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International tax updates

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BEPS 2.0: Pillar 1

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BEPS 2.0: Pillar 1

Pillar 1 is an OECD-led initiative to redesign the arm's length standard (ALS)-based international tax system.

Amount A

New taxing right for market jurisdictions over the residual profits of large multinational groups with revenues above EUR 20 billion and profit margins above 10%.

Amount B

Simplifies and streamlines transfer pricing for in-country baseline marketing and distribution activities, in a way that is consistent with the ALS.

Unilateral measures

As part of the "Pillar 1 deal", countries will be required to remove and not re-introduce digital services taxes (DSTs) and "other relevant similar measures".

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Pillar 1: State of play

- These changes are multinational in scope and, despite simplification compared to previous proposals, remain technically complex.
- Digital services taxes and other similar measures are to be repealed under the agreement, but the identification and timetable are not yet clear.
- The scope of covered businesses has moved far from the original intention of highly digitalized business models. Extractives and regulated financial services are exempt, but other industries are generally in scope.

Significant political obstacles

Disagreement between on key Amount A design issues, e.g., Marketing and Distribution Profits Safe Harbor (MDSH), treatment of WHT, scope of tax certainty etc.

Significant technical challenges

Interposing a new group-based profit allocation system on an entity-based system is complex

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BEPS 2.0: Pillar 2

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BEPS 2.0: Pillar 2

Income Inclusion Rule (IIR)

Undertaxed Profits Rule (UTPR)

Qualified Domestic Minimum Top-up Tax (QDMTT)

Global Anti-Base Erosion Rules (GloBE Rules)

Pillar 2

Global Minimum Tax of 15%

Subject to Tax Rule (STTR)

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Top-up tax calculation

Covered Taxes
calculated on a jurisdictional basis

———

GloBE Income
calculated on a jurisdictional basis

=

Effective Tax Rate (ETR)
on a jurisdictional basis

Excess Profit = GloBE Income – Substance-based Income Exclusion

×

Top-up Tax % = 15% Minimum Rate - Jurisdictional ETR

Jurisdictional Top-up Tax = (Excess Profit x Top-up Tax %)

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Top-up tax collections mechanisms

Top-up Tax percentage [15% - Effective Tax Rate (ETR)]

×

Excess Profits [GloBE Income less Substance-based Income Exclusion (SBIE)]

+

Additional Top-up Tax

=

Top-up Tax for jurisdiction

Qualified Domestic Minimum Top-up Tax (QDMTT)

→

Income Inclusion Rule (IIR)

→

Undertaxed Profits Rule (UTPR)

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Pillar 2 in Malaysia

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Overview of Pillar 2 in Malaysia

Global Minimum Tax Rules were enacted in Malaysia by virtue of gazette of Finance (No. 2) Act on 29 December 2023

1 Scope

- Constituent Entities (CE) that are members of an MNE with an annual revenue of **EUR 750 million or more** in at least **2 out of 4** immediately preceding financial years.
- Take effect for the Financial Year beginning on or after **1 January 2025** and subsequent Financial Years.

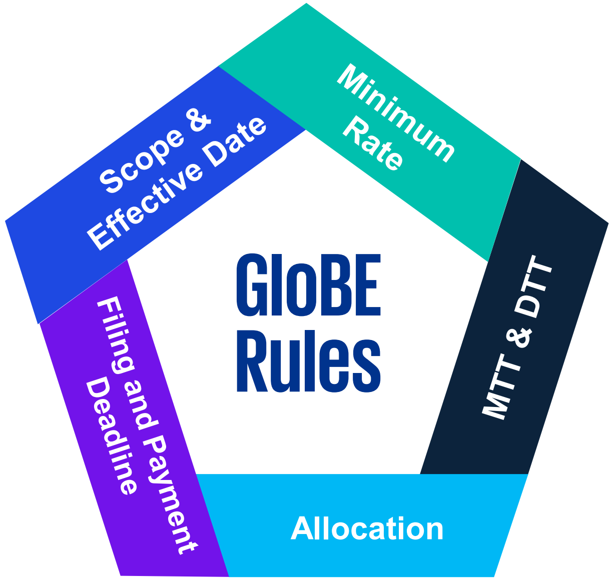
5 Information Return / Top-up Tax Return

- **Top-up tax return** must be filed by **every** CE.
- **Information Return** may be filed by the **CE itself, or a Designated Local Entity on its behalf.**
- Filing deadline and payment deadline : **Last day of the 15th month* from the close of the Reporting Financial Year**

18th months for first year filing.

