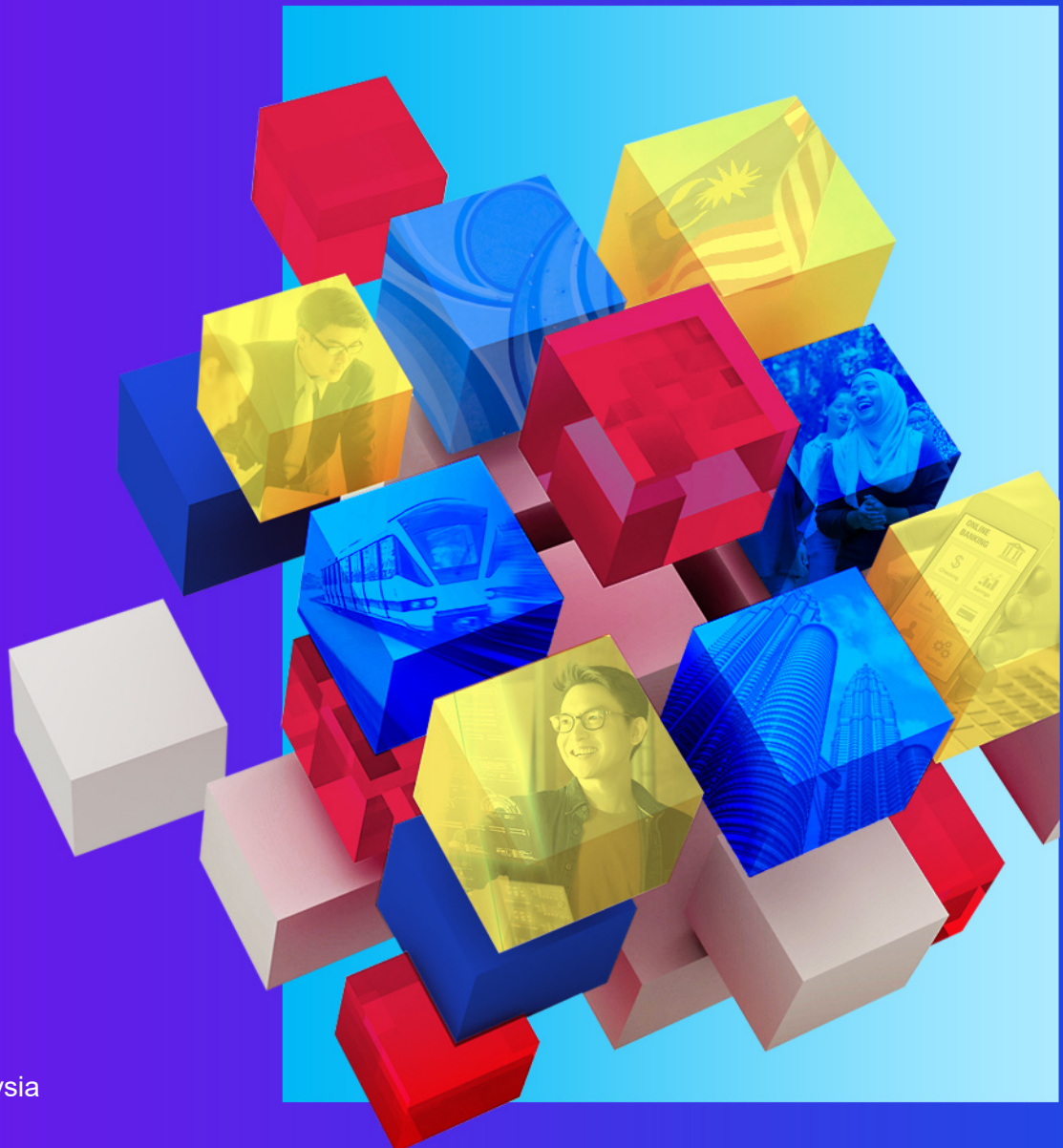




BEPS 2.0: Pillars One and Two

A Time for Action

February 2023 update



February 2023

KPMG in Malaysia

Overview and Commentary



Neoh Beng Guan
Executive Director
Corporate Tax

Key Message

“2023 is a particularly important year for affected MNE groups. A thorough understanding of the information required for GloBE reporting purposes and an evaluation of data readiness are paramount in the coming months.”



The Organisation for Economic Co-operation and Development (“OECD”)’s Base Erosion and Profit Shifting (“BEPS”) 2.0 initiative needs no introduction and the culmination of what has been a nearly 10-year (and counting) effort for Pillar Two at least, is right around the corner.

Since the publication of our Thought Leadership, [BEPS 2.0: Pillars One and Two – The Path Ahead](#), on 7 October 2022 in conjunction with the previous 2023 Budget announcements, we have seen a flurry of Pillar Two activity in the lead up to its recommended implementation date of 2024. Despite some initial skepticism over the timeframe, the finalisation of the GloBE Rules

and the release of the much-anticipated Administrative Guidance on 2 February 2023 mark an important milestone for the realisation of Pillar Two.

Global activity around the implementation of Pillar Two has ramped up since and looking closer to home, the following regional developments are of particular note:

- On 31 December 2022, South Korea became the first country to enact a new legislation that introduces the GloBE Rules as one of the amendments to the Law for the Co-ordination of International Tax Affairs, a domestic tax law that governs international transactions. The Income Inclusion Rules (“IIR”) and Undertaxed Payments Rule (“UTPR”) under Pillar Two will be effective for fiscal years beginning on or after 1 January 2024.
- In Japan, draft legislation on the GloBE Rules was released on 6 February 2023 and is expected to be passed in March 2023. The proposal includes a legislative outline on the IIR and this would apply to fiscal years beginning on or after 1 April 2024. The UTPR and the Qualified Domestic Minimum Top-up Tax (“QDMTT”) are expected to be effective from 2025.

