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Report of Bills Committee on Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024

Purpose

This paper reports on the deliberations of the Bills Committee on Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024 ("the Bill") ("the Bills Committee").

Background

2. According to paragraphs 2 to 5 of the Legislative Council ("LegCo") Brief (File Ref: TsyB R2 00/800/1/0 (C)), in July 2021, Hong Kong joined more than 130 jurisdictions in accepting a two-pillar solution announced by the Organisation for Economic Co-operation and Development ("OECD") to tackle base erosion and profit shifting risks arising from digitalization of economy ("BEPS 2.0"). In gist, Pillar Two of BEPS 2.0 seeks to ensure that multinational enterprise ("MNE") groups pay a minimum tax of 15% in respect of the profits derived from every jurisdiction in which they operate, thereby reducing the incentive for large MNE groups to shift profits to low tax jurisdictions to reduce tax. In the 2024-2025 Budget, the Financial Secretary announced the proposal to apply the global minimum tax rate of 15% on large MNE groups with an annual consolidated revenue above a certain level beginning from 2025.[1] The proposal serves to fulfil Hong Kong's international obligation to tackle cross-border tax evasion and safeguard Hong Kong's taxing rights by implementing Pillar Two of BEPS 2.0. The Bill is thus introduced to implement the global minimum tax for MNE groups in accordance with the OECD framework by revising relevant parts of Hong Kong's tax regime.

Inland Revenue (Amendment) (Minimum Tax for Multinational

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[1] Please refer to paragraph 238 of the 2024-2025 Budget Speech. The proposal was previously announced in paragraph 200 of the 2023-2024 Budget Speech.

Enterprise Groups) Bill 2024

3. The date of First Reading of the Bill is 8 January 2025. The Bill seeks to amend the Inland Revenue Ordinance (Cap. 112) to:

(a) implement the international tax reform proposals to address the base erosion and profit shifting risks arising from digitalization of economy by introducing a global minimum effective tax targeting certain large MNE groups;

(b) implement a domestic minimum top-up tax ("DMTT") for the purpose of safeguarding Hong Kong's taxing rights on those groups and their members; and

(c) make minor miscellaneous amendments.

4. The main provisions of the Bill are as follows:

(a) clause 8 adds a Part 4AA (the proposed new sections 26AD to 26AH) to Cap. 112;

(b) the proposed new sections 26AD and 26AE introduce Schedules 60 to 63 to Cap. 112;[2]

(c) in the proposed new Schedule 60[3]—

(i) Part 1 mainly reproduces OECD's Global Anti-Base Erosion Model Rules ("OECD GloBE model rules")[4] with certain amendments made by OECD;

(ii) Part 2 contains short local provisions on the Undertaxed Profits Rule ("UTPR"); and

(iii) Part 3 provides for the transitional and permanent safe harbours;

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2 The Administration will propose amendments to renumber Schedules 60 to 63 as Schedules 61 to 64, and to make consequential amendments to the references to these Schedules in the Bill.

3 To be renumbered as Schedule 61; see footnote 2 for details.

4 This is the title used in the Bill, which is the same as "GloBE model rules" referred to in the ensuing part of this report.

(d) the proposed new Schedule 61[5] contains the provisions for charging DMTT;

(e) the proposed new Schedule 62[6] contains the provisions on the administration of the Income Inclusion Rule ("IIR") top-up tax, UTPR top-up tax and Hong Kong minimum top-up tax ("HKMTT") including—

(i) requirements for the filing of top-up tax returns and notices and provision of information relevant to the determination of liability for any top-up tax; and

(ii) provisions modifying provisions of Cap.112 in their application in relation to any top-up tax; and

(f) the proposed new Schedule 63[7] lists out the OECD commentaries and administrative guidances ("AGs").

Commencement

5. The Bill (except clause 3(3)), if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance. Clause 3(3) (which seeks to provide for the way to determine whether an entity is a tax resident in Hong Kong) would be deemed to have come into operation on 1 January 2024. According to paragraph 13 of the LegCo Brief, this would allow an entity that conforms to the meaning of tax resident in Hong Kong to be regarded as located in Hong Kong throughout the fiscal year of 2024, thereby minimizing its exposure to top-up tax in other jurisdictions which have implemented the Global Anti-Base Erosion ("GloBE") rules for an accounting period beginning on or after 1 January 2024.

Bills Committee

6. At its meeting held on 10 January 2025, the House Committee agreed to form a Bills Committee to scrutinize the Bill. The membership list of the Bills Committee is in **Appendix 1**.

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[5] To be renumbered as Schedule 62; see footnote 2 for details.
[6] To be renumbered as Schedule 63; see footnote 2 for details.
[7] To be renumbered as Schedule 64; see footnote 2 for details.

7. Under the Chairmanship of Hon CHAN Chun-ying, the Bills Committee has held two meetings with the Administration. The Bills Committee has also received 10 written submissions. A list of the organizations ("organizations") which have provided written submissions to the Bills Committee is in **Appendix 2**. The Administration has provided a response to the submissions, details of which are set out in LC Paper Nos. CB(3)216/2025(02), CB(3)462/2025(01) and CB(3)487/2025(01).

Deliberations of the Bills Committee

8. Members in general support the Bill to fulfil Hong Kong's international obligation to tackle cross-border tax evasion and safeguard Hong Kong's taxing rights. The concerns raised and suggestions made by members, the Legal Adviser to the Bills Committee and the organizations as well as the Administration's responses are summarized in the ensuing paragraphs.

Charging mechanism

Application of HKMTT, IIR and UTPR in Hong Kong

9. At members' request, the Administration has illustrated with charts in **Appendix 3** the application of HKMTT, IIR and UTPR to in-scope MNE groups[8] and their constituent entities.

Excluding investment entities and insurance investment entities from the scope of HKMTT

10. Some Members have enquired why investment entities and insurance investment entities are excluded from the scope of HKMTT[9] and whether the arrangement is in line with OECD's requirements.

11. The Administration has pointed out that OECD allowed jurisdictions to decide for themselves whether or not to include investment entities or insurance investment entities in the coverage of their DMTT. In this regard, the Administration consulted various industry stakeholders, including the financial services and fund sectors, and the industry generally considered that excluding these entities from the coverage of HKMTT would help enhance the competitiveness of the industry. The Administration has

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8 In-scope MNE group refers to an MNE group with annual consolidated revenue of at least EUR 750 million in at least 2 of the 4 fiscal years immediately preceding the current fiscal year.

9 The exclusion is referred to in paragraph 18 of the LegCo Brief.

added that if the investors of an investment entity are in-scope MNE groups, with their income such as dividends received from the investment entity already chargeable, the problem of double taxation would arise if the investment entity is covered by HKMTT.

Tax liabilities of MNE groups with parent entities which are not located in jurisdictions implementing BEPS 2.0

12. Given that currently there are only some 140 member jurisdictions in the BEPS 2.0 framework, some members have enquired whether the Inland Revenue Department ("IRD") can impose top-up tax on an MNE group if the parent entity of the MNE group is not located in these jurisdictions. The Administration has explained that such MNE groups may be subject to top-up tax as long as they carry on business in one of the member jurisdictions implementing BEPS 2.0.

