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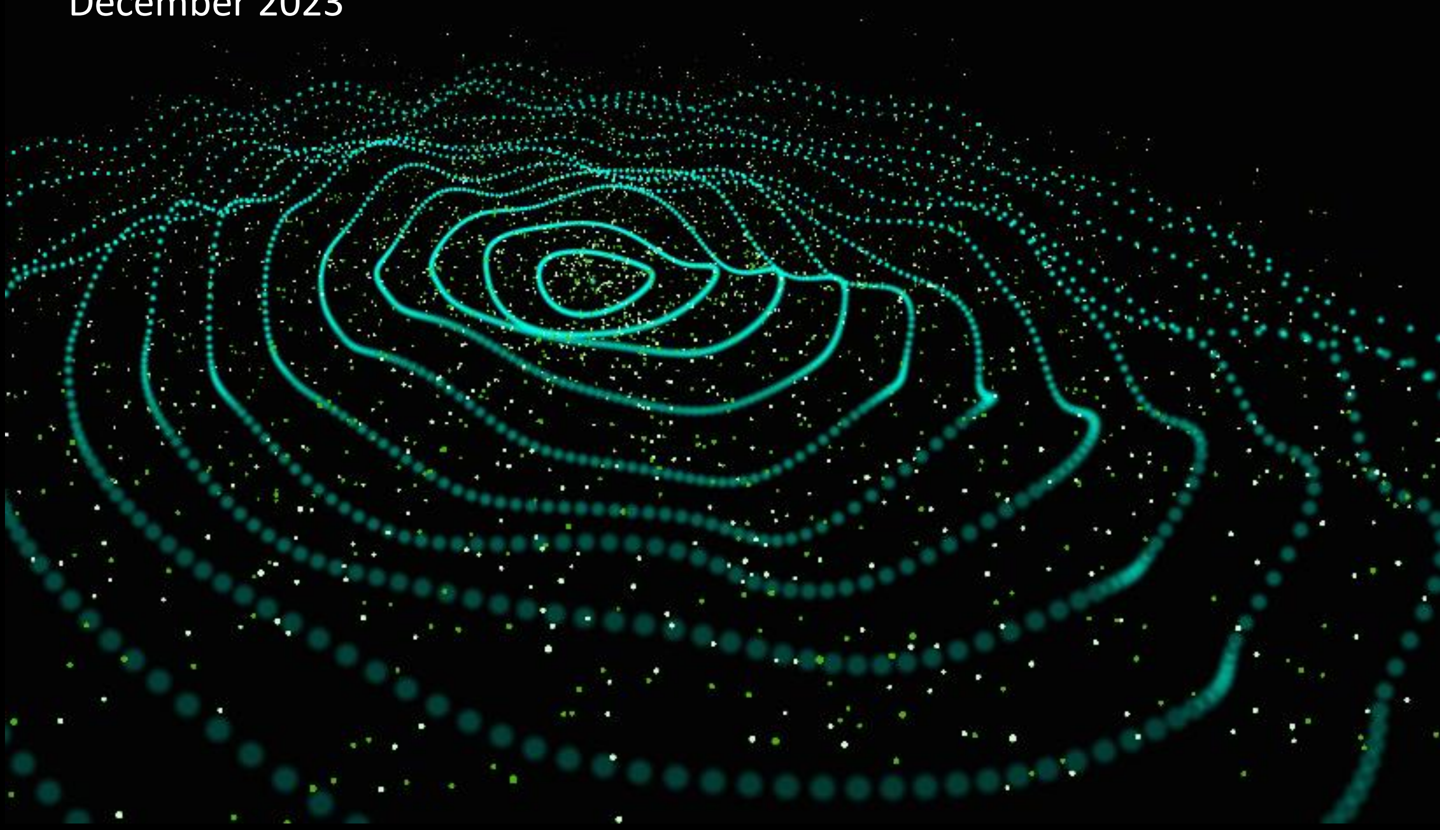
TAX ALERT