2 Minimum Rate

15%.(same as GloBE Rules)



3 Multinational Top-up Tax (MTT)

- MTT to be imposed on the Ultimate Parent Entity located in Malaysia if the ETR for a jurisdiction is less than 15%.

Domestic Top-up Tax (DTT)

- DTT to be imposed on low-taxed CE in Malaysia if the jurisdictional ETR in Malaysia is less than 15%. DTT is computed on broadly the same principles as the MTT.

4 Allocation of Jurisdictional Top-up Tax

Based on the **proportion of the GloBE income to the aggregated GloBE income**

(same as GloBE Rules for allocation of top-up tax under IIR)

(Ref: *Section 178 of the Finance (No. 2) Act 2023*)

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Undertaxed Profits Rule (UTPR) & Subject to Tax Rule (STTR)

Undertaxed Profits Rule (UTPR)

- A backstop rule to account for any residual Top-up Tax not collected under the QDMTT and IIR rules.
- The method of accounting for tax under the UTPR can be either:
  - the denial of a deduction; or
  - other equivalent adjustments.
- Under the UTPR, the liability to account for the Top-up Tax falls on the jurisdiction where the Constituent Entities are located, i.e. the direct opposite of the Income Inclusion Rule which requires the jurisdiction of the Ultimate Parent Entity to account for the tax.

Subject to Tax Rule (STTR)

- Additional taxation on certain cross-border payments between connected companies where the recipient is subject to a nominal corporate income tax rate below **9%.**
- Applicable to, amongst others, interest, royalties and income received in consideration of the provision of services.
- Will be implemented through modifications to bilateral tax treaties via a multilateral instrument or through bilateral renegotiation of treaties.

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Pillar 2: State of play as of 6 November 2024

Legislation passed/approved

- Austria (Dec 2023)
- Barbados (May 2024)
- Belgium (Dec 2023)
- Bulgaria (Dec 2023)
- Canada (June 2024)
- Croatia (Dec 2023)
- Czechia (Dec 2023)
- Denmark (Dec 2023)
- EU Directive (Dec 2022)
- Estonia (April 2024)
- Finland (Dec 2023)
- France (Dec 2023)
- Germany (Dec 2023)
- Greece (April 2024)
- Hungary (Nov 2023)
- Ireland (Dec 2023)
- Italy (Dec 2023)
- Japan – IIR (March 2023)
- Jersey (2024)
- Korea (Dec 2022)
- Latvia (June 2024)
- Liechtenstein (Dec 2023)
- Lithuania (June 2024)
- Luxembourg (Dec 2023)
- **Malaysia (Dec 2023)**
- Malta (Feb 2024)
- Netherlands (Dec 2023)
- New Zealand (March 2024)
- Norway (Jan 2024)
- Romania (Dec 2023)
- Slovakia (Dec 2023)
- Slovenia (Dec 2023)
- Sweden (Dec 2023)
- Switzerland – DMTT (Dec 2023)
- Turkey (August 2024)
- United Kingdom (June 2023)
- Vietnam (Dec 2023)

Legislative process ongoing

- Australia (March 2024)
- The Bahamas (Oct 2024)
- Brazil (Oct 2024)
- Bahrain (Sep 2024)
- Cyprus (Oct 2023)
- Kenya (May 2024)
- Poland (Sep 2024)
- Portugal (Oct 2024)
- Qatar (Feb 2024)
- Singapore (Oct 2024)
- Spain (June 2024)
- South Africa (Feb 2024)
- Thailand (March 2024)

