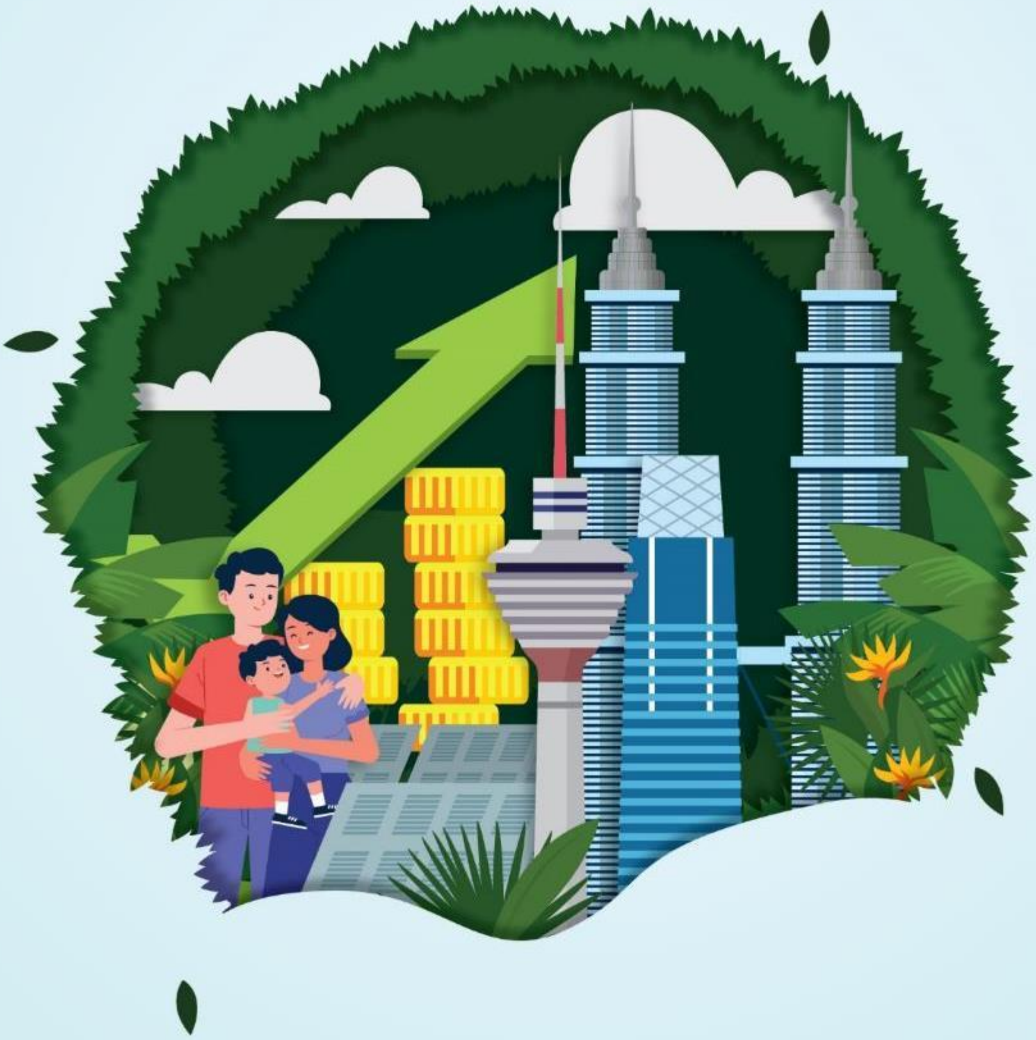
MALAYSIA BUDGET 2024

Finance (No. 2) Bill 2023

Economic Reforms, Empowering the People



CORPORATE TAX

Tax Treatment on Micro, Small and Medium Enterprises ("MSMEs")

Current

MSMEs currently benefit from the following preferential tax treatment:

i. Exemption from filing of the estimate of tax payable (Form CP204) for the first two years of assessment ("YAs") upon commencement of operations; and

ii. 100% capital allowance on small value assets with the value not exceeding RM2,000 for each asset. There are no restrictions on the total capital allowances claimed on such assets in a YA (a restriction of RM20,000 applies to non-MSMEs).

