

# The Implementation of Global Minimum Tax in Malaysia in 2025

## Is there really a breathing space?

15 October 2023

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# Foreword



**Tan Hooi Beng**  
Southeast Asia /  
Malaysia  
International Tax  
Leader

Dear Valued Clients and Friends

We trust you and your family are doing well.

In this special edition, we want to focus on one specific area of interest, namely the Pillar Two also known as the Global Minimum Tax (“GMT”). The question on the start year for Malaysia in respect of GMT has lingered in our mind for months. Many have thought that 2024 would be the year and started to prepare for that eventuality. On 13<sup>th</sup> October, the Malaysian Budget 2024 was tabled and it was announced that Malaysia is expected to implement GMT in 2025.



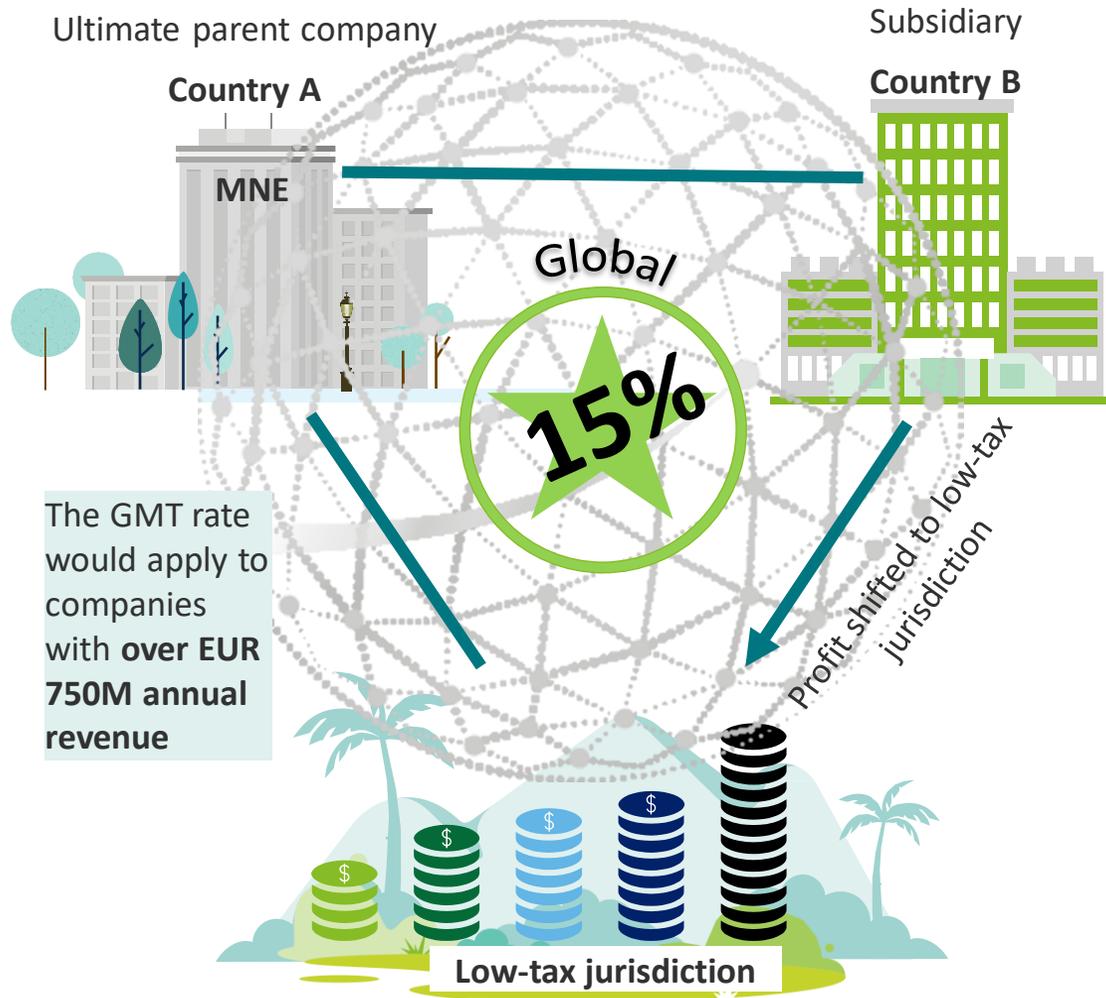
**Kelvin Yee Rung Hua**  
Director –  
International  
Tax Services Group