DMTT (2024)

- Austria
- Australia
- Bahamas
- Barbados
- Belgium
- Bulgaria
- Canada
- Croatia
- Czechia
- Denmark
- Finland
- France
- Germany
- Gibraltar
- Greece
- Hungary
- Ireland
- Italy
- Liechtenstein
- Luxembourg
- Netherlands
- Norway
- Portugal
- Qatar (?)
- Romania
- Slovakia
- Slovenia
- South Africa
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- Vietnam

DMTT (2025)

- Bahrain
- Brazil
- Cyprus
- Guernsey
- Isle of Man
- Jersey
- Hong Kong (SAR), China
- Kenya
- Lithuania
- **Malaysia**
- Poland***
- Singapore
- Thailand

Intention to apply DMTT
(timing uncertain or later)

- Iceland
- Indonesia
- Israel (2026)
- Jamaica
- Japan
- Mauritius
- Puerto Rico
- UAE
- Ukraine

IIR (2024)

- Australia
- Canada
- EU*
- Japan
- Korea
- Liechtenstein
- Norway
- Portugal
- South Africa
- Turkey
- United Kingdom
- Vietnam

IIR (2025)

- Guernsey
- Hong Kong (SAR), China
- Isle of Man (?)
- Jersey
- Lithuania (deferral)
- **Malaysia**
- New Zealand**
- Poland***
- Portugal
- Singapore
- Thailand

UTPR (2025)

- Australia
- Canada
- EU*
- Hong Kong (SAR), China
- Korea
- Liechtenstein (?)
- New Zealand
- Norway
- Thailand
- Turkey
- United Kingdom

Intention to apply IIR and UTPR
(timing uncertain or deferred)

- Estonia (deferral / 2030)
- Gibraltar
- Iceland
- Indonesia
- Japan (UTPR)
- Latvia (deferral / 2030)
- **Malaysia (UTPR)**
- Malta (deferral)
- Mexico
- Singapore (UTPR)
- Slovakia (deferral)
- Switzerland
- UAE

* Option to defer implementation to 31 December 2029 in case of max. 12 UPEs

** Domestic IIR from 2026

*** Option for groups to apply the rules retroactively from 2024

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Pillar 2 and its impact on tax incentives

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Malaysia's state of play for incentives

Survey Form

Investment Promotion Agencies (IPAs)

A Global Minimum Tax Survey Form has been shared by IPAs in Q1 2024.

The survey form has three (3) parts, i.e.:-
- General survey;
- Group information; and
- Company information.

Main objective: to assess the impact of Global Minimum Tax and the survey form **may** serve as a basis for renegotiation of incentives with taxpayers

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GMT GENERAL SURVEY FORM

1. How well do you understand the implementation of the GloBE Rules?

1	2	3	4	5
(Not understand)				*(Fully Understand)*
☐	☐			

2. Is your company/group within the scope

☐ **Yes** *Please fill in GMT Group F*

☐ **No**

3. The Government of Malaysia through the implementation of GMT in 2025. Ho for GMT?

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GMT GROUP FORM

GROUP INFORMATION AND BACKGROUND

Background		
Name of Ultimate Parent Entity (UPE)	:	
Country of UPE	:	
Name of Companies within the same group operating in Malaysia	:	
Is the company required to	:	Yes / No

Name of company	**No. ROC & Tax Reference No**	**Tax Incentive status (Y/N)** ***If yes, please indicate type**

**Each Company that has been granted tax incentives to fill in Form GMT Company Form*

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Overview of existing Malaysian tax incentives

