A10 GLOBAL MINIMUM TAX

Existing Legislation

Presently, there is no existing legislation on Global Minimum Tax (GMT) in Malaysia.

Proposed Legislation

It is proposed that, Domestic Top-up Tax and Multinational Top-up Tax (i.e., the Income Inclusion Rule as termed by the Organisation for Economic Co-operation and Development (OECD)) rules as recommended under Pillar Two Model Rules, also widely known as the GMT rules, are introduced in order to align with the global direction on international taxation. The objective of the GMT rules is to ensure that large Multinational Enterprise (MNE) Groups would be subject to a minimum effective tax rate of 15% wherever they operate.

The draft Malaysian GMT rules are largely based on the OECD Global Anti-Base Erosion (GloBE) Model Rules released on 20 December 2021.

Scope

The regime will apply to Constituent Entities that are members of an MNE Group with an annual global revenue of at least EUR750 million in at least two of the four consecutive financial years immediately preceding the tested financial year. In the case where the MNE Group undertakes any merger or demerger exercise, additional tests would need to be performed to determine whether the MNE Group is in-scope.

In general, an entity would be regarded as a Constituent Entity if its accounts are consolidated into the ultimate parent entity's consolidated financial statements on a line-by-line basis. However, certain entities (i.e., excluded entities such as pension funds and governmental entities etc.) would not be regarded as Constituent Entities, and hence would not be subject to the GMT rules. Nonetheless, even if the ultimate parent entity qualifies as an excluded entity, the GMT rules could still apply to the subgroups beneath it.

De minimis exclusion

MNE Groups may make an election to deem the Multinational Top-Up Tax for a jurisdiction as zero for a financial year if the Average GloBE Revenue of such jurisdiction is less than EUR10 million and the Average GloBE Income or Loss of such jurisdiction is a loss or is less than EUR1 million for such financial year.

GloBE Safe Harbour

If an MNE Group qualifies for the GloBE Safe Harbour, it may make an election to deem the Multinational Top-up Tax for a jurisdiction as zero for a financial year. The conditions for the GloBE Safe Harbour are dealt with in the GloBE Implementation Framework issued by the OECD.

Deadline for submission of returns and top-up tax payment

The in-scope MNE Groups are required to submit an information return and a top-up tax return, both of which are due within 15 months from the end of the reported financial year. An amended top-up tax return may be furnished within 6 months from the due date. Similarly, top-up tax payable, if any, must be paid within 15 months from the end of the reported financial year.

Retention of Documents

Sufficient documents related to the furnished returns must be kept for a period of 7 years from the end of the reported financial year.

Offences and Penalties

Offence	Penalty
Failure to pay top-up tax (if any) by the due date	A 10% penalty on the unpaid top-up tax amount.
Default in furnishing the information return / Top-up Tax return	A fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding 6 months or to both.
Incorrect information return	A fine of not less than RM20,000 and not more than RM100,000 or imprisonment for a term not exceeding 6 months or to both.
Incorrect Top-up tax return	A fine of not less than RM20,000 and not more than RM100,000 and a special penalty of double the amount of tax which has been undercharged or which would have been undercharged.
Wilful intention to evade or assist in evading tax	A fine of not less than RM20,000 and not more than RM100,000 or to imprisonment for a term not exceeding 3 years or to both, and a special penalty of treble the amount of tax which has been undercharged or which would have been undercharged.

Note: The above are some of the key offences and penalties in respect of GMT and is not an exhaustive list.

Reference

Part XI of the Income Tax Act 1967.

Effective Date

1 January 2025.

Likely Tax Effects and Implications

The implementation of GMT by Malaysia is in conformity with international tax standards, with the new 15% floor intended to end the race to the bottom. Large Malaysian headquartered MNE Groups and Malaysian subsidiaries of foreign MNEs will need to be wary of the technical complexity, impact to existing tax incentives and the necessity for data wrangling entailed by GMT. Whilst the Malaysian Government has deferred the implementation of the GMT rules, MNE Groups should be aware that there could be filing obligations and top-up tax liability in other countries if such countries implement the GMT rules earlier (i.e., from 1 January 2024).