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DATE



# Asia Pacific – ITAX Updates

LEA GLOBAL EUROPEAN REGIONAL CONFERENCE



# HONG KONG (HK)



## Adoption towards Pillar II Measures by Hong Kong Government

- **Adoption of Pillar II:** Release of Consultation paper for the implementation of 15% global minimum tax on MNE (exceeding €750m revenue).
- **Applicability Date:** 1st January 2025.
- **Draft legislation** is expected by the **second half of 2024**.
- **Key Aspects:**
  - Applicability to MNE group constituent entities **Hong Kong residency criteria** introduced for GloBE purposes.
  - **Undertaxed Profits Rule (UTPR)** as an additional tax.
  - Transitional safe harbor based on **country-by-country reporting** rules proposed.
  - **Permanent Qualified Domestic Minimum Top-up Tax** safe harbor introduced.
  - Consideration for simplified calculation safe harbor for non-material entities.

# South Korea



## Reporting obligations w.r.t. Stock based compensation Transactions

- **Applicability:** Stock-based compensation received or exercised on or after January 1, 2024.
- **Scope:** Applies to executives or employees of local subsidiaries or branches of foreign parent companies.
- **Submission of Information:** Information is to be submitted to the **South Korean Tax Authority**.
  - Details of grant, exercise, and payment schedules of stock-based compensation.
  - Profits arising from exercise and payment.
  - Personal information of relevant executive or employee.
- **Deadline for submission:** March 10 of the year following the tax year in which exercise or payment occurs.
- Definition of **Foreign Parent Entity:**
  - **For local subsidiaries:** A foreign company owning **at least 50% shares**.
  - **For branches:** Headquarters, the branch of a foreign company, or a foreign company owning at least 50% stock of another foreign company.

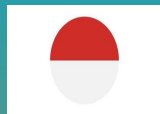
# South Korea



## Adoption towards Pillar II measures by South Korea government

- **Adoption of Pillar II Measure:** Two components of the Pillar II measure have been adopted by the South Korean government.
  - **Income Inclusion Rule (“IIR”)**: Effective from **1<sup>st</sup> January 2024** at the rate of **15%**.
  - **Undertaxed Profit Rules (“UTPR”)**: Proposed to implement from **1<sup>st</sup> January 2025**.
- **Key Pointers:**
  - The scope of IIR has been widened to cover UPE especially located in **low-tax jurisdiction**.
  - IIR would mainly impact the **MNEs headquartered in South Korea**.
  - UTPR would include the burden of top-up tax not in the scope of the IIR or QDMTT shared by constituent entities based in the countries adopting UTPR.
  - UTPR would impact the **Korean subsidiaries of inbound MNEs**.
- **Qualified Domestic Minimum Top-up Tax (“QDMTT”)**: QDMTT allows a jurisdiction to collect the top-up taxes in respect of domestic low-taxed constituent entities. However, **it is yet to be implemented in South Korea**.

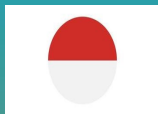
# Indonesia



## Granting of Tax Exemption for transactions related to land and building in SEZ

- **Effective Date:** Effective from **December 2023** as per the Regulation issued by DGCE.
- **Income Tax Exemption Certificate (“ITEC”):** Tax Exemption is granted in the form of ITEC by submitting an application for each transfer of rights to land and/or a building, or an agreement to bind the sale and purchase of land and/or a building.
- **Tax Exemption:** Business entities in special economic zones tax exemption :
  - **100% reduction** in corporate income tax (CIT) for **ten years** and,
  - **50% reduction for two years thereafter** post obtaining ITEC.
- **Tax on very luxurious residential properties:** Corporate taxpayers are still liable for income tax on the sale of residential properties classified as 'very luxurious', except in tourism special economic zones.
- **Tax exemption in a Tourism special economic zone:** Granting of tax exemption by issuing a **certificate of exemption** for properties classified as 'very luxurious'.

# Indonesia



## Self-assessment system for Expatriate

- **Adoption of a self-assessment system:** To calculate and settle any underpayment indicated in the Annual Individual Income Tax Return (“AIITR”) of resident taxpayers.
- **Taxability:** Resident and non-resident taxpayers in Indonesia having **Tax Identification Numbers (Tax-ID)**, are generally taxed on a worldwide income basis.
- **Validity:** This can be valid for up to **four fiscal years** from the time they become subject to tax as per Indonesian Tax law.
- **Exchange of Tax Information:** For expatriates frequently working across borders, the ITO may exchange data and enter into bilateral or multilateral agreements with other tax treaty partner countries.
- This is to ensure compliance with tax obligations, particularly for those working in multiple countries, including Indonesia.

