KPMG

# Tax alert

Issue 13 | August 2022

# BEPS 2.0 – Korea releases draft Pillar Two rules, Malaysia announces public consultation process

## 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 Organisation for Economic Cooperation and Development (OECD) sets out the agreed core rules, as endorsed by 137 out of 141 IF members.

At the G20 Finance Ministers and Central Bank Governors Meeting in Bali from 13 to 16 July 2022, the OECD released a tax report by way of a progress update noting that: *'All G7 countries, the European Union, a number of G20 countries and many others have already scheduled changes in their domestic legislation to introduce the Model Rules'. OECD secretary-general Mathias Cormann noted that: 'In spite of some delays in reaching agreement… implementation of the global minimum corporate tax seems ineluctable'.*

On 7 August 2022, Senate Democrats passed the Inflation Reduction Act which imposes an alternative minimum tax of 15% on the adjusted financial statement income of a corporation with average adjusted financial statement income in excess of US$1 billion over three years. We will issue a separate tax alert with more details on this shortly.

In recent days, further progress has also been made in the Asia Pacific region with announcements from Korea and Malaysia on their implementation of the global minimum tax (Pillar Two).

## Korea

On 21 July 2022, Korea's Ministry of Economy and Finance (MOEF) announced draft domestic tax legislation for a global minimum tax which corresponds closely to the OECD's Pillar Two Model Global Anti-Base Erosion (GloBE) Rules.

Legislation is expected to be ratified at the National Assembly in December. Once the Bill is passed, in-scope multinational enterprises with subsidiaries in Korea will need to consider accounting recognition and disclosure issues given the substantive enactment of the rules.

As it stands today, the Korean draft rules include an Income Inclusion Rule (IIR) and 'Supplementary rules for income inclusion'. The latter is known as the Undertaxed Payment Rule (UTPR) in the OECD Model Rules. According to the MOEF, a multinational company that has an effective tax rate (ETR) below 15% on its operations in a foreign jurisdiction will have to pay a top-up tax — calculated as the difference between the 15% minimum rate and actual ETR.

Similar to the OECD's model GloBE rules, the draft Korean rules use financial accounting net income or loss as the starting point for calculating an ETR, with adjustments to covered taxes for a range of matters including, but not limited to, temporary differences and prior year losses. Accordingly, it is expected that the overall calculation approach in the final rules will broadly align with the OECD's model GloBE rules. Whether final enacted rules depart from the model rules in some ways, like the UK appears to have done with their draft legislation (released on 20 July 2022), remains to be seen.

Both the IIR and Supplementary rules are proposed to take effect from tax years beginning on or after 1 January 2024. Interestingly, the proposed 2024 effective date for the Supplementary rules occurs before the proposed 2025 effective date for the UTPR in the draft EU minimum tax directive. This means Korea plans to implement the IIR and UTPR at the same time.

The Korean draft rules currently do not include a qualified domestic minimum top-up tax (QDMTT), but it is possible that the detailed implementing legislation (expected in December) might include one.

## Malaysia

On 1 August 2022, Malaysia announced a Public Consultation Paper (PCP) titled 'The Implementation of Globe Rules in Malaysia'. According to a press release issued by the Ministry of Finance (MOF) of Malaysia, this consultation process is *'…part of the MOF's overall efforts to obtain feedback from the rakyat and businesses on the Government's policy proposals that will be considered for the Budget 2023'*.

The consultation process invites comments on simplification measures including whether Country-by-Country reporting data used for transfer pricing purposes is appropriate for determining when an ETR exceeds a nominated safe harbour minimum. In such cases, a full ETR calculation would not be required for that jurisdiction.

Other matters to be addressed include the feasibility of the implementation date, currently set for 2023; the need for clarification of scope of GloBE Rules in domestic legislation; the practicalities of computing a constituent entity's accounting profit; and administrative challenges and transition rules, to name a few.

The MOF has also sought feedback on how Malaysia can incorporate its current tax incentive schemes into the reformed framework to ensure that incentives remain attractive to foreign direct investments.

While the PCP does not appear to include details on how the UTPR will be implemented in Malaysia, the MOF has sought feedback on how top-up tax allocated to Malaysia under the UTPR should be charged. This might include views on carrying forward excess amounts that cannot be charged in any given tax year.

The paper mentions the possibility of Malaysia introducing a QDMTT, similar to Hong Kong and Singapore, to protect Malaysia's tax base and minimise the impact of the UTPR on low-taxed profits.

Interested parties are invited to submit their feedback by 15 August 2022.

If you would like to discuss the topics above or BEPS 2.0, please contact your local KPMG representative. You may also reach out to Dean Rolfe, Head of International Tax, Asia Pacific.

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