LHDN.AG.600-1/7/3

GUIDELINES

THE IMPLEMENTATION OF GLOBAL MINIMUM TAX IN MALAYSIA

(DATE OF PUBLICATION: 2 DECEMBER 2024)

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 (ITA) 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 a 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.

INLAND REVENUE BOARD OF MALAYSIA

1. INTRODUCTION

1.1 The global minimum tax is a minimum rate of tax on corporate income under Pillar Two that is internationally agreed upon and accepted by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework). In Malaysia, the global minimum tax is implemented through two mechanisms –

(a) Domestic Top-up Tax (DTT); and

(b) Multinational Top-up Tax (MTT).

1.2 The legislation and operational framework for the implementation of the DTT and MTT are contained in the new Part XI of the Income Tax Act 1967 [Act 53] introduced through the Finance (No. 2) Act 2023 [Act 851]. For the purpose of this Guideline, this legislation and framework shall be referred to as the GMT legislation. The GMT legislation has been made in accordance with the GloBE Rules.

1.3 The DTT and MTT will be applicable in Malaysia for the Financial Year (FY) beginning on or after 1 January 2025 and subsequent FYs.

2. OBJECTIVE

This Guideline aims to explain the implementation of the GMT legislation as provided under Part XI of the Income Tax Act 1967 (ITA). It outlines the Director General of Inland Revenue's (DGIR) interpretation and administration of the GMT legislation, including the relevant policies and procedures. However, in the event of inconsistencies, GloBE Rules should take precedence.

3. PROVISIONS OF THE LAW

Section 157 to 239 in Part XI of the ITA.

4. INTERPRETATION

The terms used in this Guideline have the following meanings and any terms not defined herein shall have its meaning as provided under Part XI of the ITA.

4.1 "Additional Current Multinational Top-up Tax" means the amount of tax determined in subsections 181(1) to (6) and any amount treated as Additional Current Multinational Top-up Tax determined under subsections 181(1) to (6), such as the amount determined under subsection 169(3) or section 191.

4.2 "Agreed Administrative Guidance" means the guidance on the interpretation or administration of the Domestic Top-up Tax or Multinational Top-up Tax published by the Organisation for Economic Co-operation and Development/G20 Inclusive Framework on Base Erosion and Profit Shifting.

4.3 "Average GloBE Income" means an average of the GloBE Income of a jurisdiction for the current and the two preceding Financial Years.

4.4 "Average GloBE Loss" means an average of the GloBE Loss of a jurisdiction for the current and the two preceding Financial Years.

4.5 "Average GloBE Revenue" means the average of the GloBE Revenue of a jurisdiction for the current and the two preceding Financial Years.

4.6 "Country-by-Country Reporting" (CbCR) refers to the report based on Base Erosion and Profit Shifting (BEPS) Action 13 published by the Organisation for Economic Co-operation and Development (OECD), which requires a Multinational Enterprise Group to provide all relevant tax jurisdictions with the necessary information on their global allocation of income, economic activity and taxes paid among countries according to a standard template. The implementation of CbCR in Malaysia is based on the Income Tax (Country-by-Country Reporting) Rules 2016 [P.U. (A) 357/2016], Income Tax (Country-by-Country Reporting) (Amendment) Rules 2017 [P. U. (A) 416/2017] and Labuan Business Activity Tax (Country-by-Country Reporting) Regulations 2017 [P.U. (A) 409/2017].

4.7 "Consolidated Financial Statement" means—

(a) the financial statements prepared by an Entity in accordance with an Acceptable Financial Accounting Standard, in which the assets, liabilities, income, expenses and cash flows of that Entity and the Entities in which it has a Controlling Interest are presented as those of a single economic unit;

(b) where an Entity is an entity under paragraph (b) of the definition of "Group", the financial statements of the Entity that are prepared in accordance with an Acceptable Financial Accounting Standard;

(c) where the Ultimate Parent Entity has financial statements described in paragraph (a) or (b) that are not prepared in accordance with an Acceptable Financial Accounting Standard, the financial statements are those that have been prepared subject to adjustments to prevent any Material Competitive Distortions; and

(d) where the Ultimate Parent Entity does not prepare financial statements described in paragraphs (a) to (c), the Consolidated Financial Statements of the Ultimate Parent Entity are those that would have been prepared if such Entity were required to prepare such statements in accordance with an Authorised Financial Accounting Standard that is either an Acceptable Financial Accounting Standard or another financial accounting standard that is adjusted to prevent any Material Competitive Distortions.

4.8 "Constituent Entity" means–

(a) any Entity that is included in a Group, or

(b) any Permanent Establishment of a Main Entity that is within paragraph (a) and which is treated as separate from the Main Entity and any other Permanent Establishment of that Main Entity.

but does not include an Excluded Entity.

4.9 "Covered Taxes" means—

(a) taxes recorded in the financial accounts of a Constituent Entity with respect to its income or profits or its share of the income or profits of a Constituent Entity in which it owns an Ownership Interest;

(b) taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an Eligible Distribution Tax System;

(c) taxes imposed in lieu of a generally applicable corporate income tax; and

(d) taxes levied by reference to retained earnings and corporate equity, including a Tax on multiple components based on income and equity,

but does not include any amount of—

(a) Multinational Top-up Tax accrued by a Parent Entity under a Qualified Income Inclusion Rule;

(b) Qualified Domestic Top-up Tax accrued by a Constituent Entity;

(c) taxes attributable to an adjustment made by a Constituent Entity as a result of the application of a set of rules equivalent to Articles 2.4 to 2.6 of the GloBE Model Rules (including any provisions of the GloBE Model Rules associated with those articles) that are included in the domestic law of a jurisdiction and that are implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Model Rules provided that such jurisdiction does not provide any benefits that are related to such rules;

(d) a Disqualified Refundable Imputation Tax;

(e) taxes paid by an insurance company in respect of returns to policy holders.

4.10 "Designated Filing Entity" means the Constituent Entity, other than the Ultimate Parent Entity, that has been appointed by the Multinational Enterprise Group to file the information return on behalf of the Multinational Enterprise Group.

4.11 "Domestic Top-up Tax" means tax as provided under section 159 of the ITA.

4.12 "Effective Tax Rate" means, in respect of a Multinational Enterprise Group, the sum of the Adjusted Covered Taxes of each Constituent Entity located in the jurisdiction divided by the Net GloBE Income of the jurisdiction for the Financial Year.

4.13 Excluded Entity means—

(a) a Governmental Entity;
(b) an International Organisation;
(c) a Non-profit Organisation;
(d) a Pension Fund;
(e) an Investment Fund that is an Ultimate Parent Entity;
(f) a Real Estate Investment Vehicle that is an Ultimate Parent Entity; or
(g) an Entity—

(i) 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 above other than a Pension Services Entity and where that Entity—

(A) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the Excluded Entity or Entities; or

(B) only carries out activities that are ancillary to those carried out by the Excluded Entity or Entities; or

(ii) 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 above other than a Pension Services Entity provided that substantially all of the Entity's income is Excluded Dividends or Excluded Equity Gain or

Loss that is excluded from the computation of GloBE Income or Loss in accordance with this Part.

