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China | Tax & Business Advisory | 18 July 2023

Tax Newsflash

【Global Tax Reset II Series】Pillar 2 – QDMTT, UTPR & GIR developments relevant to Hong Kong, Singapore and Mainland China

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On 17 July 2023, the OECD published a number of documents which provide additional clarity regarding various aspects of Pillar 2, otherwise known as GloBE, or the global minimum tax. While the documents are extensive, key focus areas of these documents relate to Qualified Domestic Minimum Top-up Tax (QDMTT), the Under Taxed Profits / Payments Rule (UTPR), the GloBE Information Return (GIR) and the Subject to Tax Rule (STTR).

We have selected and summarized several of the key developments for MNE Groups with operations in Hong Kong, Singapore and Mainland China.

QDMTT Safe Harbour

QDMTTs are effectively a local version of the GloBE rules that allow jurisdictions to collect the minimum 15% top-up tax locally, rather than it being collected by the jurisdiction in which the ultimate parent entity (UPE) operates. Since the introduction of the concept of QDMTTs, there have been questions regarding the exact manner of operation of QDMTTs and whether they are required to operate in precisely the same manner as the GloBE rules, or whether some divergence will be permitted. There have also been questions about which tax authority will have the final say in order to determine how much top-up tax is due. For example, would it be the jurisdiction operating the QDMTT? Or could a jurisdiction with a right to apply the Income Inclusion Rule (IIR) challenge the interpretation of the jurisdiction operating the QDMTT? Similarly, could a jurisdiction operating the UTPR seek to make a challenge to both jurisdictions' interpretations of the GloBE rules?

To resolve some of these questions, the concept of a QDMTT Safe Harbour had been raised in December 2022 and developed throughout 2023. As expected, its introduction has now been confirmed. The significance of the QDMTT Safe Harbour is that it effectively gives the jurisdiction operating the QDMTT the final decision on whether an MNE Group must pay top-up tax within that jurisdiction. In other words, where a jurisdiction that meets the safe harbour criteria determines that an MNE Group should pay $80 of top-up tax under a QDMTT, it should not be open to another jurisdiction to then argue that the correct amount of top-up tax should have been $100. This previously could have led to uncertainty for the MNE Group and the potential for excess taxation. Such scenarios might have arisen where a difference in opinion occurred regarding the proper application of the GloBE rules and could have led to a scenario where multiple claims were made by different tax authorities on the same MNE Group.

The OECD has outlined a number of requirements that must be met in order to be eligible for the QDMTT Safe Harbour. These include rules relating to the usage of particular accounting standards, an explicit requirement regarding consistency with the GloBE rules (subject to specific deviations) and meeting an ongoing administrative standard in respect of the rules. Meeting the requirements of the QDMTT Safe Harbour will be monitored by a peer review process that is to be developed and administered by the OECD.

The QDMTT Safe Harbour could have implications for MNE Groups' Pillar 2 projects. As tax administrations operating QDMTTs will effectively have greater authority within the Pillar 2 construct, MNE Groups may be forced to engage with those tax authorities individually, rather than with the tax authority of the UPE as was envisioned in the original Pillar 2 framework. Therefore, it will be important to have the necessary data and skillsets locally to respond to these tax authorities. This could push MNE Groups to adopt a more decentralized approach to projects or to create satellites of Pillar 2 excellence in different geographies and time zones.

UTPR transitional relief

The UTPR was originally supposed to be a backstop mechanism that would apply where top-up tax was not collected under either a QDMTT or IIR. However, over the past 12 months, the UTPR has attracted increasing attention. In particular, the potential for the UTPR to collect significant amounts of top-up tax from MNE Groups headquartered in the US and Mainland China. This concern has been magnified by legislation introduced by Korea that if unchanged would introduce the UTPR 1-year earlier than most other jurisdictions, meaning it would apply from 2024.

To ease the initial burden of the UTPR on certain jurisdictions, the OECD has created a transitional relief mechanism. This mechanism applies to the UPE jurisdiction and would prevent the UTPR from applying to the UPE jurisdiction for fiscal years that begin on or before 31 December 2025 and ending before 31 December 2026. Effectively, meaning the UTPR should not be applicable for MNE Groups with a 31 December year end, until 1 January 2027.

