Proposed amendments to global minimum tax and Hong Kong minimum top-up tax bill released

22 April 2025
Issue 3

In brief

Further to the release of the bill on the implementation of the global minimum tax and the Hong Kong minimum top-up tax (HKMTT) in late 2024 (Bill), the Government issued (i) its responses to the submissions from various organisations and (ii) the proposed amendments to the Bill by way of committee stage amendments (CSAs) on 11 April 2025[1].

We are pleased that the Government has adopted various recommendations from PwC, including:

- replacing the main purpose test with the sole or dominant purpose test under the existing Inland Revenue Ordinance (IRO) with modifications as the proposed anti-avoidance provision;
- setting a fixed time limit of 8 years (or 12 years for evasion cases) for raising additional top-up tax assessments;
- shortening the record-keeping period from the proposed 12 years to 9 years;
- removing the proposed provisions relating to offences by directors and other officers;
- clarifying the treatment of qualified domestic minimum top-up tax (QDMTT) imposed by other jurisdictions under Hong Kong profits tax;
- incorporating the administrative guidance issued by the Organisation for Economic Co-operation and Development (OECD) in January 2025; and
- refining the wording of certain provisions of the Bill to clarify the legislative intent.

This news flash summarises the Government's responses and proposed amendments together with our observations.

In detail

Background

The Bill seeks to implement the global anti-base erosion (GloBE) rules under Pillar Two of Base Erosion and Profit Shifting (BEPS) 2.0 to ensure that in-scope multinational enterprise (MNE) groups pay a minimum tax of 15% in respect of the profits derived from every jurisdiction they operate in. The GloBE rules comprise the income inclusion rule (IIR) and undertaxed profits rule (UTPR). The HKMTT has priority over the IIR and UTPR, allowing Hong Kong to generally preserve its taxing rights over low-taxed profits in Hong Kong. For more background and earlier developments of the GloBE rules (as well as other aspects of BEPS 2.0), please refer to our previous tax news flashes[2].

CSAs to the Bill, the Government's responses and clarifications on the Bill

Several organisations, including PwC, made submissions to the Bills Committee providing comments or seeking clarifications on certain provisions of the Bill and offering related suggestions. Taking into account feedback from the stakeholders and the latest administrative guidance issued by the OECD after the gazettal of the Bill, the Government has proposed a number of CSAs to the Bill. The key CSAs, as well as the Government’s noteworthy clarifications and responses to the written submissions regarding the Bill[3], are summarised below.

<table>
<tr><th>Issues</th><th>Key CSAs and clarifications from the Government</th></tr>
<tr><td>Anti-avoidance provision</td><td>

The Government has proposed to apply the sole or dominant purpose test under section 61A of the IRO with modifications, instead of the main purpose test as originally proposed in the Bill, as the general anti-avoidance provision to safeguard the GloBE and HKMTT regimes.
Under the modified section 61A, the additional matters to be considered in determining whether a transaction was entered into for the sole or dominant purpose of obtaining a top-up tax benefit include any changes in the overall top-up tax liability of the MNE group and whether the transaction’s outcome is inconsistent with the OECD GloBE model rules, as interpreted by the OECD GloBE rules guidance.
The Inland Revenue Department (IRD) will publish guidance clarifying that the modified section 61A generally will not apply to transactions entered into on or before 30 November 2021, and also addressing the application of the modified section 61A to the GloBE and HKMTT regimes.
The Government has rejected certain stakeholders’ suggestions to remove the anti-avoidance provision, citing that jurisdictions implementing the BEPS 2.0 framework are expected to demonstrate how their legislation addresses arrangements that could undermine the framework’s integrity to attain qualified status in the peer review process.

Our observations: We have long advocated the application of the existing section 61A without introducing a main purpose test, which has a higher threshold than the sole or dominant purpose test. Additionally, section 61A is a long-standing general anti-avoidance provision under Hong Kong tax law. Over the years, several court decisions have clarified its application and interpretation. Applying a modified section 61A to the GloBE and HKMTT regimes will give in-scope MNE groups enhanced certainty and consistency regarding anti-avoidance measures.
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<tr><td>Time limit for raising top-up tax assessments, correcting errors or omissions, record-keeping period, initiating proceedings etc.</td><td>