Extending the scope of the new section 25A and relaxing the limit of reimbursement for UTPR top-up tax or HKMTT

13. In response to the organizations' suggestions, the Administration will propose an amendment to amend the proposed new section 25A of Cap. 112 to clarify that reimbursement for top-up tax is not taken into account in calculating the profits or loss in the paying entity or receiving entity of an MNE group for the purpose of the profits tax under Part 4 of Cap. 112 ("Part 4 profits tax"), and that the reimbursement for top-up tax should not exceed the amount of top-up tax that (a) is payable by the paying entity under an allocation of the applicable tax among entities and permanent establishments of the MNE group concerned that are relevant to the applicable assessment; and (b) has been paid (or agreed to be paid) by the receiving entity on behalf of the paying entity.

Adaptations to the OECD GloBE model rules

14. According to note 1 in Part 1 of the proposed new Schedule 61 (originally the proposed new Schedule 60) to Cap. 112, the OECD GloBE model rules (except for articles 2.4.2, 8.1, 8.3 and 9.4, which are omitted) are set out with "certain necessary changes" in Part 1 of the said Schedule. The Legal Adviser to the Bills Committee has sought clarification on the meaning of "necessary changes".

15. The Administration has explained that the OECD GloBE model rules were published on 20 December 2021, whereas the OECD commentaries and AGs are published from time to time to clarify or supplement the OECD GloBE model rules. Some guidance provided in the commentaries and AGs may alter the operation of the rules in certain

circumstances and affect the computation of the top-up tax liability for in-scope MNE groups. Thus, it is necessary to reflect those changes in the proposed GloBE rules set out in Part 1 of the proposed new Schedule 61 (originally the proposed new Schedule 60). The changes are reflected either in the form of a refinement in the relevant article (e.g. "and" was changed to "or" in the second sentence of Article 3.3.1) or a note under the relevant article reminding the reader of the need to take into account the relevant guidance (e.g. the note under Article 1.4.1 in the proposed new Schedule 61 (originally the proposed new Schedule 60)). In any case, the proposed section 26AF provides that the OECD GloBE rules documents must be given effect to in a way that supplements, and clarifies the interpretation and operation of, the GloBE model rules as incorporated under Cap. 112.

Administrative guidances promulgated by OECD

16. In response to the organizations' suggestions and the latest AG promulgated by OECD, the Administration will propose amendments to Part 3 of the proposed new Schedule 61 (originally the proposed new Schedule 60) to Cap. 112 by amending section 7(3) and adding sections 24A and 24B, so as to provide additional guidance on safe harbours to provide for (a) certain situations where the Qualified Domestic Minimum Top-up Tax ("QDMTT") safe harbour does not apply to an in-scope MNE group's jurisdictional top-up tax under the GloBE rules for a fiscal year; and (b) exclusion of certain deferred tax expenses from the simplified covered taxes for the calculation of the simplified effective tax rate ("ETR") in relation to the application of the transitional country-by-country reporting safe harbour.

UTPR top-up tax allocated to Hong Kong

17. Under section 3 of Part 2 of the proposed new Schedule 61 (originally the proposed new Schedule 60) to Cap. 112, IRD will charge the UTPR top-up tax allocated to Hong Kong (i.e. under Article 2.6 of Part 1 of the proposed new Schedule 61 (originally the proposed new Schedule 60) to Cap. 112) on Hong Kong constituent entities ("HK constituent entities") of an MNE group, based on the respective proportion of the employee headcount and the value of tangible assets. Regarding the determination of the number of employees and the value of tangible assets of a HK constituent entity, the Administration has explained that according to the OECD GloBE model rules and commentaries, the number of employees and the value of tangible assets of a HK constituent entity are calculated by averaging the value of the figure at the beginning of the year and that at the end of the year (i.e. adding the two figures and dividing the sum by two).

GloBE income or loss

18. Under Article 3.2.8 of Part 1 of the proposed new Schedule 61 (originally the proposed new Schedule 60) to Cap. 112, an ultimate parent entity may elect to apply its consolidated accounting treatment to eliminate income, expense, gains, and losses from transactions between constituent entities that are located in the same jurisdiction for purposes of computing each such constituent entity's net GloBE income or loss, and the election is a five-year election. Some members have enquired whether the ultimate parent entity may update the election immediately if there is a change in the vesting of a constituent entity, or it needs to wait until the expiry of the five-year period before making a fresh election or withdrawing its election.

19. The Administration has explained that according to the OECD GloBE model rules, an election made by the ultimate parent entity under section 3.2.8 of Part 1 of the proposed new Schedule 61 (originally the proposed new Schedule 60) would be a five-year election and could not be varied before the expiry of the five-year period.

GloBE income under the effective tax rate

20. Regarding the GloBE income under ETR, the Administration has explained that the GloBE income is computed based on the profits in the financial statements, including all other consolidated incomes in the statement of comprehensive income covered by the the GloBE rules. In addition, in computing the GloBE income, if an enterprise is required to exclude, subject to certain conditions, any GloBE income with increased value due to fair value accounting until the realization of such profits, the unrealized profits will not be included in the computation of the GloBE income. If no such exclusion is made by the enterprise, the unrealized profits will be included in the computation of the GloBE income.

Tax liabilities arising from profits on disposal of property or assets

21. Some members are concerned that in-scope MNE groups may have been holding properties or assets for a long period of time before the implementation of the global minimum tax and HKMTT in Hong Kong and may be required to pay a substantial amount of top-up tax if they dispose of such properties or assets at a profit in the future. Members have therefore enquired about the measures to reduce such tax liabilities.

22. The Administration has explained that if an in-scope MNE group sells a property or asset at a profit in the future, such profits will be included in the GloBE income for the purpose of computing ETR, which is computed by dividing the sum of a jurisdiction's covered taxes by the total GloBE income of the jurisdiction. If the group's ETR is below 15%, the said profits

may be subject to top-up tax. Nevertheless, there are provisions in the GloBE rules which allow companies to account for assets at fair value rather than at cost, and such an arrangement may reduce or even eliminate the exposure to top-up tax for in-scope MNE groups. The Administration has further advised that if an enterprise accounts for its assets at fair value, the top-up tax chargeable on the profits earned from the subsequent disposal of the assets will only be calculated on the basis of the value added of the assets from the commencement of the Bill up to the date of the disposal of the assets, so as to minimize the exposure to a substantial amount of top-up tax. In addition, in the case where the enterprise does not sell the asset directly but sells the company holding the asset and it holds 10% or more of the shareholding in the company being sold, the profits derived from the sale of the company need not be included in the computation of top-up tax.

Change of accounting policy from measuring assets at cost to fair value

23. Some members have enquired about the numbers of companies, among some 200 Hong Kong-headquartered MNE groups as estimated by the Administration that are likely to be in-scope, with fiscal year-end date on 31 March, 31 December or other dates of the year respectively, and whether these companies would have sufficient time to switch from cost approach to fair value approach for recording their assets before HKMTT and IIR top-up tax are charged, as well as the related procedures.

