



Tax Whiz

Tax highlights from your advisers

BEPS 2.0 – Latest developments



17 February 2023

KPMG in Malaysia

BEPS 2.0 – Latest Developments

Announcement	Need to Know
Pillar One	
<p>Amount B</p> <ul style="list-style-type: none"> The OECD released a public consultation paper on 7 December 2022 and consultation ran until 25 January 2023 	<ul style="list-style-type: none"> Amount B is intended to streamline the application of the arm's length principle to in-country baseline marketing and distribution activities (i.e. a standardized methodology for marketing and distribution rights). The public consultation paper outlines the main design elements of Amount B, focusing on the scope, the pricing methodology and the current status of discussions concerning an appropriate implementation framework. Our observations to the public consultation paper are as follows: <ul style="list-style-type: none"> The proposed scoping criteria for Amount B (where there are several exclusions) appears to reduce its efficacy; and There are wide differences in approach from different countries and businesses. <p>In this regard, there is a high level of skepticism as to whether these will come to fruition.</p>

BEPS 2.0 – Latest Developments (cont.)

Announcement	Need to Know
Pillar Two	
Accounting Disclosures / IAS 12 Income Taxes <ul style="list-style-type: none"> For annual accounts years commencing 2023 The IASB released an Exposure Draft with proposed amendments to IAS 12 on 9 January 2023 and consultation will run until 10 March Amendments are intended to be finalised in Q2 2023 	<ul style="list-style-type: none"> It is proposed that IAS 12 be amended to introduce a temporary exception from accounting for deferred tax in relation to the top-up tax. Companies would be required to provide new disclosures, particularly before the top-up tax rules come into effect. 3 types of disclosure requirements <ol style="list-style-type: none"> disclosure that the temporary deferred tax exemption is being used; disclosures on the impact of Pillar Two when the laws are substantively enacted but top-up tax is not yet effective; and disclosure on the current tax expense once the top-up tax becomes effective.
Transitional CbCR Safe Harbour <ul style="list-style-type: none"> Finalised at the OECD level on 20 December 2022 but implementation may vary For 2024-2026 years only 	<ul style="list-style-type: none"> Allows an MNE group to avoid undertaking detailed GloBE Rules calculations in respect of “lower-risk jurisdictions” if it can demonstrate, based on its CbC Report, that for such jurisdiction it has one of the following: <ol style="list-style-type: none"> De Minimis Test The MNE group reports a total revenue of less than EUR10 million and Profit or Loss before Income Tax of less than EUR1 million in the jurisdiction on its Qualified CbC Report for the year; Simplified ETR Test The MNE group has a simplified ETR that equals or exceeds the Transition Rate of 15% to 17% in the jurisdiction for 2023 to 2026; or

BEPS 2.0 – Latest Developments (cont.)

Announcement	Need to Know
Pillar Two (cont.)	
Transitional CbCR Safe Harbour (cont.)	<p><i>iii. Routine Profits Test</i></p> <p>The MNE group's Profit or Loss before Income Tax in the jurisdiction on its Qualified CbC Report equals or is less than the Substance-based Income Exclusion amount for entities resident in that jurisdiction as calculated under the GloBE Rules.</p> <p>The top-up tax for a jurisdiction that meets any of the above quantitative tests is deemed to be zero.</p> <ul style="list-style-type: none"> Unlikely to apply to all companies therefore MNE groups will still need to establish the relevant processes to perform the full GloBE calculations in respect of non-qualifying jurisdictions by 2024 at the latest.
<p>Permanent Safe Harbour</p> <ul style="list-style-type: none"> Likely to apply from 2027 (although theoretically from 2024) 	<ul style="list-style-type: none"> Applies similar tests to the Transitional CbCR Safe Harbour but methodology has yet to be determined. The difference between the Permanent and Transitional CbCR Safe Harbour is the source data that is used for the purposes of applying the three tests. It is implicit in the Inclusive Framework that there will be less reliance on CbC Report as the basis for the Permanent Safe Harbour. This likely stems from the many definitional differences between the GloBE Rules and CbCR, which were likely acceptable only on a transitional basis. The Permanent Safe Harbour is less technically developed than the Transitional CbCR Safe Harbor and key definitions associated with applying the tests are open for future development. It is therefore difficult to assess the impact Permanent Safe Harbour will have on compliance at this juncture.

BEPS 2.0 – Latest Developments (cont.)

Announcement	Need to Know
Pillar Two (cont.)	
Transitional Penalty Relief Regime <ul style="list-style-type: none"> Finalised at the OECD level on 20 December 2022 but implementation may vary For 2024-2026 years only 	<ul style="list-style-type: none"> The transitional penalty relief regime provides a “soft-landing” during the initial years of the application of the GloBE Rules. Jurisdictions are to give careful consideration as to the appropriateness of applying penalties where an MNE has taken “reasonable measures”¹ to ensure correct application of the GloBE Rules. Where “reasonable measures” are undertaken, penalties will be reduced to nil. It is important to note that the transitional penalty relief regime is a common understanding between Inclusive Framework members, rather than a legally binding commitment.
GloBE Information Return <ul style="list-style-type: none"> Consultation ends 3 February 2023 and likely to be finalised mid-2023 First GIRs to be filed in 2025-2026 	<ul style="list-style-type: none"> The consultation document identifies the information a taxpayer could require to compute every aspect of a full GloBE calculation. The base case is a GIR of 23 pages (i.e. approximately 200 data points per jurisdiction). As the drafting of the consultation document hints at the expectation that the GIR should include all data points tax administrations would require to evaluate a taxpayer’s application of the GloBE Rules, this would impose a significant compliance burden on taxpayers. The extent to which CbCR will be used remains to be seen but may be limited given little basis in Permanent Safe Harbours.