Tax Incentives	Pioneer Status	Investment Tax Allowance / Reinvestment Allowance	Principal Hub / Global Trading Centre	Labuan Tax Regime	Double Deduction	Grants
Mechanism	Partial / Full exemption of statutory income (from qualifying activities) from income tax	An allowance (in addition to CA) on qualifying plant and equipment acquired (for qualifying activities).	Principal Hub: • 2-tier preferential corporate tax rates 0% and 5% • 10% concessionary rate on statutory income for qualifying existing manufacturing/services companies Global Trading Centre • 10% concessionary tax rate	Preferential tax rate of 3% for Labuan companies carrying on Labuan business activities (0% for Labuan non-trading companies), provided that substantial requirements are met.	Additional deduction on certain qualifying expenses	Reimbursement from the Government on expenditure incurred on qualifying activities
Commitment requirements	Usually high	Usually high	Usually high	Moderate	Low	Expenditure on the qualifying activities
Impact of the GloBE Rules	Downward impact on ETR	Downward impact on ETR (SBIE consideration)	Downward impact on ETR	Downward impact on ETR	Usually small quantum	Lower impact on ETR compared to tax holiday

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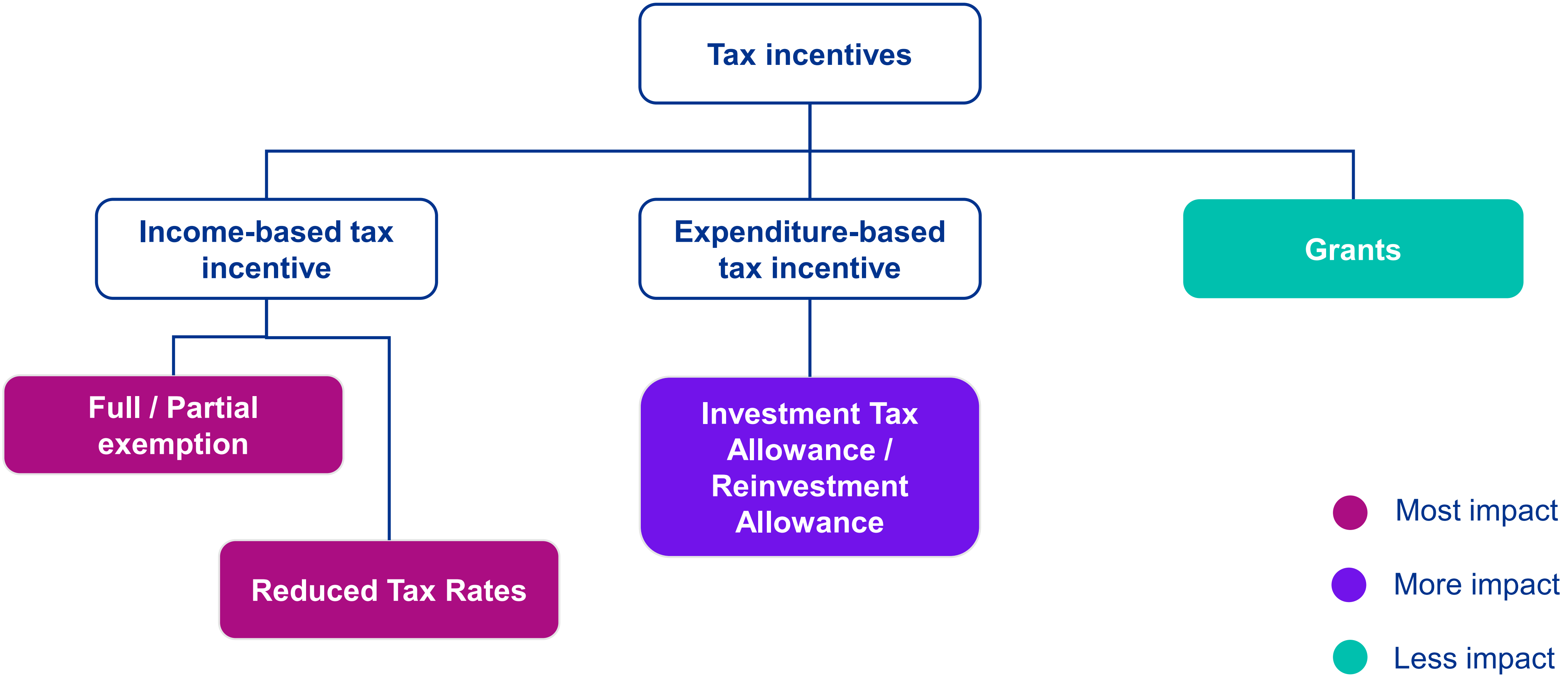
Impact of incentives on Top-up Tax



