

Implementation of Global Minimum Tax and Hong Kong Minimum Top-up Tax

A consultation paper issued by the Financial Services and the Treasury Bureau.

Comments from ACCA
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OVERALL COMMENTS

ACCA welcomes the opportunity to provide views in response to the consultation paper issued by the Financial Services and the Treasury Bureau (“FSTB”) on the proposed scheme to implement global minimum tax and Hong Kong minimum top-up tax. Our response is based on feedback from our Hong Kong Tax Committee and our wider network of international tax experts.

Our comments on the current position, and some observations on the wider policy context are set out below.

COMMENTS ON SPECIFIC AREAS

CHARGING PROVISIONS

Although the proposed equivalent adjustment approach (i.e., in the form of an additional tax) to bring the undertaxed profits rule top-up tax into charge may be seen as less beneficial to taxpayers, the actual application or impact to taxpayers may be somewhat limited given that Qualified Domestic Minimum Top-up Tax (“QDMTTs”) are expected to be implemented elsewhere and most top-up tax would have been collected therefrom. Considering the above and the benefits as stated (i.e., more certainty and ease of administration), the proposed approach can be considered as a balanced approach.

To stay competitive within the boundaries of Pillar Two, ACCA recommends the Hong Kong Government to open the choice of “denial of deduction approach” for taxpayers to decide which approach they shall use based on their own calculation.

Besides, ACCA recommends the Hong Kong Government to reference the Singapore Government. One of the suggestions is to introduce refundable investment credit – credits are given to enterprises that invest in high-value and substantive economic activities approved by the government, for which credits can be used to offset against corporate income tax payable. This method can benefit all taxpayers. Another suggestion is to provide alternative/ additional tax rate tier for current tax incentive scheme; this can provide tax certainty for foreign-parented MNEs with Controlled Foreign Company (“CFC”) regimes. It is worth noting that the additional tax rate tier maybe burdensome for the tax administration, but it can create certainty for MNEs.

In addition, the proposed general definition of Hong Kong resident entity for the purposes of the global anti-base erosion (“GloBE”) rules and Hong Kong minimum top-up tax (“HKMTT”) looks reasonable, but it would be useful to clarify how these terms will be incorporated in the Inland Revenue Ordinance (“IRO”) precisely (and to see how these would interact with the territorial principle already embedded in the IRO.)

CALCULATION OF EFFECTIVE TAX RATE

There are numerous uncertainties pointed out when it comes to the calculation of effective tax rate, with examples such as the historical cost method on calculating the historical cost of the properties – whether it is at purchase date or a set date as suggested by the Government, and the accounting treatment for accrual long service payment expenses upon the abolition of MPF offsetting arrangement, etc.

CALCULATION OF TOP-UP TAX

In relation to uncertainties that could be clarified in the administrative guidance of Inland Revenue Department (“IRD”) regarding the process for calculating top-up tax, one of the examples suggested by ACCA would be computer software.

Computer software is generally regarded as intangible assets, but it may still be classified as Properties, Plant & Equipment (“PPE”) under some accounting standards and capitalised on the balance sheet. Considering that computer software being an integral part of many businesses and the substantial costs involved, it would be helpful to provide further clarification and guidance on whether this item should qualify as Eligible Tangible Assets for substance-based income exclusion (“SBIE”) purposes.

TRANSITION RULES

The requirement to analyse and potentially recast the basis of deferred tax attributes will be subject to the same issues of uncertainty as for current year ETR calculation. In general, ACCA welcomes 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 in para 6.13.

DESIGN OF HONG KONG MINIMUM TOP-UP TAX

ACCA generally agrees to maintain consistency with 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. Also, ACCA agrees 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, such that Hong Kong would not be effectively ceding its taxing rights to other jurisdictions through this relief under the relevant circumstance.

SIMPLIFICATION

ACCA agrees to adopt the transitional country-by-country reporting safe harbour in order to provide a mechanism for relief of compliance burden of in-scope MNE groups in the initial / subsequent years, hence enhancing the simplification of the GloBE implementation. Also, ACCA agrees to adopt the switch-off mechanism under the consistency standard when implementing the QDMTT safe harbour as this could make Hong Kong seen as a more attractive asset management hub in view of the switch-off rules on investment entities.

TAX COMPLIANCE AND ADMINISTRATION

In general, ACCA believes it is fair for the maximum penalty as proposed for wrongdoing and non-compliance in relation to the GloBE rules and HKMTT. It would also be useful to expand the existing penalty policy statement on IRD's website to cover these new penalties.

Regarding record keeping requirements for GloBE and QDMTT purposes, in view of the different applicable time limits under local law in different jurisdictions, it should be clarified and based on either Organisation for Economic Co-operation and Development ("OECD") mandated time period or the domestic requirements of the ultimate parent entity jurisdiction. Also, in case Hong Kong qualifies under the QDMTT safe harbour, the record keeping requirements should follow domestic requirements.