To provide greater certainty to MNE groups, the Government has proposed a CSA to set a fixed time limit of 8 years (for non-evasion cases) and 12 years (for evasion cases) for raising top-up tax assessments. This time limit is 2 years longer than that for normal profits tax purposes and applies as follows:
<table>
<tr><th>Fiscal year end date of MNE group</th><th>Proposed time limit</th></tr>
<tr><td>31 March</td><td>8 or 12 years after the end of the fiscal year</td></tr>
<tr><td>Other than 31 March</td><td>8 or 12 years after the end of 31 March of the following year</td></tr>
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The Government has also proposed the following CSAs to align with the above revised time limit:

(i) The time limit for correcting errors or omissions and claiming refund of excess top-up tax paid will be extended from 6 years after the end of the year of assessment to the following:
<table>
<tr><th>Fiscal year end date of MNE group</th><th>Proposed time limit</th></tr>
<tr><td>31 March</td><td>8 years after the end of the fiscal year</td></tr>
<tr><td>Other than 31 March</td><td>8 years after the end of 31 March of the following year</td></tr>
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(ii) The record-keeping period will be shortened from 12 years to 9 years after the completion of the transactions, acts or operations to which the records relate (i.e. 2 years longer than the 7-year period for normal profits tax purposes).

(iii) The initiation of proceedings will be subject to a fixed time limit of 8 years after the date on which the offence was committed.

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Issues	Key CSAs and clarifications from the Government
	Our observations: *While we agree that an extended time limit for raising a top-up tax assessment beyond the normal statute of limitations of 6 years under normal profits tax is warranted, we raised concerns that the originally proposed time limit appeared to impose no actual time limit on the issuance of top-up tax assessments. There was a similar concern with respect to the time limit for initiating proceedings. As such, we proposed a 'plus 2 years' approach to all the relevant time limits to provide clarity and predictability for taxpayers, thereby mitigating the potential indefinite tax exposure. We also proposed shortening the record-keeping period using the same 'plus 2 years' approach, as the originally proposed 12-year period was comparatively longer than that in other jurisdictions. We are pleased that the Government has adopted our suggestions and proposed the above CSAs.*
Penal provisions	• The Government has proposed CSAs to: (i) remove the penal provisions regarding directors and other officers of in-scope MNE entities and service providers; and (ii) amend the relevant IRO provision to ensure that prosecution for an offence under the proposed new penal provision regarding in-scope MNE entities may only commence with the sanction of the Commissioner. This will align the prosecution process with the existing IRO penal provision. • The Government has also clarified the following: (i) The IRD will refer to the OECD's guidance on transitional penalty relief when considering whether prosecution or penal action is to be initiated against an offence under the GloBE and HKMTT rules. The IRD will provide guidance in this regard. (ii) A service provider is not statutorily required to verify the correctness of the information or instructions from the taxpayer. ***Our observations:*** *We are pleased that the proposed penal provision related to offences by directors and other officers of in-scope MNE entities and service providers will be removed. This provision raised significant concerns as it would impose a considerable burden and personal liability on these individuals for a corporation's non-compliance. We also noted that this provision was disproportionate, given that the GloBE and HKMTT rules only target large MNE groups, which generally take reasonable actions to comply with their tax obligations. The other penal provisions should be sufficient to provide adequate safeguards against non-compliance under the GloBE and HKMTT regimes.*
Interaction between top-up tax payable in other jurisdictions and normal profits tax	• The Government has proposed a CSA whereby for the purposes of the participation requirement under the foreign-sourced income exemption (FSIE) regime, QDMTT (but not IIR or UTPR top-up tax) paid in other jurisdictions will be taken into account when determining whether the income concerned is subject to tax outside Hong Kong, but the effect of the QDMTT will be disregarded when determining whether the applicable tax rate is at least 15%. • The Government has further clarified that QDMTT will not be taken into account for the subject to tax condition under the interest deduction rules. ***Our observations:*** *We are pleased to see the Government incorporating our recommendation that QDMTT paid in jurisdictions outside Hong Kong will be taken into account for the purposes of the subject to tax condition as provided in the participation requirement under the FSIE regime. Note however that currently, the IRD adopts a strict interpretation of this condition, requiring that the tax be actually paid. For certain specified foreign-sourced income that accrues and is received in Hong Kong within the same year of assessment, this stringent approach may create challenges. The assessment and payment of QDMTT are generally aligned with the top-up tax under the GloBE rules, which may take place approximately 15 months after the end of the relevant fiscal year. Therefore, we hope that the IRD will adopt a more liberal approach in these circumstances.*

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<tr><td>Double taxation relief</td><td>