With this, the knee-jerk reaction is that there will be breathing space for the affected multinational enterprises (“MNEs”) given that there are additional 12 months to prepare. But, is this really the case? We will recapitulate on the concept of GMT, discuss on the perceived “breathing space” and the way forward.

We hope that you would find this write-up useful and relevant.

Happy reading!

# What Led to GMT?



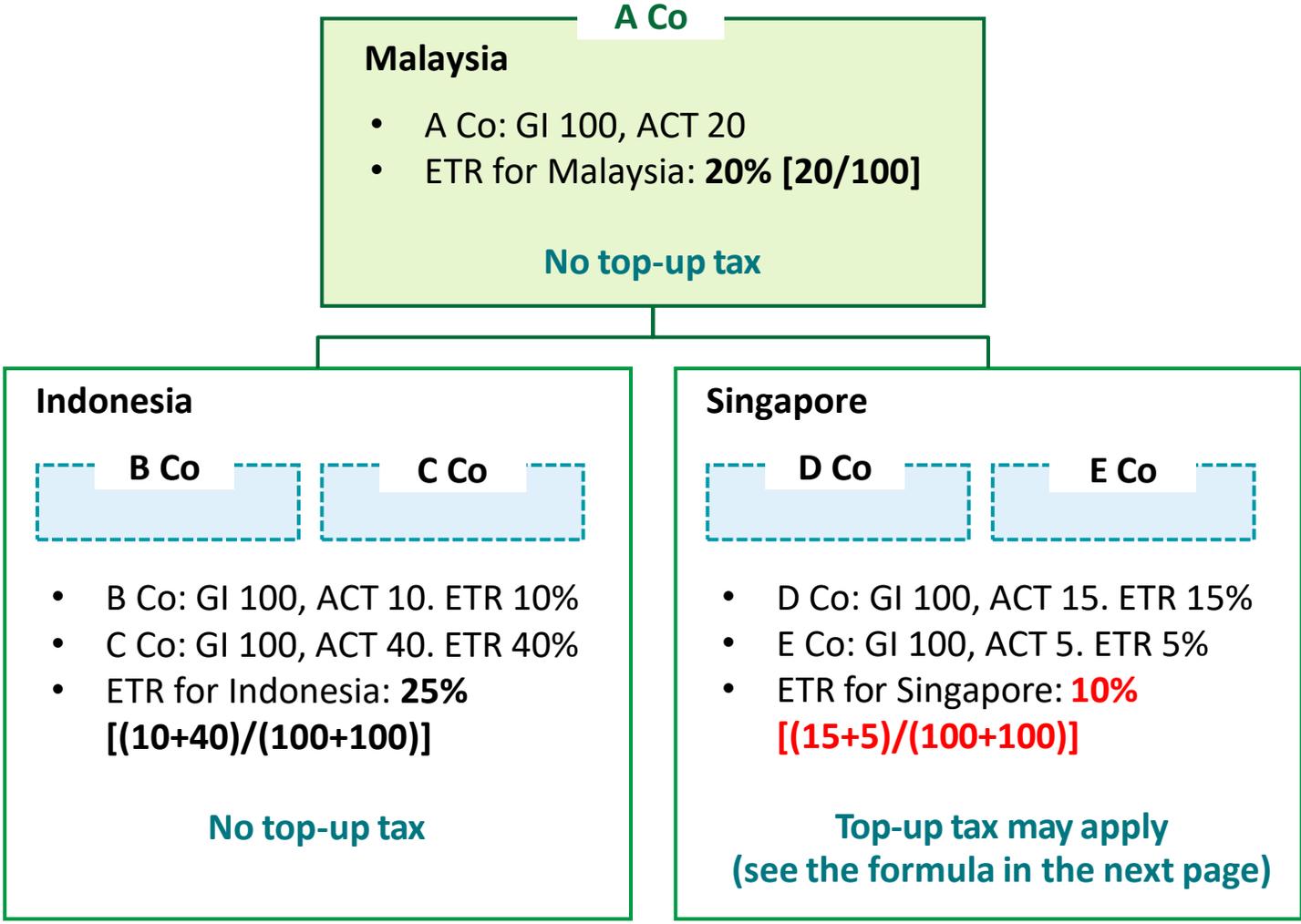
Source – OECD brochure July 2021 – Addressing the tax challenges arising from the digital economy