The transitional relief only applies in respect of jurisdictions that have a headline rate of tax of 20% or more. Accordingly, jurisdictions such as the US and Mainland China should be able to utilize this transitional relief, whereas jurisdictions such as Hong Kong and Singapore should not be able to. Making the transitional relief subject to a 20% headline rate of tax appears to give rise to outcomes that are not consistent with the core design of the GloBE rules, which are focused on effective tax rates. For example, this could lead to a scenario where a Singapore UPE has an effective tax rate of 10%, but has its profits subjected to top-up tax under the UTPR, whereas a US UPE could have an effective tax rate of 0% but benefit from the transitional UTPR relief.

GloBE Information Return

The GIR is effectively the GloBE tax return that will be filed in respect of an MNE Group's position under the GloBE rules. The GIR is extensive and requires the submission of a large amount of information, including information on a constituent entity by constituent entity (CE) basis. The GIR was subject to a public consultation in early 2023, during which many respondents argued that providing information at a CE level was not practical. Typically, group accounting systems do not support the provision of such granular information and to extract or create the information manually would be time consuming. In response to these concerns, the OECD has introduced a transitional simplified jurisdictional reporting framework.

This simplification would apply for fiscal years beginning on or before 31 December 2028 and ending on or before 30 June 2030. Effectively, meaning the simplification should be applicable for MNE Groups with a 31 December year end, until 31 December 2029.

The simplification would allow MNE Groups to report the majority of information in respect of a particular jurisdiction on an aggregated basis. For example, the various different adjustments required under Article 3 of the GloBE rules would not be required for each CE, but rather, one aggregated adjustment could be made for all CEs within the jurisdiction.

The simplification is only available in jurisdictions where no top-up tax arises, or where top-up tax does arise but is not required to be allocated on a CE-by-CE basis. Whether CE-by-CE allocation will be necessary should be considered on a case-by-case basis, but an example of when it would occur is where some CEs in a jurisdiction are wholly owned by a UPE and others are owned by a Partially Owned Parent Entity. There will be many instances where MNE Groups will still have some jurisdictions where they are required to include the full CE-by-CE information in their filing. However, many MNE Groups will consider this a helpful simplification, at least in respect of the filing process itself.

Despite the simplification of filing during the transitional years, MNE Groups would still be expected to have substantially robust accounting systems and processes in place to facilitate jurisdictional filing and if necessary, would need to be able to trace particular items to CEs where relevant to the accuracy of the GloBE adjustments. Tax authorities that wish to obtain more information about the filing of a particular MNE Group will also still be able to request information on a CE-by-CE basis should they wish to. Given the potential for tax authorities to request CE level information and an expectation around tracing of specific adjustments within an accounting system, the simplification may not be as helpful as many MNE Groups had hoped for. In the longer term there is an expectation of CE-by-CE data provision, meaning MNE Groups will need to invest considerable effort and capital in order to prepare for Pillar 2.

STTR

The STTR is a component of the Pillar 2 rules that was agreed several years ago and was intended to assist developing jurisdictions to collect tax revenue in respect of certain cross border intra-group payments. However, the OECD had focused recent efforts on developing the GloBE rules, rather than the STTR, making this the first major STTR announcement in the last couple of years. The concept of the STTR is that it should allow a developing source jurisdiction to effectively switch off treaty benefits in respect of intra-group payments made to developed jurisdictions that do not tax those payments at a rate of at least 9%.

For example, if Hong Kong had a tax treaty with a developing jurisdiction under which the developing jurisdiction reduced its interest withholding tax rate from 10% to 5% in respect of interest paid to Hong Kong, and a Hong Kong lender earned interest which was not taxed in Hong Kong pursuant to the Foreign Source Income Exemption. The STTR could apply to effectively switch off the treaty benefits enjoyed by the Hong Kong lender, to the extent of 9% withholding tax in total. This means that the developing jurisdiction that was already withholding 5%, could withhold an additional 4% as a result of the STTR.