4.14 "Financial Accounting Net Income or Loss" means the net income or loss determined for a Constituent Entity before any consolidation adjustments eliminating intra-group transactions in preparing Consolidated Financial Statements of the Ultimate Parent Entity.

4.15 "Financial Year" means an accounting period with respect to which the Ultimate Parent Entity of the Multinational Enterprise Group prepares its Consolidated Financial Statements and in the case of Consolidated Financial Statements as defined in paragraph (d) of the definition of "Consolidated Financial Statements", Financial Year means the calendar year.

4.16 "GloBE Income or Loss" means the Financial Accounting Net Income or Loss determined for the Constituent Entity for the Financial Year adjusted for the items described in sections 165 to 168 of the ITA to each Constituent Entity.

4.17 "GloBE Information Return" means a standardised information return in accordance with the GloBE Implementation Framework that contains the information described in Article 8.1.4 of the GloBE Model Rules.

4.18 "GloBE Model Rules" means the model rules published by the Organisation for Economic Co-operation and Development/ G20 Inclusive Framework on Base Erosion and Profit Shifting as "Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on Base Erosion and Profit Shifting".

4.19 "GloBE Rules" means—

(a) the GloBE Model Rules;

(b) the GloBE Rules Commentary and any further commentaries published by the Organisation for Economic Co-operation and Development /G20 Inclusive Framework on Base Erosion and Profit Shifting that are relevant to the implementation of the GloBE Rules; and

(c) any Agreed Administrative Guidance or any other guidance published by the Organisation for Economic Co-operation and Development /G20 Inclusive Framework on Base Erosion and Profit Shifting that are relevant to the implementation of the GloBE Rules.

4.20 "Income Inclusion Rule" means the rules for the allocation of Multinational Top-up Tax as provided in Chapter 4 of Part XI of the ITA.

4.21 "Information Return" means a return in the prescribed form as provided for under section 201 of the ITA and it is the same as the "GloBE Information Return" provided for under the GloBE Model Rules.

4.22 "Main Entity" means, in respect of a Permanent Establishment—

(a) the Entity that includes the Financial Accounting Net Income or Loss of the Permanent Establishment in its financial statements; and

(b) is deemed to have the Controlling Interests of its Permanent Establishment.

4.23 "Multinational Enterprise Group" (MNE Group) means any Group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity.

4.24 "Multinational Top-up Tax" means tax computed for the jurisdiction or Constituent Entity in accordance with sections 175 to 179 of the ITA.

4.25 "Permanent Establishment" means—

(a) a place of business including a deemed place of business situated in a jurisdiction and treated as a permanent establishment in accordance with an applicable Tax Treaty in force provided that such jurisdiction taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD Model Tax Convention;

(b) if there is no applicable Tax Treaty in force, a place of business including a deemed place of business in respect of which a jurisdiction taxes under its domestic law the income attributable to such place of business on a net basis similar to the manner in which it taxes its own tax residents;

(c) if a jurisdiction has no corporate income tax system, a place of business including a deemed place of business situated in that jurisdiction that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention provided that such jurisdiction would have had the right to tax the income attributable to it in accordance with Article 7 of that model; or

(d) a place of business or a deemed place of business that is not already described in paragraphs (a) to (c) through which operations are conducted outside the jurisdiction where the Entity is located provided that such jurisdiction exempts the income attributable to such operations.

4.26 "Qualified Domestic Top-up Tax" or "Qualified Domestic Minimum Top-up Tax" (QDMTT) means a minimum tax that is included in the domestic law of a jurisdiction and that—

(a) determines the Excess Profits of the Constituent Entities located in the jurisdiction in a manner that is equivalent to the GloBE Rules;

(b) operates to increase domestic tax liability with respect to domestic Excess Profits to the Minimum Rate for the jurisdiction and Constituent Entities for a Financial Year;

(c) is implemented and administered in a way that is consistent with the outcomes provided for under the GloBE Model Rules and GloBE Rules Commentary and that jurisdiction does not provide any benefits that are related to such rules; and

(d) may compute domestic Excess Profits based on an Acceptable Financial Accounting Standard permitted by the Authorised Accounting Body or an Authorised Financial Accounting Standard adjusted to prevent any Material Competitive Distortions, rather than the financial accounting standard used in the Consolidated Financial Statements.

4.27 "Simplified Calculations" which consist of Simplified Income Calculation, Simplified Revenue Calculation, and Simplified Tax Calculation is an alternative calculation to the GloBE Income or Loss, GloBE Revenue and Adjusted Covered Taxes calculations required under the GloBE Rules, respectively for the purpose of the Permanent Safe Harbour.

4.28 "Simplified Covered Taxes" is a jurisdiction's income tax expense as reported on the MNE Group's Qualified Financial Statements, after eliminating any taxes that are not Covered Taxes and uncertain tax positions reported in the MNE Group's Qualified Financial Statements.

4.29 "Simplified Effective Tax Rate" is calculated by dividing the jurisdiction's Simplified Covered Taxes by its Profit (Loss) before Income Tax as reported on the MNE Group's Qualified CbC Report.

4.30 "Substance-based Income Exclusion" means the jurisdictional payroll carve-out and the tangible asset carve-out for each Constituent Entity as determined under section 180 of the ITA.

4.31 "Ultimate Parent Entity" means either—

(a) an Entity that—

(i) owns directly or indirectly a Controlling Interest in any other Entity; and

(ii) is not owned, with a Controlling Interest, directly or indirectly by another Entity; or

(b) the Main Entity of a Group that is located in one jurisdiction and has one or more Permanent Establishments located in other jurisdictions, provided that the Entity is not a part of another Group.

5. SCOPE

5.1 To determine who is subject to the GMT legislation, consider these questions-

(a) Are you an MNE Group?

(i) For any group of companies in Malaysia to be considered an MNE Group and subject to GMT legislation, it must have at least one Entity, such as a subsidiary, branch, or PE located outside Malaysia (even one that does not earn income). A purely domestic group is not an MNE Group and is not subject to the GMT legislation.

(ii) An MNE Group includes:

- Entities under the common control of an Ultimate Parent Entity and required to be included in the Consolidated Financial Statement of the Ultimate Parent Entity; or

- If a Consolidated Financial Statement does not exist, entities that would have been consolidated had the Ultimate Parent Entity been required to prepare financial statements under the Authorised Financial Accounting Standard. For Malaysia, Malaysian Financial Reporting Standards (MFRS) and Malaysian Private Entities Reporting Standards (MPERS) are authorised financial accounting standards issued by the Malaysian Accounting Standards Board; or

- A standalone Entity with one or more Permanent Establishments located in another jurisdiction.