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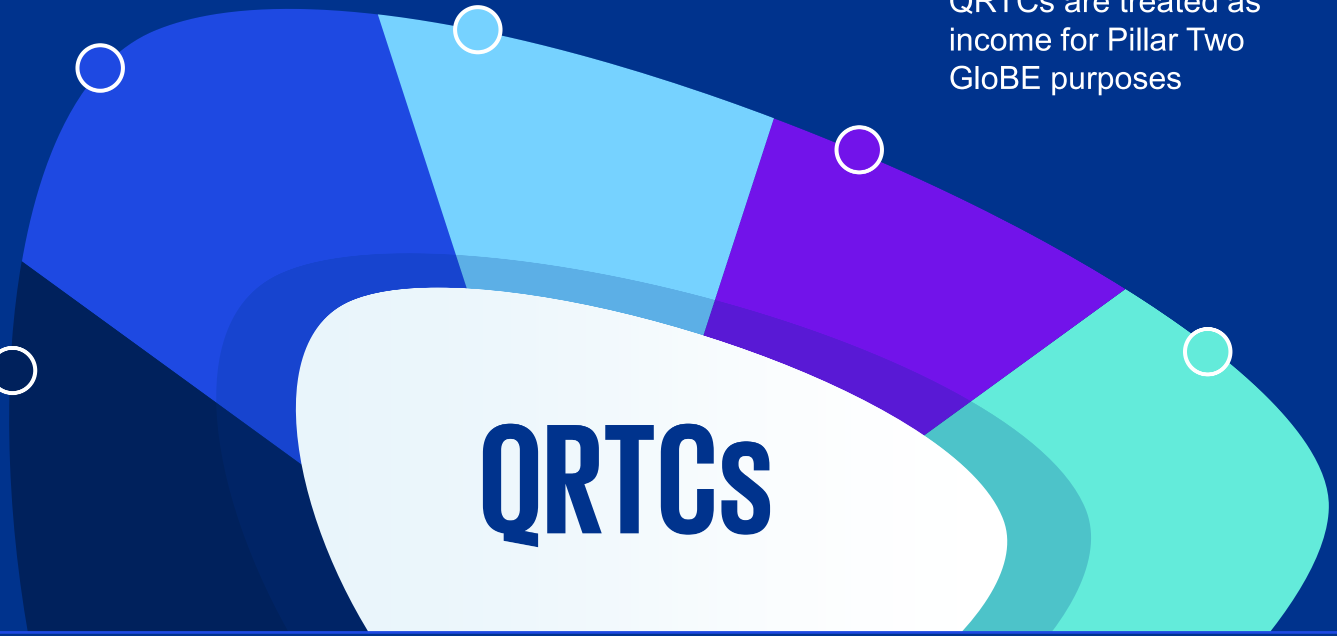
Qualified Refundable Tax Credits (QRTCs)

A refundable tax credit paid as cash or available as cash equivalents within four years from the date when a Constituent Entity (i.e. in-scope entity for Pillar 2 purposes) satisfies the conditions for receiving the credit.



01

Meaning: Can be refunded as cash or its equivalents

02

Availability: Within four years from when the constituent entity meets the eligibility criteria

03

Example of QRTCs: R&D refundable tax credit

04

QRTCs are treated as income for Pillar Two GloBE purposes

05

Non-QRTCs are treated as a reduction to the tax expense for Pillar Two GloBE purposes

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Incentives around the region