The Government has proposed the following CSAs:
(i) For normal profits tax purposes, a bilateral or unilateral tax credit may be granted for a QDMTT (but not IIR or UTPR top-up tax) that is paid outside Hong Kong in respect of the profits of:
(a) a foreign permanent establishment (PE) if the PE’s profits are taxable in the hands of the main entity in Hong Kong; or
(b) a foreign investee entity if dividend is paid to the taxpayer out of such profits and the dividend is taxable in Hong Kong (e.g. under the FSIE regime).
The IRD will provide guidance on the granting and computation of the tax credit in respect of QDMTT paid in other jurisdictions.
(ii) For normal profits tax purposes, the existing provision for deducting foreign tax in respect of specified profits (generally referring to certain interest and interest-like receipts) deemed as taxable receipts in Hong Kong may apply to a QDMTT (but not IIR or UTPR top-up tax) paid in another jurisdiction in respect of such specified profits derived by a PE in that jurisdiction. On the other hand, the existing provision for deducting foreign tax in respect of other income will not apply to any foreign IIR top-up tax, foreign UTPR top-up tax or foreign domestic minimum top-up tax (DMTT) (irrespective of whether the foreign DMTT is a QDMTT).
The Government has also clarified that based on the GloBE rules, excess HKMTT paid for a previous fiscal year due to post-filing adjustments will not be refunded. As such, taxpayers are encouraged to make use of the advance ruling system to minimise any potential tax disputes and post-filing adjustments that may affect the top-up liability under the GloBE and HKMTT rules.

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<tr><td>Reimbursement for top-up tax</td><td>

It was originally proposed under the Bill that for normal profits tax purposes, any reimbursement made by a Hong Kong constituent entity (HKCE) to a designated paying entity, not exceeding that HKCE’s share of the UTPR top-up tax or HKMTT pursuant to the GloBE rules, will be disregarded when computing the assessable profits of either entity. This aims to ensure tax-neutral treatment by preventing such transactions from affecting the taxable income of either entity for normal profits tax purposes.
The Government has proposed a CSA to:
(i) extend the application of the above tax-neutral treatment to cover reimbursement for IIR top-up tax or foreign IIR top-up tax to a parent entity, as well as foreign UTPR top-up tax and foreign DMTT; and
(ii) relax the limit of reimbursement for such top-up tax, as long as the amount of reimbursement does not exceed the amount of the top-up tax that (a) is payable by the reimbursing entity under an intra-group tax allocation arrangement among entities and PEs of the MNE group that are subject to the relevant assessment, but (b) has been paid or payable by the reimbursed entity on behalf of the reimbursing entity.

Our observations: It is envisaged that MNE groups would prefer to allocate their top-up tax liabilities among their constituent entities (CEs) in a way they deem suitable, rather than strictly based on GloBE rules. Consequently, the proposed amendments to the tax-neutral treatment would offer MNE groups greater flexibility in managing their intra-group payments related to top-up taxes without creating potential adverse effects on normal profits tax.
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<tr><td>HKMTT</td><td>

The Government has proposed CSAs to:
(i) improve the clarity of the provisions regarding the relief from HKMTT for in-scope MNE groups in their initial phase of international activity; and