(b) Do you meet the consolidated revenue threshold?

(i) The GMT legislation apply to the Constituent Entities of an MNE Group with annual revenue of EUR 750 million or more in the Consolidated Financial Statement of the MNE Group in at least two of the four previous Financial Years (not including the tested Financial Year).

(ii) For the purposes of determining whether the threshold (EUR 750 million) has been met, the MNE Group will be required to translate the relevant amount from its presentation currency to the currency in EURO based on the average foreign exchange rate for the December month of the calendar year prior to the commencement of the relevant Financial Year. The average foreign exchange rate for the month of December of the previous Financial Year shall be determined by the foreign exchange reference rates as quoted by the European Central Bank (ECB). This approach applies for any other foreign currency translation within this guidelines.

(iii) Where one or more of those Financial Years is of a period other than 12 months, for each of those Financial Years, the EUR 750 million annual revenue threshold is adjusted proportionally to correspond with the length of the relevant Financial Year.

(iv) The revenue threshold applies to the revenue reported in the MNE Group's Consolidated Financial Statements. The threshold amount is the same as the one used for Country-by-Country Reporting (CbCR), EUR 750 million. However, unlike CbCR, which is based on an annual calculation, the revenue threshold for the GMT legislation is based on a four-year test, as illustrated in Figure 5.1 below:

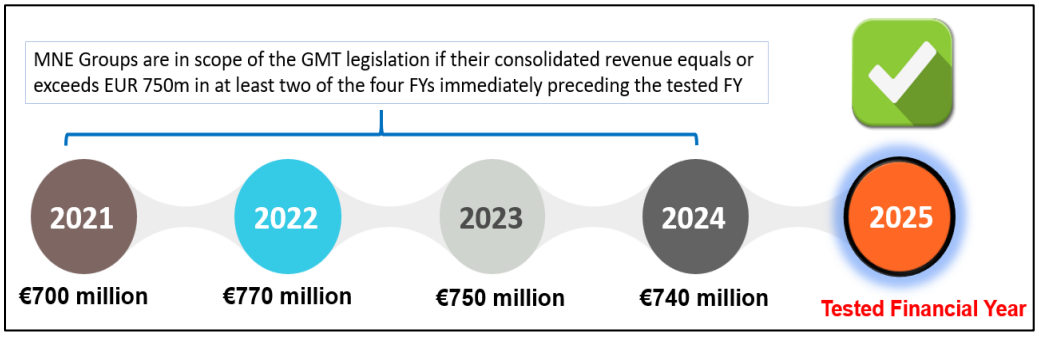

Figure 5.1: The Four-year Test

5.2 Figures 5.2 and 5.3 provide an overview of how to determine if an MNE Group is in scope and subject to the GMT legislation, as well as guidance on how a Constituent Entity can decide whether the GMT legislation applies to it.

Scenarios	MNE Group Does business operate in more than one jurisdiction?	Revenue ≥ € 750 M In at least 2 out of 4 previous FY	In Scope of GMT legislation?
#1	✓	✓	✓
#2	✓	✗	✗
#3	✗	✓	✗
#4	✗	✗	✗

EXAMPLE

FY2025: ✓
FY2024 – €750M, FY2023 – €740M, FY2022 – €760M, FY2021 – €730M

EXAMPLE

FY2025: ✗
FY2024 – €745M, FY2023 – €740M, FY2022 – €760M, FY2021 – €730M

Figure 5.2: In scope MNE Group

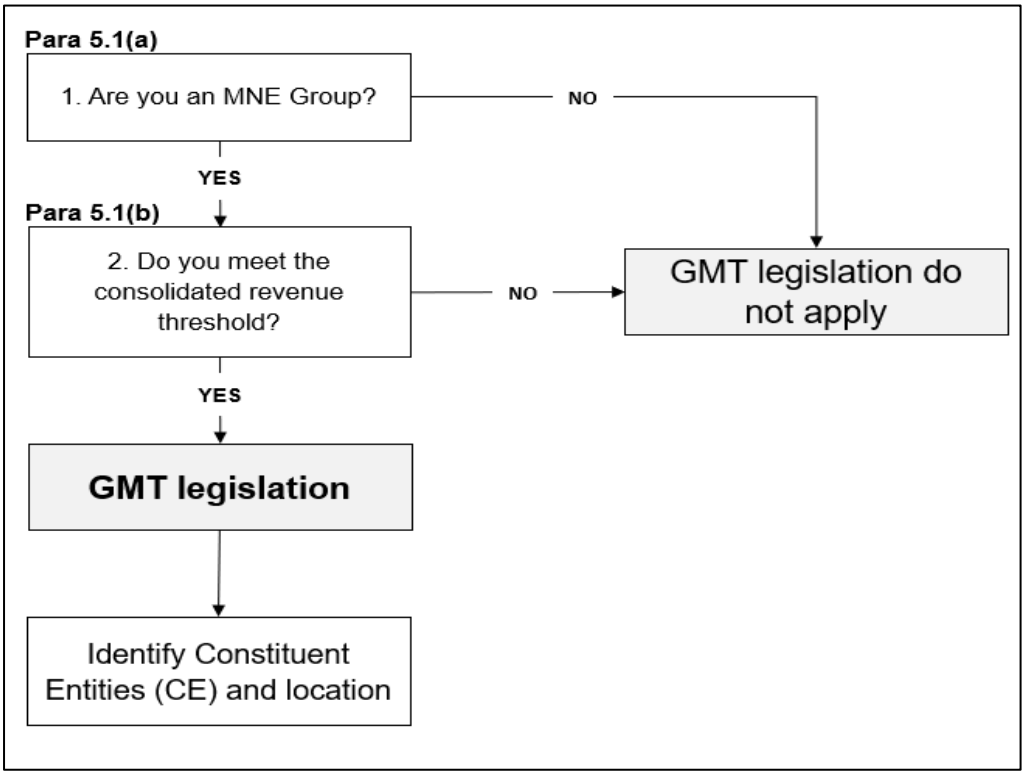

Figure 5.3: The Flowchart for Determining the Application of the GMT Legislation

5.3 The GMT legislation shall also apply to any Labuan entity under the Labuan Business Activity Tax Act 1990 and to a chargeable person under the Petroleum (Income Tax) Act 1967 if it is a Constituent Entity that is a member of a Multinational Enterprise Group that falls within the scope as explained in this paragraph.

5.4 For avoidance of doubt, a sovereign wealth fund that meets the definition of a Governmental Entity in Part XI of the ITA will not be considered to be an Ultimate Parent Entity and will not be considered part of an MNE Group.

Excluded Entity

5.5 An Excluded Entity is not subject to the GMT legislation, however it is still considered as a Group Entity to determine the revenue threshold to the extent its income is consolidated with the rest of the Group. In this case, the Excluded Entity's revenue must be considered when applying the consolidated revenue threshold.

