



## **GUIDELINE**

# **THE IMPLEMENTATION OF DOMESTIC TOP-UP TAX IN MALAYSIA**

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**INLAND REVENUE BOARD OF MALAYSIA**

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**GUIDELINES OF THE DIRECTOR GENERAL OF INLAND REVENUE**

Section 134A of the Income Tax Act 1967 provides that the Director General is empowered to issue Guidelines which the Director General thinks is expedient or necessary.

A Guideline is published as a guide for the public and officers of the Inland Revenue Board of Malaysia. It provides clarification by the Director General of a particular provision of the tax law or facilitates the compliance of the law or any other matter relating to the law.

The Director General may revoke, revise or amend the whole or any part of this Guideline by publishing a new Guideline.

**Director General of Inland Revenue  
Inland Revenue Board of Malaysia**

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### 1. INTRODUCTION

- 1.1 As part of Malaysia's commitment to the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, the Global Minimum Tax is being implemented in Malaysia effective from 1 January 2025, through two mechanisms: the Domestic Top-up Tax (DTT) and the Multinational Top-up Tax (MTT).
- 1.2 This Guideline provides specific guidance on the DTT, ensuring that income earned by entities within large multinational enterprises (MNEs) in Malaysia is subject to a minimum effective tax rate of 15%. The DTT allows Malaysia to retain taxing rights over low-taxed domestic profits, aligning with the OECD's Qualified Domestic Minimum Top-up Tax (QDMTT) Framework.
- 1.3 This Guideline is intended for corporate taxpayers that are part of in-scope MNE groups. It provides a clear explanation of the DTT's scope and operation, filing obligations, administrative procedures, and the interaction with international rules under the GloBE Model Rules.
- 1.4 The DTT has effect in Malaysia for the Financial Year beginning on or after 1 January 2025 and subsequent Financial Years. As this Guideline is a reproduction of the GloBE Rules Commentary and Agreed Administrative Guidance, the effective date of the different paragraphs within this Guideline shall depend on the date of release of the related GloBE Rules Commentary and Agreed Administrative Guideline, beginning from 1 January 2025.

### 2. OBJECTIVE

This Guideline aims to provide clarity in determining liability for the DTT and outline the necessary modifications referenced in Section 159 of the Income Tax Act 1967 (ITA 1967). In case of any inconsistencies, reference should be made to the GloBE Rules and the latest OECD Administrative Guidance.

### 3. PROVISIONS OF THE LAW

Sections 157 to 239 in Part XI of the ITA 1967.

The terms used in this Guideline have its meaning as provided in the Guidelines on Implementation of Global Minimum Tax in Malaysia, originally published on 2 December 2024. Any terms not defined herein shall have its meaning as provided

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under Part XI of the ITA 1967, GloBE Rules Commentary and Agreed Administrative Guidance.

### 4. SCOPE

4.1 Constituent Entities of MNE Group that are located in Malaysia will be subjected to DTT in Malaysia if the consolidated annual revenue of the MNE Group meets the threshold of EUR750 million in at least two out of the four preceding Financial Years.

4.2 The effective date of implementation of DTT is the first Financial Year beginning on or after 1 January 2025 and subsequent Financial Years based on the accounting period of the Ultimate Parent Entity's Consolidated Financial Statement.

4.3 The DTT liability is computed by taking into account the income and Covered Taxes of all Constituent Entities of the MNE Group that are located in Malaysia. The following types of entities are excluded from the scope of DTT:

- (a) a Government Entity;
- (b) an International Organisation;
- (c) a Non-Profit Organisation;
- (d) a Pension Fund;
- (e) an Investment Fund that is an Ultimate Parent Entity; and
- (f) a Real Estate Investment Vehicle that is an Ultimate Parent Entity.

4.4 The following entities are also excluded from the scope of DTT:

- (a) an Entity where at least ninety-five per cent of the value of the Entity is owned directly or through a chain of Excluded Entities by one or more Excluded Entities referred in paragraph 4.3 above other than a Pension Services Entity and where that Entity—
  - (i) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Excluded Entity or Entities; or
  - (ii) only carries out activities that are ancillary to those carried out by the Excluded Entity or Entities; or
- (b) where at least eighty-five per cent of the value of the Entity is owned directly or through a chain of Excluded Entities, by one or more Excluded Entities referred in paragraph 4.3 above other than a Pension Services Entity provided that substantially all of the Entity's income is Excluded

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Dividends or Excluded Equity Gain or Loss that is excluded from the computation of GloBE Income or Loss in accordance with Part XI of the ITA 1967.