24. The Administration has pointed out that the accounting year-end dates of Hong Kong-headquartered MNE groups that are likely to be in-scope are as follows:

31 March	11%
31 December	84%
Others	5%
Total	100%

25. Regarding the change in accounting method, the Administration has explained that while gains from disposal of capital assets (e.g. immovable property) recorded in a HK constituent entity's financial statements are not chargeable to Part 4 profits tax, the whole sum of GloBE income, which includes the capital gain, may be subject to top-up tax under HKMTT if the MNE group's ETR in Hong Kong is below 15% in the year of disposal. If the asset has been accounted for at fair value in the entity's financial statements and the entity elects to determine any gain or loss associated with the asset using the realization method for the fiscal year of 2025 (i.e. the entity's accounting period commencing in 2025), Article 3.2.5 of the GloBE rules allows confining the amount of gain for the purpose of calculating the top-up tax in the year of disposal to the difference between

the value of disposal and the carrying value of the asset on the first day of the fiscal year of 2025. In other words, if a HK constituent entity of an in-scope MNE group that is subject to the GloBE rules for the first time in the fiscal year of 2025 wishes to adopt the treatment under the above Article of the GloBE rules but has previously accounted for its capital assets at cost in its financial statements, the entity may consider changing the way it accounts for the capital assets for the fiscal year of 2024 such that the value of the assets can be reflected at its fair value on the first day of the fiscal year of 2025. Since most of the HK constituent entities that adopt 31 December 2024 as the end date of their fiscal year of 2024 were still finalizing their relevant financial statements as at 5 February 2025 when the Bills Committee held its meeting, there should be sufficient time for these entities to change to fair value accounting if they consider it appropriate to do so.

Foreign-sourced income exemption

26. Regarding the foreign-sourced income exemption regime, in response to the organizations' suggestions, the Administration will propose an amendment to amend section 15N of Cap. 112 to provide that a QDMTT paid in a territory outside Hong Kong will also be taken into account under the "subject to tax" condition as provided in the participation requirement under the foreign-sourced income exemption regime, and clarify that the top-up tax percentage in relation to any top-up tax paid in that territory would be disregarded under the meaning of "applicable rate" for the purpose of section 15N.

Tax credits

27. In response to the organizations' suggestions, the Administration will propose amendments to amend sections 50, 50AAA and 50AAAB and add a proposed new section 50AAAD to Cap. 112 to provide clarity that QDMTT payable in other jurisdictions is allowable as a tax credit through a bilateral relief or unilateral relief with respect to specified scenarios.

Mandatory e-filing of Part 4 profits tax return

28. In response to the organizations' suggestions, the Administration will propose an amendment to amend section 51AAB of Cap. 112 and introduce the proposed new Schedule 65, so as to incorporate the requirement for mandatory e-filing of Part 4 profits tax return by in-scope MNE groups into the Bill.

Form of and deadline for filing a top-up tax notice

29. Regarding the requirement that a HK constituent entity of an in-scope MNE group should file a top-up tax notice with the Commissioner of Inland Revenue ("the Commissioner") by the notification deadline (section 5 of the proposed new Schedule 63 (originally the proposed new Schedule 62) to Cap. 112), the Administration has been requested to advise on the form of filing the said notice, and the arrangements in case the notification deadline falls on a public holiday.

30. The Administration has advised that the notice should be filed in the form of an electronic record that is sent by using a system designated by the Commissioner. In addition, under the Interpretation and General Clauses Ordinance (Cap. 1), if the notification deadline for filing a notice falls on a public holiday, the deadline will be extended to the next working day that is not a public holiday.

Flexibility in handling non-compliant filing of top-up tax return and notice

31. Section 11(6) and (7) of the proposed new Schedule 63 (originally the proposed new Schedule 62) to Cap. 112 seeks to allow the Commissioner to accept a top-up tax return or notice despite the requirements under the proposed new section 11(2), 11(3) or 11(5) not being complied with. In addition, the Commissioner could specify under section 11(8) of the Schedule the circumstances or conditions under which a top-up tax return or a notice could be accepted under section 11(6) or (7) of the Schedule, and under section 11(9) of the Schedule, the notice specifying such circumstances or conditions would not be subsidiary legislation. Members have enquired about the details of the above circumstances or conditions. The Legal Adviser to the Bills Committee has also sought clarification from the Administration on the factors that would be taken into account by the Commissioner when specifying such circumstances and conditions, and whether e.g. practice notes would be issued to facilitate better understanding of the Commissioner's exercise of discretion in this regard.

32. The Administration has explained that section 11(6), (7) and (8) of the said Schedule is intended to give flexibility in certain unusual circumstances where a HK constituent entity is unable to file the top-up tax return or notice in the form of an electronic record through the designated system. For example, a HK constituent entity of an in-scope MNE group, being the parent entity and the only constituent entity located in Hong Kong, goes into liquidation in 2026. Having regard to the urgency of raising assessment, the parent entity in the process of liquidation may be required to file a top-up tax return in respect of the fiscal year of 2025 by a stipulated deadline that is prior to the launch of the designated system. In such

circumstances, the assessor may need to issue a notice in paper form requiring the parent entity to file a top-up tax return in paper form.

33. The Administration has pointed out that given that the above arrangement concerns a pure operational matter, pursuant to section 11(9) of the said Schedule, the notice is not subsidiary legislation. IRD can provide guidance on its website in relation to the means of filing of top-up tax return and notice.

Time limit for raising top-up tax assessment

34. Some organizations have suggested that a fixed time limit for raising additional assessments for top-up tax should be provided under the modifications to section 60 of Cap. 112 under section 20 of the proposed new Schedule 63 (originally the proposed new Schedule 62) to provide certainty and predictability for in-scope MNE groups. In response to the suggestion, the Administration will propose an amendment to amend the time limit for raising top-up tax assessment under the said section and provide a fixed time limit of 8 years in relation to non-evasion cases and 12 years in relation to evasion cases.

Time limit for application to correct errors or omissions in top-up tax assessment and for claiming refund of tax paid in excess in top-up tax assessment

35. In response to the organizations' suggestions, and in line with the extension of the time limit for raising top-up tax assessment and the record-keeping period as mentioned in paragraphs 34 and 42 of this report respectively, the Administration will propose an amendment to sections 25 and 26 of the proposed new Schedule 63 (originally the proposed new Schedule 62) to extend the time limit for taxpayers' application to correct errors or omissions in top-up tax assessment under section 70A(1) of Cap. 112, and for claiming refund of tax paid in excess in top-up tax assessment under section 79(1) of Cap. 112 from six years after the end of the year of assessment concerned to eight years.

How to deal with the failure to keep business records for the period from 1 January 2025 to the enactment of the Bill

36. Under section 17(1) and (2) of the proposed new Schedule 63 (originally the proposed new Schedule 62) to Cap. 112, the existing section 51C of Cap. 112 (Business records to be kept) would apply to a HK constituent entity of an in-scope MNE group with modifications to require a HK constituent entity of an in-scope MNE group to keep records of transactions, acts or operations relevant to the computation of its top-up tax

liability. Under the proposed new section 17(3) of the Schedule, the existing section 80 of Cap. 112 (Penalties for failure to make returns, making incorrect returns, etc.) would apply to a failure to comply with the requirement to keep records by such entity.

37. The Legal Adviser to the Bills Committee has enquired hypothetically, where an in-scope MNE group's fiscal year begins on 1 January 2025 (i.e IIR top-up tax and HKMTT would be payable by such entity pursuant to the proposed new section 26AE(6) and (8) of Cap. 112), whether a HK constituent entity of that MNE group would be considered as having contravened the record-keeping requirement by virtue of having insufficient business records relevant to the computation of top-up tax for the period from 1 January 2025 to the time before the enactment of the Bill ("the Period"), and shall be held criminally liable.