5.6 When an Entity meets paragraph (g) of the definition of “Excluded Entity” under subsection 157(1) of the ITA , the entirety of its activities, including those undertaken by its Permanent Establishments, are excluded from the GMT legislation.

5.7 Paragraph (g) of the definition of “Excluded Entity” under subsection 157(1) of the ITA applies where an Entity that is a member of a Group is held by an Excluded Entity that is not a member of that Group. An Entity that is a member of a Group that is held by an Investment Fund or a Real Estate Investment Vehicle can still meet the requirements under paragraph (g) of the definition of “Excluded Entity” under subsection 157(1) of the ITA even though the Investment Fund or Real Estate Investment Vehicle is not the Ultimate Parent Entity of that Group. For example, an Investment Fund (not a member of the Group) wholly-owns an Entity that is the UPE of a Group and that Entity meets the requirements under paragraph (g) of the definition of “Excluded Entity”. In this case, the Ultimate Parent Entity is an Excluded Entity under paragraph (g) of the definition of “Excluded Entity” notwithstanding that the Investment Fund is not part of the Group because it is not consolidated on a line-by-line basis with such Group.

5.8 Non-profit Organisations may set up wholly-owned subsidiaries to undertake commercial activities to raise funds for the charitable activities of the parent Non-profit Organisation. The activities of these subsidiaries may qualify as “ancillary activites” for the purpose of determining an Excluded Entity under paragraph (g) of the definition “Excluded Entity’ under subsection 157(1) of the ITA if –

a) 100% of the value of the Entity is owned (directly or indirectly) by one or more Non-profit Organisations; and

b) the revenue of all Group Entities (excluding the revenue derived by Non-profit Organisation, or by an Entity that is under paragraph (g) of definition of Excluded Entity) for that Fiancial Year is less than–

i) GloBE annual revenue threshold of EUR 750 million (adjusted if the Financial Year is a period other than 12 months); or

ii) 25% of the total revenue of the MNE Group.

5.9 A Filing Constituent Entity may elect not to treat an Entity as an Excluded Entity in accordance with paragraph (g) of the definition of “Excluded Entity” under subsection 157(1) of the ITA and this is a Five-Year Election.

6. FILING OBLIGATIONS OF THE INFORMATION RETURN AND TOP-UP TAX RETURN

6.1 The GloBE Information Return (GIR) is a comprehensive reporting document that MNEs must file annually to disclose their financial and tax information under the GloBE Rules. The GIR includes detailed information on the MNE Group's income, taxes, and the Effective Tax Rate calculation across all jurisdictions where the MNE Group operates or has a business presence.

6.2 The GIR is typically submitted to the tax authority in the jurisdiction where the Ultimate Parent Entity of the MNE Group is resident and it is required to be submitted not later than fifteen months from the last day of the Reporting Financial Year. Therefore, all Ultimate Parent Entities of Malaysian MNE Groups residing in Malaysia should file an Information Return in a prescribed form which is the same as the GIR, with the Inland Revenue Board of Malaysia (IRBM).

6.3 For the Constituent Entity of a foreign MNE Group, where the Ultimate Parent Entity or the Designated Filing Entity (DFE) of the foreign MNE Group reside in a jurisdiction with a Qualifying Competent Authority Agreement (QCAA) to exchange the GIR with Malaysia, they do not have to file the Information Return with the IRBM. The election to appoint a DFE must be made by a notice in writing in the prescribed form and furnished to the Director General no later than 15 months from the last day of Reporting Financial Year by a Constituent Entity.

6.4 When a foreign MNE Group's Ultimate Parent Entity or DFE resides in a jurisdiction that does not have a QCAA with Malaysia, the Constituent Entity must file the Information Return with the IRBM. But if that foreign MNE Group has more than one Constituent Entity in Malaysia, it can nominate a Designated Local Entity (DLE) to submit the Information Return to the IRBM on behalf of all the other Constituent Entities. The election to appoint a DLE must be made by a notice in writing in the prescribed form and furnished to the Director General not later than 15 months from the last day of Reporting Financial Year by a DLE on behalf of that Constituent Entity.

6.5 The transitional concept under the GloBE Rules is designed to ease implementing these rules for MNE Groups. It includes several provisions that take into account existing tax attributes and provide relief during the initial years of implementing the GloBE Rules. The main objective of the transitional provisions under the GloBE Rules is to reduce compliance burdens and provide a smooth transition for MNE Groups when they first come into the scope of the rules.

6.6 The GloBE Rules provide transitional relief for filing obligations where the GIR and notifications can be filed with the tax administration no later than 18 months after the last day of the Reporting Financial Year for the first filing transition year. Filing transition year for Malaysia means the first Financial Year in which the MNE Group comes within the scope of the Part XI of the ITA.

6.7 Transitional relief for filing also applies to Top-up Tax Returns. The Top-up Tax return is the prescribed form for a Reporting Financial Year, which needs to be submitted by every Constituent Entity of an MNE Group located in Malaysia to disclose the amount of tax payable under Section 159 and Section 160 for that financial year. The due date to submit a Top-up Tax return for the filing transition year is no later than 18 months after the last day of the corresponding Reporting Financial Year.

6.8 The tax payable for the first filing transition year is due on the last day of the 18th month after the end of that filing transition year.

6.9 Figure 6.1 below illustrates how the 18-month transition filing relief is provided to Ultimate Parent Entities of the MNE Group or Constituent Entities of the foreign MNE Group. In this scenario, the transitional filing relief only applies for Financial Year 2025 if Financial Year 2025 is the first filing transition year of any Constituent Entity of the MNE Group.