- 4.5 Further details on MNE Group's definition and revenue threshold test can be found in the Guidelines on Implementation of Global Minimum Tax in Malaysia, originally published on 2 December 2024,.

### 5. CHARGING PROVISIONS

- 5.1 The tax payable under DTT is based on the whole amount of the Jurisdictional Top-up Tax computed under subsection 177(1) of ITA 1967, regardless of the Ownership Interests held in the Constituent Entities by any Parent Entity of the MNE Group. The same principle applies where the DTT is computed with respect to Minority-Owned Constituent Entities (MOCEs), Joint Ventures, and JV Subsidiaries in Malaysia.
- 5.2 The DTT tax liability is allocated pursuant to the formula in section 178 of the ITA 1967. This is based on the Constituent Entities' proportion of the GloBE Income over that of all Constituent Entities located in Malaysia.
- 5.3 The allocation is only to the Constituent Entities that have GloBE Income for the Financial Year. The formula is as follows:

$$A \times \frac{B}{C}$$

- Where
- |   |   |
|---|---|
| A | is the jurisdictional Top-up Tax for the jurisdiction for the Financial Year;                                     |
| B | is the GloBE Income of the Constituent Entity for the Financial Year if the Entity has positive GloBE Income; and |
| C | is the aggregate GloBE Income of all Constituent Entities that have GloBE Income for the Financial Year.          |

### 6. GloBE INCOME OR LOSS

- 6.1 Computation of GloBE Income or Loss for a Financial Year begins with the Financial Accounting Net Income or Loss of the Constituent Entity. The amount is adjusted for the items of income, gain, loss and expense that are set out in sections 165 to 168 of the ITA 1967.

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### Financial Accounting Standard

- 6.2 Under subsection 164(2) of the ITA 1967, the DTT shall be computed based on the financial statement of the Constituent Entity that uses local financial accounting standards, which refers to the Malaysian Financial Reporting Standards (MFRS) and/or the Malaysian Private Entities Reporting Standards (MPERS). However, the use of MFRS or MPERS is subject to the conditions below:
- (a) all of the Constituent Entities of the MNE Group which are located in Malaysia must have the same Financial Year as their Ultimate Parent Entity; and
  - (b) each of the Constituent Entities prepares its own financial statements and the financial statements are required to be kept or used under any written law of Malaysia, or are audited by an approved company auditor.
- 6.3 If the MNE Group meets the requirements outlined in paragraph 6.2; the Financial Accounting Net Income or Loss, GloBE Income, and Covered Taxes must be computed based on Financial Statements prepared under the Local Financial Accounting Standards. Similarly, the Substance-based Income Exclusion should be based on the carrying value of assets recorded under those accounting standards.
- 6.4 In the case where not all Constituent Entities located in Malaysia meet the above requirements or the Financial Year of such accounts is different to the Financial Year of the Consolidated Financial Statements of the MNE Group, the DTT shall be computed based on the accounts and the Financial Accounting Standard used for purposes of the Consolidated Financial Statements of the Ultimate Parent Entity.
- 6.5 The Local Financial Accounting Standard Rule also applies to a Constituent Entity that is a Permanent Establishment located in Malaysia. However, this rule will apply only where the Main Entity prepares a separate financial statement based on the local standard for the Permanent Establishment and the Financial Year of the local account is the same as the Consolidated Financial Statement.

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### Currency

- 6.6 For the purpose of DTT computation, the Malaysian Ringgit shall be used where the Constituent Entities meet the criteria outlined in paragraph 6.2 above and use Malaysian Ringgit as their functional currency in preparing their financial statements.
- 6.7 If one or more Constituent Entities do not use Malaysian Ringgit as their functional currency in preparing financial statements, a Five-Year Election is provided for the Constituent Entities to compute the DTT, either by using—
- (a) the presentation currency of the Ultimate Parent Entity's Consolidated Financial Statements; or
  - (b) the Malaysian Ringgit.
- 6.8 For Constituent Entities that do not meet the requirement in paragraph 6.2, the DTT calculation must be based on the presentation currency used in the Ultimate Parent Entity's Consolidated Financial Statement.

### Income of a Permanent Establishment (PE)

- 6.9 The DTT only takes into account the income and Covered Taxes of Constituent Entities located in Malaysia.
- 6.10 Permanent Establishments located outside Malaysia will not be taken into account when computing the DTT, regardless as to whether their income is taxable on the Main Entity in Malaysia under sections 3 and 4 of the ITA 1967.
- 6.11 Any low-taxed income of a PE will be taxable under the QDMTT of the jurisdiction in which the PE is located.