38. The Administration has explained that given that IIR and HKMTT will be implemented in Hong Kong for a fiscal year beginning on or after 1 January 2025 pursuant to the proposed new section 26AE(6) and (8), by virtue of section 17(1) of the proposed new Schedule 63 (originally the proposed new Schedule 62), a HK constituent entity should keep sufficient records that are relevant to the computation of top-up tax liability for a fiscal year beginning on or after 1 January 2025 to enable the ascertainment of the correctness and accuracy of its top-up tax return filed for the relevant fiscal year.

39. The Administration has further explained that in the hypothetical case mentioned in paragraph 37 above, if the HK constituent entity fails to keep sufficient records of transactions, acts or operations completed during the Period that are relevant to the computation of top-up tax for the fiscal year of 2025, IRD will exercise flexibility in considering whether the constituent entity has contravened the record-keeping requirement.[10] Having said that, it is in the HK constituent entity's own interest to keep sufficient records for the Period in order to enable the ascertainment of the correctness and accuracy of its top-up tax return filed for the fiscal year of 2025. In the case of non-assessment or underassessment (e.g. where the constituent entity claims without documentary evidence that an amount is an excluded dividend under Article 3.2.1(b) of the OECD GloBE model rules and the exclusion of the amount from the GloBE income has an impact on the group's jurisdictional top-up tax liability), IRD can raise a notice of assessment under section 60 of Cap. 112 and the constituent entity would

[10] The flexibility does not apply to the constituent entity's failure to the extent it contravenes the requirement under the existing section 51C of Cap. 112 to keep sufficient records for the purposes of Part 4 profits tax.

have to provide documentary evidence in support of its claim in accordance with the objection and appeals provisions of Cap. 112.

40. The Legal Adviser to the Bills Committee has made a further enquiry with the Administration on whether prosecution of a HK constituent entity for a failure to keep sufficient records for the computation of the proposed new top-up tax during the Period would be a retrospective imposition of the relevant criminal liability, which would contravene Article 12(1) of the Hong Kong Bill of Rights which prohibits retrospective criminal offences or penalties. The Administration has clarified that its policy intent is that the application of section 80(1A) of Cap.112 on failing to comply with the requirement on keeping top-up tax record provided under section 17 of the proposed new Schedule 63 (originally the proposed new Schedule 62) is to be construed consistently with this guiding principle under Article 12(1) of the Hong Kong Bill of Rights. The Administration has no intention to create retrospective criminal liability or penalty. The Administration has further advised that IRD would not impose penalties on a HK constituent entity for non-compliance in respect of record keeping during the Period.

Retention period of business records to be kept

41. The Administration has been requested to elaborate on the requirement in section 17 of the proposed new Schedule 63 (originally proposed new Schedule 62) for a HK constituent entity to retain the records of transactions, acts or operations relevant to the computation of top-up tax liability of an in-scope MNE group at least until the expiry of 12 years after the completion of the transactions, acts or operations to which they relate.

42. The Administration has pointed out that the current time limit for record keeping is seven years. However, the Administration considers it necessary to extend the time limit having regard to the following: (a) IRD will only receive the top-up tax returns 15 or 18 months after the end of the fiscal year; and (b) if the parent entity of an in-scope MNE group is not located in Hong Kong, IRD has to rely on the exchange of information mechanisms to obtain GloBE Information Returns ("GIRs") . Therefore, it may be two years or more after the end of the fiscal year when IRD receives the relevant information. In addition, there is a fundamental difference between the GloBE rules and HKMTT and Part 4 profits tax: Part 4 profits tax is charged under the territorial source principle of taxation, and IRD would review the formation about a company's own business in Hong Kong and all of its operations. However, as the top-up tax will involve the overseas companies of the MNE group and their offshore income, IRD will need more time to collect such information when it conducts an assessment. The Administration has advised that among the written submissions

received, there is a suggestion that the Administration should shorten the time limit for record keeping. In response to the suggestion and members' concern, the Administration will propose an amendment to section 17(1)(b) of the proposed new Schedule 63 (originally proposed new Schedule 62) to shorten the record-keeping period from 12 years to 9 years after the completion of the transactions, acts or operations to which the records relate in order to reduce compliance burden.

Time limit for filing GIRs and relief from the filing requirement (if exchange mechanisms fail)

43. Regarding the requirement for filing GIRs, in response to the organizations' suggestions, the Administration will propose an amendment to extend the time limit for HK constituent entities to file GIRs, if exchange mechanisms fail, from 30 days to at least 60 days, and relieve a HK constituent entity from the relevant filing requirement under specified conditions under section 7 of the proposed Schedule 63 (originally the proposed Schedule 62) to reduce compliance burden.

<u>Peer review process</u>

44. Members have noted that the global minimum tax and HKMTT implemented in Hong Kong would need to be assessed as qualified rules under the OECD's peer review process. In this regard, the Administration has been requested to provide details of the peer review process and the impact on Hong Kong in the event of being assessed as not qualified during the peer review process.

45. The Administration has explained that OECD's peer review process provides for a common assessment of the qualified status of IIR, UTPR, and DMTT, as well as the eligibility for QDMTT safe harbour in each implementing jurisdiction. The peer review process seeks to ensure consistent and coordinated application of the GloBE rules across different jurisdictions. The process consists of a full review on legislation of these jurisdictions and ongoing monitoring of the consistent application and administration of the GloBE rules.

46. The Administration has pointed out that pending the finalization of the full legislative review process, OECD has put in place a mechanism for a jurisdiction to obtain a transitional qualified status by self-certifying that its legislation achieves consistent outcomes with reference to the key provisions of the GloBE model rules, the commentary, and the safe harbours. After a jurisdiction has submitted a self-certification to OECD, and receives no questions from other jurisdictions that have agreed to implement the BEPS 2.0 framework (including non-implementing jurisdictions) or has

resolved the questions, the jurisdiction's legislation will be recorded as having a transitional qualified status. The full legislative review is expected to start no later than two years after the effective date of the legislation. Once the full legislative review is completed, the transitional qualified status of a jurisdiction's legislation will end.

47. The Administration has further remarked that failure to obtain a qualified status in the peer review may make in-scope MNE groups operating in Hong Kong face additional top-up tax liabilities and uncertainty, as jurisdictions implementing IIR and UTPR may impose top-up tax in respect of the group's HK constituent entities even though the HK constituent entities are already subject to HKMTT. Moreover, the absence of a qualified status could undermine Hong Kong's reputation as an international financial centre and an attractive destination for global business operations.

Circumvention of the GloBE rules

Replacing main purpose test with sole or dominant purpose test

48. The main purpose test ("MPT") in the proposed new section 26AH of Cap. 112 is the general anti-avoidance rule ("GAAR") applicable to the GloBE and HKMTT regimes. In response to the organizations' suggestions, the Administration will propose amendments to delete the proposed new section 26AH (the main purpose test) and add section 20A in the proposed new Schedule 63 (originally proposed new Schedule 62) to adopt section 61A of Cap. 112 (i.e. the sole or dominant purpose test) with modifications as GAAR to address potential avoidance arrangements in the context of the GloBE and HKMTT regimes to facilitate compliance. Section 61A of Cap. 112 is a long standing GAAR in the tax laws of Hong Kong and has been applied effectively. Applying a modified section 61A to the GloBE and HKMTT regimes will provide certainty, simplicity and consistency to MNE groups with respect to anti-avoidance rules.