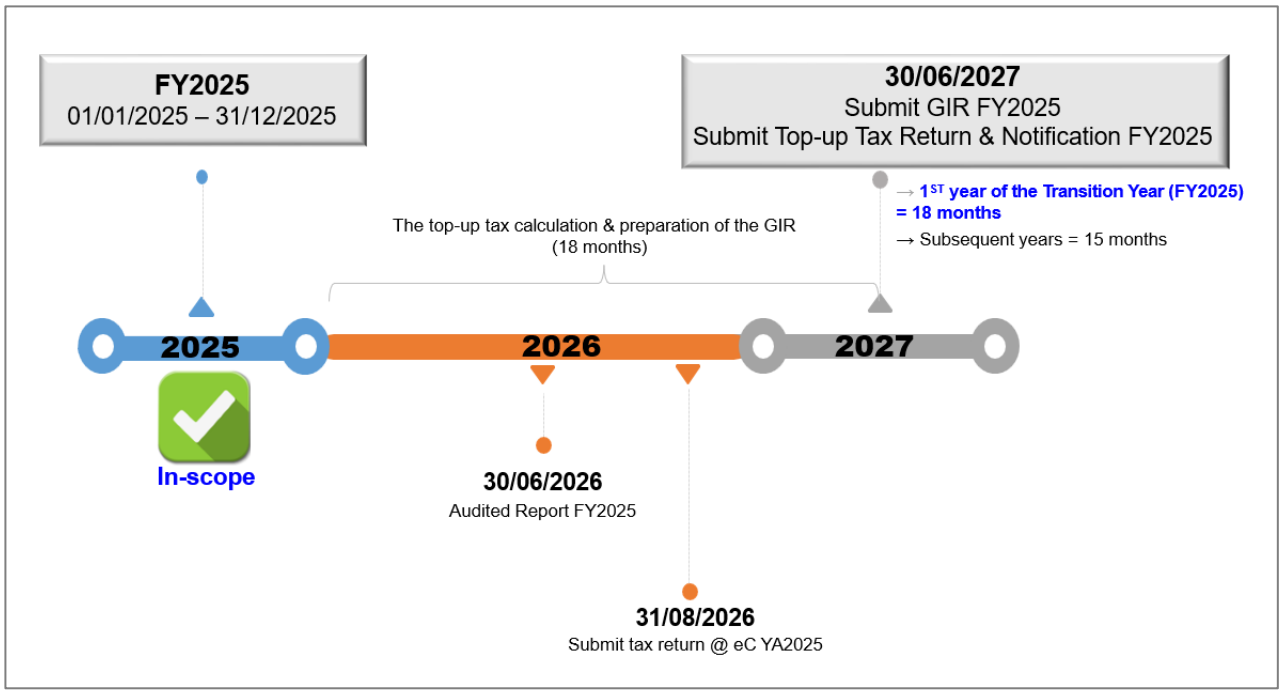

Figure 6.1: The First Filing Transition Year for Filing Relief (FY 2025)

6.10 Figure 6.2 below illustrates how the 18-month transitional filing relief is provided if a Constituent Entity is only in scope of GMT legislation in Financial Year 2026.

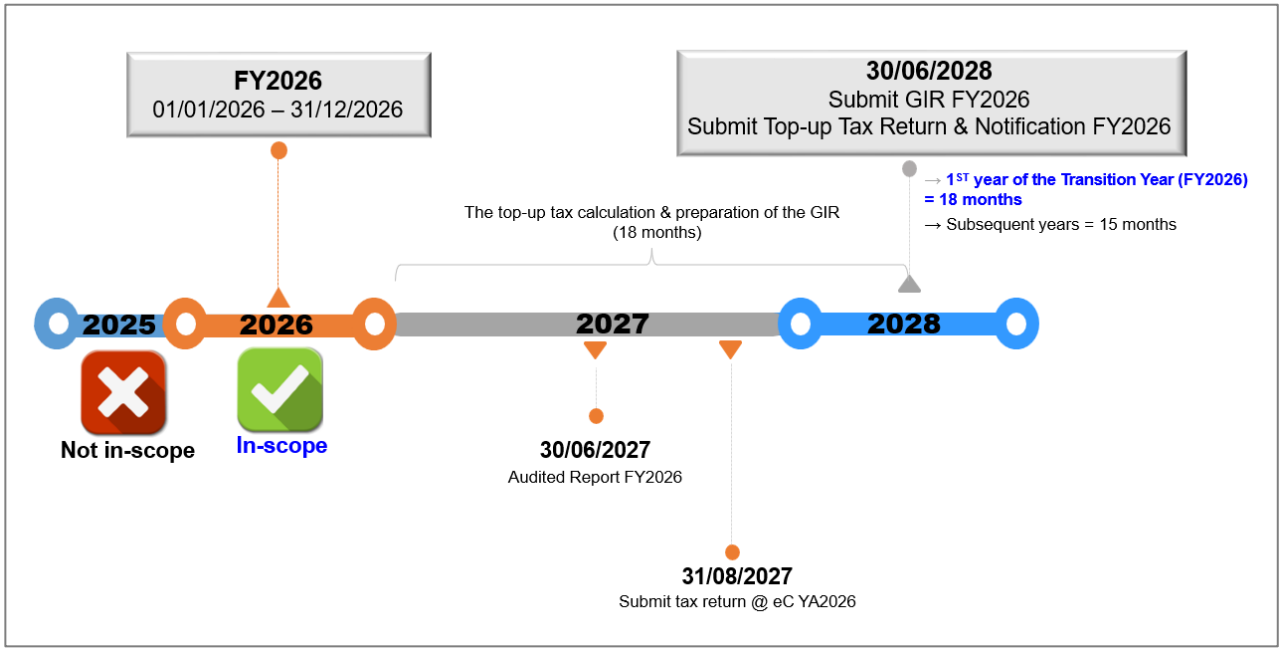

Figure 6.2: The First Filing Transition Year for Filing Relief (FY 2026)

7. TRANSITIONAL PENALTY RELIEF

7.1 Information furnished in the information return must be complete and correct. Incomplete and/ or incorrect information provided to IRBM may result in a penalty or fine imposed under subsection 226(1) of the ITA, ranging from RM20,000 to RM100,000, or imprisonment for up to six months, or both.

7.2 Under subsection 227(1) of the ITA, IRBM may impose a fine of not less than RM20,000 and not more than RM100,000 and a special penalty of double the amount of tax which has been undercharged for—

a) an incorrect Top-up Tax return that omits or understates the top-up tax; or

b) any incorrect information affecting the chargeability to tax of any Constituent Entity.

7.3 Under subsection 227(2) of the ITA where no prosecution under subsection 227(1) has been instituted, IRBM may require the Constituent Entity to pay a penalty equal the amount of tax which has been undercharged for an incorrect Top-up Tax return that omits or understates the top-up tax.

7.4 However, during a Transition Period, no fines or penalties will be imposed if DGIR considers that the Constituent Entity has taken “reasonable measures” to ensure the correct application of the GMT legislation. Transition Period refers to any Financial Years beginning on or before 31/12/2026 but does not include Financial Year that ends after 30/06/2028.

7.5 For Malaysia, the Transition Period will apply to Financial Years starting on or after 01/01/2025, but not exceeding 31/12/2026, and the Financial Year must not end after 30/06/2028. For example:

Scenario 1:

FY	Period	Status
2025	01/01/2025 – 31/12/2025	Transition Period
2026	01/01/2026 – 31/12/2026	Transition Period
2027	01/01/2027 – 31/12/2027	Not a Transition Period
2028	01/01/2028 – 31/12/2028	Not a Transition Period

Scenario 2:

FY	Period	Status
2026	01/07/2025 – 30/06/2026	Transition Period
2027	01/07/2026 – 30/06/2027	Transition Period
2028	01/07/2027 – 30/06/2028	Not a Transition Period

Scenario 3:

FY	Period	Status
2026	01/10/2025 – 30/09/2026	Transition Period
2027	01/10/2026 – 30/09/2027	Transition Period
2028	01/10/2027 – 30/09/2028	Not a Transition Period

7.6 For the DGIR to consider that the Constituent Entity has taken “reasonable measures”, it must demonstrate that it has acted in good faith to understand and comply with the GMT legislation. The DGIR will assess each case based on the facts and circumstances.

