KPMG

Tax News Flash

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Minister of Finance Regulation No. 136/2024 – Global Minimum Tax

In line with several other countries, the Indonesian Minister of Finance (MOF) has recently issued "Regulation No. 136 Year 2024, regarding the application of a global minimum tax based on an International Agreement (MOF-136)". MOF-136 was issued to adopt the Organization of Economic Co-operation and Development (OECD/G20) Inclusive Framework on base erosion and profit shifting (BEPS), which are the rules for a Global Minimum Tax at 15 percent for multi-national enterprises (MNEs) with an annual turnover of more than EUR750 million. This has already been adopted by 147 other countries.

Parts of MOF-136 went into effect on 1 January 2025 including the Income Inclusion Rule (IIR), and the Domestic Minimum Top-up Tax (DMTT). However, the Under-Taxed Payments Rule (UTPR) will go into effect on 1 January 2026. The IIR imposes top-up tax on a parent entity for the low taxed income of a Constituent Entity. This applies to both overseas and domestic entities. The UTPR can deny deductions or provide a similar adjustment for group entities to the extent that there is top-up tax that has not been taxed under the IIR.

The global minimum tax under MOF-136 applies to Indonesian taxpayers and permanent establishments (PEs) that are Constituent Entities of MNE groups and is calculated using the top-up tax charging mechanisms (i.e., IIR, UTPR and/or DMTT).

The determination of whether top-up tax is required, either through the IIR, DMTT or the UTPR, is based on a complex calculation of the effective tax rate (ETR) for a jurisdiction. The model rules use modified deferred tax calculations for timing differences, the treatment of losses and other adjustments.

There are exclusions from the Global Anti-Base Erosion (or GloBE) rules that apply to pension funds, the government, international and non-profit organizations as well as investment funds and real estate investment vehicles that are ultimate parent entities (UPEs). There are also provisions for safe harbors with certain requirements and tests, like the *de-minimis* rule.

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Below we will highlight some of the key provisions in MOF-136:

Scope of the Global Minimum Tax

Pillar Two deals with the new GloBE rules and the Global Minimum Tax rules. The agreed upon global minimum tax rate is 15 percent.

Revenue threshold

Generally, the GloBE rules apply to an MNE when consolidated group revenue exceeds EUR750 million. This is determined by looking at the consolidated financial statements of the UPE. An entity located in one jurisdiction, which has a PE in another jurisdiction, is also deemed to be a group when applying the test.

Test years for the consolidated revenue threshold

There is a four-year test period that determines whether the threshold has been met. Generally, if revenue exceeds EUR750 million in two of the previous four fiscal years (FY), the threshold is met. When two groups merge, the test is deemed to be met if the sum of the revenue of each group meets the EUR750m threshold. There are also special rules for demergers.

In this case then, FY24, FY23, FY22 and FY21 will be used to determine this threshold.

Excluded entities

Certain organizations, entities or arrangements are excluded from the GloBE rules. Government entities that do not carry out trade, international organizations, non-profit organizations and pension funds are fully excluded. In addition, investment funds are excluded, but only when they are the UPE of an MNE Group. Certain holding vehicles owned by these excluded entities are also themselves excluded.

Exclusions – International shipping

There is an exclusion for international shipping income and certain related income. This applies to both the transportation of passengers and cargo but does not include income from transportation in inland waterways of the same jurisdiction. To qualify for the exclusion, the Constituent Entity must demonstrate that the strategic or commercial management of all ships concerned is effectively carried out from within the jurisdiction where the Constituent Entity is located.

Domestic Minimum Top-up Tax

There is additional income tax that needs to be paid by Indonesian taxpayers that are Constituent Entities of MNEs and that have an ETR lower than the global minimum tax of 15 percent.

This additional income tax is applied to the Indonesian Constituent Entities irrespective of the ownership interests held in the constituent entities located in other jurisdictions by any parent entity of the MNE Group.

Once the effective tax rate is calculated, the taxpayer will need to determine how much top-up tax is owed. The rate for this is the difference between the 15 percent minimum rate and the ETR in that jurisdiction. This top-up tax percentage is then applied to the GloBE income in the jurisdiction, after deducting a substance-based income exclusion (SBIE). The SBIE reduces the exposure to the minimum tax and is calculated as a percentage mark-up on tangible assets and payroll costs.