Whether any jurisdiction has unlawfully assisted in circumventing the GloBE rules

49. Concerns have been raised as to whether any jurisdiction has unlawfully assisted in-scope MNE groups in circumventing the GloBE rules in order to reduce the amount of top-up tax payable.

50. The Administration has pointed out that OECD is very concerned about whether jurisdictions have faithfully implemented the GloBE rules and would ensure through the peer review process that no implementing

jurisdictions would help businesses avoid or reduce top-up tax payable through other arrangements or measures. If OECD finds during the peer review process that a jurisdiction is not fully, faithfully and effectively implementing the GloBE rules, the jurisdiction will be requested to rectify the situation. Failure to do so will result in that jurisdiction's rules being assessed as non-qualified rules, and the other jurisdictions will be entitled to tax the in-scope MNE group concerned.

Impact of the implementation of the global minimum tax and HKMTT

Additional tax revenue

51. According to paragraph 6(d) of the LegCo Brief, the Administration expects that the implementation of HKMTT might bring to the Government an additional tax revenue of about $15 billion per year from 2027-2028 onwards. Regarding the criteria for calculating the amount, the Administration has advised that IRD has in the past few years required MNE groups with annual consolidated revenue of EUR 750 million to submit annual country-by-country reports to IRD, setting out details of their revenues, tax expenses, etc. in Hong Kong and in different jurisdictions. On the basis of the information in the country-by-country reports and a preliminary estimate based on the minimum tax rate of 15%, IRD expects that the Government might collect an additional tax revenue of about $15 billion per year from 2027-2028 onwards.

52. The Administration has further pointed out that unlike the annual consolidated revenue threshold for in-scope MNE groups (i.e. EUR 750 million in at least two of the four fiscal years immediately preceding the current fiscal year), a country-by-country report only reflects the annual consolidated revenue of an MNE group amounting to EUR 750 million in the preceding fiscal year. As MNE groups may also make structural adjustments in response to these new tax measures which may affect their tax expenses, coupled with IRD's lack of detailed information on each of the HK constituent entities of these MNE groups, the additional tax revenue of $15 billion per year is only a very rough estimate.

Existing concessionary tax treatments

53. Under the proposed new section 26AE(1) of Cap. 112 (clause 8 of the Bill), the GloBE rules would ensure that an in-scope MNE group pays a minimum level of tax at 15% on the income arising in each of the jurisdictions where it operates. In view of the different tax incentives provided by the Government to facilitate the development of specific industries by attracting overseas enterprises to Hong Kong, members and the Legal Adviser to the Bills Committee have enquired whether the

implementation of the GloBE rules would adversely affect the benefits brought by the concessionary tax treatments under Cap. 112, e.g. concession for qualifying aircraft lessor, concession for qualifying aircraft leasing manager and concessionary tax treatment in respect of certain income derived from intellectual property.

54. The Administration has explained that for in-scope MNE groups, the impact arising from the implementation of the GloBE rules on the group's constituent entities benefiting from the concessionary tax treatments under Cap. 112 depends on whether the group's jurisdictional ETR in Hong Kong (computed based on the aggregate GloBE income and covered taxes of all HK constituent entities) is below 15%. While some entities of the group may be paying lower tax under the concessionary tax treatments, it is the group's jurisdictional ETR in Hong Kong that decides whether the group has to pay top-up tax. These tax concessions must meet OECD's minimum standards on non-harmful tax practices, meaning that the concessionary tax treatments should not favour local enterprises while imposing additional taxes on other foreign enterprises. In Hong Kong, the tax concessions in place are all applicable to businesses operating in Hong Kong, and such tax concessions therefore meet OECD's minimum standards.

Tax competitiveness

55. Some members have pointed out that Hong Kong has all along been practising a simple and low tax regime and adopts the territorial source principle of taxation whereby foreign-sourced income is generally exempted from Part 4 profits tax, and that there is no capital gains tax and dividend tax in Hong Kong. However, with the implementation of the global minimum tax and HKMTT in Hong Kong, in-scope MNE groups may be subject to top-up tax on the said income/profits. Members have therefore enquired how the Administration would continue to publicize Hong Kong's tax advantages in order to attract more enterprises to set up their presence in Hong Kong.

56. The Administration has explained that the implementation of global minimum tax and HKMTT in Hong Kong is to align with the latest international tax standards, and the measures are not targeted at offshore income or profits of a capital nature. Hong Kong would maintain its practice of not imposing Part 4 profits tax on capital receipts, implying that no new taxes are thus introduced in Hong Kong.

57. On tax competitiveness, the Administration has advised that more than 140 jurisdictions around the world have agreed to implement the BEPS 2.0 framework, and the outcomes achieved by Hong Kong and other jurisdictions in implementing the global minimum tax would need to be in

line with the target outcomes set out in the OECD GloBE model rules, commentaries and AGs. Therefore, the simple and low tax regime maintained in Hong Kong still has a competitive edge over other jurisdictions. In addition, jurisdictions that used to compete for business and enterprises with low or zero tax rates will no longer be able to attract enterprises to set up business with their tax policies. Moreover, Hong Kong's unique advantages of "one country, two systems", coupled with its excellent infrastructure, pool of talents and status as an international financial centre, etc., will sharpen Hong Kong's competitive edge after other jurisdictions begin implementing BEPS 2.0.

Proposed new offences

58. The Bill proposes to introduce new offences in the following proposed new sections under Cap 112: section 80O(1)(a)(i) (failure of a HK constituent entity of an in-scope MNE group to file top-up tax return), section 80O(1)(a)(ii) (failure of a HK constituent entity of an in-scope MNE group to file notice), section 80O(1)(a)(iii) (failure to provide information required by an assessor), section 80O(1)(b) (filing of a top-up tax return, a notice or providing information to an assessor, that is misleading, false or inaccurate), and section 80P(2) to (5) (failure of a service provider to file top-up tax return or notice or the filing of a misleading, false or inaccurate top-up tax return or notice) (clause 13 of the Bill). In this regard, the Legal Adviser to the Bill Committee has requested the Administration to clarify whether each of these new offences is a strict liability offence and that the prosecution would not have to prove the existence of *mens rea* (i.e. the mental element) of committing the offence; if so, whether the implied common law defence of "honest and reasonable mistaken belief" would be available to the defendant; and if so, the details of the evidential burden to be borne by the defendant.

59. The Administration has explained that unless a HK constituent entity or service provider engaged for or on behalf of a HK constituent entity ("specified person") fails to provide a "reasonable excuse" for non-compliance with the requirements referred to in paragraph 58 above, IRD would not institute the prosecution against the specified person. If the excuse is considered not reasonable or if the supporting evidence of the excuse is considered insufficient in raising a reasonable doubt, IRD may institute prosecution against the person. In that case, the prosecutor has to prove beyond reasonable doubt the specified person's failure in complying with the relevant filing obligation and, if reasonable doubt arises on the evidence that a reasonable excuse exists, the absence of the reasonable excuse.