- GMT is arguably the largest tax reform in the history of mankind. It was conceived with the objective of setting a floor to corporate taxation.
- Ultimately, large MNEs will need to pay a minimum effective tax rate of 15% in every country in which they operate. This new “low” for effective corporate taxation will affect MNEs operating in at least two jurisdictions, with an annual consolidated group revenue of at least €750 million in at least two of the four immediately preceding fiscal years.
- The effective tax rate (“ETR”) for GMT purpose is a unique one that is calculated on a jurisdictional basis (see next page) and involves extensive adjustments. If the MNC Group’s ETR in a jurisdiction is below 15%, top-up taxes may be imposed by foreign jurisdictions via the Income Inclusion Rule (“IIR”) and the Undertaxed Profits Rule (“UTPR”). The IIR and UTPR are also known as the GloBE Rules.
- Instead of ceding the taxing right to other countries, a jurisdiction may implement a Qualified Domestic Top-Up Tax (“QDMTT”) regime, which grants itself the right to collect top-up taxes in respect of entities located in its jurisdiction.
- The Model Rules for GMT, along with the Commentary and subsequent Administrative Guidances, have been released by the Organisation for Economic Co-operation and Development (“OECD”) since December 2021, and an embedded “common approach” rule dictates that implementing countries should apply GMT in a consistent manner.

# The Concept of Jurisdictional Blending

- The GMT ETR is different from the typical accounting ETR. The accounting ETR is commonly calculated by dividing an entity’s tax expense with its profit before tax.
- On the other hand, the GMT ETR is calculated by dividing the aggregate of Adjusted Covered Taxes (“ACT”) and GloBE Income or Loss (“GI”) for all constituent entities (“CEs”) in the jurisdiction. Various adjustments are required to arrive at each component. For example, deferred taxes would need to be recast to 15% for the calculation of ETR.
- It is important to note that the ETR calculation will involve all jurisdictions in which the Group operates, **including** the jurisdiction where the Ultimate Parent Entity (“UPE”) is located.
- In addition, a jurisdiction may have multiple ETRs if special rules apply, e.g., where the Group has a joint venture within the scope of GMT.

## Jurisdictional Blending



# A Quick Guide to the Top-Up Tax Formula

Generally, Top-up Taxes would need to be calculated on a jurisdictional basis, alongside the jurisdictional ETR.

Under certain circumstances, special rules may apply which result in more than one calculation of ETR and Top-up Tax for a jurisdiction.

The “chargeable income” for GMT purposes would be Excess Profits, and it is derived by deducting a substance-based carve-out from the jurisdiction’s aggregate GloBE Income or Loss.

The substance-based carve-out comprises of 5% on qualifying payroll costs and the average carrying value of qualifying tangible assets in the jurisdiction, with a higher carve-out percentage in initial years.

Under the GMT rules, a “Qualified” Top-up Tax imposed by the source jurisdiction on domestic entities could be creditable against any Top-up Taxes computed for the application of IIR and UTPR.

