

Inclusive Framework BEPS Agreement

Enactment of Alternative Minimum Tax in the United States
Policy Perspectives Update – the Hong Kong SAR



The United States to implement a 15% Alternative Minimum Tax from 1 January 2023

On 16 August 2022, the United States (US) President Joe Biden signed into law the budget reconciliation legislation - commonly known as the Inflation Reduction Act 2022 (the Act). The Act includes, among other measures, an Alternative Minimum Tax (AMT) of 15% on certain large corporations. The AMT will apply to tax years beginning after 31 December 2022. A comprehensive summary of the AMT legislation can be accessed via this [link](#).

The 15% AMT in the US

Introduction

In a historic agreement reached at the G20 Rome Summit in October 2021, the OECD/G20 Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) committed to reforms that aim to make the international tax system fairer and address tax challenges in a digitalised and globalised world economy. The 2021 statement released by the OECD sets out the agreed core rules, as endorsed by 137 out of 141 IF members.

In recent weeks, progress has been made in the Asia-Pacific region with announcements made by Korea and Malaysia on the implementation of the BEPS Pillar Two. However, many observers have been more focused on recent developments in the US with the AMT. The AMT re-emerged as a key tax proposal after the Democrats were unable to come to an agreement on the Build Back Better proposals in 2021, which included proposed amendments to US tax rules to align them with the GloBE model rules.

The Act introducing the AMT was passed by the Senate on 7 August 2022 and the House on 12 August 2022. The Act was enacted into law on 16 August 2022 and will apply to tax years commencing after 31 December 2022.

This AMT is estimated to raise approximately US\$222.25 billion over 10 years.

Key differences between the AMT and the OECD BEPS rules

As an introductory comment, it is noteworthy that the US has signed up to the OECD's common approach as an IF member, but the introduction of this new US AMT seems to have deviated from the agreed common approach. While the AMT shares some similarities with the Pillar Two GloBE effective tax rate (ETR) calculation methodologies, in that both use financial statement income as the starting point for the 15% ETR calculation, the scope and technical design of the AMT deviates from OECD architecture in material ways.

Given the differences summarised below, it seems unlikely this AMT would be considered a Qualified Domestic Minimum Top-up Tax, or Qualified Income Inclusion Rule. This raises many new issues and considerations that may result in unexpected complexities.

That said, subject to a yet-to-be-agreed Pillar Two peer review process, it is possible that the AMT may be treated as a "CFC Tax Regime" under the GloBE rules, at least to the extent that the AMT taxation is imposed in relation to the overseas profits of a US MNE. Furthermore, there is currently no agreed GloBE rule allocation methodology for how one jurisdiction's CFC tax liability would be re-allocated to a different jurisdiction. Using a yet to-be-developed allocation CFC allocation methodology under the GloBE rules may raise further complexity when computing country-by-country ETRs.

While the AMT shares some similarities with the Pillar Two GloBE rules, it deviates in a few material ways as follows.

Threshold

With respect to scope, the AMT uses a USD 1 billion consolidated income threshold, which is based on an average annual adjusted financial statement income (AFSI) test over a three-consecutive-year period. Whereas Pillar Two GloBE rules use a EUR 750 million consolidated revenue threshold in 2 out of 4 preceding years. Also, if the corporation is a member of a foreign-parented multinational group, the USD 1 billion AFSI threshold test is modified. There are also apparent differences between Excluded Entities under GloBE rules and an "applicable corporation" under the AMT rules.

Timing

As mentioned above, the application date for the AMT is 2023, whereas the GloBE rules are anticipated to apply from 2024 in major jurisdictions, based on the latest information available.

Calculation Methodology

With respect to the calculation methodology, the AMT and Pillar Two GloBE rules also deviate from one another. Unfortunately, the AMT calculation methodology moves away from the OECD's common approach (i.e. agreeing a consistent set of rules) to aid overall compliance. For example, the AMT allows various US domestic tax credits, whereas the GloBE rules would treat nominated credits as a reduction to covered taxes. The OECD took this position to achieve consistency in ETR determination across many foreign jurisdictions with many different tax credit and tax offset regimes.

Another significant difference is that the GloBE rules utilise deferred tax accounting numbers in the ETR numerator to deal with potential ETR volatility from temporary differences. By contrast, the AMT determines taxes without any reference to book deferred tax accounts. There are also significant differences with the way carry forward tax losses are utilised.

The AMT is a globally blended calculation methodology that mixes high taxed and low taxed jurisdictions together. This is fundamentally different to the jurisdictional approach adopted under the GloBE rules.

As a result of these and other differences in calculation methodologies, US AMT taxpayers could still have an ETR that is lower than 15% and thus be exposed to the Income Inclusion Rule and / or the Undertaxed Payments Rule under the GloBE rules.

Hong Kong business considerations

Businesses in Hong Kong belonging to multinational groups that will be impacted by the newly enacted AMT in the US should be aware of the detail rules in the AMT legislation, which are quite complex and deviate from the GloBE rules in various aspects. They should also consider the interaction between the US AMT regime and the OECD's global minimum tax regime, bearing in mind in particular that the differences between the two may result in potential double taxation of the in-scope groups. If you would like to discuss the topics above or BEPS 2.0, please contact your usual KPMG representative.

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