### Income of a Tax Transparent Entity

- 6.12 For the purpose of DTT, the income and taxes of a foreign or domestic Tax Transparent Entity must be allocated to a Constituent Entity-owner or a Permanent Establishment located in Malaysia. The income allocated to a foreign Constituent Entity-owner will be excluded from DTT computation.
- 6.13 A tax transparent Ultimate Parent Entity is located in the jurisdiction in which it is created. Hence, DTT must include the income and taxes of a tax transparent

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Ultimate Parent Entity located in Malaysia.

6.14 If the highest level Constituent Entity in Malaysia is a Tax Transparent Entity, its income and taxes may be allocated to a foreign Constituent Entity-owner and this foreign Constituent Entity-owner will be subject to QDMTT in the jurisdiction where it is located.

### 7. ADJUSTED COVERED TAXES

7.1 Sections 169 to 171 of the ITA 1967 apply to determine the Adjusted Covered Taxes of the in-scope Constituent Entity in Malaysia.

7.2 However, the following are types of cross-border taxes that need to be excluded when computing the Effective Tax Rate for DTT purposes:

- (a) a Main Entity that is allocable under Article 4.3.2(a) of the GloBE Model Rules (paragraph 170(1)(a) of the ITA 1967) to a Permanent Establishment in Malaysia;
- (b) a Constituent Entity-owner under a Controlled Foreign Company Tax Regime that is allocable to a Constituent Entity in Malaysia under Article 4.3.2(c) of the GloBE Model Rules (paragraph 170(1)(c) of the ITA 1967);
- (c) a Constituent Entity-owner on income of a Hybrid Entity or a Reverse Hybrid Entity that is allocable to a Hybrid Entity or Reverse Hybrid Entity that is located in Malaysia under Article 4.3.2(d) of the GloBE Model Rules (paragraph 170(1)(d) of the ITA 1967); and
- (d) a Constituent Entity-owner (net basis taxes), other than a withholding tax imposed under the ITA 1967, that is allocable to a distributing Constituent Entity located in Malaysia under Article 4.3.2(e) of the GloBE Model Rules (paragraph 170(1)(e) of the ITA 1967).

7.3 Any Covered Taxes of Malaysia's Constituent Entity-Owner incurred with respect to Passive Income that remains after the application of subsection 170(2) of the ITA 1967 is allowed to be included in computing the Adjusted Covered Taxes of the Constituent Entity-Owner for DTT purposes.

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- 7.4 The taxes that arise under a Qualified Income Inclusion Rule (QIIR) and a Qualified Undertaxed Payment Rule (QUTPR) cannot be treated as a Covered Tax when computing the DTT.
- 7.5 Under subsection 169(3) of the ITA 1967, a Domestic Constituent Entity is treated as having Additional Current Top-up Tax in a Financial Year in which there is no Net GloBE Income or GloBE loss when the Adjusted Covered Taxes for Malaysia is less than zero and less than the Expected Adjusted Covered Taxes Amount. The MNE Group may apply the Excess Negative Tax Expense administrative procedure in order not to subject the Additional Current Top-up Tax Amount under subsection 169(3) of the ITA 1967.
- 7.6 Guidance on Excess Negative Tax Expense administrative procedure can be found at paragraphs 21.5 to 21.8 of the Commentary to Article 4.1.5, Consolidated Commentary to the Global Anti-Base Erosion Model Rule.

## 8. COMPUTATION OF DOMESTIC TOP-UP TAX

### Jurisdictional Blending

- 8.1 DTT is computed for the jurisdiction as a whole by taking into account the income and Covered Taxes of all Constituent Entities of the MNE Group that are located in Malaysia.
- 8.2 The following types of entities are required to perform separate Effective Tax Rate and Top-up Tax computations:
- (a) Investment Entities;
  - (b) Minority-Owned Constituent Entities;
  - (c) Joint Ventures and Joint Venture Subsidiaries;
  - (d) Stateless Flow-through Entities; and
  - (e) Stateless Permanent Establishments.

### Top-up Tax Formula

- 8.3 For the purposes of DTT, the Minimum Rate is 15% which is the same as the Minimum Rate for the purposes of MTT.