The OECD has released Administrative Guidance as to the design of Qualified Domestic Top-up Taxes, and it is worth noting that jurisdictions with a QDMTT Safe Harbour could effectively “turn off” the calculation of Top-up Taxes for IIR and UTPR application.

**Jurisdictional Top-up Tax**

$$= \left[ \text{Top-up Tax Percentage} \times \text{Excess Profits} \right] + \text{Additional Current Top-up Tax} - \text{Domestic Top-up Tax}$$

The ETR is calculated by dividing the aggregate of the Adjusted Covered Taxes by the GloBE Income or Loss of all entities in the same jurisdiction.

Then, the difference between 15% and the ETR (where it is lower than 15%), would be the Top-up Tax Percentage.

Occasionally, special rules apply which could give rise to Additional Current Top-up Taxes.

For example, where a jurisdiction has a Net GloBE Loss, the ETR would not need to be computed and ordinarily no Top-up Tax would arise. However, if the jurisdiction also has negative Adjusted Covered Taxes of less than 15% on such Net GloBE Loss, the differential amount would be Additional Current Top-up Tax payable. An election could be made to defer such payment to subsequent year(s) with a Net GloBE Income.

# Global Minimum Tax Implementation Across the World



# Global Minimum Tax Implementation Across the World

Evidently, GMT is a worldwide phenomenon, with many jurisdictions already in various stages of the implementation process. The common trend in European countries is GMT implementation with an effective date beginning on or after 31 December 2023 (i.e., 2024). In the Asia Pacific, some jurisdictions intend to proceed effective 2024, whereas others have opted for a deferment to 2025. The African jurisdictions and the Americas are generally undecided in terms of implementation plans, with the exception of Canada which already has draft legislation ready for implementation in 2024.

Europe	Effective	QDMTT	IIR	UTPR
United Kingdom (Laws enacted)	31.12.23	✓	✓	✓
Isle of Man	2025	✓	✓	???
Guernsey	2025	✓	✓	???
Jersey	2025	✓	✓	???
Switzerland (Parliament approved)	01.01.24	✓	✓	✓
Liechtenstein (Draft ready)	01.01.24	✓	✓	✓
European Union (27 members agreed to the EU Directive)	31.12.23	Optional (Adopting members include Germany, Luxembourg, Italy, Netherlands, etc)	✓	✓
The Americas	Effective	QDMTT	IIR	UTPR
United States	???	Under discussion		
Canada (Draft ready)	31.12.23	✓	✓	✓
Bermuda	2025	Propose to enact a 15% corporate income tax that would align with the GMT rules		
Bahamas	???	Launched public consultation		
British Virgin Islands	???	Reviewing GMT implementation; current focus on info-exchange		
Barbados	???	Launched public consultation		

Africa	Effective	QDMTT	IIR	UTPR
African Tax Administration Forum (ATAF)	N/A	Discussing draft legislation for QDMTT	???	???
Mauritius	???	✓	???	???
South Africa	???	Draft for GMT implementation to be published in the 2024 Taxation Laws Amendment Bill		

Asia	Effective	QDMTT	IIR	UTPR
Republic of Korea (Laws enacted)	01.01.24	???	✓	✓
Japan (Laws gazetted)	01.04.24	???	✓	???
Indonesia	???	???	✓	✓
Malaysia	2025	✓	✓	✓
Hong Kong	2025	Awaiting details	✓	✓
Singapore	2025	✓	✓	✓
Thailand (Cabinet approved GMT proposal)	2025	Awaiting details	✓	✓
Vietnam	01.01.2024	✓	✓	Awaiting details
Oceania	Effective	QDMTT	IIR	UTPR
Australia	01.01.24	✓	✓	✓
New Zealand	01.01.24	Implementing a “Domestic IIR” instead of QDMTT	✓	✓