60. The Administration has further pointed out that the offence provisions relating to filing of top-up tax return and notice referred to in paragraph 58 above do not contain any terminology that imports a mental element of intention (such as "wilfully"). This reflects the Administration's policy intent that the prosecution is not required to prove such a mental element in these offences. Notwithstanding that, the relevant specified person will have to adduce sufficient evidence that it has "reasonable excuse" for failing to comply with the relevant requirements for filing of a top-up tax return and notice. It is for the prosecution to disprove such defence beyond reasonable doubt.

61. The Administration considers that the term "reasonable excuse" has a scope wider than that of "honest and reasonable mistaken belief" referred to in paragraph 58 above. By allowing the specified persons to raise "reasonable excuse", they are provided with sufficient safeguards under the proposed offence provisions.

Prosecution in respect of an offence under section 80O must be commenced at the instance of or with the sanction of the Commissioner

62. Regarding the offence under section 80O referred to in paragraph 58 above, the Administration will, in the light of the organizations' suggestions, propose an amendment to amend section 84 of Cap. 112 to provide that no prosecution in respect of an offence under the proposed section 80O may be commenced except at the instance of or with the sanction of the Commissioner, so as to align the treatment for prosecution under the proposed section 80O with that under section 80.

Removing the proposed offences relating to directors and officers of Part 4AA entities and service providers

63. In response to the organizations' suggestion, the Administration will propose an amendment to repeal the proposed section 80Q which relates to offences by directors and officers of Part 4AA (i.e. the proposed new Part 4AA of Cap. 112) entities and service providers to reduce compliance burden. The Administration has reviewed the proposed offence provisions and considers that proposed section 80O as well as the proposed amendments to sections 82 and 82A of Cap. 112 are sufficient to deter non-compliance under the GloBE and HKMTT regimes while ensuring Hong Kong's ability to enforce the rules.

Time limit for instituting proceedings for offences

64. In response to the organizations' suggestions, the Administration will propose an amendment to amend the time limit for initiating proceedings

under the proposed section 80R of Cap. 112 from six years to eight years after the date on which the offence was committed. The extension aligns with the extension of time limits mentioned in paragraphs 34, 35 and 42 above.[11] The other time limit of the expiry of two years from the day on which the offence was discovered by the Commissioner will also be removed so as to provide certainty.

<u>Effective Date</u>

Effective date of global minimum tax and HKMTT

65. Regarding the implementation of the IIR top-up tax and HKMTT with effect from 1 January 2025, the Administration has been requested to advise whether HKMTT would only be chargeable on profits earned after 1 January 2025, and the reasons why Hong Kong did not implement HKMTT from 2024 onwards.

66. In response, the Administration has advised that only profits earned from the fiscal year beginning on or after 1 January 2025 would be included in the calculation of HKMTT. In respect of the profits in 2024, the Administration has explained that, in general, IIR would only apply in Hong Kong if an in-scope MNE group is headquartered in Hong Kong. Hong Kong's taxing rights would only be affected if other jurisdictions have already implemented UTPR in 2024 and can impose UTPR top-up tax on HK constituent entities. The Administration has remarked that it is not aware of any jurisdictions that have implemented UTPR in 2024. Therefore, as long as Hong Kong implements HKMTT and IIR from 2025 onwards, its taxing rights would not be affected.

Effective date of the proposed new meaning of tax resident in Hong Kong

67. Clause 3(3) of the Bill seeks to provide for the way to determine whether an entity is a tax resident in Hong Kong. As clause 3(3) would be deemed to have come into operation on 1 January 2024, in other words, the proposed new meaning of tax resident in Hong Kong under the clause comes into effect on that date. Some members have raised concern as to whether OECD is aware of and accepts such commencement arrangement, and whether there are other jurisdictions which have adopted the same arrangement.

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11 Paragraphs 34, 35 and 42 above relate to the extension of time limits for raising additional top-up tax assessments, for application to correct errors or omissions in top-up tax return and claiming refund of top-up tax paid in excess, and for the record-keeping period respectively.

68. As advised by the Administration, IRD has discussed with the OECD Secretariat the arrangement for the proposed new meaning of tax resident in Hong Kong to take retrospective effect from 1 January 2024, and confirmed that the said arrangement was accepted by the Secretariat. The Administration has added that the GloBE rules have also provided for change of resident status by enterprises, and the new resident status would take effect from the first day of the year in which the change occurred (i.e. 1 January).

69. The Administration has further remarked that that the location of a constituent entity and its parent entity is an important factor for determining how and where the top-up tax is to be collected. Under Article 10.3 of the OECD GloBE model rules, an entity is located where it is a tax resident or was created, and the entity's tax residence is determined in accordance with the domestic law of a jurisdiction. As some jurisdictions have already implemented the GloBE rules since 2024, the introduction of the definition of "Hong Kong resident entity" under the proposed section 2(9)[12] with a retrospective effect from 1 January 2024 would allow the parent entity of an in-scope MNE group that falls within the definition to be regarded as located in Hong Kong throughout the fiscal year of 2024 so that it will not be charged top-up tax by another implementing jurisdiction under IIR in that year in certain cases.[13]

Proposed amendments to the Bill

70. Apart from the amendments elaborated in paragraphs 13, 16, 26 to 28, 34, 35, 42, 43, 48, 62 to 64 as well as footnotes 2 and 12 above, the Administration has also proposed other amendments to the Bill to make

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[12] The Administration will propose an amendment to renumber the proposed new section 2(9) as new section 2(11). The proposed new section 2(11) (originally the proposed new section 2(9)) provides that an entity is a tax resident in Hong Kong if –

(a) where the entity is a company - the entity is incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong; or

(b) in any other case - the entity is constituted under the laws of Hong Kong, or if otherwise constituted, normally managed or controlled in Hong Kong.

[13] For example, the parent entity of a group is incorporated in Jurisdiction A which has implemented IIR in 2024, and is effectively managed in Hong Kong. If Hong Kong has a comprehensive avoidance of double taxation agreement with Jurisdiction A and the resident article therein resolves dual residence in favour of the place of effective management, following Articles 10.3.1(a) and 10.3.4(a)(i) of the OECD GloBE model rules, the introduction of the definition of "Hong Kong resident entity" with retrospective effect from 1 January 2024 and the application of the tie-breaker rule would allow the parent entity to be regarded as located in Hong Kong (instead of Jurisdiction A) throughout the fiscal year of 2024, thus minimizing its exposure to IIR top-up tax charged by Jurisdiction A for the fiscal year of 2024.

relevant textual amendments and drafting improvements to enhance clarity (e.g. clarifying whether the term "tax" under certain provisions covers top-up tax). The Bills Committee has no objection to these amendments and will not propose any amendments to the Bill.

Resumption of Second Reading debate

71. The Bills Committee has completed the scrutiny of the Bill. The Administration has indicated its intention to resume the Second Reading debate on the Bill at the Council meeting of 28 May 2025. The Bills Committee raises no objection to it.