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8.4 Subsection 177(2) of the ITA 1967 sets out the formula for computing the Jurisdictional Top-up Tax for the purposes of DTT. The DTT formula is as follows:

$$\text{DTT} = (\text{Top-up Tax Percentage} \times \text{Excess Profits}) + \text{Additional Current Top-up Tax}$$

Where:

$$\text{Top-up Tax Percentage} = 15\% - \text{Jurisdictional Effective Tax Rate}$$

Jurisdictional Effective Tax Rate

$$= \frac{\text{Sum of the Adjusted Covered Taxes of each CE in Malaysia}}{\text{Net GloBE Income of each CE in Malaysia}}$$

$$\text{Excess Profits} = \text{Net GloBE Income} - \text{Substance-based Income Exclusion}$$

**Substance-Based Income Exclusion (SBIE)**

8.5 The SBIE and related provisions in the ITA 1967 apply to DTT in the same manner as MTT. The transitional SBIE rate, as per section 197 of the ITA 1967, is also applicable for DTT. The rate can be found in Table 11.1 of this Guideline.

**The De Minimis Exclusion**

8.6 The de minimis exclusion, as explained in section 182 of the ITA 1967, is applicable for the purposes of DTT. The de minimis exclusion is an Annual Election. The DTT for the Constituent Entities located in Malaysia shall be deemed to be zero for a Financial Year if:

- (a) The Average GloBE Revenue of all Constituent Entities in Malaysia for the current and the two preceding Financial Years is less than 10 million Euro; and
- (b) The Average GloBE Income or Loss of all Constituent Entities in Malaysia for the current and the two preceding Financial Years is less than 1 million

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Euro.

- 8.7 As per subsection 182(5), the de minimis exclusion election is not applicable to a Stateless Constituent Entity or to an Investment Entity. The GloBE Revenue and GloBE Income or Loss of these entities shall be excluded from the computations in paragraph 8.6.

**9 TAX NEUTRALITY AND DISTRIBUTION REGIMES**

**Ultimate Parent Entity that is a Flow-through Entity**

- 9.1 Section 189 of the ITA 1967 pertaining to Ultimate Parent Entity, which is a Flow-through Entity, is applicable for the purposes of DTT. Consequently, income attributable to the Ultimate Parent Entity cannot be subject to a DTT to the extent that section 189 of the ITA 1967 applies.

**Ultimate Parent Entity subject to Deductible Dividend Regime**

- 9.2 Section 190 of the ITA 1967 pertaining to the treatment of Ultimate Parent Entity subject to the Deductible Dividend Regime does not apply to DTT unless and until Malaysia introduces such regime.

**Eligible Distribution Tax System**

- 9.3 The Eligible Distribution Tax System election as per section 191 of the ITA 1967 does not apply to Constituent Entities in Malaysia for the purpose of DTT unless and until Malaysia introduces such a regime.

**Effective Tax Rate for Investment Entity**

- 9.4 Investment Entities are not exempt from the scope of DTT and thus are subject to DTT. Section 192 of the ITA 1967 explains that the Effective Tax Rate for an Investment Entity that is a Constituent Entity shall be calculated separately from the Effective Tax Rate of the jurisdiction in which it is located.
- 9.5 Section 192 of the ITA 1967 assures that top-up tax only arises with respect to the MNE Group's interest in the Investment Entity or Insurance Investment Entity. It does so by computing the Effective Tax Rate and top-up tax of such Entities based only on income and taxes that are attributable to the MNE Group.

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- 9.6 As their top-up tax was already reduced by the amount attributable to non-Group Entities, a Parent Entity's Inclusion Ratio in Investment Entities and Insurance Investment Entities is then deemed to be 100%, irrespective of the actual interest of the Parent Entity in their income.
- 9.7 Investment Entities or Insurance Investment Entities located in Malaysia must compute the Effective Tax Rate and Top-up Tax for the purposes of DTT pursuant to section 192 of the ITA 1967, except that taxes that would be allocated to the Entity pursuant to paragraph 170(1)(c) and (d) of the ITA 1967 are not taken into account in the Effective Tax Rate computation.

### Investment Entity Tax Transparency Election

- 9.8 Section 193 of the ITA 1967 pertaining to the Tax Transparency Election is applicable to Investment Entities or Insurance Investment Entities in Malaysia for the purposes of DTT.
- 9.9 Section 193 of the ITA 1967 provides a Five-Year Election to treat Investment Entities or Insurance Investment Entities as a Tax Transparent Entity. The election is available to Constituent Entity-owners that are subject to a mark-to-market or a similar tax regime on their investment in such Entities at a rate that equals or exceeds 15%. It is intended to match the timing and location of the income under the GloBE Rules and the local rules of the jurisdiction where the Constituent Entity-owners are located.
- 9.10 An Investment Entity or Insurance Investment Entity is treated as a Tax Transparent Entity to the extent of a Constituent Entity-owner's Ownership Interest in the Entity. When the election under section 193 of the ITA 1967 is made, the Constituent Entity-owner's share of the income and taxes of any Investment Entity or Insurance Investment Entity is treated as the income and taxes of the Constituent Entity-owner. This means that if all the Ownership Interests of an Investment Entity or Insurance Investment Entity are subject to this election, then all of the GloBE Income or Loss will be allocated to the Constituent Entity-owners and the Entity will not have any GloBE Income or Loss subject to the QDMTT. On the other hand, to the extent that none of the Ownership Interests in the Investment Entity or Insurance Investment Entity is subject to this election, the whole income of the Investment Entity or Insurance Investment Entity is subject to section 192 of the ITA 1967 or if an election was made, in section 194 of the ITA 1967.