# Singapore



## Implementing the IIR & DTT Under Pillar Two Of BEPS 2.0

- **Pillar 2 Component:** Implement two component namely **Income Inclusion Rule (IIR)** and **Domestic Top-Up Tax (DTT)**
- **Undertaxed Profits Rule (UTPR)** consideration deferred to a later stage.
- **Effective Date:** January 1, 2025
- **Application:**
  - **IIR:** Applies to in-scope MNE groups parented in Singapore for profits of low-taxed constituent entities **operating outside Singapore**.
  - **DTT:** Applies to foreign headquartered in-scope MNE groups for the profits of low-taxed constituent entities **operating in Singapore**.
- **Objective:** These measures aim to impose a minimum effective tax rate of 15% on business profits of Multinational Enterprise (MNE) groups.
- **Revenue Limit:** Applicable on annual revenue over 750 million Euros earned in the jurisdictions in which MNE operate.

# Singapore



## Tax on Gains on Foreign Assets in Singapore

- **Coverage:** Gains (*received in Singapore*) from the sale/disposal of foreign assets (*on or after 1 January 2024*)
- **Applicability Criteria:**
  - If the entity lacks adequate economic substance in Singapore or
  - gains arise from the disposal of foreign Intellectual Property Rights (IPRs)
- **Tax Applicability before 1 January 2024:**
  - Taxation on gains from asset sales if gain is revenue in nature: Applies on both- Singapore-sourced or foreign-sourced income
  - Taxation on gains from asset sales if gain is capital in nature: No taxation on gains from asset sales if capital in nature

# Singapore



## Tax on Gains on Foreign Assets in Singapore

- **Types of assets:**
  - **Immovable property** situated outside Singapore.
  - **Equity** and **debt securities** registered in a foreign exchange.
  - **Unlisted shares** issued by a foreign-incorporated company.
  - **Loans with a creditor** resident outside Singapore.
  - **Intellectual Property Rights (IPRs)** owned by a resident in a jurisdiction outside Singapore.
- **Tax Credit:** Singapore tax resident entity may claim double taxation relief a unilateral tax credit as per the mechanism specified in tax law therein.

# Singapore



## Extension and Refinement of Singapore Tax Incentive Schemes

- Extended the time limit for availing the benefit of the below-mentioned tax incentive schemes by 5 years i.e., till **31st December 2029** vide Singapore Budget 2024:
  - **Offshore Fund Tax Incentive Scheme:** Under this foreign investors use Singapore based fund managers to manage their **offshore fund vehicles**. (*Section 13D*)
  - **Enhanced-tier Fund Tax Incentive Scheme:** Applies to both onshore and offshore fund and accommodates the widest range of fund structures (*Broadest in scope*). (*Section 13U*)
- Above incentives schemes exempts “Specified Income” (SI) from “Designated Investments” (DI) to provide certainty on tax treatment of such gains.
- It was also announced that the economic criteria for qualifying funds under the fund tax incentive schemes would be revised with effect from **1 January 2025** with more details to be released by the third quarter of 2024.

# Bangladesh



## Introduction of the New Income-tax Act, 2023

- Replacing the Income-tax Ordinance, 1984 with effect from 22 June 2023,
- Salient features of the New Income-tax Act, 2023:
  - **Filing of Annual Income Tax Return:** Foreign companies with Bangladesh-source income, including companies engaged in selling goods or rendering services through digital platforms.
  - **Tax year:** Holding companies, subsidiaries of foreign corporations, branches, liaison offices, may use a different financial year for consolidation purpose (*generally follows July 1st to June 30<sup>th</sup>*).
  - **Tax Rates:**
    - Branches of Foreign companies taxed at the rate of **27.5%**
    - Remittance of profits by Branch office remitted abroad subject to **20% tax rate**.