Consultation with the House Committee

72. The Bills Committee reported its deliberations to the House Committee on 25 April 2025.

Council Business Divisions
Legislative Council Secretariat
21 May 2025

Appendix 1

Bills Committee on Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024

Membership list

Chairman	Hon CHAN Chun-ying, BBS, JP
Members	Hon Paul TSE Wai-chun, JP Hon Frankie YICK Chi-ming, GBS, JP Dr Hon Junius HO Kwan-yiu, BBS, JP Hon Robert LEE Wai-wang Hon LAM San-keung, JP Dr Hon Wendy HONG Wen Hon Dennis LEUNG Tsz-wing, MH Hon Rock CHEN Chung-nin, SBS, JP Hon Benson LUK Hon-man Hon Edmund WONG Chun-sek Hon TANG Fei, MH Hon Carmen KAN Wai-mun, JP Hon Adrian Pedro HO King-hong (Total：14 members)
Clerk	Mr Colin CHUI
Legal Adviser	Mr Jonathan CHENG

Appendix 2

Bills Committee on Inland Revenue (Amendment) (Minimum Tax for Multinational Enterprise Groups) Bill 2024

List of organizations which have provided written submissions to the Bills Committee

1. Ernst & Young Tax Services Limited
2. Deloitte Advisory (Hong Kong) Limited
3. One submission from an organization
4. Chinese Dream Think Tank
5. Hong Kong Institute of Certified Public Accountant
6. The Taxation Institute of Hong Kong
7. KPMG Tax Services Limited
8. PricewaterhouseCoopers Limited

Appendix 3

Application of the Hong Kong minimum top-up tax, Income Inclusion Rule and Undertaxed Profits Rule in Hong Kong

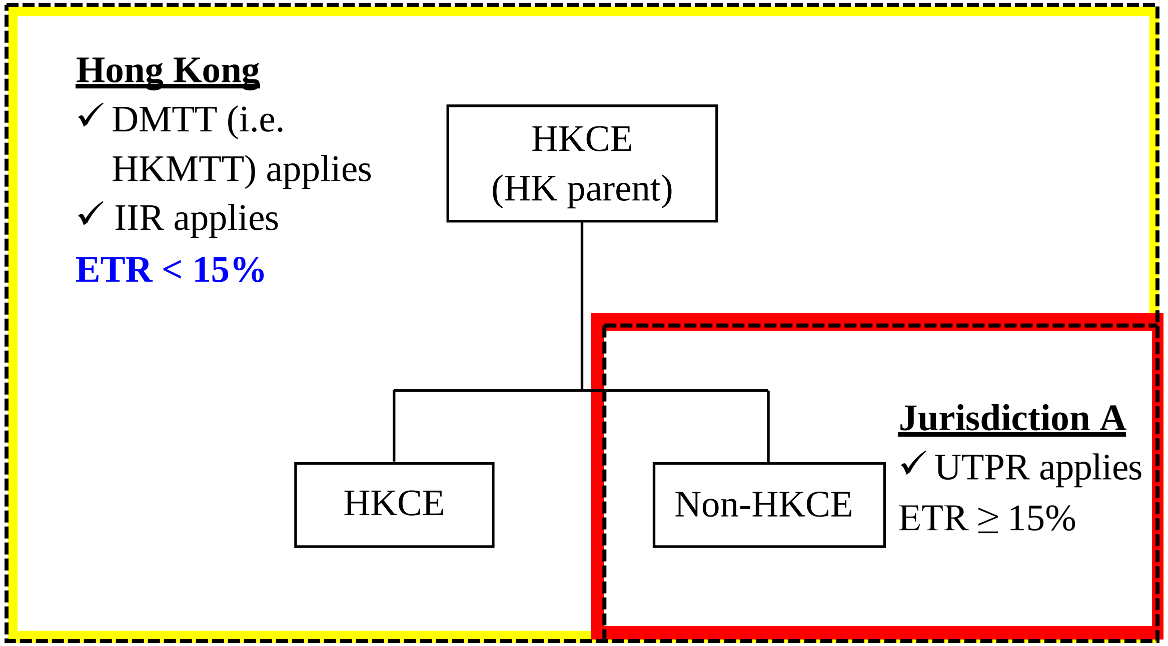
Abbreviations:

CE	Constituent entity
ETR	Effective tax rate
HKCE	Hong Kong constituent entity
HK group	Hong Kong headquartered MNE group
HKMTT	Hong Kong minimum top-up tax
HK parent	Hong Kong parent entity
IIR	Income Inclusion Rule
Non-HKCE	Non-Hong Kong constituent entity
Non-HK group	Non-Hong Kong headquartered MNE group
Non-HK parent	Non-Hong Kong parent entity
DMTT	Domestic minimum top-up tax
UTPR	Undertaxed Profits Rule

For illustration purpose, it is assumed that the DMTT, IIR and UTPR in the following scenarios are all qualified.

(a) <u>HKMTT</u>

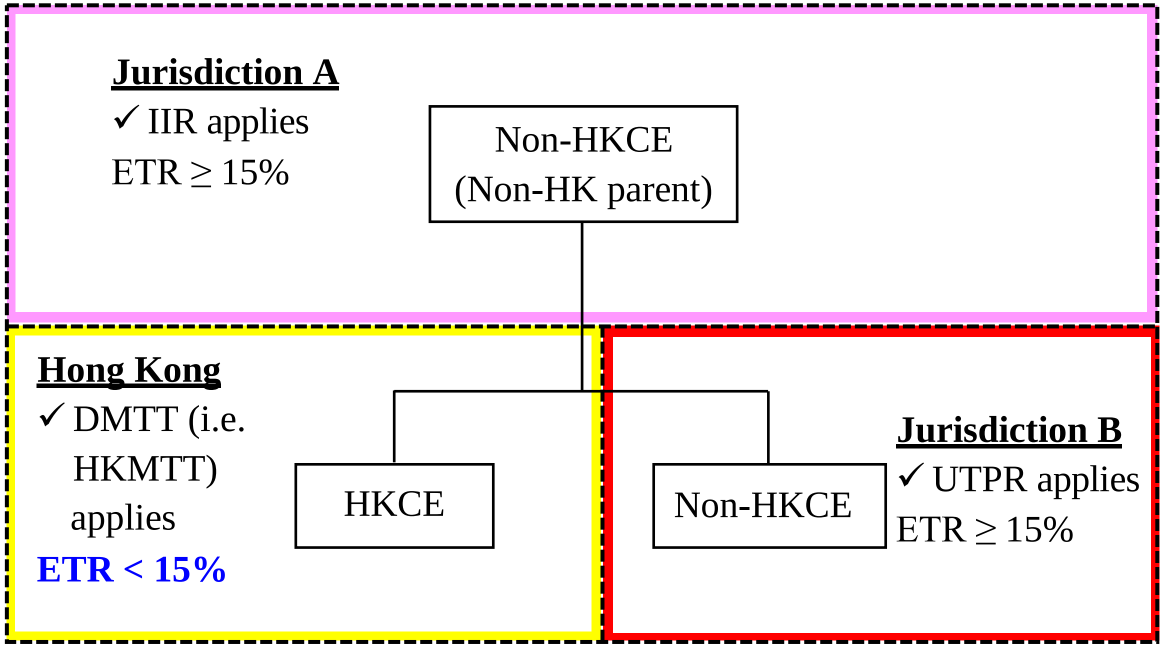
(i) HKCEs of HK group



Top-up tax on HKCEs charged under:

