



Hong Kong Tax Newsflash

Proposed amendments to the draft legislation on the Global Minimum Tax and Hong Kong Minimum Top-up Tax

【Global Tax Reset II Series】

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The Hong Kong Government recently published its [response](#) to the comments and suggestions submitted by various stakeholders regarding the draft legislation¹ for the implementation of the OECD BEPS Pillar Two Global Anti-Base Erosion (GloBE) Rules and Hong Kong Minimum Top-up Tax (HKMTT), and concurrently introduced a series of amendments to the draft legislation, i.e. [Committee Stage Amendments](#) (CSAs). These refinements address feedback from tax professionals and industry stakeholders, fine-tuning Hong Kong's adoption of the global minimum tax and the HKMTT regimes. The amendments improve the clarity, practicality, and legal certainty of Hong Kong's new minimum tax framework, reinforcing its commitment to international tax cooperation.

In this article, we highlight the key proposed amendments and the Government's response to the comments and suggestions received. For the features of the GloBE Rules and HKMTT, please refer to our prior Hong Kong Tax Newsflash [Issue 234](#).

Proposed amendments

General anti-avoidance rule

One of the most important changes is the Government's decision to remove the proposed "main purpose test" (MPT) and apply the sole or dominant purpose test under Hong Kong's existing general anti-avoidance rule (GAAR) with modifications to the new top-up tax regime. This has significant implications for how multinational enterprise (MNE) groups should assess tax risk when structuring transactions.

The original MPT would have applied where avoiding any obligation under the top-up tax regime was one of the main purposes of an arrangement, even if not the dominant one. This low threshold introduced broad uncertainty, as even commercially driven transactions with incidental tax effects could fall within scope. In contrast, the modified GAAR will only be triggered when the sole or dominant purpose of an arrangement is to obtain a tax benefit. This higher threshold is well-established in Hong Kong case law and provides a more predictable framework.

¹ [Inland Revenue \(Amendment\) \(Minimum Tax for Multinational Enterprise Groups\) Bill 2024](#)

Importantly, GAAR will only apply to arrangements under the top-up tax regime if they are inconsistent with the intended outcomes provided under the OECD GloBE Rules and guidance. This safeguard implies that taxpayers who act in accordance with the OECD's guidance, whether on effective tax rate calculations or safe harbour applications, are protected from GAAR application.

The Inland Revenue Department (IRD) also indicated that it will publish guidance on the application of GAAR to the GloBE and HKMTT regimes on its website. In particular, the guidance will clarify that transactions entered into on or before 30 November 2021 in general will not be considered as having the sole or dominant purpose of enabling a person to obtain a tax benefit under the GloBE and HKMTT regimes.

This shift delivers greater legal certainty and reduces compliance risk. Taxpayers should continue to structure their global operations based on sound commercial rationale and OECD-compliant practices. Where material tax benefits arise, a careful review of the arrangement's consistency with the GloBE principles is advised.

Time limits for tax administration

The Government has adopted stakeholders' recommendations to amend various tax administration time limits in order to improve the friendliness and practicality of the regime, including:

- **Raising top-up tax assessment:** providing a fixed time limit of 8 years after the end of the year of assessment for non-evasion cases; and 12 years for evasion cases (originally unlimited time limit²).
- **Correcting errors:** extending from 6 years to 8 years after the end of the year of assessment for taxpayers to correct errors or omissions in top-up tax returns and claim refunds of tax overpaid.
- **Record keeping:** shortening from 12 years to 9 years after the completion of transactions, acts or operations to which the records relate.
- **Local GloBE Information Return (GIR) filing if exchange mechanisms fail:** extending from 30 days to at least 60 days for filing the GIR locally if the overseas jurisdictions fail to exchange the GIR with Hong Kong. Moreover, it is clarified that if a Hong Kong constituent entity (CE) files the GIR, other Hong Kong CEs are exempt from separate filings.

Penalties

In response to stakeholders' requests, the Government proposed to remove the penalty provisions on directors, officers and service providers in respect of a corporation's non-compliance with the top-up tax regime.

