

Global minimum tax and Hong Kong minimum top-up tax bill passed

28 May 2025
Issue 8

In brief

On 28 May 2025, the bill on the implementation of the global anti-base erosion (GloBE) rules and the Hong Kong minimum top-up tax (HKMTT) (Bill), together with certain amendments to the Bill by way of committee stage amendments (CSAs), was passed by the Legislative Council (LegCo)¹. It is expected that the Bill will be gazetted as an amendment ordinance on 6 June 2025.

Upon gazettal of the amendment ordinance, the GloBE rules (comprising the income inclusion rule (IIR) and the undertaxed profits rule (UTPR)) and the HKMTT will take effect as follows:

Aspect	Effective date
IIR and HKMTT	For a fiscal year beginning on or after 1 January 2025
UTPR	To be specified by notice published in the Gazette
Definition of Hong Kong resident entity	Retrospectively from 1 January 2024

This news flash summarises the key features of the GloBE and HKMTT legislation as passed by the LegCo.

In detail

Background

As a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), Hong Kong is committed to implementing the GloBE rules under Pillar Two of BEPS 2.0. The GloBE rules target multinational enterprise (MNE) groups with annual consolidated revenue of at least EUR 750 million in two or more of the preceding four fiscal years, ensuring that they pay a minimum tax of 15% on profits in every jurisdiction they operate.

The Bill to implement the GloBE rules and the HKMTT in Hong Kong was released in late 2024. Having considered feedback from the stakeholders and the latest administrative guidance (AG) issued by the Organisation for Economic Co-operation and Development (OECD), the Government proposed a number of CSAs to the Bill subsequently. The Bill as amended by the CSAs was passed by the LegCo on 28 May 2025, and is expected to be gazetted as an amendment ordinance on 6 June 2025. For the background and earlier developments of the Bill, please refer to our previous news flashes².

Key features of the GloBE and HKMTT legislation

Overview

Adopting a hybrid legislative approach, the legislation directly incorporates the GloBE model rules into the Inland Revenue Ordinance (IRO) with limited modifications. To ensure consistency, the legislation is construed in a way that is best consistent with the existing GloBE commentary and AGs issued by the OECD. The legislation has already incorporated all AGs published by the OECD up to January 2025, and

future AGs issued by the OECD will be incorporated through subsidiary legislation, which can be enacted more swiftly compared to the main legislation.

The top-up tax under the GloBE and HKMTT regimes is treated as profits tax. Consequently, the existing tax administration mechanisms under the IRO, such as tax collection and handling of objections and appeals, apply to the top-up tax. However, due to its distinctive nature, the GloBE and HKMTT regimes are incorporated under a new Part 4AA of the IRO, separate from the rules for normal profits tax under Part 4, and the provisions do not apply to normal profits tax.

Safe harbours

The legislation incorporates all the safe harbours available under the GloBE rules, namely:

- (i) the transitional country-by-country reporting safe harbour;
- (ii) the transitional UTPR safe harbour;
- (iii) the qualified domestic minimum top-up tax (QDMTT) safe harbour; and
- (iv) the simplified calculations safe harbour for non-material constituent entities.

Subject to annual elections, the safe harbours will apply to reduce the compliance burden of MNE groups from performing full GloBE calculations when certain conditions are met.

Definition of Hong Kong resident entity

Currently, the IRO does not contain a definition of 'resident' for general purposes as Hong Kong does not impose tax based on an entity's residence. However, since the tax residence of an entity is crucial to the application of the GloBE and HKMTT regimes, the legislation provides that for the general purposes of the IRO, an entity is a tax resident in Hong Kong if it is (i) incorporated/constituted in Hong Kong, or (ii) normally managed or controlled in Hong Kong if it is incorporated/constituted outside Hong Kong. The definition applies retrospectively from 1 January 2024 to cater for MNE groups with parent entities located in jurisdictions that have already implemented the GloBE rules in 2024.

HKMTT

The HKMTT is intended to qualify as a QDMTT and be eligible for the QDMTT safe harbour. This is to ensure that the Hong Kong constituent entities (HKCEs) (as well as the Hong Kong joint venture entities) of MNE groups only need to calculate their Pillar Two liability under the HKMTT without the need to pay additional tax, if any, under the GloBE rules in other jurisdictions.

Some of the key policy decisions made in the design of the HKMTT are set out below:

- The HKMTT is imposed on the whole amount of the total top-up tax in respect of all HKCEs of the MNE group, irrespective of the ownership interest held in the HKCEs by the group. Investment entities and insurance investment entities are excluded to preserve their tax neutrality.
- The financial accounting net income or loss of an HKCE of an MNE group must be determined in accordance with a local accounting standard when certain conditions are met. The definition of 'local accounting standard' includes the following:
 - (i) the International Financial Reporting Standards (i.e. IFRS);
 - (ii) the Hong Kong Financial Reporting Standards (i.e. HKFRS);
 - (iii) the HKFRS for Private Entities; and
 - (iv) the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standard.
- Eligible MNE groups in their initial phase of international activity are relieved from the HKMTT for up to five years if none of the ownership in an HKCE is held directly or indirectly by a parent entity subject to a qualified IIR.
- Hong Kong joint venture entities held by an MNE group are also in scope for the HKMTT, subject to certain special rules.