Competitiveness Enhancement Fund

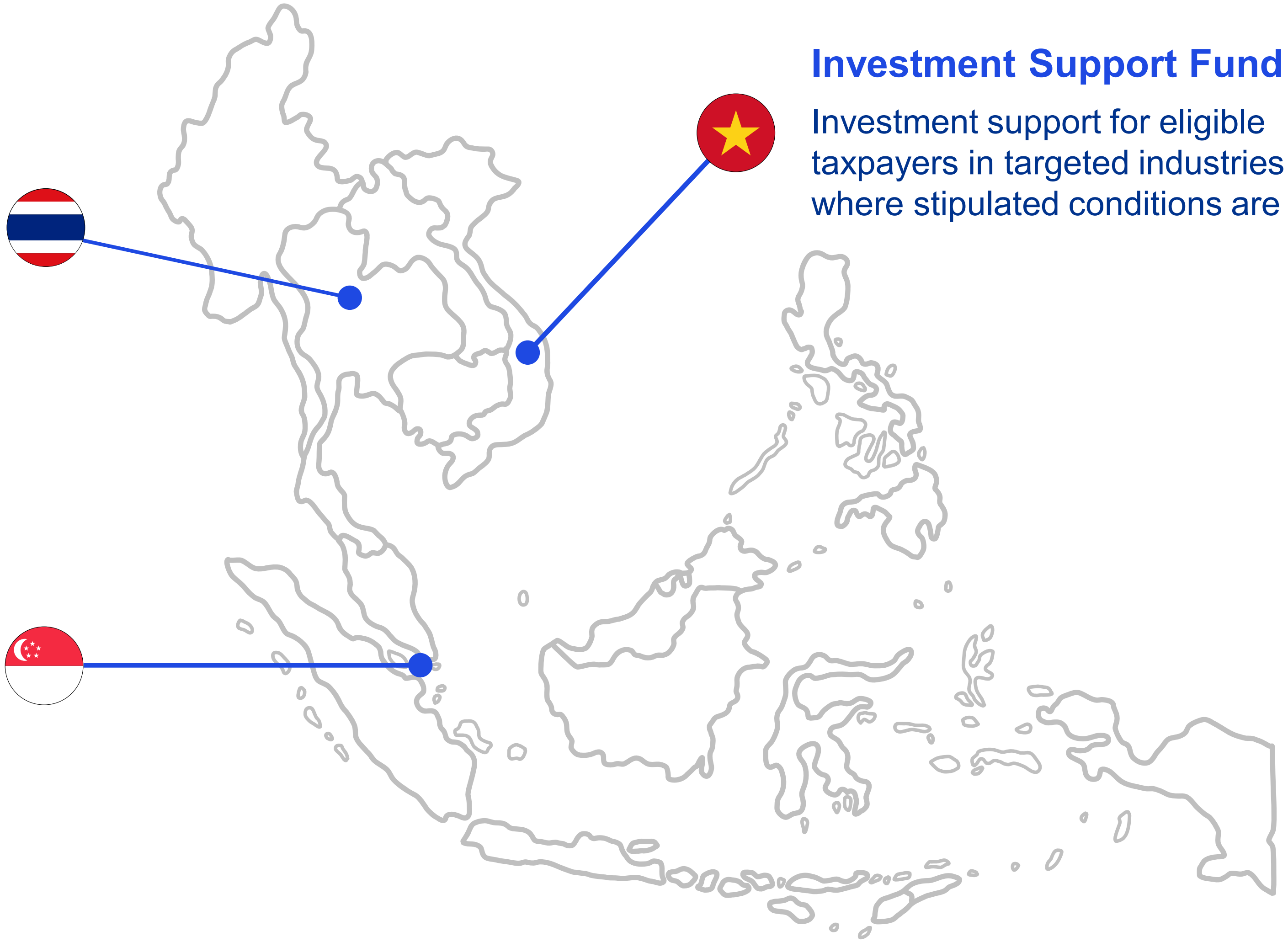
Financial support to qualifying investors where stipulated conditions are met

Election to apply a 10% corporate income Tax (CIT) rate

In lieu of income tax exemption which will also double the taxpayer’s tax incentive period by the remaining tax exemption period

Refundable Investment Credit

Tax credits on qualifying expenditure and consistent with the QRTC requirements under the GloBE Rules



Investment Support Fund

Investment support for eligible taxpayers in targeted industries where stipulated conditions are met.

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