8. THE QUALIFIED DOMESTIC MINIMUM TOP-UP TAX (QDMTT) SAFE HARBOUR

8.1 The "QDMTT Safe Harbour" is a specific provision in the GloBE Rules that enables MNE Group to take advantage of simplified compliance measures under specific circumstances. This safe harbour provision is intended to alleviate administrative burdens and compliance costs by offering a more straightforward approach to fulfilling tax obligations. Where an MNE Group qualifies for a QDMTT Safe Harbour, the Top-Up Tax payable in other jurisdictions for the Financial Year will be deemed to be zero.

8.2 An MNE Group will be eligible for the QDMTT Safe Harbour in respect of a jurisdiction for a Financial Year where:

(i) The jurisdiction has a QDMTT for the Financial Year; and

(ii) The jurisdiction’s domestic top-up tax has fulfilled the QDMTT Safe Harbour status for the Financial Year.

8.3 The QDMTT Safe Harbour, as outlined in the GloBE Rules, allows an MNE Group to make an annual election to apply the QDMTT Safe Harbour for each subgroup or standalone entity that is subject to a separate QDMTT calculation.

- A subgroup refers to a subset of entities within the MNE Group that are subject to the same QDMTT. This could be because they are located in the same jurisdiction or because they are subject to the same tax rules within a jurisdiction.

- A standalone entity refers to an individual entity within the MNE Group that is subject to a QDMTT calculation independently of other entities in the group. This could be because it operates in a jurisdiction where it is the only entity of the MNE Group, or because it is subject to different tax rules than other entities in the same jurisdiction.

Non application for disputed amounts

8.4 A Filing Constituent Entity can only elect to apply the QDMTT Safe Harbour where the Top-up Tax computed under QDMTT would be treated as "Qualified Domestic Minimum Top-up Tax payable" under subsection 177(1).

8.5 Therefore, an MNE Group cannot elect to apply the safe harbour if its liability under a QDMTT is subject to a challenge or deemed not assessable as described in paragraph 8.6 below. Such an MNE Group cannot elect to apply the QDMTT Safe Harbour for that jurisdiction irrespective of whether such QDMTT meets the standards set out in the GloBE Rules.

8.6 "The Qualified Domestic Minimum Top-up Tax payable" is the amount the Constituent Entity accrues in the jurisdiction for the QDMTT for the financial year, excluding any amount of QDMTT that:

(i) the MNE Group directly or indirectly challenges in a judicial or administrative proceeding; or

(ii) the tax authority of the jurisdiction has determined is not assessable or collectable based on constitutional grounds or other superior law or based on a specific agreement with the government of the QDMTT jurisdiction limiting the MNE Group's tax liability, such as a tax stabilisation agreement, investment agreement, or similar agreement.

The Application of the Switch-off Rule

8.7 The Switch-off Rule under the QDMTT Safe Harbour is a provision in the GloBE Rules that prevents an MNE Group from applying the safe harbour in certain scenarios. This rule is designed to maintain the integrity of the GloBE Rules and ensure that they achieve their objective of ensuring a minimum level of taxation.

8.8 The Switch-off Rule acknowledges that some jurisdictions may face restrictions on imposing QDMTT for certain Constituent Entities or corporate structures. Therefore, denying the jurisdiction of the QDMTT

Safe Harbour seems unfair if it affects only a few entities or specific structures.

8.9 In the Agreed Administrative Guidance published in July 2023, an MNE Group will be subject to the switch-off Rule only for specific scenarios as listed below:

(a) A QDMTT jurisdiction decides not to impose a QDMTT on Flow-through Entities created in its jurisdiction.

(b) A QDMTT jurisdiction decides not to impose a QDMTT on Investment Entities subject to Articles 7.4, 7.5, and 7.6 of the GloBE Rules.

(c) A QDMTT jurisdiction decides to adopt Article 9.3 in a QDMTT legislation with no limitation.

(d) A QDMTT jurisdiction includes members of a JV Group (which includes Joint Ventures) within the scope of the QDMTT but imposes the liability on Constituent Entities of the main group instead of directly on the members of the JV Group.

8.10 For example, if a QDMTT jurisdiction includes members of a Joint Venture Group within the scope of the QDMTT but imposes the liability on Constituent Entities of the main group instead of directly on the members of the Joint Venture Group, therefore the Switch-off Rule applies.

8.11 On the other hand, if a QDMTT jurisdiction decides not to include Joint Ventures and Joint Venture Subsidiaries within the scope of the QDMTT, the Switch-off Rule is not relevant because the QDMTT will not meet the Consistency Standard and therefore, will not qualify for the safe harbour.

8.12 When the Switch-off Rule is triggered, it prevents the MNE Group from applying the safe harbour to all or some Constituent Entities located or created in the QDMTT jurisdiction. Instead, the MNE Group is required to switch to the credit method to offset the QDMTT, as provided under subsection 177 of the ITA.

9. THE TRANSITIONAL CbCR SAFE HARBOUR

9.1 The main objective of the Transitional CbCR Safe Harbour is to temporarily relieve MNEs from performing the complex and detailed computations required by the GloBE Rules during the initial years of implementation. It seeks to reduce an MNEs' compliance burden while they update their internal processes and systems to meet the new reporting requirements. Transitional CbCR applies to both MTT and DTT.

9.2 A Qualified CbC report is the main document an MNE Group must use under the Transitional CbCR Safe Harbour. A Qualified CbC report refers to a CbC report prepared using Qualified Financial Statements.

9.3 A Qualified Financial Statements refer to the following definitions:

(a) the accounts used to prepare the Consolidated Financial Statements of the Ultimate Parent Entity;

(b) separate financial statements of each Constituent Entity provided they are prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard if the information contained in such statements is maintained based on that accounting standard and it is reliable; or

(c) in the case of a Constituent Entity that is not included in an MNE Group’s Consolidated Financial Statements on a line-by-line basis solely due to size or materiality grounds, the financial accounts of that CE that are used for the preparation of the MNE Group’s CbC Report.

9.4 The Transitional CbCR Safe Harbour applies only where the MNE Group prepares its CbC Report using Qualified Financial Statements, and the main source of data to be used is as below:

No	Item	Source of Data
i.	Total Revenue	MNE Group's Total Revenues in a Jurisdiction as reported on its Qualified CbC Report.
ii.	Profit (Loss) Before Income Tax	MNE Group's Profit (Loss) before Income Tax in a jurisdiction as reported on its Qualified CbC Report.
iii.	Income Tax Expenses	Income tax expense as recorded in a Constituent Entity's financial accounts provided that such Constituent Entity's income is included in the CbC Report but excluding taxes that are not Covered Taxes and uncertain tax position.