• DMTT in Hong Kong	Yes
• IIR in Hong Kong	N/A
• UTPR in Jurisdiction A	No

(ii) HKCEs of non-HK group

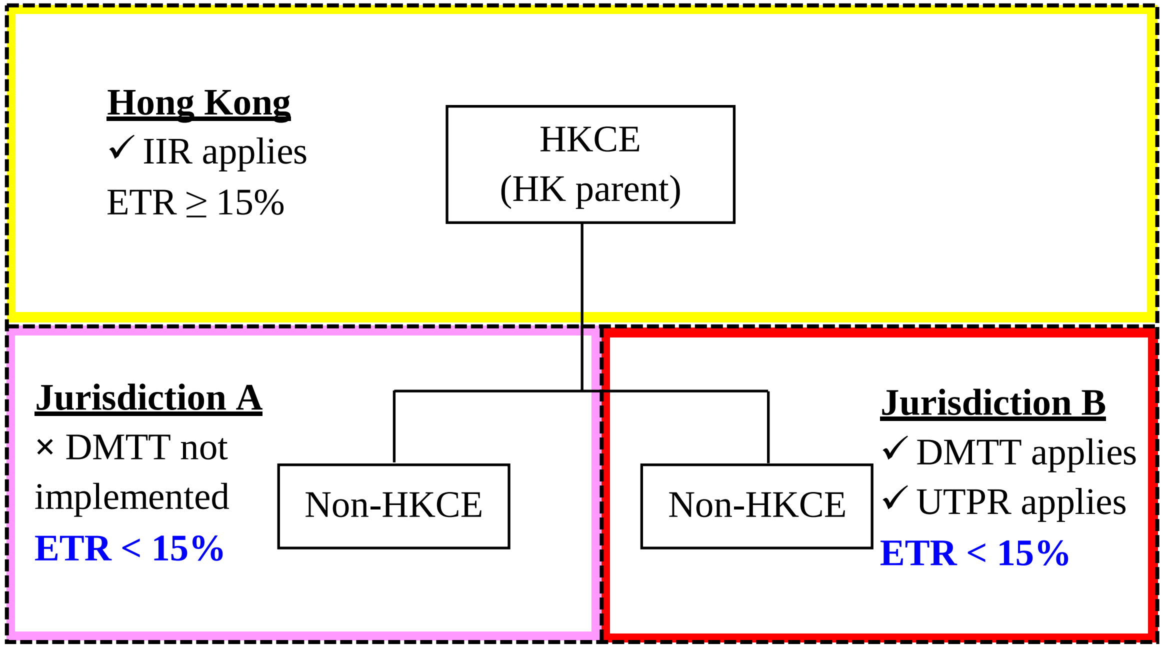


Top-up tax on HKCEs charged under:

• DMTT in Hong Kong	Yes
• IIR in Jurisdiction A	No
• UTPR in Jurisdiction B	No

(b) IIR

Non-HKCEs of HK group



Top-up tax on non-HKCEs in Jurisdiction A charged under:

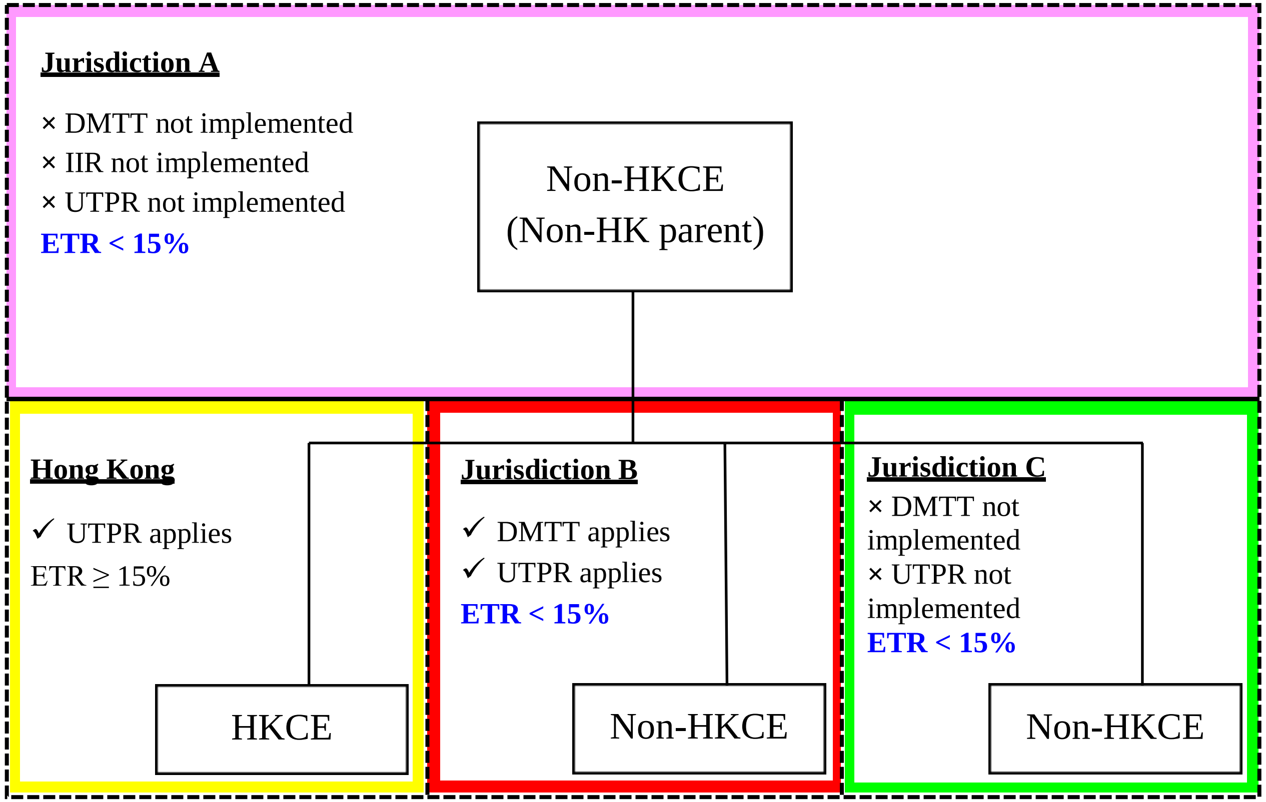
• DMTT in Jurisdiction A	No
• IIR in Hong Kong	Yes
• UTPR in Jurisdiction B	No

Top-up tax on non-HKCEs in Jurisdiction B charged under:

• DMTT in Jurisdiction B	Yes
• IIR in Hong Kong	No
• UTPR in Jurisdiction B	No

(c) UTPR

Non-HKCEs of non-HK group



Top-up tax on non-HKCEs in Jurisdiction A charged under:

• DMTT in Jurisdiction A	No
• IIR in Jurisdiction A	N/A
• UTPR in Hong Kong and Jurisdiction B	Yes

Top-up tax on non-HKCEs in Jurisdiction B charged under:

• DMTT in Jurisdiction B	Yes
• IIR in Jurisdiction A	No
• UTPR in Hong Kong and Jurisdiction B	No

Top-up tax on non-HKCEs in Jurisdiction C charged under:

• DMTT in Jurisdiction C	No
• IIR in Jurisdiction A	No
• UTPR in Hong Kong and Jurisdiction B	Yes