



The Hong Kong Chartered Governance Institute

Submission

**Financial Services and the Treasury Bureau (FSTB)
Inland Revenue Department (IRD)**

**Consultation paper on
Implementation of Global Minimum Tax and
Hong Kong Minimum Top-Up Tax**

The Hong Kong Chartered Governance Institute 香港公司治理公會

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18 March 2024

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The Treasury Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Sirs,

Consultation paper on the implementation of global minimum tax and Hong Kong minimum top-up tax

About HKCGI

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries (HKICS), is the only qualifying institution in Hong Kong and the Chinese mainland for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With 75 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extends to all of CGI's nine divisions, with about 40,000 members and students worldwide. HKCGI is one of the fastest growing divisions of CGI, with a current membership of over 7,200, 300 graduates and 2,300 students with significant representations within listed companies and other cross-industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach that considers all stakeholders' interests.

Overall support

Our Institute supports the proposed legislative changes, in line with the Organisation for Economic Co-operation and Development's (OECD) proposed international tax reform to address base erosion and profit-shifting risks arising from the digitalisation of economies. We agree with the Government's position that as an international financial centre and a responsible member of the international community, Hong Kong must support international efforts to enhance tax transparency and combat tax evasion.

We note that OECD's BEPS 2.0 package, the global anti-base erosion (GloBE) rules, which fall under Pillar Two of the package, aim to put a floor on competition over corporate income tax by

requiring large multinational enterprise (MNE) groups with consolidated annual revenue of at least 750 million euros to pay a global minimum tax of at least 15% on income derived by their constituent entities in every jurisdiction where they operate. The GloBE rules have already been finalised based on the international consensus, and there is no room for Hong Kong to deviate.

Following the 2023–24 Budget by the Financial Secretary, our Institute supports applying the worldwide minimum effective tax rate of 15% and preserving Hong Kong's taxing rights over these entities rather than giving them up to other jurisdictions by applying the Hong Kong minimum top-up tax (HKMTT) to MNE groups that fall under Hong Kong's purview beginning in 2025.

Accordingly, we have no issue with the Government's proposal to make amendments to the Inland Revenue Ordinance (Cap. 112) and the Government's suggested strategy for the design and execution of the HKMTT, the framework for tax compliance and administration, and specific aspects of the GloBE regulations. Further, we agree that an in-scope MNE group should be given flexibility in allocating the HKMTT payable among its Hong Kong entities, and the framework should include safe harbours to reduce the burden of compliance and improve tax certainty. Also, an in-scope MNE group should only be required to provide a single top-up tax return for both the global minimum tax and the HKMTT to minimise compliance burden.

We also hope that the Government will actively promote the redomiciliation regime that our Institute proposed the Government to implement, which is now a major policy initiative with legislation expected this year. The redomiciliation regime will complement entities seeking to continue as Hong Kong companies, including because of their tax arrangements under GloBE rules.

Consultation Questions

1. Do you have any views on the proposed equivalent adjustment approach to bring the undertaxed profits rule ("UTPR") top-up tax into charge? (para 3.20)

Assuming there to be no significant additional tax burden, we have no issue with the Government's proposed method of levying the UTPR top-up tax through an equivalent adjustment that resembles an extra tax. We agree that regardless of its local tax situation, a constituent entity that is required to pay top-up tax under the UTPR for a fiscal year will potentially find this approach more straightforward. We also agree that using this route reduces the need to deal with interactions under profits tax laws and could lead to more tax certainty.

2. Do you have any views on the proposed allocation and payment mechanism for the UTPR top-up tax? (para 3.21)

Regarding how the UTPR top-up tax will be distributed among Hong Kong constituent entities of an in-scope MNE group, we have no issue with this being allocated based on the value of tangible assets and the number of employees of each entity. This is subject to the flexibility that if the group designates one or more Hong Kong constituent entities to pay the top-up tax as

outlined in paragraph 9.16 of the Consultation Paper, then this default allocation mechanism will be disapplied.