Table 9.1: Source of Data Used for the Transitional Safe Harbour

9.5 MNE Groups that are in scope of the GloBE Rules but not required to file CbC Reports are still eligible for the Transitional CbCR Safe Harbour if they complete section 2.2.1.3(a) of the GIR using the data from Qualified Financial Statements that would have been reported as Total Revenue and Profit (Loss) before Income Tax in a Qualified CbC Report if the MNE Group were required to file a CbC Report.

9.6 The Transitional CbCR Safe Harbour does not permit adjustments to the amounts reported in financial accounts or separate financial statements in order for them to be considered Qualified Financial Statements. However, where the MNE Group allocated and incorporated the purchase price accounting (PPA) adjustments into the financial accounts of an acquired Constituent Entity that are used in the preparation of the Consolidated Financial Statements or the separate financial statements of the Constituent Entity, those financial accounts or separate financial statements will not be considered Qualified Financial Statements, unless consistent reporting condition is met and the goodwill impairment adjustment is made.

9.7 For the purpose of paragraph 9.5—

(a) consistent reporting condition is a situation where the MNE Group has not submitted a CbC Report for a Financial Year beginning after 31/12/2022 that was based on the Constituent Entity's reporting

package or separate financial statements without the PPA adjustments, except where the Constituent Entity was required by law or regulation to change its reporting package or separate financial statements to include PPA adjustments; and

(b) goodwill impairment adjustment means any reduction to the Constituent Entity's income attributable to an impairment of goodwill related to transactions entered into after 30/11/2021 must be added back to the Profit (Loss) before Income Tax:

(i) for purposes of applying the routine profits test; and

(ii) for purposes of applying the simplified ETR test, but only if the financial accounts do not also have a reversal of deferred tax liability or recognition or increase of a deferred tax asset in respect of the impairment of goodwill.

9.8 The transitional period for this safe harbour will only apply to Financial Years beginning on or before 31 December 2026, not including any Financial Years ending after 30 June 2028.

9.9 A Tested Jurisdiction, as referred to in the GloBE Rules, is a jurisdiction where Contituent Entities of an MNE Group are located. The Top-up Tax in the Tested Jurisdiction for a financial year shall be deemed to be zero if it qualifies for the Transitional CbCR Safe Harbor by fulfiling either one of the following tests:

(a) de minimis test;
(b) simplified Effective Tax Rate test; or
(c) routine profits test.

9.10 The tests above are explained as follows:

(a) De minimis test

- An MNE must demonstrate that its Total Revenue and Profit (Loss) before Income Tax in a jurisdiction as reflected in the Qualifed CbC Report fall below certain thresholds as follows:

✓ Total Revenue for the current financial year for a jurisdiction is less than EUR 10 million; and

- ✓ Profit (Loss) before Income Tax of the current financial year is less than EUR 1 million

(b) Simplified Effective Tax Rate test

- The MNE can qualify for this safe harbour if it can demonstrate that the jurisdiction's Simplified Effective Tax Rate equals or exceeds the prescribed transition rates for the Financial Years during the transitional period. The formula is as below:

$$\text{Simplified Effective Tax Rate} = \frac{Simplified\ Covered\ Taxes}{Profit\ (Loss) Before\ Income\ Tax\ In\ Qualified\ CbC\ Report}$$

- The transition rates are typically set at a gradual increase, starting at 15% for the earliest years and increasing in subsequent years. These rates are set as follows:
  - ✓ 16% for FYs beginning in 2025; and
  - ✓ 17% for FYs beginning in 2026.

(c) Routine profits test

- The routine profits test compares a Tested Jurisdiction's Substance Based Income Exclusion (SBIE) amount under the GloBE Rules to its Profit (Loss) before Income Tax, as reported in the MNE's Qualified CbC Report.

- If a jurisdiction's SBIE amount equals or exceeds its Profit (Loss) before Income Tax, it indicates that there will be minimal (or no) excess profits in that jurisdiction, and the Tested Jurisdiction will be eligible for the safe harbour.

SBIE amount ≥ Profit before Income Tax

- The SBIE for the Transitional CbCR Safe Harbour shall be computed in accordance with Article 5.3 of the GloBE Rules or section 180(3) of the ITA. The SBIE amount estimated for the routine profit test does not include the payroll and tangible assets of entities that are not Constituent Entities under the CbCR (e.g., Entities held for sale) or GloBE Rules (e.g., Excluded Entities).

- If the Constituent Entity is located in different jurisdictions under CbCR and GloBE, its payroll and tangible assets are excluded from the SBIE amount for both jurisdictions' routine profit tests.

- A Tested Jurisdiction with a loss or zero profits will never generate income exceeding the routine profit amount. Hence, it will always pass the routine profits test. In this situation, the MNE will not need to calculate the jurisdiction's SBIE. This finding is consistent with the outcome under Article 5.1 of the GloBE Rules or section 174 of the ITA, which states that if a Tested Jurisdiction has no Net GloBE Income, an Effective Tax Rate computation is not needed.

9.11 The CbC Report must not be used to calculate the top-up tax amount under the GloBE Rules. Hence, if the safe harbour conditions are not met, then the general GloBE Rules apply, where any potential liability to top-up tax, either DTT or MTT, must be computed under the ordinary GloBE Rules.

9.12 To access the transitional safe harbour, the MNE Group must make an election for the safe harbour in the Information Return. If an MNE group decide not to apply the Transitional CbCR Safe Harbour with a jurisdiction in a Financial Year in which it is subject to GloBE Rules, it cannot qualify for that safe harbour in that jurisdiction in a subsequent year (“once out, always out” approach).

9.13 This once out, always out approach does not apply when the MNE Group did not have Constituent Entiities located in Malaysia in a previous Financial Year. For instance, an MNE Group is subject to the GloBE Rules in year 2025. In that year, the MNE Group has no Constituent Entities located in Malaysia. In year 2026, it incorporates a Constituent Entity in Malaysia. In this case, the MNE Group could still access the Transitional CbCR Safe Harbour with respect to Malaysia in year 2026.

9.14 If upon audit, it is determined that the taxpayer did not apply the Transitional CbCR Safe Harbour correctly, and a jurisdiction should not have benefitted from the Transitional CbCR Safe Harbour for a particular Financial Year, the GloBE Rules would apply fully for that and any subsequent Financial Year.

Treatment of Certain Entities and Group

9.15 Joint Ventures and JV subsidiaries may apply the Transitional CbCR Safe Harbor, even though they are not included in CbC Report. The MNE Group is required to take information from Qualified Financial Statement data and apply separately as if they were members of separate MNE Group.

9.16 An Investment Entity (including Insurance Investment Entity) is not required to make a separate GloBE calculation in a financial year when :

(a) the Investment Entity does not make an election under Section 193 or Section 194 of the ITA; and

(b) all the Constituent Entity Owners are resident in the same jurisdiction as that of the Investment Entity.