This is provided that at the beginning of the basis period for the YA, the paid-up capital of that company in respect of ordinary shares is not more than RM2.5 million and not more than:

i. 50% of the company's ordinary share paid-up capital is directly or indirectly owned by a related company;

ii. 50% of the related company's ordinary share paid-up capital is directly or indirectly owned by the first mentioned company; or

iii. 50% of the ordinary share paid-up capital of the first mentioned company and the related company is directly or indirectly owned by another company.

"Related company" refers to a company that has a paid-up capital in respect of ordinary shares of more than RM2.5 million at the beginning of the basis period for a YA.

Proposed

It is proposed that additional shareholding requirements are to be imposed on MSMEs to qualify for the preferential tax treatment. Specifically, it entails that not more than 20% of its ordinary share paid-up capital at the beginning of the basis period for a YA is directly or indirectly owned by:

i. One or more companies incorporated outside Malaysia; or

ii. One or more individuals who are not citizens of Malaysia.

The above proposal is to align the shareholding requirements of an MSME with the additional shareholding requirements introduced for MSMEs in Budget 2023 in respect of preferential tax rates for MSMEs.

The above proposal is effective from YA 2024.

CORPORATE TAX

Revision of Estimate of Tax Payable

- It is proposed that every company, limited liability partnership ("LLP"), trust body or co-operative society is given the option to revise its estimate of tax payable in the 11th month of the basis period for a YA in addition to the revision currently allowed in the 6th and/or the 9th month of the basis period for a YA.
- The above proposal is effective from YA 2024.

Power of Director General to Issue Guidelines under New Section 134A of the Income Tax Act 1967 ("Income Tax Act")

- It is proposed that the Director General may issue guidelines to clarify the provisions of the Income Tax Act or to facilitate the compliance of the law or any other matter relating to the Income Tax Act. The Director General may also revoke, revise or amend the guidelines issued.
- The above proposal is effective from 1 January 2024.

Authorisation of Employee to File Company's Tax Return

- It is proposed that a company may give authorisation in writing to an employee to file any prescribed form under the Income Tax Act such as a tax return on its behalf.
- The above proposal is effective from the coming into operation of the Finance (No. 2) Bill 2023.

Duty to Provide Information and Furnish Documents for Ascertaining Chargeable Income and Tax Payable

- It is proposed that all taxpayers shall provide information and furnish documents within 30 days after the due date for furnishing the tax returns to the Inland Revenue Board Malaysia ("IRBM") for the purpose of ascertaining the chargeable income and tax payable for a YA. The information and documents required will be submitted electronically to the IRBM via the Malaysian Income Tax Reporting System.
- The above proposal is effective from 1 January 2024.

Double Taxation Relief

- Where foreign income of a resident person chargeable to Malaysian tax is subject to foreign tax and Malaysian tax, double taxation relief in the form of either bilateral credit (where there is a double taxation agreement in force) or unilateral credit (where there is no double taxation agreement) is given in Malaysia.
- It is proposed that "foreign income" be redefined as follows:
  - a) In relation to unilateral credit, means income derived from outside Malaysia charged to foreign tax;
  - b) In relation to bilateral credit, means income derived from outside Malaysia and from Malaysia, charged to foreign tax.
- It is also proposed that "foreign tax" be redefined as any tax on income chargeable or imposed by or under the laws of a territory outside Malaysia in which the same income arose.
- The above proposal is effective from YA 2024.

CORPORATE TAX

Submission of Form E, CP21, CP22, CP22A and CP22B via Electronic Medium

- It is proposed that all categories of employers are required to submit Forms E, CP21, CP22, CP22A and CP22B via electronic medium with the following effective dates:
  i. Form E - Effective for the year ending 31 December 2023.
  ii. Forms CP21, CP22, CP22A and CP22B – Effective from 1 January 2024.
- It also proposed that the exemption from filing CP22A or CP22B where the employer knows that the employee is not retiring from any employment will no longer be given with effect from 1 January 2024.