3. Do you have any views on the proposed approach to deal with the issue relating to the location of an entity and the proposed meaning of Hong Kong resident entity for the purposes of the global anti-base erosion ("GloBE") rules and Hong Kong minimum top-up tax ("HKMTT")? (para 3.22)

We understand the need for the Government to provide, for the GloBE rules and HKMTT, that an entity is a Hong Kong resident entity if – (a) in the case where an entity is a company – the entity is incorporated in Hong Kong or, if incorporated outside Hong Kong, normally managed or controlled in Hong Kong; or (b) in any other case – the entity is constituted under the laws of Hong Kong, or if otherwise constituted, normally managed or controlled in Hong Kong. This provision is consistent with the test for the constituent entity's location under the GloBE rules and the reality that entities may be created outside Hong Kong but carry on a business or are managed and controlled in Hong Kong.

4. Do you have any views on the retrospective application of the meaning of a Hong Kong resident entity from 1 January 2024 (para 3.23)? Calculation of Effective Tax Rate (Chapter Four)

We do not favour retrospective legislation, but in connection with GloBE rules, from the applied governance perspective, as the proposed definition is largely a consolidation of existing application of the term we will raise no objections, However, we ask the IRD to exercise its discretion in cases of demonstrable hardship which would not have otherwise arisen but for the retroactive legislation.

5. Are there any uncertainties that could be clarified in Inland Revenue Department's ("IRD") administrative guidance regarding the following – (a) adjustments made to the financial accounting net income or loss; (b) the rules relating to covered taxes; (c) the mechanism to address temporary timing differences; (d) post-filing adjustments? Calculation of Top-up Tax (Chapter Five)

We would not comment on this issue, as it is best left for the MNEs concerned and their tax practitioners and consultants to provide their views. We would expect that as the matter evolves, there might be a need to provide interpretations and training support. HKCGI will support working with the Government for knowledge enhancement.

6. Are there any uncertainties that could be clarified in IRD's administrative guidance regarding the process for calculating top-up tax, in particular the de minimis exclusion and substance-based income exclusion ("SBIE")? Transition Rules (Chapter Six)

See answer to Q5.

7. Are there any uncertainties in relation to the operation of the transition rules that may need to be clarified in law or IRD's administrative guidance?

See answer to Q5.

8. Do you have views on the proposed adoption of the optional provision relating to the relief for initial phase of international activity under Article 9.3.5 of the GloBE rules? (para 6.13) Design of Hong Kong Minimum Top-up Tax (Chapter Seven)

See answer to Q5.

9. Do you have views on the scope of the HKMTT? (paras 7.5 to 7.7)

We have no issue with the HKMTT scope since these adhere to the GloBE regulations. In other words, HKMTT will only apply to MNE groups with yearly consolidated revenue of EUR 750 million or more, not small MNE groups or local groups. Additionally, the HKMTT attributable to these JVs and their JV subsidiaries will be directly imposed on the JVs and JV subsidiaries in question rather than being distributed to other Hong Kong constituent entities of the group to secure the availability of QDMTT safe harbour, as permitted by the Administrative Guidance along with other matters relating to HKMTT's scope set out under paragraphs 7.5 to 7.7 of the Consultation Paper.

10. Do you have views on the allocation rules of HKMTT liability? (para 7.9)

We support the Government's proposed method to divide the HKMTT payable among the Hong Kong constituent entities of an in-scope MNE group by default using the formula outlined in Article 5.2.4 of the GloBE rules. This formula is based on the ratio of the Hong Kong constituent entity's GloBE income to the total GloBE income of all the group's Hong Kong constituent entities. However, if the group specifies one or more Hong Kong constituent entities to pay the HKMTT as outlined in paragraph 9.16 of the Consultation Paper, then this default allocation mechanism will be disapplied.