¹ Kindly note that what is considered as “reasonable measures” is currently not defined as at the drafting of this Tax Whiz and is subject to interpretation.

BEPS 2.0 – Latest Developments (cont.)

Announcement	Need to Know
Pillar Two (cont.)	
GloBE Administrative Guidance <ul style="list-style-type: none"> Released on 2 February 2023 A revised GloBE Commentary (originally released on 14 March 2022) incorporating the AG should be released later in 2023 	<ul style="list-style-type: none"> The released AG is noted to be an initial tranche, to be followed by further items of guidance in the future. Based on the AG, the following are of particular note: <ul style="list-style-type: none"> Many of the AG items clarify the application and interpretation of the GloBE rules in such a way as to avoid distortive outcomes that could otherwise arise, i.e. these items are directed at “helping” taxpayers; A number of AG items could be viewed as “patches” to deal with quirky interactions of the GloBE Rules with accounting treatments which were not foreseen when the GloBE Rules and Commentary were initially drafted; and The AG identifies certain elements of a QDMTT, as designed by a jurisdiction, that would need to be identical with the GloBE Rules and certain other elements that may vary. For example, variations from the GloBE Rules may be permissible where particular GloBE provisions would be “redundant” in light of a jurisdiction’s tax system.
M&A and Restructuring	Consideration should be given to M&A planning in order to reduce the risk of additional top-up tax on divestment.

The table below sets out the various abbreviations and references used in this publication.

Abbreviation	Reference
AG	Administrative Guidance
CbCR	Country-by-Country Reporting
GloBE	Global Anti-Base Erosion
GIR	Global Anti-Base Erosion Information Return
IASB	International Accounting Standards Board
M&A	Mergers and acquisitions
MNE	Multinational enterprise
OECD	The Organisation for Economic Co-operation and Development
QDMTT	Qualified Domestic Minimum Top-up Tax

Contact Us

Petaling Jaya Office

Soh Lian Seng

Executive Director –
Head of Tax and Head of Tax Dispute Resolution
lsoh@kpmg.com.my
+603 7721 7019

Tai Lai Kok

Executive Director –
Head of Corporate Tax
ltai1@kpmg.com.my
+603 7721 7020

Bob Kee

Executive Director – Head of Transfer Pricing
bkee@kpmg.com.my
+603 7721 7029

Long Yen Ping

Executive Director –
Head of Global Mobility Services
yenpinglong@kpmg.com.my
+603 7721 7018

Ng Sue Lynn

Executive Director – Head of Indirect Tax
suelynnng@kpmg.com.my
+603 7721 7271

Outstation Offices

Penang Office

Evelyn Lee

Executive Director – Penang Tax
evewflee@kpmg.com.my
+604 238 2288 (ext. 312)

Kota Kinabalu Office

Titus Tseu

Executive Director – Kota Kinabalu Tax
titustseu@kpmg.com.my
+6088 363 020 (ext. 2822)

Ipoh Office

Crystal Chuah Yoke Chin

Associate Director – Ipoh Tax
ycchuah@kpmg.com.my
+605 253 1188 (ext. 320)

Kuching & Miri Offices

Regina Lau

Executive Director – Kuching Tax
reglau@kpmg.com.my
+6082 268 308 (ext. 2188)

Johor Bahru Office

Ng Fie Lih

Executive Director – Johor Bahru Tax
flng@kpmg.com.my
+607 266 2213 (ext. 2514)

KPMG Offices

Petaling Jaya

Level 10, KPMG Tower,
8, First Avenue, Bandar Utama,
47800 Petaling Jaya, Selangor
Tel: +603 7721 3388
Fax: +603 7721 3399
Email: info@kpmg.com.my

Penang

Level 18, Hunza Tower,
163E, Jalan Kelawei,
10250 Penang
Tel: +604 238 2288
Fax: +604 238 2222
Email: info@kpmg.com.my

Kuching

Level 2, Lee Onn Building,
Jalan Lapangan Terbang,
93250 Kuching, Sarawak
Tel: +6082 268 308
Fax: +6082 530 669
Email: info@kpmg.com.my

Miri

1st Floor, Lot 2045,
Jalan MS 1/2,
Marina Square, Marina Parkcity,
98000 Miri, Sarawak
Tel: +6085 321 912
Fax: +6085 321 962
Email: info@kpmg.com.my

Kota Kinabalu

Lot 3A.01 Level 3A,
Plaza Shell,
29, Jalan Tunku Abdul Rahman,
88000 Kota Kinabalu, Sabah
Tel: +6088 363 020
Fax: +6088 363 022
Email: info@kpmg.com.my

Johor Bahru

Level 3, CIMB Leadership Academy,
No. 3, Jalan Medini Utara 1,
Medini Iskandar,
79200 Iskandar Puteri, Johor
Tel: +607 266 2213
Fax: +607 266 2214
Email: info@kpmg.com.my

Ipoh

Level 17, Ipoh Tower,
Jalan Dato' Seri Ahmad Said,
30450 Ipoh, Perak
Tel: +605 253 1188
Fax: +605 255 8818
Email: info@kpmg.com.my

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