concerned in a jurisdiction outside Hong Kong (cf. Article 4.6.1 of the GloBE rules).	We share the view that a different limitation period for raising assessments under the GloBE rules is justified for ensuring the consistent implementation of such rules. As IRD may not be timely informed of the adjustments initiated by other jurisdictions, we suggest the time limit for issuing a top-up tax assessment be set as six years from (a) the end of the fiscal year or (b) the time when the non-assessment or under-assessment has come to the assessor's knowledge, whichever is the later.
13.	The general anti-avoidance provisions (i.e. sections 61 and 61A of the IRO) should not be applied to the GloBE and	We agree that sections 61 and 61A of the IRO should not apply in the context of the GloBE and HKMTT regimes. These

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	<p>HKMTT regimes because they were not designed for the said regimes and, if Hong Kong introduces its own anti-avoidance provisions, transactions entered into prior to 1 January 2025 should be grandfathered.</p>	<p>provisions were specifically enacted to tackle tax avoidance within the current framework of the IRO. Given the global-consensus approach of the GloBE rules and QDMTT, it appears more appropriate to address any avoidance arrangements in relation to top-up tax liability by way of specific provisions or guidance promulgated by the OECD. To maintain the integrity of the GloBE and HKMTT regimes, we will introduce the main purpose test as a general anti-avoidance rule for the regimes.</p> <p>As objective evaluation of all relevant facts and circumstances is required for the application of the main purpose test, a general grandfathering of all transactions entered into before the GloBE and HKMTT regimes come into operation may not be appropriate.</p>
14.	<p>Clear penalty abatement rules should be provided for the initial transitional years and no penalty should be imposed in the situation of a good faith misunderstanding of the GloBE rules.</p>	<p>The existing penalty mechanism under the IRO calls for an evaluation of all relevant circumstances surrounding the taxpayer's wrongdoing to determine whether the required mental element of the offence concerned (e.g. without reasonable excuse) can be established. The IRD will adopt the same approach in formulating the penalty provisions in relation to the GloBE rules and HKMTT rules.</p> <p>The IRD will set out in its guidance that the factors mentioned in the OECD's guidance on transitional penalty relief will be taken into account when considering whether penal action is to be taken against a wrongdoing in relation to the GloBE rules or HKMTT rules.</p>

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15.	The penalty imposed on service providers should be lowered/refrained from if they have no reasonable basis to doubt the information provided to it.	Currently, a service provider only commits an offence in relation to the filing of a tax return if the wrongdoing falls within the description under section 80K(2), (3) or (4) of the IRO and the maximum penalty would be a fine at level 3. We suggest adopting a similar approach for a service provider's wrongdoing in relation to the filing of top-up tax return or notification.
(F) Others		
16.	Further administrative guidance ("AG") issued by the OECD should be implemented through subsidiary legislation.	We will incorporate future additional AG into the IRO through subsidiary legislation.
17.	The IRD should provide its own guidance on the implementation of the GloBE rules and HKMTT rules.	The IRD will publish its own guidance on the implementation issues that are of common interest to in-scope MNE groups on its website.