The STTR references a 9% nominal rate. However, that can be flexed to take into account the different rules that jurisdictions operate. For example, if a jurisdiction had a 20% rate that only applied to 25% of a company's relevant income, the rate would be computed as 5%, rather than 20%. The STTR also includes targeted anti-avoidance provisions to prevent the imposition of intermediaries that could prevent the STTR from applying.

The STTR is relevant for jurisdictions such as Hong Kong and Singapore that operate quasi-territorial regimes and continue to exempt or otherwise not tax certain types of income, such as interest income for example. However, in practice, due to the nature of applicable treaties that both jurisdictions have entered into, the practical impact of the STTR may be limited.

Conclusion

While the OECD release may appear to be focused on certain safe harbours and transitional matters, these are substantive and will have significant impacts for MNE Groups. The QDMTT Safe Harbour measure should help to create certainty, whereas the UTPR transitional relief should provide relief for MNE Groups with Mainland China and US UPEs, among others. The STTR has also reemerged and should be looked at closely by MNE Groups with large operations in developing jurisdictions.

The OECD continues to develop the Pillar 2 rules at a considerable pace. This is happening at the same time as many jurisdictions draft and begin to implement domestic versions of the Pillar 2 rules. The new rules published by the OECD, plus the divergence between the OECD model rules and domestic versions of these rules is creating substantial complexity. MNE Groups will need to continue to commit significant resources to the tax technical aspects of Pillar 2, as well as to data, compliance and accounting disclosure readiness.

If you have any questions, please contact our professionals:

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Through the "Global Tax Reset II series" articles, Deloitte will help you keep an eye on the recent major changes in the global tax system and discuss with you the far-reaching impact that it may have on multinational corporations. Please refer to the following links to access to the previous articles under the series.

Tax Analysis

P374/2023 – 2023 年 3 月 16 日
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 – 2023 年 3 月 6 日
OECD 发布支柱二征管指南
[Simplified Chinese] [Japanese]

P372/2023 – 2023 年 3 月 2 日
支柱二下的信息报告表和安全港规则
[Simplified Chinese] [Japanese]

P368/2022 - 2022 年 12 月 30 日
OECD 发布《支柱一金额 B 公众意见征询文件》
[Simplified Chinese] [Japanese]

P356/2022 - 2022 年 6 月 16 日
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 - 2022 年 5 月 24 日
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 - 2022 年 4 月 13 日
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]

P350/2022 – 2022 年 3 月 9 日
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] [Japanese]

P347/2021 – 2021 年 12 月 22 日
支柱二 – G20/OECD 包容性框架发布全球最低税立法模板
[Simplified Chinese] [Japanese]

P343/2021 – 12 July 2021
Global Minimum Tax Frequently Asked Questions (FAQ)
[Simplified Chinese] [English] [Japanese]

P338/2021 - 2021 年 5 月 20 日
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 – 2021 年 1 月 22 日
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 – 2020 年 11 月 19 日
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 – 2020 年 11 月 4 日
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 – 2020 年 10 月 22 日
变革与经济复苏下的全球税收政策导向
[Simplified Chinese]

P322/2020 – 2020 年 10 月 7 日
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 – 2020 年 2 月 14 日
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 – 2019 年 12 月 20 日
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 – 2019 年 11 月 15 日
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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3 February 2023
OECD released administrative guidance on global minimum tax

21 December 2022
OECD Pillar Two: Information return and safe harbors published

18 August 2022
Hong Kong defers the implementation of Pillar Two

15 March 2022
OECD 发布支柱二下全球最低税的注释
OECD announces release of commentary on Pillar Two model rules for global minimum tax

21 December 2021
Pillar Two – OECD Inclusive Framework global minimum tax model rules

11 October 2021
关于应对经济数字化税收挑战"双支柱"方案最新进展
OECD inclusive framework updates political agreement on Pillar One and Pillar Two

7 July 2021
OECD Inclusive Framework reaches political agreement on taxing the digitalised economy and a global minimum rate

3 July 2021
双支柱方案得到全球性支持
Global Endorsement on Pillar One and Pillar Two

2020 年 10 月 13 日
2020 年美国大选对美国企业所得税政策的影响

Hong Kong Tax Analysis

H113/2023 – 8 March 2023
How Global Minimum Tax implementation timelines could affect top-up tax liabilities
[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]

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