The National Assembly of the Socialist Republic of Vietnam issued Resolution on application of additional Corporate Income Tax in accordance with Global Minimum Tax policy, effectively from 01 January 2024

December 2023



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*On 29 November 2023, the 15th National Assembly has issued the **Resolution No. 107/2023/QH15** on application of additional Corporate Income Tax ("CIT") in accordance with the Global Base Erosion (GloBE) Rules on Global Minimum Tax (GMT), effectively from 01 January 2024, including **Qualified Domestic Minimum Top-up Tax (QDMTT)** and **Income Inclusion Rule (IIR).***

Introduction and overview

Concept and context

- GMT (or "Pillar 2") is a solution proposed by the OECD Inclusive Framework/ G20 against profit shifting and aggressive tax competition. Pillar 2 sets out a set of taxing rules to ensure that in-scope Multinational Enterprises (MNEs) pay a minimum level of tax at **15%** in each of the jurisdiction where they operate;
- In Vietnam, after study, the Government has proposed a Draft Resolution on implementation of additional CIT according to GMT, which has been officially approved by the National Assembly to take effect **from 01 January 2024**. A Decree providing guidance for implementation of this Resolution is being developed by competent authorities.

Main rules applied by Vietnam

Accordingly, Vietnam will apply 2 main rules:

(1) Qualified Domestic Minimum Top-up Tax (QDMTT)

(2) Income Inclusion Rule (IIR)

Who will be subject to GMT

In Vietnam, the scope of application under GMT will include **constituent entities (companies, organizations, permanent establishments, etc.)** of MNEs that have annual revenue of **EUR 750 million or more** in the consolidated financial statements in at least 2 of the 4 immediately preceding years. A MNE is defined as a group that includes at least one constituent entity or permanent establishment that is not located in the jurisdiction of the Ultimate Parent Entity.

Overall impact analysis

Implementation of GMT according to the Resolution will have significant impact on the tax obligations of MNEs operating in Vietnam, as well as their related filing and compliance obligations, specifically:

Additional tax liability	Additional filing requirement
• ***For constituent entities of MNEs operating in Vietnam that are enjoying tax incentives***: at risk of incurring additional CIT (Top-up Tax) if the **effective tax rate (ETR) (*)** in Vietnam is lower than 15%; • ***For parent companies of Vietnamese MNEs:*** at risk of incurring Top-up Tax on income generated by overseas constituent entities that are applying low tax rates or enjoying incentives of tax holiday and reduced tax rate under such jurisdiction's domestic laws, resulting in a jurisdictional **ETR** of lower than 15%.	• In addition to the current CIT finalization obligations, **additional filing requirements** will be imposed regarding preparation of GMT tax return and explanatories according to GMT rules; • Filing deadlines: **12 months** after the last day of the fiscal year (for QDMTT) and **15 months** (**18 months for the first year**) after the last day of the fiscal year (for IIR).

***(*) Effective Tax Rate (ETR)** is computed on a jurisdictional blended basis for all MNE's constituent entities located in such jurisdiction according to the OECD formula (Please refer to the formula in Page 4).*

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Details of critical provisions in the Resolution

1. General principles

SCOPE OF APPLICATION

- **Effectiveness:** From 01 January 2024, applicable from the financial year 2024
- **In-scope entities:** Constituent entities of MNE that have consolidated annual revenue of **EUR 750 million** or more in at least **2 of the 4** years immediately preceding the applicable fiscal year.
- **Excluded entities:** The Resolution also provides **exclusion** for entities in accordance with the GloBE Rules (*such as governmental entity, international organization, non-profit organization, pension fund, investment fund and real estate investment vehicle that is an Ultimate Parent Company and entities with at least 85% of the asset value owned by excluded entities, etc*.).