# Bangladesh



## Bangladesh-Netherlands sign deal to amend double tax avoidance agreement

- **Treaty Signed:** Bangladesh and the Netherlands have signed on 12<sup>th</sup> March, 2024 a new agreement to avoid double taxation and prevent base erosion.
- **Widened the scope of taxation** vide changes in articles.
- **Greater Taxing Rights:** Bangladesh is entitled to levy a 10% tax on payments made from Bangladesh to a Dutch service provider for **technical services** provided in Bangladesh.
- **Capital Profit:** Bangladesh may tax capital gains from the alienation of shares and comparable interests in businesses consisting of real estate.
- **Preventing tax avoidance:** The treaty includes arrangements to prevent tax avoidance, aligning with the OECD/G20 Base Erosion and Profit Shifting Project standards.
- **Insertion of New Article:** An article has been newly inserted in the agreement for assistance in the collection of tax claims.

# Philippines



## Introduction of Ease Of Paying Taxes (EOPT) Act

- **Signed and Enforced:** 15 days of its publication from 22nd January 2024.
- **Aim to simplify and facilitate tax compliance** by allowing taxpayers to electronically or manually file tax returns with
  - the Bureau of Internal Revenue (BIR),
  - any authorised agent bank or
  - authorised tax software provider.
- Allows **non-residents** to register for these facilities, in a bid **attract foreign investors** and make it **easier** for them to do **business** in the Philippines.
- It covers taxes such as income tax, business tax, and Value-added Tax (VAT).

# Philippines



## TAX TREATMENT OF CROSS-BORDER SERVICES

- Clarifications issued by the Philippine Bureau of Internal Revenue (PBIR) regarding taxation of Outbound Service Payments
- **Effective Date:** Regulations were **issued on 10 January 2024** and took **effect immediately**.
- **Outbound Service Payment** is considered as **Philippines-sourced income** subject to:
  - Corporate tax and consequent withholding tax : **25%**
  - Value-Added Tax (VAT) : **12%**
- **Source-based taxation principle:** The jurisdiction where an **economic activity occurs** has the **right to tax** the income from that activity.
- For cross-border services, the **source of income** is determined by the **location of the activity**.
- **Value Added Tax:** It applies if the **service is utilized, applied, executed or consumed** by a recipient within the Philippines, even if the service provider is located outside the country.
- **Example of certain cross border services** are as under:
  - Payments for **consultancy services** that are carried out abroad but the results of which are used locally are considered income sourced within the Philippines.,
  - **Telecommunication services** that enable global communication and connectivity

# Philippines



## TAX TREATMENT OF CROSS-BORDER SERVICES

- **Travel agencies**, hotels, online booking applications or tour operators providing planning services, accommodation, transportation, tour packages, or entertainment activities.
- **Educational institutions** and training providers offering language courses, academic programs, vocational training, or skill development courses.
- **Other similar services** following the concept of being provided, processed, or performed overseas but subsequently utilized, applied, executed, or consumed within the Philippines.

# Malaysia



## OECD Global Anti-Base Erosion (GLoBE) Model Rules under Pillar Two and Domestic Top-Up Tax (DTT\*)

- **Adoption of GloBE Rules and DTT:** Effective from January 01, 2025
- **Top-up Tax:** Under GloBE rules, a **parent entity** will be subject to a **top-up tax** on the **low-taxed income of a constituent entity (CE)**, with a minimum rate of **15%**.
- **Coverage:** **Malaysian CEs**, including **Labuan entities**, in MNE\*\* groups with **annual revenue exceeding EUR 750 million** in two of the past four years.
- **Applicability**
  - **DTT:** Applies to low-taxed Malaysian CEs if Malaysia's effective tax rate (ETR) falls below 15%.
  - **Multinational Top-Up Tax (MTT):** Applies to the Ultimate Parent Company (UPE) in Malaysia for its low-taxed CEs in other jurisdictions with an ETR below 15%.

*\*The DTT is a minimum tax included in the domestic law of a jurisdiction and takes priority over the GloBE Rules. It reduces the amount of top-up tax that may otherwise be applicable under the GloBE Rules and payable in another jurisdiction.*

*\*\* An MNE group means any group that includes at least one entity or permanent establishment that is not located in the jurisdiction of the UPE excluding governmental entities, pension funds, international organisations, real estate vehicles that are UPE etc.*

# Malaysia



## OECD Global Anti-Base Erosion (GLoBE) Model Rules under Pillar Two and Domestic Top-Up Tax (DTT\*)

- **Exclusion from MTT:**
  - If a jurisdiction's average GloBE revenue is **less than EUR 10 million** or
  - Average\*\*\* GloBE income is **less than EUR 1 million over three years**.
  - Safe harbour jurisdictions are exempt from MTT if they meet GloBE Implementation Framework conditions (*applicable if the safe harbour jurisdiction's ETR falls below 15%*).