Finally, Indonesia has a domestic minimum tax that is consistent with the Pillar Two model rules, i.e. the Qualified Domestic Minimum Top-up Tax or QDMTT. This domestic tax eliminates any top-up tax liability under the GloBE rules when it is treated as a QDMTT safe harbor. When it is not treated as a QDMTT safe harbor, domestic tax is credited against any Pillar Two minimum tax liability.[1]

Income inclusion rule

Top-down approach and intermediate parents

The GloBE rules are designed to ensure that large MNEs pay a minimum level of tax on the income arising in each jurisdiction in which they operate. To this end, the rules calculate the ETR imposed on the MNE in each jurisdiction. When the ETR in a jurisdiction falls below 15 percent, these rules determine the amount of top-up tax for each constituent entity in the jurisdiction.

If no QDMTT is imposed on the low-taxed Constituent Entity, the IIR should be imposed as a top-up tax. Under the IIR, a parent entity within the MNE group will pay tax in its jurisdiction of tax residence with respect to its allocable share of the top-up tax of a low-taxed Constituent Entity. In this regard the IIR bears similarities to controlled foreign corporation (CFC) rules.

Under the top-down approach, priority is given to the parent entity at the highest point in the ownership chain. Therefore, in a multi-tiered structure, when the UPE of the MNE group is subject to a qualified IIR (i.e., one conformant of the GloBE rules' design), it will pay the IIR tax with respect to the top-up tax of a low-taxed Constituent Entity, rather than an intermediate parent entity. When the UPE is not subject to a qualified IIR, IIR tax rights will 'drop' down to the jurisdiction of the intermediate parent

[1] *OECD - The Pillar Two Rules in a Nutshell (https://www.oecd.org/tax/beps/pillar-two-model-rules-in-a- nutshell.pdf).*

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entity beneath it, to the extent it applies a qualified IIR, and so on down the chain of ownership.

Split ownership rules

An exception to the top-down rules can apply when a low-taxed Constituent Entity is a significant (i.e., more than 20 percent) minority interest holder outside the MNE group. The split-ownership rules apply to address the potential for leakage that would result from simply subjecting the UPE's allocable share of the low-taxed Constituent Entity to IIR tax.

For example, take the case where the UPE has a 75 percent ownership interest in an intermediate parent entity, and the latter has a 100 percent ownership interest in a low-taxed Constituent Entity. In this case, the IIR taxing rights would 'drop' to the jurisdiction of the intermediate parent entity, assuming the latter applies a qualified IIR. This is termed a 'partially-owned parent entity'. The effect of the rule is that 100 percent of the top-up tax is subject to IIR tax at the level of the partially owned parent entity, rather than 75 percent of the top-up tax being taxed at the level of the UPE. The rules ensure that the allocable share of higher-tier parents (e.g., 75 percent share of the UPE in this case) will be reduced to the extent that IIR tax is imposed by lower-tier parents (i.e., down to zero in this case).

Under-taxed payments rule

Situations where the UTPR is applicable and the top-up tax calculation

The UTPR operates as a backstop to the IIR, to be applied where insufficient top-up tax is collected under the IIR. Importantly, the UTPR also serves the purpose of ensuring low-tax income in the UPE jurisdiction is subject to tax at the minimum rate. Central to the application of the UTPR is the determination of the total UTPR top-up tax amount. This is an aggregate 'pool' of all the top-up tax of the low-taxed Constituent Entities across the MNE group, which is not adequately taxed by an IIR or otherwise excluded.

An important rule, in this regard, references the UPE's ownership interest in a low-taxed Constituent Entity. If the UPE has a 75 percent ownership interest in a low-taxed Constituent Entity, and the IIR is applied at the level of group parents (including partially owned parent entities) for the full 75 percent of the low-taxed Constituent Entities' top-up tax, then for UTPR purposes the low-taxed Constituent Entities' top-up tax will be reduced to zero (despite 25 percent of the top-up tax remaining untaxed). If this is not the case (e.g., the group parents are subject to 74 percent of the potential 75 percent of the IIR, as the 1 percent holder is not in an IIR-applying jurisdiction), then the top-up tax is not reduced to zero. Instead, the top-up tax for UTPR purposes is reduced by the amount subject to IIR (e.g., 26 percent remains). These core rules are accompanied by other special rules.