DEFINITIONS

The Resolution includes **key terms and definitions** in alignment with the GloBE Rules, such as *Multinational Enterprise, Ultimate Parent Entity, Constituent Entity, Accepted Financial Accounting Standards, Authorized Financial Accounting Standards, etc*. and at the same time **directly refers to** the OECD's GloBE Rules including Model Rules, Commentaries, Agreed Administrative Guidance, etc.

DE MINIMIS

This is applicable to QDMTT and IIR, where Top-up Tax in a jurisdiction shall be **deemed to be 0** (zero) provided that all constituent entities **simultaneously meet** the following conditions: (i) Average GloBE Revenue of such jurisdiction is **less than EUR 10 million** and (ii) Average GloBE Income of such jurisdiction is **less than EUR 1 million EUR** or having **an Average GloBE Loss.**

EXCHANGE RATE

The foreign exchange rate used to determine the revenue and income threshold in the Resolution is the **average foreign exchange rate of December** of the **calendar year immediately preceding** the year in which revenue and income arise, which is announced by **the State Bank of Vietnam.**

SAFE HARBOURS

- **Transitional country-by-country report ("CbCR") Safe Harbours (2024 - 2026):** Top-up Tax shall be deemed to be 0 (zero) if 1 of the following 3 criteria is met:
  - i. Total Revenue is less than **EUR 10 million** and Profit (Loss) before Income Tax is less than **EUR 1 million** based on the **qualified CbCR**;
  - ii. Simplified ETR is equal to or greater than: **15%** in 2023 and 2024; **16%** in 2025; **17%** in 2026;
  - iii. Profit (Loss) before Income Tax is **equal to or less than** Substance-based Income Exclusion amount as calculated under the GloBE Rules.
- **Simplified Calculation Safe Harbour:**
  Constituent entities will be also allowed to use **Simplified Calculations Safe Harbour** tests, including Routine profits test, *De Minimis* test and ETR test.
- **Transitional Penalty Relief:**
  - During transitional period, **no penalties or sanctions** would apply in connection with violation of the GMT returns filing;
  - While not yet mentioned by the Resolution, OECD guidance provides that such penalty relief is on conditional that MNE has taken "reasonable measures", where MNE need to prove they have acted in good faith to understand and comply with the regulations of GMT.

SUBSTANCE-BASED INCOME EXCLUSION

The Net GloBE Income shall be reduced by the Substance-based Income Exclusion amount that is equal to 5% of the aggregate carrying value of Eligible Tangible Assets of all constituent entities and 5% of the aggregate Eligible Payroll Costs of all constituents. The carve-out transitional rates from 2024 are as follows:

Fiscal year	Payroll carve-out (%)	Tangible asset carve-out (%)
2024	9,8	7,8
2025	9,6	7,6
2026	9,4	7,4
2027	9,2	7,2
2028	9,0	7,0
2029	8,2	6,6
2030	7,4	6,2
2031	6,6	5,8
2032	5,8	5,4

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Details of critical provisions in the Resolution

2. QDMTT and IIR

Specifically, application of QDMT and IIR rules are guided in the Resolution with the following key contents:

	QDMTT rule	IIR rule
Scope	**Constituent entities in Vietnam** of: ✓ MNEs with parent entities located overseas (**in-bound investment**); and ✓ Vietnamese MNEs.	**Parent entities in Vietnam** (including Ultimate Parent Entity, Intermediate Parent Entity, and Partially Owned Parent Entity) of MNEs holding direct or indirect ownership in constituent entities outside Vietnam (**out-bound investment**).
Formula	**Top-up Tax** = (**Top-up Tax percentage** x **Excess profits**) + Additional Current Top-up Tax (if any).	**Top-up Tax** = ((**Top-up Tax percentage** x **Excess profits**) + Additional Current Top-up Tax (if any) – **QDMTT.**
	In which: - ***Top-up Tax percentage*** *= 15% (-) ETR.* - ***Effective Tax Rate (ETR)*** *= the sum of the Adjusted Covered Taxes of each Constituent Entity located in the jurisdiction/the Net GLoBE Income of the jurisdiction for the fiscal year* - ***Excess profit*** *= Net GloBE Income (-) Substance-based Income Exclusion.* - ***Net GloBE Income*** *= GloBE Income (-) GloBE Loss of all constituent entities.* - ***Substance-based Income Exclusion*** *= 5% of the aggregate carrying value of Eligible Tangible Assets of all constituent entities (+) 5% of the aggregate Eligible Payroll Costs, after the transitional carve-out period from 2024 to 2032.*	
Top-up Tax Income and Top-up Tax Allocation	• All income of constituent entities is subject to QDMTT, **disregarding ownership ratio**; • The allocation of Top-up Tax under QDMTT **is not yet mentioned**.	• Top-up Tax payable is charged on the parent entity's **ownership ratio** in the constituent entities; • Top-up Tax then is allocated to each constituent entity on the basis of a **GloBE Income ratio**.
Filing obligations	QDMTT and IIR taxpayers need to prepare and submit: • GloBE Information Return. • **Supplementary GMT return** together with the **explanatories on variances due to different accounting standards.**	
	• Deadline: **12 months** after the last day of the fiscal year. • Taxpayers: Constituent entity in Vietnam. In case the Group has **more than 01 constituent entity**, the Ultimate Parent Entity (within 30 days from the end of the fiscal year) will designate a **constituent entity** as the filing entity.	• Deadline: **18 months** after the last day of the fiscal year **for the first year** and **15 months** for the subsequent years. • Taxpayers: Parent entities in Vietnam.

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Deloitte's viewpoint

- The Resolution on GMT is expected to have **a significant impact** on in-scope MNEs, including foreign enterprises investing in Vietnam and Vietnamese enterprises investing overseas. Specifically, in-scope companies will be directly affected by (i) **Top-up tax liability** (if their ETR is below 15%, particularly for those that are enjoying tax incentives) and (ii) **Tax filing obligation.**
- Computation and filing regulation under the Resolution which are conformed with GloBE Rules are **quite complicated** with various definitions and terminologies that are newly introduced in Vietnam. Accordingly, enterprises are required to understand thoroughly about related regulations, collect information from different constituent entities, consider critical factors that have impact on the calculation and filing process.
- If **Vietnam's QDMTT** is assessed as **qualified** under the GloBE Rules (subject to a peer review process by the OECD), MNEs operating in Vietnam might be **released from recalculating** Top-up Tax under the GloBE Rules in the host countries, which will help relieve administrative burdens and save costs in relation with compliance work.
- *Undertaxed payment rule – UTPR* – the back-stop rule to IIR under the GloBE Rules has not yet been mentioned in the Resolution. Notwithstanding, the application of both QDMTT and IIR rules also ensures that Top-up Tax of constituent entities in Vietnam will not be collected by a third jurisdiction under UTPR, thereby **securing Vietnam's taxing rights**.
- A **Decree by the Government** providing detailed guidance for regulations in this Resolution is expected**.**

Recommendations for in-scope enterprises

With the issuance of the Resolution on GMT from 2024, in-scope enterprises need to promptly kick-off the process of studying and preparation for compliance, as well as planning for optimization policies where applicable, which may include the following steps:

(1) Impact assessment	(2) Policy observation and study	(3) Resource preparation	(4) Optimization planning
Assess the impacts *of GMT in Vietnam and other jurisdictions where the group operates.*	*Stay close with the schedule of the issuance of* ***detailed guidance (Decree)*** *on GMT implementation in Vietnam to fully understand the calculation and filing principles.*	***Prepare resources*** *(human resources, tools, external consultation, etc.) to be ready for implementation and compliance.*	*Develop a plan for Top-up Tax filing* ***compliance,*** *at the same time* ***consider available optimizing solution/incentives*** *to mitigate GMT impacts.*

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