- Singapore announced in its 2023 Budget tabled on 14 February 2023 that the IIR, UTPR and QDMTT would be implemented for fiscal years beginning on or after 1 January 2025. We understand that the government will continue to monitor international developments and may adjust the implementation timeline where necessary.
- On 22 February 2023, the Hong Kong government indicated its plans to implement the IIR, UTPR and QDMTT in 2025 in its 2023/24 Budget announcements.

On the home front, the previous 2023 Budget announcement on the implementation of Pillar Two and the introduction of a QDMTT to our domestic legislation had invited a mixed bag of reactions from affected MNE groups based in Malaysia. Affected taxpayers may have been sitting at both ends of the spectrum – some of whom are moving swiftly to understand the impact of the GloBE Rules on their group whilst others have opted to bide their time until new legislation is passed. In the hope of narrowing the gap between these two inclinations, we believe that demystifying a few recent developments highlighted in our Tax Whiz, [BEPS 2.0 – Latest Developments](#), published on 17 February 2023 is in order as advance planning is key to adapting to the global tax reform that is Pillar Two.

1. Transitional Country-by-Country Reporting (“CbCR”) Safe Harbour (“TCSH”)

The TCSH 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 met one of three quantitative tests.

On the basis that the aforementioned tests are reliant on an MNE group’s CbC Report, the process that goes into preparing that report should be relooked at closely and it will have greater significance going forward.

The TCSH is unlikely to apply to an MNE group in every jurisdiction in which it operates and there will still be a need to establish the relevant processes to perform the full GloBE calculations in respect of non-qualifying jurisdictions by 2024 at the latest. In any case, the full GloBE calculation will be required in every jurisdiction once the transition period expires.

2. Transitional Penalty Relief Regime (“TPRR”)

Similarly to the TCSH, affected MNE groups should not assume that benefiting from the TPRR is a given. The intention of the TPRR is to provide a “soft-landing” during the initial years of the application of the GloBE Rules. Penalties will be reduced to nil where an MNE group is able to prove that “reasonable measures”¹ were undertaken to ensure the correct application of the GloBE Rules, although tax authorities in relevant jurisdictions are at liberty to decide the appropriateness of imposing penalties. In this regard, the position which the Malaysian Government will eventually adopt remains to be seen.



¹ Kindly also note that what is considered as “reasonable measures” is currently not defined as at the writing of this Thought Leadership and is subject to interpretation.

3. GloBE Information Return (“GIR”)

Affected MNE groups should not discount the scope of the GIR which is unlike that of the Malaysian corporate income tax return, i.e. Form C. It is also noteworthy that the obligation to prepare the GIR is separate from any domestic tax return requirements.

The GIR requires extremely detailed information on a Constituent Entity basis for the purposes of determining the GloBE income or loss and adjusted covered taxes as well as historical and non-tax information on a jurisdictional basis. The onerous data requirements contemplated in the GIR would impose a significant compliance burden on taxpayers and there is definitely a need for significantly increased data collection and information sharing.

4. GloBE Administrative Guidance

Whilst the release of the Administrative Guidance has ameliorated a certain level of uncertainty in the application and interpretation of the GloBE Rules, we could expect unforeseen problems and inconsistencies to arise as jurisdictions move to adopt the GloBE Rules and how this will interact with existing domestic legislation.

The release of further guidance and a revised GloBE Commentary (originally released on 14 March 2022) incorporating the AG is expected later in 2023 and these will be keenly looked at.

In view of our comments above, 2023 is a particularly important year for our clients on Pillar Two. A thorough understanding of the information required for GloBE reporting purposes and an evaluation of data readiness are paramount in the coming months. Impact assessments on how the GloBE Rules will affect MNE groups should not be assumed to be a timely exercise and one should not undermine the work that needs to be done by both the affected taxpayer and their tax advisors.

Based on the Ministry of Finance’s Touchpoints released in conjunction with the re-tabling of the 2023 Budget on 24 February 2023, Global Minimum Tax and QDMTT under the GloBE Rules will be implemented in 2024. This confirmation affirmed what was previously announced in the 2023 Budget announcements on 7 October 2022. In this regard, affected MNE groups would not have additional breathing space and steps should be taken to prepare for what lies ahead. Many clients are realising what a challenge Pillar Two will be for them and we certainly hope that others do not fall behind in their planning for the journey ahead.

Should you have any questions or require further clarification, please do not hesitate to email or contact any of our Executive Directors whom you are accustomed to dealing with or who are responsible for the tax affairs of your organisation.

Important

We would be remiss if we did not mention Pillar One of the BEPS 2.0 initiative which, perhaps, may have been overlooked by some given the pace at which Pillar Two is moving. Notwithstanding the high level of skepticism as to whether Amount B will come to fruition, developments on Amount B should be closely watched as it is intended to streamline the application of the arm’s length principle to in-country baseline marketing and distribution activities (i.e. a standardised methodology for marketing and distribution rights).

Authors



Neoh Beng Guan
Executive Director
Corporate Tax
bneoh@kpmg.com.my



Jessica Yap
Tax Manager
Corporate Tax
jessicayap@kpmg.com.my

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
suelynng@kpmg.com.my
+603 7721 7271

Outstation Offices

Penang Office

Evelyn Lee

Executive Director – Penang Tax
evewflee@kpmg.com.my
+604 375 1800 (ext. 299)

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 Office

Ng Fie Lih

Executive Director – Johor 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: +604 375 1800
Fax: +604 238 2299
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

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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