Global Minimum Tax ("GMT")

- In line with the international taxation standards aimed at curbing tax base erosion activities and the transfer of profits to countries with low tax rates, the implementation of GMT in Malaysia will be postponed by a year to 2025.
- GMT is applicable to Constituent Entities within a Multinational Enterprise Group that reports annual revenue of EUR750 million or more in the consolidated financial statements of the Ultimate Parent Entity in at least two of the four immediately preceding financial years. It is aimed at ensuring that the Multinational Enterprise Group pays a minimum tax of 15% regardless of where they operate.
- Provisions on Domestic Top-up Tax and Multinational Top-up Tax have been introduced in the Income Tax Act. More details on GMT will be provided in a separate publication.

CAPITAL GAINS TAX

Income Tax on Gains or Profits from the Disposal of Capital Assets

- Capital Gains Tax ("CGT") is proposed to be implemented by treating any gains or profits from the disposal of capital assets as income that is chargeable to income tax under the Income Tax Act.
- "Capital asset" is defined to mean moveable or immovable property including any rights or interests thereof.
- The scope of CGT as proposed is therefore wider than that originally announced in the Budget Speech of taxing only companies on their gains from disposal of unlisted shares. However, it is also proposed that income tax exemption is given on gains or profits from the disposal of capital assets situated in Malaysia, except for:

  a) disposal of shares of an unlisted company incorporated in Malaysia; and

  b) disposal of shares of a controlled company incorporated outside Malaysia (referred to as the "relevant company") that derives its value from real property in Malaysia, which are deemed to be derived from Malaysia under the proposed new section 15C of the Income Tax Act. The rules for determining whether the relevant company derives its value from real property in Malaysia, and the acquisition date and acquisition price of the shares in the relevant company, is similar to that of a real property company under the Real Property Gains Tax Act 1976 ("RPGT Act").

- The wider scope of CGT reflects Malaysia's commitment to the European Union's Code of Conduct Group ("COCG") to amend its legislation to tax foreign capital gains. In this regard, the proposed income tax exemption does not extend to the gains or profits from the disposal of capital assets situated outside Malaysia.
- The proposed CGT/income tax rates on the income of a company, LLP, trust body or co-operative society from the disposal of capital asset are as follows:

Disposal of capital asset situated in Malaysia which was acquired before 1 January 2024	i. 10% on the chargeable income from of the disposal of the capital asset; or ii. 2% on the gross disposal price of the capital asset.
Disposal of capital asset situated in Malaysia which was acquired on or after 1 January 2024	10% on the chargeable income from the disposal of the capital asset.
Disposal of capital asset other than the above	At the applicable rate to the company, LLP, trust body or co-operative society as specified in Part I or IV of Schedule 1 to the Income Tax Act on the chargeable income from of the disposal of the capital asset.

- The CGT/income tax rate that may potentially be applicable to persons other than a company, LLP trust body or co-operative society on income from the disposal of capital asset is not specified in the Finance (No. 2) Bill 2023.
- A company, LLP, trust body or co-operative society is required to file a CGT return and pay the applicable CGT within 60 days from the date of disposal of a capital asset under a self-assessment system separately from its annual income tax return and income tax payments. Further clarification would be required to confirm whether the same would apply to disposals of capital assets situated outside Malaysia where the proceeds are received in Malaysia. In addition, there are no provisions in the Finance (No. 2) Bill 2023 which specifically exempts individuals from CGT.