In the case of a GloBE JV, for example, the top-up tax 'ceiling' for UTPR is the UPE ownership interest in the JV (e.g., 50 percent of the JV top-up tax). For investment entities within a group, the UTPR does not apply.

Effective tax rate – Normal cases

The GloBE rules prescribe that the ETR of the MNE Group for a jurisdiction with Net GloBE Income needs to be calculated for each fiscal year. The ETR of the MNE Group for a jurisdiction is equal to the sum of the Adjusted Covered Taxes of each Constituent Entity located in the jurisdiction (numerator) divided by the Net GloBE Income of the jurisdiction for that fiscal year (denominator). For the purposes of this rule, each Stateless Constituent Entity shall be treated as a Single Constituent Entity located in a separate jurisdiction.

Calculation of Net GloBE Income

The Net GloBE Income of a jurisdiction for a fiscal year is the positive amount, if any, computed in accordance with the following formula:

Net GloBE Income = GloBE Income of all Constituent Entities from that jurisdiction - GloBE Losses of all Constituent Entities from that jurisdiction.

The GloBE Income of each Constituent Entity is defined as the financial accounting net income or loss determined for the Constituent Entity for the fiscal year adjusted for certain specific items. Any Adjusted Covered Taxes or the GloBE Income or Loss of the Constituent Entities that are Investment Entities are excluded from the determination of the ETR and the determination of the Net GloBE Income. The top-up tax percentage for a jurisdiction for a fiscal year is any positive percentage point difference between 15 percent (the minimum rate) and the ETR.

Excess profit for the jurisdiction for the fiscal year is any positive amount between Net Globe Income minus the SBIE. The jurisdictional top-up tax for a jurisdiction for a fiscal year is any positive amount equal to the top-up tax percentage times the excess profit, minus any domestic top-up tax and plus any additional top-up tax arising from certain adjustments, such as prior year increases.

There is a *de-minimis* exclusion. Upon request and subject to conditions, the top-up tax for the Constituent Entities located in a jurisdiction is deemed to be zero for a fiscal year if, for such a fiscal year:

a. the average GloBE Revenue of that jurisdiction is less than EUR10 million; and

b. the average GloBE Income or Loss of that jurisdiction is a loss or is less than EUR1 million.

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Substance-based Income Exclusion

The GloBE rules provide for a substance carve-out based on the return to payroll and tangible assets. The effect of the substance carve-out is to allow a jurisdiction to continue to offer tax incentives that reduce taxes on routine returns from investment in substantive activities. The use of payroll and tangible assets is to assist both labor and capital-intensive industries.

Calculating the Substance-based Income Exclusion

The payroll component is based on determining the payroll costs of employees of the relevant MNE entity. A wide concept of employees is adopted and must include independent contractors who are natural persons or employed by an employment company whose daily activities are directed by the MNE entity, but not employees of a corporate contractor providing goods or services.

The rules look to where the activities of an employee take place and not the location of the employer. Payroll costs (apart from payroll costs capitalized into tangible assets) are also widely defined and include employee benefits, certain pension fund payments and related taxes.

The tangible asset component is based on the carrying value in the financial accounts (with certain safeguards) of plant, property, equipment, land-use rights and land (excluding land held for development). There are special rules for self-constructed assets, natural resources, and leased assets which aim at equivalent treatment.

The amount of the SBIE is the sum of a percentage applied to the payroll and tangible asset components. For the payroll component, the percentage starts at 10 percent starting for fiscal year 2023 and declines by 0.2 percentage points per year for the first five years to 9 percent, and then by 0.8 percentage points per year to reach 5 percent after 10 years (for fiscal year 2025: 9.6 percent). For the tangible asset component, the percentage starts at 8 percent starting for fiscal year 2023 and declines by 0.2 percentage points per year for five years to reach 7 percent and then by 0.4 percentage points for five years to also reach 5 percent after 10 years (for fiscal year 2025: 7.6 percent).

