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International Tax Updates

1. The OECD released GloBE model rules under Pillar Two of BEPS 2.0

On 20 December 2021, the OECD/G20 Inclusive Framework on BEPS (IF) published the GloBE model rules under Pillar Two of BEPS 2.0. The GloBE model rules include the detailed design features of the Income Inclusion Rule (IIR) and Undertaxed Payment Rule (UTPR).

Compared to the draft rules set out in the blueprint issued by the IF in October 2020 and the IF Statement issued on 8 October 2021, major changes / updates reflected in the model rules include:

- the threshold for in-scope MNE groups is now changed to consolidated annual revenue threshold of EUR 750 million or more in at least two of the four immediately preceding accounting periods of the ultimate parent entity (UPE);
- an excluded entity now also includes a real estate investment vehicle (as defined and subject to certain conditions) that is an UPE;
- the “adjusted deferred tax approach” is now adopted to deal with certain accounting to tax timing differences and tax losses (including pre-regime losses);
- a “GloBE loss election” can be made in lieu of applying the rules under the adjusted deferred tax approach;
- a “five-year election” to determine the gains or losses from revaluation of assets (including immovable property) and liabilities based on the realisation principle for the purposes of computing the GloBE income has been introduced;
- distributions paid or payable in respect of additional tier one capital by issuers are now treated as an expense in computing the GloBE income;
- domestic top-up tax payable under a qualified domestic minimum top-up tax regime in a jurisdiction can be used as a reduction of the jurisdictional GloBE top-up tax amount;
- the “Simplified IIR” is no longer applicable to associates and there are special provisions for applying the IIR in case of joint ventures; and
- the scope of the UTPR has been expanded to cover all tax-deductible payments rather than restricted to related-party payments, two new substance-based allocation keys have been introduced (i.e. allocation of the total UTPR top-up tax amount to a UTPR jurisdiction is based on the number of employees and the net book value of tangible assets in that jurisdiction).

The minimum effective tax rate for the GloBE rules remains to be 15%.

According to the OECD's announcement, the release of the Commentary on the GloBE model rules and the Subject-to-Tax Rule (STTR) will now be deferred to early 2022. This will be followed by the development of the GloBE Implementation Framework focused on administrative, compliance and co-ordination issues relating to Pillar Two. A public consultation on the implementation framework and the STTR will be held in February and March of 2022 respectively.

Based on the OECD's proposed timeline, the IIR is expected to be brought into law in 2022 and come into effect in 2023 whereas the implementation of the UTPR will be deferred to 2024.

For more details and a copy of the GloBE model rules and the related documents, please refer to these Link 1 and Link 2 to the OECD's website.

2. The OECD released the mutual agreement procedure statistics for year 2020

On 22 November 2021, the OECD released the mutual agreement procedure (MAP) statistics for year 2020 as part of the BEPS Action 14 minimum standard on improving the effectiveness of tax dispute resolution mechanism. The statistics cover 118 jurisdictions. Some of the trends revealed by the 2020 MAP statistics are:

- MAP remains very concentrated - around 2,500 new cases started in 2020, with the top 25 jurisdictions accounting for 95% of them and the remaining cases involving around 40 other jurisdictions;
- slight decrease in cases closed due to COVID-19 - approximately 5% fewer MAP cases were closed in 2020 than in 2019. MAP inventories as of the end of 2020 have increased in the majority of jurisdictions;
- outcomes remain generally positive - around 75% of the MAPs concluded in 2020 fully resolved the issue both for transfer pricing and other cases. Approximately 3% of MAP cases were closed with no agreement. In addition, the number of cases withdrawn by taxpayers nearly doubled in 2020; and
- cases still take a long time to close - On average, MAP cases closed in 2020 took 35 months for transfer pricing cases and approximately 18 months for other cases.

For more details and the 2020 MAP statistics for China and Hong Kong, please refer to these Link 3, Link 4 and Link 5 to the OECD's website.

3. The OECD published BEPS Action 5 peer review report on exchange of tax rulings

On 14 December 2021, the OECD published the peer review assessment of 131 jurisdictions in relation to the spontaneous exchanges of information on tax rulings, one of the minimum standards under BEPS Action 5.

According to the 2020 peer review reports, 95 jurisdictions are now fully in line with the BEPS Action 5 minimum standard, with the remaining 36 jurisdictions receiving one or more recommendations to improve their legal or operational framework to identify and exchange the tax rulings.

Both China and Hong Kong have met all aspects of the terms of reference for the peer review for year 2020, with no recommendations made to them.

For more details and the peer review reports for China and Hong Kong, please refer to these Link 6, Link 7 and Link 8 to the OECD's website.

4. Implementation of the public country-by-country reporting in the European Union

The European Union (EU) Directive on public country-by-country reporting was published in the Official Journal of the EU on 1 December 2021. According to the EU Directive:

- the Directive will enter into force on 21 December 2021;
- EU Member States will have until 22 June 2023 to transpose the Directive into domestic legislation;
- the new rules will apply from the commencement date of the first financial year starting on or after 22 June 2024 the latest; and
- the report on income tax has to be published within 12 months from the balance sheet date of the financial year for which the report is drawn up.

In general, the new rules will apply to multinational groups (1) with annual consolidated revenue of EUR 750 million or more and (2) with their ultimate parents located in the EU or having EU subsidiaries or branches of a certain size, with certain carve-outs subject to fulfillment of the specified conditions.

For more details and a copy of the Directive, please refer to this Link 9 to the website of the EU Official Journal.

5. Changes to Malaysia's offshore income exemption regime

On 5 October 2021, the EU released its updated list of non-cooperative jurisdictions for tax purposes which consists of the blacklist and grey list. As reported in the International Tax Updates of the last issue of our newsletter, both Hong Kong and Malaysia are among the jurisdictions that have been added to the EU's grey list (i.e. the watch list) because the EU considers their foreign sourced income exemption regimes as a harmful tax regime. These jurisdictions are granted until 31 December 2022 by the EU to change their legislation and remove the harmful features of their offshore regimes.

In the 2022 Malaysian Budget tabled on 29 October 2021, Malaysia announced that it will repeal the tax exemption for foreign sourced income received by Malaysian tax residents in Malaysia from 1 January 2022. This means foreign sourced income derived by Malaysian tax residents that is received in Malaysia will be taxable effective 1 January 2022. The Budget proposal was subsequently enacted as part of the Finance Act 2021 gazetted on 31 December 2021.

Based on a media release of the Malaysian Inland Revenue Board (MIRB) dated 16 November 2021:

- a transitional tax rate of 3% will be imposed on the gross amount of foreign income remitted to Malaysia from 1 January 2022 through 30 June 2022;
- a Special Program for Foreign Income Remittance will be introduced during the transitional period. Under this program, the tax authority is ready to accept any disclosure / declaration made by taxpayers without conducting a tax audit or investigation; and
- taxpayers wishing to participate in the program are required to make a declaration no later than 30 days after the end of program (i.e. on or before 30 July 2022).

On 17 December 2021, the MIRB released a set of frequently asked question (FAQs) on the above special program during the transitional period. The FAQs provide further clarification on the program including what is meant by "received in" Malaysia.

On 30 December 2021, the Finance Ministry announced that tax exemption will continue to be available for (1) foreign sourced dividend income for corporate taxpayers and (2) foreign sourced income for individuals until 31 December 2026, subject to certain conditions. The extension of the tax exemption is introduced as a relief measure for the COVID-19 pandemic. More guidelines on the qualifying conditions will be issued by the MIRB.

For more details and the MIRB's media release and FAQs, please refer to these Link 10 and Link 11 to the MIRB's website.