Based on the remaining penalty provisions applicable to service providers it appears they will not be regarded as having committed an offence so long as the top-up tax notification or return is furnished in accordance with the information provided or instructions given by the entity. This implies that the service provider is relieved from the responsibility to verify the correctness of the information provided or instructions given by the entity.

For the remaining offences, the unlimited time limit (6 years from the offence or 2 years from discovery) for initiating proceedings in respect of an offence is replaced by a fixed 8-year time limit, offering greater clarity and finality for taxpayers and service providers.

² The original time limit for raising an additional assessment is within 6 years after the end of the fiscal year, or the time when the non-assessment or under-assessment has come to the assessor's knowledge, whichever is later.

The Government indicated that it will make reference to the approach set out in the OECD's guidance on transitional penalty relief when considering whether prosecution or penal action is to be initiated and will provide guidance accordingly.

Tax credit

In response to stakeholders' recommendations, CSAs are proposed to allow foreign qualified domestic minimum top-up tax (QDMTT) paid in overseas jurisdictions as a tax credit against Hong Kong profits tax in the following two situations:

- QDMTT paid in respect of the profits of a foreign permanent establishment (PE) in another jurisdiction, which are also included in the assessable profits of the main entity which is a Hong Kong CE.
- QDMTT paid in respect of the profits of a foreign investee entity in another jurisdiction, out of which a dividend is paid to a Hong Kong CE, where the dividend is chargeable to profits tax (i.e. offshore dividends under the foreign-sourced income exemption (FSIE) regime).

Neither foreign income inclusion rule (IIR) nor undertaxed profits rule (UTPR) top-up tax is allowed as a tax credit against profits tax payable. The IRD will provide guidance on the granting and computation of the tax credit in respect of foreign QDMTT paid.

Interaction with the FSIE regime

The FSIE regime is amended to recognize QDMTT paid in other jurisdictions as satisfying the "subject to tax" condition for the participation exemption. The applicable rate (at least 15%) remains to be the corporate tax rate of the foreign jurisdiction and the top-up tax percentage is disregarded.

For instance, a Hong Kong company receiving dividends from Company X, which is exempt from corporate income tax due to tax incentives in Jurisdiction X (with a statutory tax rate of 15%) but that paid QDMTT in Jurisdiction X, would meet the "subject to tax" condition. In contrast, if the Hong Kong company receives dividends from Company Y, which is neither subject to any corporate income tax nor QDMTT in Jurisdiction Y (with no corporate income tax system), but subject to IIR, the "subject to tax" condition is not satisfied.

Groups should review their foreign income streams and repatriation strategies to assess how these adjustments may impact their overall tax position.

Reimbursements of top-up taxes

Intra-group reimbursements of top-up tax, including UTPR top-up taxes and HKMTT as originally proposed in the draft legislation, are tax-neutral. A CSA is introduced to clarify that such neutralization also applies to IIR top-up tax. In other words, reimbursements of IIR, UTPR top-up taxes and HKMTT are neither deductible to the payer nor taxable to the recipient if certain conditions are met³.

³ provided that the intra-group payment does not exceed the amount of top-up tax payable by the paying entity under an allocation of the applicable tax among entities and PEs of the MNE group relevant to the applicable assessment, and has been paid or agreed to be paid by the receiving entity

This rule supports cost-sharing among group entities without distorting Hong Kong's tax base. Taxpayers using centralized tax settlement arrangements should properly document the reimbursement arrangement and ensure internal allocations to align with the underlying liability.

Mandatory e-filing of profits tax returns

The CSA incorporates the requirement for mandatory e-filing of profits tax returns into the draft legislation. Specifically, it mandates a Hong Kong CE, a Hong Kong joint venture and a stateless CE of an in-scope MNE group⁴ to file the profits tax returns in an electronic form starting from the year of assessment 2025/26. Once the mandatory e-filing requirement applies to an entity or a PE, it will continue to apply for every subsequent year of assessment. This move provides in-scope MNE groups with early clarity, enabling them to prepare for tax filing requirements well in advance.

Our observations

Hong Kong is proceeding with its legislative agenda and remains committed to enacting the relevant legislation in the first half of 2025 in spite of the recent uncertainty in the international tax system. The CSAs bring Hong Kong a step closer to completing its legislative implementation of the global minimum tax.