11. Do you agree with the adoption of the local financial accounting standard for the purposes of the HKMTT? (para 7.11)

We concur that QDMTT jurisdiction must mandate the application of the local financial accounting standard, and the opportunity to select the standard to be used cannot be granted to MNE groups. As a result, the local financial accounting standard must be the foundation for the financial accounts of every constituent entity of an in-scope MNE group.

12. Do you have views on the proposed optional variations in the design of HKMTT, namely the inclusion of a SBIE, the tax rate of 15%, and the inclusion of the same de minimis exclusion? (paras 7.12 to 7.14)

We have no issue with the Government's proposed inclusion of an SBIE under the HKMTT, as allowed under the GloBE regulations, to decrease the tax burden on MNE groups that fall under the scope of the legislation and preserve compliance with the rules along with the de minimis exclusion for HKMTT. The 15% tariff complies with GloBE regulations.

13. Do you agree to allow the exclusion of initial phase of international activity under the HKMTT but limit its application to in-scope multinational enterprise ("MNE") groups where no parent entity is required to apply qualified Income Inclusion Rule with respect to Hong Kong constituent entities of the group? (para 7.15)

We support giving in-scope MNE groups more relief in light of other jurisdictions' practices and the Administrative Guidance. We understand the limit in application to in-scope MNE groups for which the parent entity is not required to apply qualified IIR with regard to Hong Kong constituent entities of the group.

14. Do you have views on whether the transitional country-by-country reporting safe harbour should be adopted? If not, why not? (para 8.17)

We agree, as this will provide tax certainty.

15. Given additional standards need to be met, do you have views on whether the Qualified Domestic Minimum Top-up Tax ("QDMTT") safe harbour should be adopted? If not, why not? (para 8.19)

We agree, as the intention is to reduce the compliance burden of MNE groups.

16. Do you have views on whether the switch-off mechanism under the consistency standard should be adopted for implementing the QDMTT safe harbour? If not, why not? (paras 8.10 to 8.11)

See answer to Q5.

17. Do you have any views on the proposed arrangements for the filing of top-up tax return and top-up tax notification? (paras 9.8 to 9.13)

We have no issue as this is an administrative matter for the Government to determine, and industry representation should be taken into account from affected MNEs and their tax advisers and consultants.

18. Do you have any views on the proposed arrangements for the assessment and payment of top-up tax? (paras 9.14 to 9.15)

We have no issue as this is an administrative matter for the Government to determine, and industry representation should be taken into account from affected MNEs and their tax advisers and consultants.

19. Do you have views on the proposed penalties for wrongdoing and noncompliance in relation to the GloBE rules and HKMTT? (paras 9.18 to 9.22)

We have no issue as this is an administrative matter for the Government to determine, and industry representation should be taken into account from affected MNEs and their tax advisers and consultants.

20. Do you have any views or comments on the proposed compliance and administration framework for the GloBE rules and HKMTT? (paras 9.7 to 9.22)

We have no issue as this is an administrative matter for the Government to determine, and industry representation should be taken into account from affected MNEs and their tax advisers and consultants.

21. Do you have any views on the necessary modifications of the existing administrative provisions of the Inland Revenue Ordinance to deal with the record keeping requirements, objection procedures, collection and recovery of tax, anti-avoidance issues, etc.? Mandatory Electronic Filing of Profits Tax Returns (Chapter Ten)

We agree with the proposed approach of providing simplicity, certainty, and continuity.

22. Do you have any views on the proposed application of mandatory e-filing of profits tax returns to in-scope MNE groups from the year of assessment 2025/26?

We support the approach, which is in line with the GloBE timetable, to keep pace with the global trend of digital transformation of tax administration, align with the Government's Smart City initiatives and implement the OECD's standard recommendation to Hong Kong regarding the exchange of information on request.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely,

For and on behalf of
The Hong Kong Chartered Governance Institute



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