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### Taxable Distribution Method Election

- 9.11 Section 194 of the ITA 1967 pertaining to the Taxable Distribution Method Election applies to Investment Entities or Insurance Investment Entities in Malaysia for the purposes of DTT.
- 9.12 Section 194 of the ITA 1967 provides a Five-Year Election to apply the Taxable Distribution Method. The election reduces the exposure to Top-up Tax to the extent that the Investment Entity or Insurance Investment Entity makes distributions of its income within a four-year period. It is only available where the Constituent Entity-owners are not Investment Entities or Insurance Investment Entities, and it is reasonably expected that such owners are subject to tax on the distributions from the Investment Entity or Insurance Investment Entity at a rate that equals or exceeds 15%.
- 9.13 Under this section, the Constituent Entity-owners located in Malaysia shall include the distributions of the Investment Entity or Insurance Investment Entity when computing the Constituent Entity-owners' GloBE Income or Loss. DTT is then imposed on the Investment Entity in respect of any Undistributed Net Income.

### Securitisation Entity

- 9.14 DTT will apply to the Securitisation Entity in the same way as it applies to other entities in Malaysia.
- 9.15 A Securitisation Entity means an Entity which is a participant in a Securitisation Arrangement, and which satisfies all of the following conditions:
- (a) the Entity only carries out activities that facilitate one or more Securitisation Arrangements;
  - (b) it grants security over its assets in favour of its creditors (or the creditors of another Securitisation Entity);
  - (c) it pays out all cash received from its assets to its creditors (or the creditors of another Securitisation Entity) on an annual or more frequent basis, other than:
    - (i) cash retained to meet an amount of profit required by the documentation of the arrangement, for eventual distribution to

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equity holders (or equivalent); or

(ii) cash reasonably required under the terms of the arrangement for either (or both) of the following purposes:

A. to make provision for future payments which are required, or will likely be required, to be made by the Entity under the terms of the arrangement; or

B. to maintain or enhance the creditworthiness of the Entity.

9.16 An Entity shall not be treated as a Securitisation Entity unless any profit referred to in paragraph 9.15(c)(i) above for a given Financial Year is negligible relative to the revenues of the Entity.

9.17 A Securitisation Arrangement means an arrangement which satisfies the following conditions:

(a) It is implemented for the purpose of pooling and repackaging a portfolio of assets (or exposures to assets) for investors that are not Constituent Entities of the MNE Group in a manner that legally segregates one or more identified pools of assets; and

(b) It seeks through contractual agreements to limit the exposure of those investors to the risk of insolvency of an Entity holding the legally segregated assets by controlling the ability of identified creditors of that Entity (or of another Entity in the arrangement) to make claims against it through legally binding documentation entered into by those creditors.

## 10 FILING OBLIGATIONS

10.1 Every Constituent Entity of a MNE Group located in Malaysia shall furnish its DTT Top-up Tax Return in the prescribed form on an electronic medium to the Inland Revenue Board of Malaysia.

10.2 The due date to submit the DTT Top-up Tax Return is no later than 15 months after the end of the Financial Year. For the first filing transition year, the due date is no later than 18 months after the last day of the corresponding Reporting Financial Year.

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- 10.3 The return reflects either a declaration of no tax liability or the amount of tax payable for the Financial Year.
- 10.4 The Top-up Tax Return must be submitted in Malaysian Ringgit. If the DTT calculation is based on the presentation currency of the Consolidated Financial Statements, which is not Malaysian Ringgit, the Constituent Entity has to convert the DTT tax liability into Malaysian Ringgit using the average Bank Negara Malaysia monthly exchange rate for the Financial Year. The foreign exchange rate can be obtained from the official HASiL's website.