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Issues	Key CSAs and clarifications from the Government
	(ii) expand the definition of 'local accounting standard'. In addition to the original International Financial Reporting Standards and the Hong Kong Financial Reporting Standards (HKFRS), the HKFRS for Private Entities and the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard will be covered. • It is the Government's plan that from the year of assessment 2025/26 onwards, HKCEs of in-scope MNE groups that have prepared accounts based on the local accounting standard will be required to submit their profits tax returns together with such accounts. ***Our observations:*** *To ensure that the HKMTT attains the QDMTT safe harbour status, it must be computed based on the local accounting standard where all of the HKCEs have financial accounts prepared based on that standard and (i) are **required** to keep or use such accounts under a domestic corporate or tax law; or (ii) such financial accounts are subject to an external financial audit.* *Currently, non-Hong Kong incorporated companies or Hong Kong branches of foreign companies are not required to prepare financial accounts based on the local accounting standard for profits tax filing or other purposes. As such, if an MNE group wishes to use local accounting standard financial accounts for HKMTT computation, it would face the additional burden of an external financial audit. The Government's plan to impose the above new filing requirement will relieve MNE groups from this compliance burden.* *Additionally, the expanded definition of local accounting standard to encompass all accounting standards prescribed by the Hong Kong Institute of Certified Public Accountants will also ease compliance burden of in-scope MNE groups.*
Administrative guidance issued by the OECD in January 2025	• The Government has proposed a CSA to incorporate the various GloBE documents issued by the OECD in January 2025 after the Bill was gazetted.
Safe harbours	• The Government has proposed the following CSAs: (i) An additional disqualifying condition will be added under the QDMTT safe harbour. An MNE group will not be able to benefit from the QDMTT safe harbour (and the switch-off rule will apply) for a jurisdiction if: (1) a member of the MNE group in that jurisdiction is a securitisation entity participating in a securitisation arrangement; and (2) the QDMTT in that jurisdiction is not imposed on a securitisation entity in any circumstances. (ii) Another disqualifying condition will be added under the QDMTT safe harbour regarding jurisdictions that do not exclude certain deferred tax expenses from the deferred tax adjustment amount or from the simplified covered taxes for the calculation of the simplified effective tax rate under the transitional country-by-country reporting safe harbour (TCSH). Similarly, to avoid triggering the switch-off rule in other jurisdictions, which would prevent in-scope MNE groups from applying the QDMTT safe harbour in other jurisdictions to their affected HKCEs, such deferred tax expenses will be excluded from the simplified covered taxes under the TCSH in Hong Kong. ***Our observations:*** *While the exclusion of such deferred tax expenses from the calculation of the deferred tax adjustment amount of HKCEs is also required under the latest administrative guidance, such exclusion is effectuated by the CSA that incorporates the GloBE documents issued by the OECD in January 2025 into the Bill. As such, specific amendments are proposed only to the safe harbour provisions but not*

Issues	Key CSAs and clarifications from the Government
	to the GloBE rules under the Bill. (iii) The provisions on the TCSH have been amended to better reflect certain policy intents. In particular, the 'once out, always out' approach has now been made clear by specifying that an MNE group cannot benefit from the TCSH for a jurisdiction if: (1) the TSCH did not apply to the MNE group for that jurisdiction for a previous fiscal year; and (2) the MNE group had CEs in that jurisdiction in the previous fiscal year.
Compliance and administration matters	• To reduce the compliance burden in relation to the filing of the GloBE information return (GIR), the Government has proposed CSAs to: (i) extend the time limit for filing the GIR from 30 days to at least 60 days if exchange mechanisms fail; and (ii) relieve an HKCE from filing the GIR if another HKCE of the group, which is either the ultimate parent entity or the designated local entity, has filed the GIR. • The Government has also proposed a CSA to introduce an offsetting mechanism with respect to a combined specified assessment of UTPR top-up tax or HKMTT (subject top-up tax) on HKCEs of an assessed MNE group. Under this mechanism, if a reassessment or additional assessment of the subject top-up tax leads to a decrease in the top-up tax liability for certain HKCEs (liability-reduced entities) – thereby giving rise to an overpaid sum – and an increase in the top-up tax liability for other HKCEs, the Commissioner may offset the overpaid sum of the liability-reduced entities against the increased liability of those other HKCEs. Notably, this mechanism operates regardless of whether the assessed MNE group has appointed designated paying entities for the payment of UTPR top-up tax or HKMTT. ***Our observations:*** *This newly proposed mechanism facilitates the direct offset of overpayments against increased tax liabilities related to the subject top-up tax, thereby reducing the need for separate refund or additional payment processes.* • Under the Bill, a 'linked entity' is defined as an entity that (i) is an HKCE of an assessed MNE group when the notice demanding top-up tax in default (Notice) is issued, and (ii) was, at any time during the taxable year, an HKCE of that group. The Government has proposed a CSA to amend this definition by removing condition (i) to better reflect the policy intent that HKCEs of an assessed MNE group will become jointly and severally liable for top-up tax if the designated paying entity fails to make the payment by the due date. Following this proposed change, any HKCE that was part of the assessed MNE group at any time during the taxable year will be jointly and severally liable for unpaid top-up tax, even if it exited the group before the Notice is issued. ***Our observations:*** *The proposed change broadens the scope of joint and several liability for top-up tax in default by capturing any entity that was part of an assessed MNE group at any point during the taxable year. Nonetheless, the Government has indicated that it will explore arrangements to allow a 'clean exit' for HKCEs intending to leave the assessed MNE group, provided they meet certain conditions. This measure may help mitigate concerns for entities transitioning out of the group.* • The Government has clarified the meaning of 'no longer exists' in the top-up tax allocation when an HKCE chargeable to UTPR top-up tax or HKMTT no longer exists on the date of filing of the top-up tax return. As a general principle, an HKCE no longer exists once it has ceased to have legal existence, i.e. when it has been formally dissolved by striking off or liquidation. The IRD will also take into account the legal form of the HKCE and the