CAPITAL GAINS TAX

Income Tax on Gains or Profits from the Disposal of Capital Assets (cont'd)

- To facilitate the filing and payment of CGT by a company, LLP, trust body or co-operative society, provisions for ascertaining the chargeable income from gains or profits from the disposal of capital asset have been proposed to be included in the Finance (No. 2) Bill 2023. The notable provisions are:

  a) definition of "disposal", which means to sell, convey, transfer, assign, settle or alienate whether by agreement or by force of law and includes a reduction of share capital and purchase by a company of its own shares;

  b) definition of "shares" to mean all or any of the following:

     i. stock and shares in a company;

     ii. loan stock and debentures issued by a company or any other corporate body incorporated in Malaysia;

     iii. a member's interest in a company not limited by shares whether or not it has a share capital;

     iv. any option or other right in, over or relating to shares as defined above;

  c) each disposal shall be treated as a separate source of gain or profit;

  d) where there is a loss on disposal of a capital asset, the loss can be set-off against any subsequent gain on disposal of another capital asset in the same year of assessment or in the subsequent 10 consecutive years of assessment;

  e) capital asset taken into trading stock shall be deemed to be a disposal at a consideration equal to the market value of the capital asset on the date it is taken into trading stock; and

  f) the provisions in relation to disposal price, acquisition price, certain transactions to be at market value, date of disposal and acquisition, conditional contracts, and part disposals which are copied, with necessary modifications, from the provisions for computing the chargeable gain under the RPGT Act.

- The effective date of the above proposal is 1 January 2024, which differs from the date announced in the Budget Speech of 1 March 2024. The difference in the effective date reflects Malaysia's commitment to the COCG to amend its legislation to tax foreign capital gains by the end of 2023, with effect from 1 January 2024. Nevertheless, it is expected that subsidiary legislation will be gazetted later to give tax exemption to taxpayers in respect of their capital gains from disposal of unlisted shares in Malaysia during the period from 1 January 2024 to 29 February 2024.

CAPITAL GAINS TAX

Review of Tax Treatment for Arising from Realisation of Investment by Unit Trust

- Currently, gains arising from the realisation of investments by a unit trust would not be treated as income subject to income tax under the proviso to Section 61(1)(b) of the Income Tax Act.
- In line with the implementation of CGT, it is proposed that the proviso to Section 61(1)(b) of the Income Tax Act be amended to state that gains arising from the realisation of investments by a unit trust shall be subject to CGT except for gains that are subject to real property gains tax ("RPGT") which are not taxed as income of the unit trust.

Non-application of requirement to submit estimate of tax payable ("ETP")

- It is proposed that the requirement to submit an ETP for a YA for every company, trust body or co-operative shall not be applicable to gains or profits from the disposal of capital assets subject to CGT with effect from 1 January 2024.

REAL PROPERTY GAINS TAX

Implementation of Self-assessment System for RPGT

- RPGT is currently assessed by the IRBM under the Official-Assessment System ("OAS"). Under OAS, the RPGT is assessed and calculated by the IRBM based on the RPGT return form submitted by the taxpayer.
- Under the proposed Self-Assessment System for RPGT:
  i. The submitted RPGT return form is a deemed notice of assessment by the IRBM based on the date of submission.
  ii. Any RPGT payable shall be due and payable within 60 days from the date of disposal whether or not the taxpayer appeals against the assessment or additional assessment.
  iii. The disposer can furnish an amended RPGT return form within 6 months from the due date of submission of the RPGT return form. Any RPGT or additional RPGT payable shall be increased by a sum equal to 10% and the total amount is due and payable on the day the amended RPGT return is submitted.
  iv. The documents must be kept for a period of 7 years from the end of the YA in which the assessment was raised.
- The above proposal is effective from 1 January 2025.

Disposal of Shares in a Real Property Company ("RPC")

- With the implementation of CGT, the disposal of unlisted company shares by a company, LLP, trust body and co-operative society would be subject to CGT. In order to avoid double tax, RPGT on disposal of RPC shares would no longer apply to company, LLP, trust body and co-operative society except for Labuan entity under Section 2B of the Labuan Business Activity Tax Act 1990 ("LBATA").
- The above proposal is effective from 1 January 2025.