### Safe Harbour

- 10.5 To reduce the burden of complying with detailed computational requirements, MNE Groups can apply for the safe harbour. The following safe harbours are applicable for DTT:
- (a) Transitional Country-by-Country Reporting (CbCR) Safe Harbour; and
  - (b) Permanent Safe Harbour.
- 10.6 Transitional CbCR Safe Harbour can only be applied for Financial Years beginning on or before 31/12/2027, but not including a Financial Year that ends after 30/6/2029.
- 10.7 An MNE Group is exempted from the requirements to perform additional GloBE calculations in respect of Constituent Entities located in Malaysia that qualify for the QDMTT Safe Harbour.
- 10.8 Further details and guidance on the Safe Harbour can be found in The Guidelines on Implementation of Global Minimum Tax in Malaysia, originally published on 2 December 2024, which may be updated from time to time.

## 11 TRANSITION RULES

- 11.1 The transition rules under section 196 of the ITA 1967 are applicable for DTT purposes. The objective is to simplify the application of the rules and reduce the compliance burdens of the newly in-scope MNE Groups.
- 11.2 These rules apply when DTT becomes applicable to Constituent Entities located in Malaysia in a Financial Year that begins on or before the Financial

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Year that the GloBE Rules (Qualified Income Inclusion Rule or Qualified Undertaxed Profits Rule) first became applicable to those Constituent Entities.

### Tax Attributes Upon Transition

- 11.3 The transition rules allow the MNE Group to utilise deferred tax accounting in calculating the Effective Tax Rate in a jurisdiction in the Transition Year and subsequent years.
- 11.4 The MNE Group shall take the deferred tax at the beginning of the Transition Year at the lower of the Minimum Rate (15%) or the applicable domestic tax rate. The applicable domestic tax rate is the rate at which an item of deferred tax expense has been recorded in the financial accounts.
- 11.5 Deferred tax assets in respect of GloBE Losses that have been recorded at a rate lower than 15% may be recast at the 15% if the taxpayer can demonstrate that the deferred tax asset is attributable to a loss that would have been a GloBE Loss had the MNE Group been subject to the GloBE Rules in the year in which the loss arose. These tax attributes shall include losses that have not been recognised due to an accounting recognition adjustment or valuation allowance, or because the recognition criteria were not met.
- 11.6 The impact of any valuation adjustment, or accounting recognition adjustment with respect to a deferred tax asset, is disregarded.
- 11.7 Deferred tax assets arising from items excluded from the computation of GloBE Income or Loss because they are deductions that are not allowed for accounting purposes, such as depreciation expenses in excess of the actual expenditure, must also be excluded pursuant to subsection 196(5) of the ITA 1967.

### Refreshing Rule (which relates to DTT only)

- 11.8 The Transition Year is to be refreshed as a new Transition Year for a jurisdiction when that jurisdiction's QDMTT regime applies ahead of an Income Inclusion Rule or Undertaxed Payment Rule. For example, X is a Constituent Entity of a foreign MNE Group (from Jurisdiction A) located in Malaysia and is first subject to DTT in Financial Year 2025. When Jurisdiction A implements IIR in Financial Year 2026, X in Malaysia will be subjected to the refreshing rule when computing the DTT in Financial Year 2026.
- 11.9 In computing DTT for those Constituent Entities in the new transition year, the

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following attributes need to be reset:

- (a) Any Excess Negative Tax Expense Carry-forward under subsection 169(3) and 169(4) or 175 of the ITA 1967 shall be eliminated at the beginning of the new Transition Year.
- (b) The deferred tax liability recapture rule pursuant to subsections 171(4) to 171(6) of the ITA 1967 shall not apply to any deferred tax liability that was taken into account in computing the Effective Tax Rate under the QDMTT and that was not recaptured prior to the new Transition Year. This rule applies to deferred tax liabilities that are taken into account in and after the new Transition Year.
- (c) Any GloBE Loss Deferred Tax Asset under subsection 172 of the ITA 1967 that arose in a year preceding the new Transition Year must be eliminated. The Filing Constituent Entity may make a new GloBE Loss election in the new Transition Year.
- (d) The deferred tax items previously determined shall be eliminated, and subsections 196(1) to 196(4) of the ITA 1967 shall be applied at the beginning of the new Transition Year.
- (e) Subsection 196(5) of the ITA 1967 shall apply to transactions occurring after 30 November 2021 and before the beginning of the new Transition Year. However, if the QDMTT was payable due to the application of subsections 169(3) to 169(4) of the ITA 1967 in respect of a deferred tax asset attributable to a tax loss, such deferred tax asset shall not be treated as arising from items excluded from the computation of GloBE Income or Loss under Chapter 5 of Part XI of the ITA 1967.