Issues	Key CSAs and clarifications from the Government
	circumstances leading to such cessation. • The Government will consider suggestions for simplifying the top-up tax notification process with reference to the updated GIR template issued by the OECD in January 2025 (for instance, simplifying the information required for notification if there are no changes to the information previously filed, or not requiring new notifications each year if the information remains unchanged from the previous notification).
Mandatory e-filing of profits tax returns by in-scope MNE groups' entities	• The Government has proposed the first phase of mandatory e-filing of profits tax returns by in-scope MNE groups' entities in Hong Kong starting from the year of assessment 2025/26. • Once an entity falls within the scope of the mandatory e-filing regime, it will always remain in the regime, regardless of whether it still belongs to an MNE group that is in scope for the GloBE and HKMTT regimes for any subsequent years of assessment. ***Our observations:*** *We commend the current approach of incorporating the mandatory e-filing requirement for profits tax returns in the CSAs. This approach saves the Government from issuing a separate gazette notice, which may not be gazetted until the Bill is passed, unless the relevant terms such as 'in-scope MNE group' are defined in the notice, as these terms do not currently exist in the IRO. It also encourages in-scope MNE groups to prepare early and provides certainty regarding the timeline for mandatory e-filing.*

Timeline for implementation and compliance

Subject to the passage of the Bill, the IIR and HKMTT will apply for fiscal years beginning on or after 1 January 2025, while the UTPR will be implemented on a date to be specified by notice published in the Gazette.

For an in-scope MNE group with a fiscal year ending on 31 December, the due dates for the filing of its top-up tax notification and top-up tax return in Hong Kong for the fiscal year ending 31 December 2025 (FY 2025) are as follows:

Compliance obligation	Due date
Filing of top-up tax notification	30 June 2026 (i.e. within 6 months after the end of the fiscal year)
Filing of top-up tax return	*If the MNE group is subject to a qualified IIR or qualified UTPR in another jurisdiction before FY 2025* 31 March 2027 (i.e. within 15 months after the end of the fiscal year) *If FY 2025 is the first year in which the MNE group is subject to (i) a qualified IIR or qualified UTPR in Hong Kong or another jurisdiction or (ii) the HKMTT* 30 June 2027 (i.e. within 18 months after the end of the fiscal year)

The takeaway

We are pleased that the Government has favourably considered many of our comments and suggestions. The range of amendments has appropriately addressed the key concerns raised by stakeholders while adhering to the OECD's framework, ensuring that Hong Kong's GloBE and HKMTT regimes could attain qualified status under the peer review.

As a next step, we hope that the IRD will provide more detailed guidance on the application of these complex rules to assist in-scope MNE groups in complying with this legislation.

Furthermore, we hope that after the enactment of the Bill, the Government will review and realign its tax incentive toolkits to maintain their attractiveness to in-scope MNE groups. One potential direction is modifying the existing enhanced tax deduction of research and development expenditures to a qualified refundable tax credit (QRTC), which will yield more favourable treatment under the GloBE/HKMTT rules. Although the Government has indicated that it has no plan to introduce a QRTC regime at the moment, exploring this option in the future could mitigate impacts on in-scope MNE groups and support Hong Kong's ambition to become an international innovation and technology hub.

Endnotes

1. The Bill and the CSAs can be accessed via these links:
   https://www.legco.gov.hk/yr2024/english/bills/b202412271.pdf
   https://www.legco.gov.hk/yr2025/english/bc/bc101/papers/bc101cb3-567-1-e.pdf

2. Our previous news flash on the Bill and earlier news flashes can be accessed from our dedicated BEPS 2.0 webpage via these links:
   https://www.pwchk.com/en/services/tax/publications/hongkongtax-news-dec2024-21.html
   https://www.pwccn.com/en/services/tax/international-tax/oecd-beps.html

3. Our submission and the Government's responses to all the written submissions including ours can be accessed via these links:
   https://www.legco.gov.hk/yr2025/english/bc/bc101/papers/bc101cb3-235-2-e.pdf
   https://www.legco.gov.hk/yr2025/english/bc/bc101/papers/bc101cb3-487-1-e.pdf

Let's talk

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