\*\*\*Average of the GloBE revenue (or GloBE income) of the jurisdiction for the current and the two preceding financial year

# Malaysia



## Introduction of Capital Gains Tax (CGT)

- **Introduction of Capital Gains Tax:** Vide the Finance (No. 2) Act 2023 effective from 1st January, 2024.
- **CGT is imposed on the following asset types:**
  - Disposals of shares of an unlisted company incorporated in Malaysia; and
  - Disposals of shares of a **controlled company incorporated outside Malaysia** (referred to as the “relevant company”) that derives its value from real property in Malaysia (deemed to be derived from Malaysia)
  - Disposal of capital assets situated outside Malaysia when received in Malaysia.
- **Exemptions:**
  - Profits from the disposal of capital assets situated in Malaysia remain exempt under Malaysian tax laws.
  - Unit Trusts shall also be exempt from tax on foreign-source income and CGT. *(The exemption from foreign-source income tax is effective from January 1, 2024, to December 31, 2026, while the CGT exemption extends from January 1, 2024, to December 31, 2028. )*
- Entities must file a separate CGT return and pay the applicable CGT within 60 days of disposal under a self-assessment system.

# India



## Application of Most Favoured Nation (MFN) Clause in DTAA entered by India

- MFN clause enables a taxpayer of a treaty country to import the beneficial provisions of India's treaty with another country (third country 'which is an OECD2 member').
- The Hon'ble Supreme Court in the matter of Nestle S.A. has, in a batch of appeals, settled the controversy regarding the applicability of MFN clause in the Indian tax treaties.
- The bilateral tax treaties under consideration in appeal before the SC were India-Netherlands, India-France, and India-Switzerland tax treaties
- The Hon'ble Supreme Court pronounced that:
  - MFN clause will not get **triggered** automatically and separate notification is required to operationalise the same.
  - Benefit of lower rate / restricted scope from treaty with a third country **can only be claimed** if such country is a member of the OECD at the time of entering into the treaty with India.  
*Note that if the third-party country becomes an OECD member subsequently does not automatically result in application of MFN.*
- This would be mainly in the case of royalty, FTS, dividend, or interest payments.

# India



## Reduced tax rates on royalty and FTS with Spain by invoking MFN clause

### Amendment in India-Spain Treaty:

- Pursuant to Supreme Court Ruling, notification issued amending India-Spain Tax Treaty.
- Reduced tax rates on **Royalty and Fees for technical services (FTS)** with Spain by invoking MFN clause
- **Lower tax rate of 10%** under Article 13 (Royalties and FTS) pursuant to the lower tax rate of 10% provided under Article 12 of the India-Germany tax treaty
- The amended rates shall be applicable from **Assessment Year 2024-25 (April 2024- March 2025)**.

# India



## Amendments in Safe Harbour rules for intra-group loans

- **Meaning:** Safe Harbor rules refer to a set of regulations to provide protection or immunity from liability under certain circumstances
- **Objective of Amendment:** Streamline intra-group financing arrangements with global standards rules.
- **Pertinent Amendments:**
  - The term, 'Intra-Group Loan' has been amended to include loans to any non-resident associated enterprise, excluding loans by financial companies.
  - Specific reference rates shall be referred for determining interest rates on foreign currency intra-group loans, with a dual basis point structure based on aggregate loan amounts.
  - Credit ratings for determining interest rates must now come from Securities Exchange Board of India (SEBI) registered and Reserve Bank of India (RBI) accredited agencies.
- **Effective Date:** From April 1, 2024.
- These amendments will simplify and elucidate tax regulations, promoting a transparent and efficient tax environment in India.

# India



## Exemption in Financial Products in GIFT City

- Section 10(4G) provides an exemption to any income received by a non-resident from specified activity carried out by the specified person.
- CBDT has notified the specified activity to include income earned **through a capital market intermediary operating** within the Gift City. *(Dated January 4, 2024)*
- **Conditions for claiming exemption:** Non-residents must receive income from investments to a Non-resident in an account maintained by an offshore banking unit.
- **Objective:** This move is expected to attain following objectives:
  - Stimulate offshore banking activities and
  - Enhance the role of IFSCs in financial markets.