### **Transitional relief for SBIE**

11.10 Under section 197 of the ITA 1967, Constituent Entities can apply a more generous value of SBIE during an eight-year transition period. This transitional relief is applicable for the Domestic Top-up Tax computation.

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11.11 Table 11.1 presents the transitional rates for Payroll carve-out and Tangible Asset carve-out, corresponding to the respective financial years.

Financial Year beginning in the following calendar year	Payroll carve-out rate	Tangible Asset carve-out rate
2025	9.6%	7.6%
2026	9.4%	7.4%
2027	9.2%	7.2%
2028	9.0%	7.0%
2029	8.2%	6.6%
2030	7.4%	6.2%
2031	6.6%	5.8%
2032	5.8%	5.4%

Table 11.1: Transitional rate for Payroll carve-out and Tangible Asset carve-out

**Elections**

11.12 The GloBE Rules offers a range of elections designed to provide flexibility in the computation of Top-Up Tax. Certain elections are subject to specific conditions regarding their application. It is therefore important to carefully review these conditions before making any election. Below are the list of elections available for MTT and DTT.

	Elections	Purpose	Reference in the GloBE Rules	MTT	DTT
1	Excluded Entity Election	To treat an Entity as a Constituent Entity rather than an Excluded Entity under Article 1.5.2.	Article 1.5.3 of GloBE Model Rules	√	√
2	Portfolio Shareholding Election	To include all dividends on Portfolio Shareholdings in the computation of GloBE Income or Loss.	Consolidated Commentary (2025), Article 3.2.1(b), Paragraph 181	√	√
3	Foreign Exchange Hedge Election	To treat foreign exchange gains or losses as an Excluded Equity	Consolidated Commentary, Article 3.2.1(c),	√	√

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	Elections	Purpose	Reference in the GloBE Rules	MTT	DTT
		Gain or Loss for the purposes of Article 3.2.1(c).	Paragraph 57.1-57.3		
4	Equity Investment Inclusion Election	To include the gains, profits, and losses from equity investments in the computation of GloBE Income or Loss and to take into account the corresponding current and deferred tax expenses or benefits.	Consolidated Commentary, Art 3.2.1(c), Paragraph 57.4-57.11	√	√
5	Debt Release Election	To exclude a debt release included in the Financial Accounting Net Income or Loss from the computation of a Constituent Entity's GloBE Income or Loss	Consolidated Commentary, Art 3.2.1, Paragraph 86.1 - 86.7	√	√
6	Stock Based Compensation Election	To substitute in the computation of GloBE Income or Loss the amount of stock-based compensation allowed as a deduction in the computation of a Constituent Entity's taxable income in place of the amount expensed in its financial accounts.	Article 3.2.2 of GloBE Model Rules	√	√
7	Election to use the Realization Method in lieu of fair value accounting	To exclude fair value or impairment gain or loss in respect of assets or liabilities from the computation of GloBE Income or Loss and must include gain or loss	Article 3.2.5 of GloBE Model Rules	√	√

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	Elections	Purpose	Reference in the GloBE Rules	MTT	DTT
		determined under the realisation method.			
8	Election to Spread Capital Gains over five years	to spread the effect of gains and losses from the sale of Local Tangible Assets over five years (Look-back Period) to mitigate the effect of recognising the entire gain in a single year on the jurisdictional Effective Tax Rate computation. The Look-back Period refers to the years in which the MNE Group is in-scope of the GMT. Hence this election can only be applied if the MNE Group is subject to GMT for 5 consecutive years.	Article 3.2.6 of GloBE Model Rules	√	√
9	Election to consolidate transactions in same jurisdiction	Permits consolidated accounting treatment to be applied to transactions between Constituent Entities of the same MNE Group located in the same jurisdiction.	Article 3.2.8 of GloBE Model Rules	√	√
10	Excess Negative Tax Carry-Forward Election	Not to subject the Additional Current Top-up Tax Amount under Article 4.1.5 of GloBE Model Rules.	Consolidated Commentary, Art 4.1.5, Paragraph 21.1-21.8	√	√
11	Unclaimed Accrual Election	To allowed Deferred Tax Liabilities that are not expected to reverse entirely	Article 4.4.7 of GloBE Model Rules, Consolidated	√	√