Note 1: The UTPR is generally expected to be implemented a year after IIR

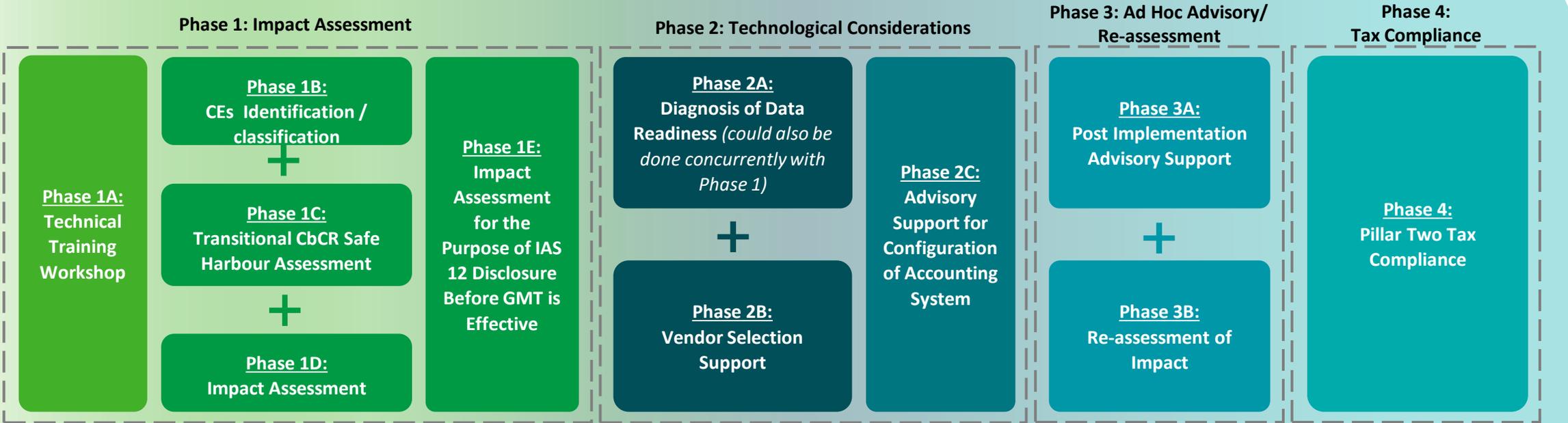
Note 2: The above is updated as of 15 October 2023

# Global Minimum Tax in 2025 – Is There Really Breathing Space?



# Global Minimum Tax in 2025 – Is There Really Breathing Space?

- GMT will apply to large MNEs that operate in Malaysia and elsewhere. Depending on where they operate, the level of urgency would differ. Where Malaysian-based MNEs operate only in Malaysia and countries that will implement GMT in 2025, there could be a slight breathing space but this will also depend on whether the GMT law in Malaysia and those countries are regarded as being substantially enacted in 2023. If so, some form of disclosure in the financial reports for 2023 would still be required, albeit companies may opt to make a limited disclosure.
- Where Malaysian-based MNEs operates in Malaysia and countries that implement GMT in 2024 such as the United Kingdom, there are already GMT issues that need to be dealt with immediately. An impact assessment on the potential top-up tax there given the local QDMTT in those countries as well as disclosures in the financial reporting in 2023 under the relevant accounting standards would be necessary. Analysis on data readiness may also be carried out.
- Regardless of 2024 or 2025, Malaysian subsidiaries of the foreign-based MNCs would need to start assessing the GMT implications on the tax incentives that they are enjoying in Malaysia. Likewise, GMT needs to be considered in new applications for tax holidays in Malaysia. The level of economic substance which would cushion the impact of GMT need to be factored in. The breathing space, if any, is temporary as a host of things need to be done in terms of impact assessment, data readiness, tax provisions, financial disclosures, impact on tax incentives and tax compliance regardless of 2024 or 2025 being the start year. Hence, those MNEs that commenced preparation for GMT, would be in a better position to manage their GMT affair. See below for the typical GMT work stream.