STAMP DUTY

Discontinuation of Postal Franking Machine and Use of Adhesive Stamps

- Effective from 1 January 2024, all applications for stamping and payment of stamp duty must be made online through the Stamp Duty Assessment and Payment System ("STAMPS") portal. The following method of stamping will be discontinued:

  I. Use of postal franking machine

  II. Use of adhesive stamps (revenue stamps)

Stamp Duty for Conventional Loan Agreements and Shariah-complaint Financing in Foreign Currency

- Currently, the following instruments are subject to stamp duty at 0.5% of the loan amount with a maximum stamp duty limit of RM2,000 under paragraph 27(a)(ii) of the First Schedule of the Stamp Act 1949 ("Stamp Act"):

  I. Foreign currency loan; and

  II. Financing made according to the syariah in currencies other than Malaysia Ringgit.

- It is proposed that the stamp duty limit of RM2,000 to be abolished with effect from 1 January 2024.

Stamping of Instruments Executed Outside Malaysia and Received in Malaysia by Way of Electronic Transmission

- It is proposed that instruments executed outside Malaysia and received in Malaysia by way of electronic transmission are required to be stamped within 30 days of acceptance via electronic medium.
- The acceptance is required to be verified via a copy or print out of the electronic transmission under Section 42(2A) of the Stamp Act.
- The above proposal is effective from 1 January 2024.

Stamping of Electronic Instruments

- Effective from 1 January 2024, it is proposed that Section 2 of the Stamp Act be amended to include the definition of 'writing' or 'written' to specify that the definition includes electronic instruments.

INDIRECT TAX

Implementation of Sales Tax on Low Value Goods (“LVG”) in Malaysia

- Sales tax on LVG proposed in Budget 2022 was originally intended to commence from 1 January 2023. However, the commencement date was postponed to 1 April 2023 and subsequently deferred to 1 January 2024.
- The following amendments to the Sales Tax Act 2018 has been proposed in Finance (No. 2) Bill 2023:

Areas	Proposed Amendment	Comments
Definition of “Seller” of LVG	The definition of a Seller of LVG under Section 11A of the Sales Tax Act 2018 shall be amended as follows: “Seller" means a person, whether in or outside Malaysia, **who sells low value goods on an online platform** or operates an online marketplace for the sales and purchase of low value goods.	This amendment would expand the scope of Seller of LVG to include any person who sells LVG on their own online platform.
Sales tax on importation is not applicable on LVG	The following new Section 11E shall be included in the Sales Tax Act 2018: “Notwithstanding paragraph 8(1)(b), no sales tax shall be levied on the low value goods if it is proven to the proper officer of sales tax that the sales tax has been charged by the registered seller and being paid on the low value goods.”	This amendment is intended to mitigate double taxation on the importation of LVG. Supporting documentation must be presented to the officer of customs during clearance of goods to prove that the sales tax on LVG has been charged and paid by the registered seller.

E-INVOICE

- It is proposed that the implementation of e-invoice will be governed under relevant sections of the Income Tax Act, Petroleum (Income Tax) Act 1967 and LBATA.
- Effective from 1 January 2024, taxpayers are required to issue an e-invoice for each transaction in respect of any goods sold or services performed to be transmitted electronically to and validated by the IRBM.
- Failure to issue an e-invoice, self-billed invoice or consolidated transaction invoice in respect of any goods sold or services performed shall be subjected to a fine of not less than RM200 and not more than RM20,000 or imprisonment not exceeding 6 months or both.
- The mandatory implementation of e-invoice for taxpayers with an annual turnover or revenue of more than RM100 million will commence on 1 August 2024.
- The taxpayers with an annual turnover or revenue between RM25 million to RM100 million shall start implementing e-invoice on 1 January 2025, while the remaining taxpayers shall start implementing e-invoice on 1 July 2025.