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	Elections	Purpose	Reference in the GloBE Rules	MTT	DTT
		within five Financial Years.	Commentary, Paragraphs 112.1 – 112.6		
12	GloBE Loss Election	To carry GloBE losses forward with a deemed deferred tax asset.	Article 4.5 of GloBE Model Rules	√	√
13	Immaterial Decrease in Covered Taxes Election	To include an immaterial decrease for Covered Taxes in the current Financial Year.	Article 4.6.1 of GloBE Model Rules, Consolidated Commentary, Article 4.6.1, paragraph 121.	√	√
14	SBIE Election	Not to apply the SBIE.	Article 5.3.1 of GloBE Model Rules, Consolidated Commentary, Article 5.3.1, paragraph 28-29.	√	√
15	De Minimis Election	To deem the Top-up Tax for the Constituent Entities located in a jurisdiction to be zero.	Article 5.5.1 of GloBE Model Rules	√	√
16	Distribution Tax Regime Election	To add the Deemed Distribution Tax to the Adjusted Covered Taxes for the Financial Year in respect of a Constituent Entity that is subject to a Eligible Distribution Tax System.	Article 7.3 of GloBE Model Rules	√	x
17	Tax Transparency Election	To treat an Investment Entity or Insurance Investment Entity as	Article 7.5 of GloBE Model Rules	√	√

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	<b>Elections</b>	<b>Purpose</b>	<b>Reference in the GloBE Rules</b>	<b>MTT</b>	<b>DTT</b>
		a Tax Transparent Entity.			
18	Taxable Distribution Election	To provide another alternative to the treatment of Investment Entity or Insurance Investment Entity under Article 7.4 of GloBE Model Rules.	Article 7.6 of GloBE Model Rules	√	√

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**12 COMPARISON BETWEEN THE APPLICABILITY OF PROVISIONS IN THE ITA 1967 FOR THE MULTINATIONAL TOP-UP TAX AND DOMESTIC TOP-UP TAX**

No	Topic	Provision in the ITA 1967	MTT	DTT
1	Preliminary	Section 157	√	√
2	Scope	Section 158	√	√
3	Imposition & General Characteristics of the Tax	Section 159	X	√
		Section 160	√	X
4	Income Inclusion Rule	Section 161	√	X
		Section 162	√	X
		Section 163	√	X
5	Computation of GloBE Income or Loss	Section 164	Subsection 164(1)	√
		Section 165	√	√
		Section 166	√	√
		Section 167	√	√
		Section 168	√	√
6	Computation of Adjusted Covered Taxes	Section 169	√	√
		Section 170	√	Paragraph 170(1)(b)
		Section 171	√	√
		Section 172	√	√
		Section 173	√	√
7	Computation of Effective Tax Rate and Top-up Tax	Section 174	√	√
		Section 175	√	√
		Section 176	√	√
		Section 177	Subsection 177(1)	Subsection 177(2)
		Section 178	√	√
		Section 179	√	√
		Section 180	√	√
		Section 181	√	√
		Section 182	√	√
		Section 183	√	√
8	Corporate Restructuring & Holding Structures	Section 184	√	√
		Section 185	√	√
		Section 186	√	√

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No	Topic	Provision in the ITA 1967	MTT	DTT
		Section 187	√	Paragraph 187(1)(a)
		Section 188	√	Paragraph 188 (1)(a) to (d)
9	Tax neutrality and distribution regimes	Section 189	√	√
		Section 190	√	X
		Section 191	√	X
		Section 192	√	√
		Section 193	√	√
		Section 194	√	√
10	Safe Harbour	Section 195	√	√
11	Transition rules	Section 196	√	√
		Section 197	√	√
12	Person Chargeable	Section 198	√	√
		Section 199	√	√
		Section 200	√	√
13	Returns	Section 201	√	√
		Section 202	√	√
		Section 203	√	√
		Section 204	√	√
		Section 205	√	√
		Section 206	√	√
		Section 207	√	√
		Section 208	√	√
		Section 209	√	√
		Section 210	√	√
14	Assessment	Section 211	√	√
		Section 212	√	√
		Section 213	√	√
		Section 214	√	√
		Section 215	√	√
		Section 216	√	√
		Section 217	√	√
		Section 218	√	√
15	Appeal	Section 219	√	√
16	Collection and Recovery	Section 220	√	√
		Section 221	√	√

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No	Topic	Provision in the ITA 1967	MTT	DTT
		Section 222	√	√
		Section 223	√	√
17	Offences and Penalties	Section 224	√	√
		Section 225	√	√
		Section 226	√	√
		Section 227	√	√
		Section 228	√	√
		Section 229	√	√
		Section 230	√	√
		Section 231	√	√
		Section 232	√	√
		Section 233	√	√
		Section 234	√	√
		Section 235	√	√
		Section 236	√	√
		Section 237	√	√
18	Relief	Section 238	√	√
19	Supplemental	Section 239	√	√

**13 DISCLAIMER**

The examples in this Guideline are for illustrative purposes only and are not exhaustive.