# Implication of Different Implementation Timelines



# Implication of Different Implementation Timelines

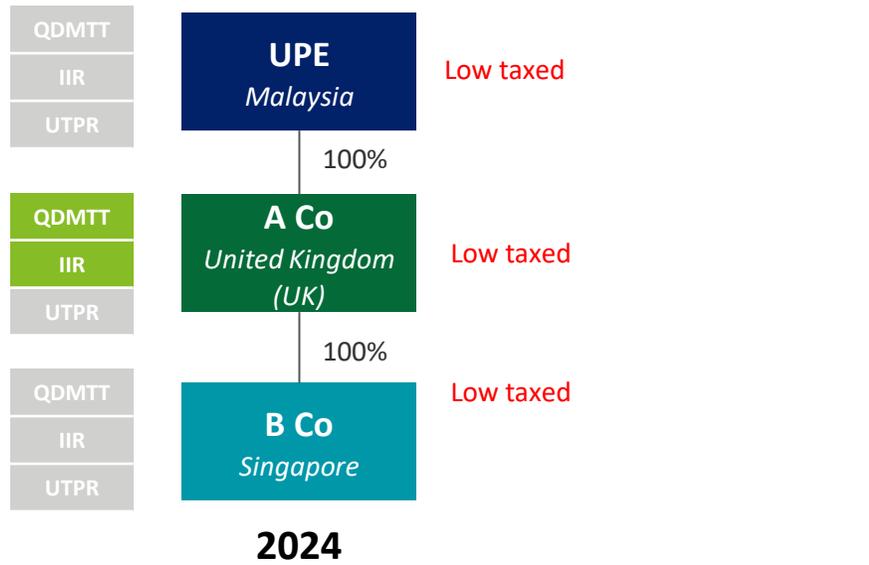
If Top-up Tax arises in a jurisdiction, GMT prescribes 3 rules which will apply, in a specific order of priority, to impose Top-up Tax. Together, these 3 rules ensure that Top-up Tax will be collected regardless of where it arises.

<b>1</b>	<b>Qualified Domestic Minimum Top-up Tax (“QDMTT”)</b>	<ul style="list-style-type: none"><li>• The source jurisdiction is allowed the first right to collect Top-up Tax pursuant to the application of QDMTT</li><li>• For example, if Malaysia implements the QDMTT, top-up taxes arising in Malaysia in respect of Malaysian Constituent Entities would be collected by the Inland Revenue Board of Malaysia</li></ul>
<b>2</b>	<b>Income Inclusion Rule (“IIR”)</b>	<ul style="list-style-type: none"><li>• Where QDMTT is not implemented in the source jurisdiction, Top-up Tax will be collected in the jurisdiction in which a foreign parent entity is located pursuant to IIR</li><li>• If there are multiple parent entities in the corporate hierarchy, a top-down approach is applied and the parent entity at the top of the chain will apply the IIR, except where the ownership interest held by third parties exceeds 20%. Such a parent entity would need to apply IIR in priority to other parent entities</li></ul>
<b>3</b>	<b>Undertaxed Profits Rule (“UTPR”)</b>	<ul style="list-style-type: none"><li>• Where neither QDMTT nor IIR can fully apply, UTPR would be a backstop rule which allows any jurisdiction in which the Group operates the right to collect a share of the Top-up Tax</li><li>• The amount of top-up tax allocated to each jurisdiction is determined by a substance-based formula</li></ul>