DOMESTIC & MULTINATIONAL TOP-UP TAX

Introduction

- It is proposed that Malaysia will adopt the OECD Global anti-Base Erosion ("GloBE") Model Rules under Pillar 2 and implement a Qualified Domestic Top-up Tax effective from 1 January 2025.
- The GloBE Rules includes an Income Inclusion Rule ("IIR") which imposes top-up tax on a parent entity in respect of the low-taxed income of a constituent entity ("CE") up to the minimum rate (i.e. 15%).
- Qualified Domestic Top-up Tax means a minimum tax that is included in the domestic law of a jurisdiction and takes priority over the GloBE Rules. This reduces the amount of top-up tax that may otherwise be applicable under the GloBE rules and payable in another jurisdiction.
- The GloBE Rules will be incorporated into Malaysian law i.e. the Income Tax Act 1967 ("ITA"), Petroleum (Income Tax) Act 1967 ("PITA") and Labuan Business Activity Tax Act 1990 ("LBATA").
- A new Part XI - Implementation of DTT and MTT with 19 chapters will be inserted into the ITA.

Scope of application

- Part XI shall apply to Malaysian CEs (including Labuan entities) that are members of an MNE Group with annual revenue of EUR 750 million or more in at least two of the four immediately preceding financial years.
- An MNE Group means any Group that includes at least one entity or permanent establishment ("PE") that is not located in the jurisdiction of the ultimate parent entity ("UPE").
- Excluded entities:
  - Governmental entities
  - International organisations
  - Non-profit organisations
  - Pension funds
  - Investment fund that is an UPE
  - Real estate investment vehicle that is an UPE
  - An entity that is at least 85% or 95% owned by one or more Excluded Entities other than a Pension Services Entity (subject to conditions).

Imposition and general characteristic of the tax

- A Domestic Top-up Tax ("DTT") shall be charged on a low-taxed CE located in Malaysia if the jurisdictional effective tax rate ("ETR") in Malaysia is less than 15%.
- A Multinational Top-up Tax ("MTT") shall be charged on the UPE located in Malaysia for its low-taxed CEs located in other jurisdictions with ETR less than 15%.
- De minimis exclusion:
  - The MTT for the CEs located in a jurisdiction shall be deemed to be zero for a financial year if for such financial year:
    - (a) the Average* GloBE Revenue of such jurisdiction is less than EUR 10 million
    - (b) the Average* GloBE Income or Loss of such jurisdiction is less than EUR 1 million

      **Average of the GloBE Revenue (or GloBE Income) of the jurisdiction for the current and the two preceding financial years*

DOMESTIC & MULTINATIONAL TOP-UP TAX

MTT = (① Top-up Tax % × ② Excess Profit) + ③ Additional Current Top-up Tax − **DTT**

① Top-up Tax %	= Minimum rate (15%) – ETR
② Excess Profit	= Net GloBE Income – Substance-based Income Exclusion* **Exclusion of a fixed return on assets and payroll expenses in each jurisdiction*
③ Additional Current Top-Up Tax	= Any incremental top-up tax resulting from the recalculation of the ETR and top-up tax for the prior financial year

DOMESTIC & MULTINATIONAL TOP-UP TAX

Safe harbour

- The MTT for a jurisdiction ("safe harbour jurisdiction") shall be deemed to be zero for a financial year when the CEs located in this jurisdiction are eligible for a GloBE Safe Harbour, pursuant to the conditions provided under the GloBE Implementation Framework and applicable for that financial year.
- However, it shall not apply in circumstances where Malaysia could be allocated MTT if the ETR for the safe harbour jurisdiction was below the Minimum Rate of 15%.

Returns

- Information Return
  - A CE shall furnish an information return not later than 15 months from the last day of the Reporting Financial Year.
  - The information return may be filed by either the CE itself, a Designated Local Entity, the UPE or a Designated Filing Entity.
  - The election shall be made by a notice in writing and furnished not later than 15 months from the last day of the Reporting Financial Year by the CE or by the Designated Local Entity.
- Top-up Tax Return
  - Every CE of an MNE Group shall furnish a Top-up Tax return not later than 15 months from the last day of the Reporting Financial Year.
  - An amended top-up tax return shall only be made after the due date for the furnishing of the return but not later than 6 months from that date.
  - The tax or additional tax payable shall be increased by a sum equal 10% of the amount of such tax or additional tax.
  - DTT or MTT shall be due and payable on the last day of the 15th month from the close of the Reporting Financial Year.