Administration and compliance

The key administrative provisions and compliance obligations under the GloBE and HKMTT regimes are set out below:

Administrative provisions	Time limit
Raising top-up tax assessments	8 years (for non-evasion cases) and 12 years (for evasion cases) after the end of the year of assessment in which the fiscal year ends
Correcting errors or omissions and claiming refund of excess top-up tax paid (under limited circumstances only ³)	8 years after the end of the year of assessment in which the fiscal year ends
Initiation of proceedings	8 years after the date on which the offence was committed
Objection to a top-up tax assessment	Within 2 months after the date of the notice of assessment

Compliance obligations	Due date / time limit
Filing of top-up tax notification (may designate an HKCE to file for the group)	6 months after the end of the fiscal year
Filing of top-up tax return (may designate an HKCE to file for the group)	<ul style="list-style-type: none"> Generally 15 months after the end of the fiscal year Extended to 18 months for the transition year, i.e. the first year that the MNE group is subject to one of the following: <ul style="list-style-type: none"> (i) a qualified IIR or UTPR in Hong Kong or another jurisdiction; or (ii) the HKMTT
Payment of top-up tax (may make an annual irrevocable election in writing to designate one or more HKCEs to pay the UTPR top-up tax or the HKMTT)	1 month after (i) the expiry of the return filing deadline or (ii) the date of the notice of assessment, whichever is the later
Record keeping	Retained for at least 9 years after the completion of the transactions, acts or operations to which those records relate

The penal provisions under the GloBE and HKMTT regimes generally ride on the existing penal provisions in the IRO with modifications. Notably, the penal provisions regarding directors and other officers of in-scope MNE entities and service providers, which were originally proposed in the Bill, were removed from the legislation.

Additionally, the Inland Revenue Department (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, and will provide guidance accordingly.

Anti-avoidance provision

The sole or dominant purpose test under section 61A of the IRO with modifications applies as the general anti-avoidance provision under 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:

- (i) any changes in the overall top-up tax liability of the MNE group; and
- (ii) whether the transaction's outcome is inconsistent with the OECD GloBE model rules, as interpreted by the OECD GloBE rules guidance.

The IRD will publish guidance clarifying that the modified section 61A generally does 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.

Interaction with normal profits tax

The legislation also addresses issues related to the interaction between the GloBE / HKMTT regimes and the normal profits tax, including the profits tax treatment of reimbursement of top-up taxes, the double tax relief for foreign top-up taxes, and the treatment of foreign top-up taxes under the subject to tax condition of the participation requirement under the foreign-sourced income exemption regime.

Mandatory e-filing of profits tax returns by in-scope MNE groups' entities

In addition, the legislation specifies that the first phase of mandatory e-filing of profits tax returns by entities of in-scope MNE groups in Hong Kong will commence from the year of assessment 2025/26. Under a 'once in, always in' approach, once an entity falls within the scope of the mandatory e-filing regime, it will remain subject to the regime permanently, regardless of whether it continues to be part of an MNE group that is in scope for the GloBE and HKMTT regimes in subsequent years of assessment.

The IRD clarified at its annual meeting with the Hong Kong Institute of Certified Public Accountants in 2024, the minutes of which were recently published, that the above mandatory e-filing requirement will also apply to taxpayers who have received an I.R.C. 1812 *Notification of Non-Issue of Annual Return to Corporation* from the IRD⁴. To facilitate this, the IRD will send letters to in-scope MNE groups requesting relevant information, as it does not currently possess details about all entities within these groups.

The takeaway

The implementation of the GloBE and HKMTT regimes marks a significant milestone, demonstrating Hong Kong's commitment to aligning its tax framework with international tax standards. This development provides greater certainty to in-scope MNE groups in assessing their top-up tax exposure in Hong Kong. Since the GloBE rules are continually evolving and the OECD is expected to issue further guidance in the near future, in-scope MNE groups should continue to monitor these developments closely and seek professional assistance when necessary.

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/bc101cb3-699-1-e.pdf>
2. Our previous news flashes on the Bill and the CSAs, along with our earlier news flashes on the development of BEPS 2.0, can be accessed via these links:
<https://www.pwchk.com/en/services/tax/publications/hongkongtax-news-dec2024-21.html>
<https://www.pwchk.com/en/hk-tax-news/2025q2/hongkongtax-news-apr2025-3.pdf>
<https://www.pwccn.com/en/services/tax/international-tax/oecd-beps.html>
3. Under the GloBE and HKMTT rules, any increase in the covered taxes for a previous fiscal year due to post-filing adjustments is added to the covered taxes for the fiscal year in which the adjustments are made, and there is no provision for recalculating the effective tax rate and top-up tax for the previous fiscal year. Accordingly, any excess top-up tax paid for a previous fiscal year as a result of post-filing adjustments is not refunded. The administrative provisions for correcting errors or omissions and claiming refund of excess top-up tax paid may only be applicable in limited circumstances.
4. Agenda item A5(b)(i) of the minutes, which can be accessed via this link:
https://www.hkicpa.org.hk/-/media/Document/APD/TF/Tax-bulletin/035_May-2025.pdf

Let's talk

For a deeper discussion of how this impacts your business, please contact:

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