While the replacement of the main purpose test with the sole or dominant purpose test under the existing GAAR, including a provision relating to consistency with the GloBE Rules, is an improvement, the introduction of anti-avoidance measures above those included in the GloBE Rules is likely to negatively impact Hong Kong's competitiveness. This is particularly the case when considering that Singapore has still not introduced such a measure.

We are encouraged to see that the Government has incorporated numerous stakeholder suggestions regarding the administrative procedures, thereby reducing the compliance burden and enhancing the user-friendliness of the legislation. We also welcome the clarifications regarding the deductibility of top-up taxes and the availability of tax credits, as well as their interaction with the FSIE regime.

Upon enactment of the Bill, Hong Kong would implement the IIR and HKMTT for fiscal years beginning on or after 1 January 2025. The implementation date for UTPR will be determined later.

For MNE groups with accounting periods beginning on or after 1 January 2025, the earliest deadline for submitting the top-up tax return in Hong Kong will depend on when they first became classified as an in-scope MNE Group and will be either 31 March 2027 (15 months after 31 December 2025) for those already in-scope or 30 June 2027 (18 months after 31 December 2025) for those falling in-scope for the first time. Concurrently, those MNE groups whose accounting period ends on 31 December must submit a notification by 30 June 2026 and file their annual Profits Tax returns by August 2026.

Next steps for taxpayers include:

- Reviewing structures for consistency with GloBE principles and GAAR safeguards.
- Adjusting data systems to accommodate extended record-keeping and filing periods.
- Preparing for mandatory e-filings and potential local GIR obligations.
- Reassessing safe harbour eligibility and identifying jurisdictions at risk of disqualification.

⁴ which meets the revenue thresholds under the global minimum tax and HKMTT regimes for the corresponding and preceding fiscal year

- Evaluating deductibility and foreign tax credit claims, particularly under FSIE.
- Formalizing and documenting any intra-group reimbursement mechanisms.

Early engagement with professional tax advisors is essential to ensure readiness, reduce compliance friction, and manage emerging risks under the new regime.

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Hong Kong Tax Analysis / Tax Newsflash

27 December 2024	Draft legislation on the Global Minimum Tax and Hong Kong Minimum Top-up Tax published in Gazette	[English] [Simplified Chinese]
31 October 2024	Updates on implementation of Global Minimum Tax and Hong Kong Minimum Top-up Tax	[English]
21 December 2023	Hong Kong Pillar 2 QDMTT / HKMTT and GloBE Rules consultation	[English]
H113/2023 – 8 March 2023	How Global Minimum Tax implementation timelines could affect top-up tax liabilities	[English]
18 August 2022	Hong Kong defers the implementation of Pillar Two	[English]
H107/2022 – 31 May 2022	The Impact of Pillar 2 on Hong Kong's Real Estate Sector	[English]
H99/2020 – 27 November 2020	Pillar Two – Impact on Hong Kong	[English] [Simplified Chinese]