Applying the Substance-based Income Exclusion

The SBIE is subtracted from the local profit (Net GloBE Income) in a jurisdiction to produce excess profit. This excess profit is multiplied by the top-up tax percentage, which is the difference between the 15 percent minimum rate and the ETR for the local jurisdiction (without adjustment for the carve-out). This product gives the top-up tax amount which is taxed either through the IIR or the UTPR. Any SBIE amount that is not utilized cannot be carried forward or back.

By way of example, say that an MNE's Constituent Entity in Country A has a payroll of EUR100, a carrying value of tangible assets of EUR200, financial accounts profits of EUR100 and tax paid of EUR10. Assume that when profits are adjusted for the GloBE rules, the Net GloBE Income remains at EUR100, and the Covered Taxes remain at EUR10. The ETR is 10 percent (EUR10/EUR100). The SBIE is calculated as EUR26 (applying 10 percent and 8 percent to payroll and assets for year 1, respectively). Excess profits are consequently EUR74 (EUR100 – EUR26). Applying the 5 percent (15 percent-10 percent) top-up tax rate to the excess profit yields a top-up tax of EUR3.70, which is taxed through the IIR and/or UTPR. This could be reduced to nil if a domestic top-up tax was applied by Country A.

Administration

Filing obligations

Under the GloBE rule, there are filing obligations that consists of:

1. GloBE Information Return (GIR) and notification

   The GIR needs to be lodged within 15 months of the GloBE reporting year (for the first year, i.e. FY25, this deadline will be 18 months). The receipt of the lodgment of GIR and a notification must be attached to the GloBE annual income tax return.

2. Annual income tax returns:

   a. GloBE annual income tax return (needs to be filed by the UPE of an MNE group that is an Indonesian tax subject);

   b. DMTT annual income tax return; and/or

   c. UTPR annual income tax return.

The DMTT and UTPR annual income tax returns need to be filed by Constituent Entities (Indonesian taxpayers including PEs) located in Indonesia. These annual income tax returns must be filed within four months after the following fiscal year (for the first-year, filing can be extended by two months).

The information contained in the return will be in a standard form which is to include:

- identification of the Constituent Entities and their location;
- the overall corporate structure of the MNE group;
- information necessary to compute the ETR for each jurisdiction, the top-up tax for each Constituent Entity and the members of a joint venture group;
- the allocation of the top-up tax to the IIR and the UTPR for each country or jurisdiction;
- a record of any elections made using GloBE rules.

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The GloBE model rules - Workflow

In summary, based on the highlights above, the workflow of MOF-136 is consistent with the GloBE model rules, i.e.:

1. Identification of in-scope entities

a. identification of MNE groups within scope

b. identification of Constituent Entities

c. removal of any excluded entities

d. identification of the location of each Constituent Entity.

2. ETR Calculation

Denominator

a. Determine financial accounting net income

b. Adjust Financial Accounting Net Income or Loss to the GloBE base

c. Allocate GloBE Income or Loss to PE or flow-through entities, if necessary.

Numerator

a. Identify the Covered Taxes

b. Adjust Covered Taxes for temporary differences and prior year losses

c. Allocate Covered Taxes as necessary

d. Take post-filing adjustments into account.

3. Top-up tax calculation

a. calculation of the top-up tax percentage for each low-tax jurisdiction (ETR < 15 percent)

b. application of the top-up tax percentage to the excess profits of the jurisdiction

c. deduction of the amount of top-up tax imposed under a qualified domestic minimum tax

d. allocation of the jurisdictional top-up tax to the Constituent Entities in the jurisdiction in proportion to their GloBE Income.

4. Impose and allocate top-up tax

a. Identification of Constituent Entities subject to QDMTT

b. Identification of the parent entity liable for the top-up tax under the IIR

c. Determination of the amount of top-up tax paid by the parent entity under the IIR

d. Identification of the remaining amount, if any, that is allocable under the UTPR

e. Liability for residual top-up tax in the UTPR jurisdictions through a UTPR adjustment.