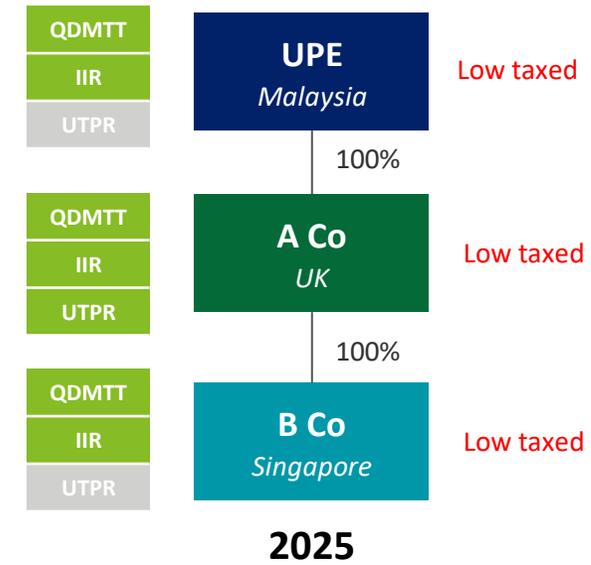
# Implication of Different Implementation Timelines

Depending on where the MNE Group operates, the fragmented implementation timelines across the globe could substantially affect the Top-up Tax quantum during the initial years of GMT. The foremost question in everyone’s mind now that Malaysia has deferred GMT implementation to 2025 is: what does this mean for my MNE Group?

For a Malaysian-based MNE Group, payment of top-up tax arising in Malaysia (if any) could be avoided in 2024. However, this does not mean that the group is free from top-up tax obligations in respect of other jurisdictions. This is illustrated in the following scenario:



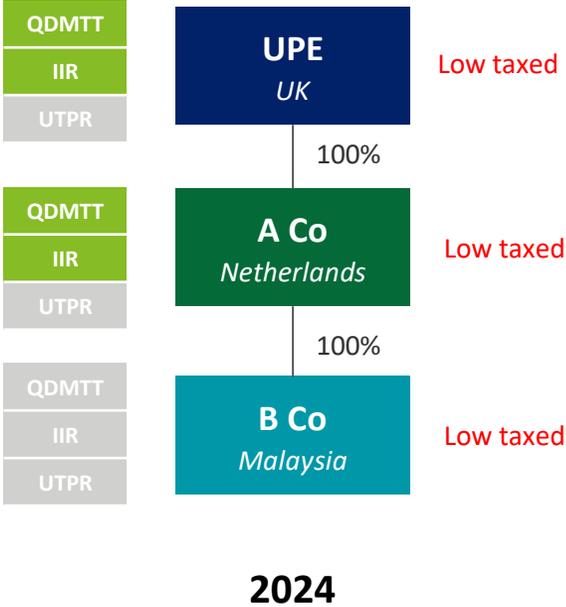
- Top-up Tax in Malaysia in respect of its low taxed profits would be uncollectible as the UK QDMTT and IIR are inapplicable
- Top-up Tax in the United Kingdom would be collected via UK QDMTT
- Top-up Tax in Singapore would be collected by UK via IIR by virtue of A Co being the foreign parent of B Co, instead of the UPE in Malaysia (which does not have an IIR in 2024)



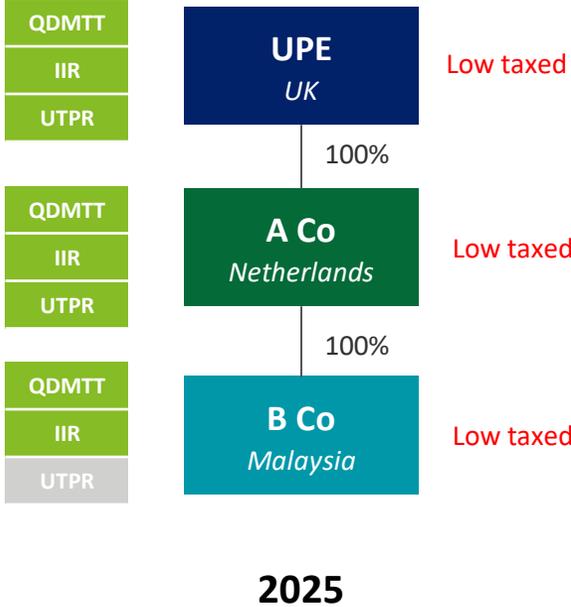
- Top-up Tax in Malaysia, UK and Singapore would be collected via the QDMTT of the respective countries

# Implication of Different Implementation Timelines

Conversely, what would happen if your company is a Malaysian subsidiary whose UPE is in a foreign jurisdiction (e.g., UK) which has implemented GMT in 2024? Unlike a Malaysian-based MNE Group, Malaysia’s deferred implementation would result in less impact on the potential Top-up Tax payable.