Tax Analysis / Tax Newsflash

27 January 2025	OECD Pillar Two: Qualified jurisdictions and further guidance	[English]
P397/2025 - 20 January 2025	OECD 发布《支柱一金额 B》补充文件	[Simplified Chinese]
20 January 2025	OECD Pillar Two: Information return updates released	[English]
24 June 2024	OECD Pillar Two: Further guidance published	[English]
26 April 2024	Pillar Two: Consolidated commentary published	[Simplified Chinese] [English]
P386/2024 – 26 February 2024	OECD 发布《支柱一金额 B》报告	[Simplified Chinese]
21 December 2023	Pillar Two: OECD's further guidance	[English]
18 July 2023	Pillar 2 – QDMTT, UTPR & GIR developments relevant to Hong Kong, Singapore and Mainland China	[Simplified Chinese] [English]
P374/2023 - 16 March 2023	支柱一金额 A 下撤销数字服务税和相关类似措施的多边公约条款草案	[Simplified Chinese] [Japanese]
P373/2023 - 6 March 2023	全球税制重塑 2.0 系列: OECD 发布支柱二征管指南	[Simplified Chinese] [Japanese]
P372/2023 - 2 March 2023	全球税制重塑 2.0 系列: 支柱二下的信息报告表和安全港规则	[Simplified Chinese] [Japanese]
3 February 2023	OECD released administrative guidance on global minimum tax	[English]
P368/2022 - 30 December 2022	OECD 发布《支柱一金额 B 公众意见征询文件》	[Simplified Chinese]
21 December 2022	OECD Pillar Two: Information return and safe harbors published	[English]
P356/2022 - 16 June 2022	OECD 发布支柱一金额 A 立法模板系列之《支柱一金额 A 下的受监管金融服务业排除》	[Simplified Chinese] [Japanese]
P354/2022 - 24 May 2022	OECD 发布支柱一金额 A 立法模板系列之《金额 A 的适用范围立法模板草案》以及《支柱一金额 A 下的采掘业排除》	[Simplified Chinese] [Japanese]
P352/2022 - 13 April 2022	OECD 发布支柱一金额 A 立法模板系列之《税基确定立法模板草案》	[Simplified Chinese] [Japanese]
15 March 2022	OECD announces release of commentary on Pillar Two model rules for global minimum tax	[Simplified Chinese] [English]
P350/2022 – 9 March 2022	OECD 发布支柱一金额 A 立法模板系列之《联结度与收入来源规则立法模板草案》	[Simplified Chinese]
P347/2021 – 22 December 2021	支柱二 – G20/OECD 包容性框架发布全球最低税立法模板	[Simplified Chinese] [Japanese]
21 December 2021	Pillar Two – OECD Inclusive Framework global minimum tax model rules	[English]
11 October 2021	OECD inclusive framework updates political agreement on Pillar One and Pillar Two	[Simplified Chinese] [English]
P343/2021 – 12 July 2021	Global Minimum Tax Frequently Asked Questions (FAQ)	[Simplified Chinese] [English] [Japanese]
7 July 2021	OECD Inclusive Framework reaches political agreement on taxing the digitalised economy and a global minimum rate	[English]
3 July 2021	Global Endorsement on Pillar One and Pillar Two	[Simplified Chinese] [English]
P338/2021 - 20 May 2021	在不断变化的国际环境中管理和规划知识产权的注意要点	[Simplified Chinese] [Japanese]
P332/2021 – 22 January 2021	在不确定性中寻找机会 – 有关 OECD/G20 税基侵蚀和利润转移(BEPS) 计划以及全球税制重塑 2.0 的第七次年度全球调查	[Simplified Chinese] [Japanese]
P330/2021 – 11 January 2021	European Union – Mandatory Tax Reporting (DAC6) implemented	[Simplified Chinese] [English]
P327/2020 – 19 November 2020	OECD 就应对数字经济带来的税收挑战发布蓝图报告: 支柱二之详细解读	[Simplified Chinese] [Japanese]
P325/2020 – 4 November 2020	OECD 就应对数字经济带来的税收挑战发布蓝图报告: 支柱一之详细解读	[Simplified Chinese] [Japanese]
P323/2020 – 22 October 2020	变革与经济复苏下的全球税收政策导向	[Simplified Chinese]
13 October 2020	2020 年美国大选对美国企业所得税政策的影响	[Simplified Chinese]
P322/2020 – 7 October 2020	澳大利亚发布 2020-21 年预算: 政策利好复苏	[Simplified Chinese]
P317/2020 – 27 July 2020	European Union - Mandatory Tax Reporting for certain cross-border arrangements	[Simplified Chinese] [English]
P311/2020 – 14 February 2020	包容性框架成员国再次承诺将致力于解决数字化经济带来的税收挑战	[Simplified Chinese]
P309/2019 – 20 December 2019	数字经济征税方案下“统一方法”与现行转让定价规则碰撞之初探	[Simplified Chinese]
P304/2019 – 15 November 2019	OECD 发布最新意见征询文件: 全球防止税基侵蚀提案 (支柱二)	[Simplified Chinese] [Japanese]
P302/2019 – 5 November 2019	OECD's public consultation document: Secretariat Proposal for a "Unified Approach" under Pillar One	[Simplified Chinese] [English] [Japanese]



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