# Australia



## Australia Introduces Pillar Two Exposure Draft Legislation

- On 21<sup>st</sup> March 2024, Australia released the draft legislation for the Implementation of OECD Pillar II.
- Measures included in the Draft Legislation:
  - Top-up tax under IIR and DMT w.e.f 1st January 2024.
  - Top-up tax under UTPR w.e.f 1st January 2025.
  - Framework for the imposition of top-up tax consistent with the OECD's GloBE Model.
  - Consequential provisions necessary for the administration of top-up tax.
- Applicability to MNEs:
  - **Corporate Structure:** must operate in more than one jurisdiction
  - **Revenue Threshold:** consolidated annual revenue of at least EUR 750 million in at least two of the four fiscal years immediately preceding the test year

# Australia



## Australia Introduces Pillar Two Exposure Draft Legislation

- Consultation paper has been released for seeking feedback on Australia's:
  - Hybrid mismatch rules
  - Foreign hybrid entity rules
  - Foreign income tax offsets
  - Controlled foreign company rules
  
- *Submission Deadlines :*
  - Exposure draft primary legislation and consultation paper: Due 16 April 2024
  - Exposure draft subordinate legislation: Due 16 May 2024

# Australia



## Consultation on Expansion of Australia's Tax Treaty Network

- Australian Government is expanding its tax treaty network.
  - Negotiations already started with Brazil and Ukraine.
  - Revising the existing treaties with New Zealand, South Korea, and Sweden.
- Treasury is seeking submissions from the stakeholders:
  - For input on desired outcomes for treaty negotiations
  - For feedback on issues related to Australia's tax treaty network
  - To support the expansion of Australia's tax treaties network.
- Deadline to comment: April 19, 2024

# New Zealand



## Non-adoption of Pillar I measures, (formerly referred as Amount B), optional approach of OECD

- OECD's simplified approach aims to:
  - Assist low-capacity jurisdictions in determining returns on sales for eligible distributors,
  - Reducing transfer pricing disputes,
  - Enhancing tax certainty.
- **Non-adoption of OECD Approach:** Denial to adopt the OECD's simplified and streamlined approach to in-country baseline marketing and distribution activities.
- **Applicability of Decision of non-adoption:**
  - Foreign-owned distributors in New Zealand,
  - New Zealand-owned distributors operating abroad
- Existing rules will continue to determine arm's-length outcomes.

# New Zealand



## Non-adoption of Pillar I measures, (formerly referred as Amount B), option approach of OECD

- New Zealand's decision **diverges** from its usual alignment with **OECD standards**, citing concerns over potential penalties and **double taxation**.
- OECD's aim to reduce transfer pricing disputes. However, on the contrary, New Zealand keeping an eye on maintaining its existing rules, potentially leading to increased complexity and compliance costs for MNCs.

# New Zealand



## Adoption towards Pillar II Measures by New Zealand Government

- New Zealand has enacted **legislation to implement the OECD's GloBE Pillar II Rules** to MNE Groups (exceeding revenue of **€750 million**), adopting them into domestic tax law by direct reference.
  - **Income Inclusion Rule (“IIR”)**: Effective from 1<sup>st</sup> January 2025.
  - **Undertaxed Profit Rules (“UTPR”)**: Effective from 1<sup>st</sup> January 2025.
  - **Domestic Income Inclusion Rule (“DIIR”)**: Proposed to be implemented from 1<sup>st</sup> January 2026.
- **Applicability:**
  - New Zealand-Parented MNE groups,
  - Foreign-based MNE groups.
- **Eligible for Foreign Tax Credit:**
  - Payments made under **QDMTT and DIIR**.

# New Zealand



## Adoption towards Pillar II Measures by New Zealand Government

- DIIR replaces the OECD's QDMTT, **applying** specifically to
  - Profits of domestic low-taxed constituent entities (LTCEs)
  - New Zealand-headquartered multinational groups
- Pillar 2 rules supersede the existing double-tax treaties with New Zealand unless these treaties explicitly refer to these rules.
- **Transitional safe harbor regime is in place**, aligning with the OECD's Inclusive Framework's agreed regime.

Thank you