- Top-up Tax in the UK and Netherlands would be collected via QDMTT of both countries
- Top-up Tax in Malaysia would be collected by UK via IIR by virtue of UPE being the ultimate parent of B Co.

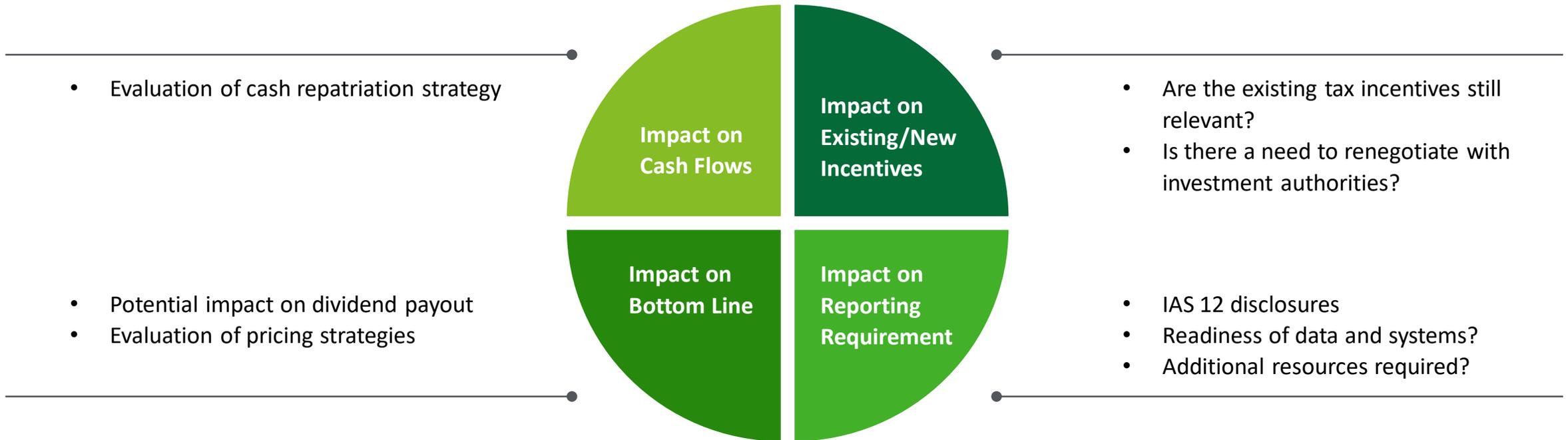


- Top-up Tax in UK, Netherlands and Malaysia would be collected via QDMTT of the respective countries

# Why Impact Assessment on Global Minimum Tax is Crucial



# Why Impact Assessment on Global Minimum Tax is Crucial



# Speak to us

If you have questions on the above or any cross-border tax matters, please get in touch with your usual contact at Deloitte or the following members of the International Tax Services Group:

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**Tan Hooi Beng**  
Southeast Asia / Malaysia  
International Tax Leader  
+603 7610 8843/+60173330891  
hooitan@deloitte.com

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**Kelvin Yee Rung Hua**  
Director  
International Tax Services  
+60 3 7610 8621  
keyee@deloitte.com

---

**James Cheang**  
Manager  
International Tax Services  
+60 3 7610 9075  
wcheang@deloitte.com

---

**Chew Chen Wah**  
Senior Associate  
International Tax Services  
+60 3 7610 8274  
chechew@deloitte.com

---

**Ashley Lim**  
Senior Associate  
International Tax Services  
+60 3 7610 8234  
siewflim@deloitte.com



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