5. Filing obligations

a. Identification of filing entities (UPE, designated filing entity, each Constituent Entity)

b. Collection of reportable information

c. Filing of the GIR with the Directorate General of Taxation (DGT) within 15 months after the end of the reporting fiscal year.

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KPMG notes: Ten points on what tax leaders need to do

The GloBE rules can have a significant impact on the ETR of MNE Groups, and it is expected to result in many different implementation challenges, as well as an increase in the administrative burden for MNE Groups that are in scope of the rules, particularly in the context of the yearly ETR and top-up tax calculations based on a jurisdictional blending.

1. Undertake a high-level evaluation of how the rules could potentially impact the MNE

This may involve the use of KPMG Assessment Tools and a review of the MNE's group structure. While the safe harbor rules have yet to be developed, a delineation can be drawn between entities that will clearly exceed the minimum ETR threshold and those that may not. It will also involve an assessment of whether a structure is likely to involve excluded entities or how certain tax concessions might operate. It should be noted that the position of various entities can change signficantly from year to year, and that full jurisdictional blending is not required in some cases.

2. Understand the potential systems issues in collating data

Some information will be available through regular accounting information and some will need to be gathered from other sources (for example, the extended definition of payroll, which includes certain types of independent contractors for the purpose of determining the SIBT).

3. Ensure that there is strong liaison between the tax teams and accounting teams for information

Because much of the information required is based on accounting data and delineations, particularly in relation to deferred tax, there is a need to ensure that data is available at the right level of granularity and integrity or robustness. In addition, the treatment and/or allocation of certain items of income or costs (including taxes) under the GloBE rules may differ from the accounting treatment in the financial accounts. The GloBE rules as outputs will also have accounting implications.

4. Consider a more detailed assessment model

After the initial evaluation provided above in 1-3, a more detailed assessment is likely to be appropriate to determine any potential additional GloBE tax liabilities and the potential exercise of the elections available. KPMG has a tool which can accommodate this more detailed assessment. This can be used to refine the consideration of any elections.

Also, any transaction between Constituent Entities located in different jurisdictions that is not recorded in the financial accounts consistent with the arm's-length principle must be adjusted to be consistent with that principle.

5. Inform board and management committees of the potential financial and administrative impact of the new GloBE rules

Ensure that your budget has included additional funds for compliance costs, and that those within the organization that need to know are aware of the potential information gathering exercises to help stream-line this process.

6. Establish a tax control framework for GloBE

The GloBE rules may result in an increase in the overall effective tax rate of an MNE group and therefore can have significant cashflow and financial statement impacts. Non-compliance can result in a higher level of scrutiny from the tax authorities, higher (tax) costs as well as brand and potential reputational damage. The MNE board's tax governance needs to include a robust tax control framework that ensures compliance with these new rules.

7. Whether a central, regional or hybrid approach is going to be adopted for dealing with GloBE

This will depend on the organization, but it is likely that some decentralization will be required based on the need for local information.

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KPMG notes: Ten points on what tax leaders need to do

8. **Monitor how individual countries are reacting to GloBE and the consistency of application**

   This includes amendments to introduce domestic top-up taxes, alternative minimum taxes or IIR and UTPR rules. Some countries may change tax-based incentives to grants or other forms of subsidies to better accommodate the rules.

   While the rules seek to present a consistent framework, there may be differences in how they are applied to domestic entities. The potential co-existence of GILTI[2] rules is likely to present differences in application. The European Union (EU) may well introduce additional elements that extend or 'clarify' the GloBE rules in comparison to other jurisdictions.

9. **Consider future tax disclosures and interaction with the GloBE rules**

   There are an increasing number of disclosure regimes, both private and public, and early consideration of how they intersect is important. These include country-by-country-report (CBCR), Global Reporting Initiative (GRI) 207 and EU Public CBCR in addition to the GloBE rules.

10. **Consider any secondary impacts for customers and investee communications**

    There may be many secondary effects for MNEs, including customer credit profiles, cash-based evaluations of investments and dealing with minority interests. Consideration of these impacts needs to be part of an implementation plan.

[2]Global intangible low-taxed income (Final regulations: "Global intangible low-taxed income" (GILTI) (text of regulations)

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