Record keeping

- Every CE which is required to furnish a return for a Reporting Financial Year shall keep and retain sufficient documents for a period of 7 years from the end of that Reporting Financial Year.

Offences and penalties

Offences	Penalties
Failure of CE to furnish information return	On conviction, a fine of between RM20,000 and RM100,000 or imprisonment for a term not exceeding 6 months or both.
Failure of CE to furnish top-up tax return	A penalty equal to treble the amount of that top-up tax. On conviction, a fine of between RM20,000 and RM100,000 or imprisonment for a term not exceeding 6 months or both.
Incorrect information return of CE	On conviction, a fine of between RM20,000 and RM100,000 or imprisonment for a term not exceeding 6 months or both.
Incorrect top-up tax return of CE	A penalty equal to the amount of tax undercharged. On conviction, a fine of between RM20,000 and RM100,000 and a special penalty of double the amount of tax undercharged.

BDO INSIGHT

- The GMT was initially set to be implemented in Malaysia in 2024 but has been subsequently postponed to 2025, providing MNEs which fall within the scope with more time to prepare for compliance. However, Malaysian MNEs with operations in countries implementing Pillar Two in 2024 (e.g. Japan, South Korea and the United Kingdom) must review and assess the impact immediately.
- In line with the OECD GloBE Rules, the DTT and MTT do not apply to wholly domestic groups.
- The OECD GloBE Rules consists of two mechanisms:
  - (i) Income Inclusion Rule ("IIR") which imposes top-up tax on a parent entity in respect of the low-taxed income of a CE up to the minimum rate; and
  - (ii) Undertaxed Payment Rule ("UTPR") which denies deductions or requires an equivalent adjustment to the extent the low-taxed income of a CE is not subject to tax under an IIR.

  - It is noted that the proposed new Part XI includes only the application of the IIR where an MTT will be charged on the Malaysian UPE for its low-taxed CEs located in other jurisdictions with ETR less than 15% (a top-down approach).
  - In instances where the parent entities of a Malaysian CE are located in jurisdictions that are not subject to an IIR, the top-up tax of a low-taxed Malaysian CE would have been collected by Malaysia through a DTT (with or without the adoption of UTPR) as a Qualified Domestic Top-up Tax takes priority over the GloBE Rules.

- It should be noted that the transitional relief provided under the OECD GloBE Rules where GloBE Information Return shall be filed no later than 18 months (instead of 15 months) after the last day of the Reporting Fiscal Year for the first Fiscal Year that the MNE Group comes within the scope of the GloBE Rules is not adopted by Malaysia.

CONTACT

BDO TAX SERVICES SDN BHD (198401002347 (114863-K))
Level 8
BDO @ Menara CenTARa
360 Jalan Tuanku Abdul Rahman
50100 Kuala Lumpur, Malaysia

t:+603 2616 2888
f:+603 2616 2970
e: marcomms@bdo.my

OUR TAX TEAM

BEH TOK KOAY
Senior Advisor
tkbeh@bdo.my

ONG ENG CHOON
Senior Advisor
ongec@bdo.my

ON BEE YEE
Executive Director
onby@bdo.my

YONG MEE THING
Executive Director
yongmt@bdo.my

DAVID LAI
Executive Director
davidlai@bdo.my

WOON YOKE LEE
Executive Director
woonyl@bdo.my

SOH PIN TAU
Executive Director
sohpt@bdo.my

YEAP LAY SUAT
Executive Director
yeapls@bdo.my

NG SWEE WENG
Senior Advisor
swng@bdo.my

KOO KIAN MING
Executive Director
kookm@bdo.my

YAP MEI SEI
Executive Director
yapms@bdo.my

CHAN KWAN YEE
Executive Director
chanky@bdo.my

CHRISTOPHER LOW
Executive Director
chrislow@bdo.my

LEE BOON HOOI
Executive Director
leebh@bdo.my

TAN CHIN TECK
Executive Director
tanct@bdo.my

TAN SIN HUAT
Advisor
shtan@bdo.my

www.bdo.my