9.17 If the Investment Entity exercise one of the election under Section 193 or Section 194 of the ITA, Transitional CbCR Safe Harbour can still apply in jurisdictions where the Constituent Entity Owner and Investment Entity are located. The Total Revenue and Profit (Loss) before Income Tax of the Investment Entity shall be reflected only in the jurisdictions of its direct Constituent Entity Owners in proportion to their Ownership Interest.

9.18 The Transitional CbCR Safe Harbour shall not apply in the jurisdiction of Ultimate Parent Entity where the Ultimate Parent Entity is a flow-through entity, except where:

(a) all the Ownership Interests in the Ultimate Parent Entity are held by a holder described in Section 189(1)(a) to (c) of the ITA; or

(b) the Ultimate Parent Entity is subject to Deductible Dividend Regime, all the Ownership Interests in the Ultimate Parent Entity are held by a holder described in Section 190(1)(a) to (c) of the ITA.

9.19 The Profit (Loss) before Income Tax of the Ultimate Parent Entity where the Ultimate Parent Entity is a flow-through entity shall be reduced to the extent where such amount is attributable to or distributed as result of an Ownership Interest held by a holder as described in paragraph 9.15.

Special Rule for Net Unrealised Fair Value Loss

9.20 A Net Unrealised Fair Value Loss shall be excluded from Profit (Loss) before Income Tax if that loss exceeds EUR 50 million in a jurisdiction.

9.21 A Net Unrealised Fair Value Loss means the sum of all losses, as reduced by any gains, which arise from changes in fair value of Ownership Interests (except for Portfolio Shareholdings).

Exclusions

9.22 The following Constituent Entities, MNE Groups or jurisdictions are excluded from Transition CbCR Safe Harbour:

(a) Stateless Constituent Entities

(b) Multi-parented MNE Groups where a single Qualified CbC Report does not include the information of the combined groups; and

(c) Jurisdictions with Constituent Entities that have elected to be subject to Eligible Distribution Tax System under Section 191 of the ITA;

Additional Guidance

9.23 The Transitional CbCR Safe Harbour tests are applied on a Tested Jurisdiction by Tested Jurisdiction basis. For this purpose, Constituent Entities, stand-alone Joint Ventures, and JV Groups that are located in the same jurisdiction are treated as being in separate Tested Jurisdictions. For example, if an MNE Group has 10 Constituent Entities and two different JV Groups located in Malaysia, then the MNE Group would have three Tested Jurisdictions for the purpose of the Transitional CbCR Safe Harbour in Malaysia – one Tested Jurisdiction for the 10 Constituent Entities, and one Tested Jurisdiction for each of the two JV Groups .

9.24 Adjustments must be made to the Tested Jurisdiction with respect to Hybrid Arbitrage Arrangements in order to determine whether the Tested Jurisdiction qualifies for the Transitional CbCR Safe Harbour. A Hybrid

Arbitrage Arrangement is —

(a) a deduction / non-inclusion arrangement;
(b) a duplicate loss arrangement; or
(c) a duplicate tax recognition arrangement.

9.25 The Tested Jurisdiction's safe harbour calculation must be adjusted by:

(a) excluding any expense or loss arising as a result of a deduction / non-inclusion arrangement or duplicate loss arrangement from the Tested Jurisdiction's Profit (Loss) before Income Tax; and

(b) excluding any income tax expense arising as a result of a duplicate tax recognition arrangement from the Tested Jurisdiction's income tax expense.

9.26 While the Transitional CbCR Safe Harbour offers significant relief, it does not exempt MNEs from all GloBE compliance obligations. MNEs are still required to prepare and submit the Information Return and ensure compliance with other aspects of the GloBE rules. The safe harbour specifically addresses the calculation of the top-up tax but maintains the requirement for overall transparency and reporting.

9.27 Further guidance on the Transitional CbCR Safe Harbour can be referred to in Annex A of the OECD Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023), as amended from time to time.

10. THE PERMANENT SAFE HARBOUR

10.1 An MNE that does not meet the requirements of a transitional safe harbour could still be eligible for the permanent safe harbour. A permanent safe harbour allows MNE groups to avoid certain complex computations to estimate whether they will likely pay a top-up tax under the GloBE Rules.

10.2 The Permanent Safe Harbour under the GloBE Rules serves several key purposes:

(a) Simplifying Compliance: It provides a streamlined method for MNEs to comply with the GloBE rules, reducing the need for detailed and complex tax calculations in low-risk jurisdictions.

(b) Reducing Administrative Burden: Allowing simplified calculations lowers the administrative and financial burden on MNEs, making it easier to adhere to international tax standards.

(c) Ensuring Tax Certainty: It offers MNEs greater predictability and stability in their tax obligations, facilitating more effective financial planning and risk management.

(d) Fostering Consistency: The safe harbour aims to apply the GloBE Rules consistently across different jurisdictions, enhancing the integrity and effectiveness of global tax compliance efforts.

10.3 When Malaysia as a Tested Jurisdiction meets the requirements of any one of these tests, the MNE Group will be treated as having zero or no top-up tax liability arising in Malaysia –

(a) The Routine Profits Test -

- The jurisdiction's SBIE amount is greater than or equal to GloBE Income as determined under the Simplified Income Calculation.

- The Routine Profits Test can also apply where a jurisdiction has a GloBE loss as determined under the Simplified Income Calculation.

(b) The De Minimis Test -

- The Average GloBE Revenue is less than EUR 10 million; and
- The Average GloBE Income is less than EUR 1 million or has a loss in accordance with section 182 of the ITA.

(c) The Effective Tax Rate test is based on the GloBE Effective Tax Rate calculations -

- The Effective Tax Rate of the jurisdiction is at least 15%, as determined by the simplified income and tax calculation.

10.4 Where a Tested Jurisdiction qualifies for the Simplified Calculations Safe Harbour (as described in Annex A of the OECD Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023), as amended from time to time), the current top-up tax will be reduced to zero in accordance with Article 8.2 of the GloBE Model Rules or section 195 of the ITA. This safe harbour does not completely eliminate any potential Additional Current Multinational Top-up Tax in the future.

10.5 Even when utilising the Permanent Safe Harbour, MNEs must still prepare and file their Information Return. This return includes reporting on the application of the safe harbour and any simplified calculations used.

10.6 The Inclusive Framework has yet to fully develop simplified income and tax calculations. Further guidance will be provided accordingly once simplified calculations are fully developed.

Non-Material Constituent Entities (NMCEs)

10.7 A Filing Constituent Entity may make an annual election to apply the simplified income and tax calculations for its NMCEs, which applies on an Entity-by-Entity basis, not a jurisdictional basis.

10.8 An NMCE is an entity, including its Permanent Establishments, that is not consolidated on a line-by-line basis in the Ultimate Parent Entity's

consolidated financial statements solely for size or materiality grounds.

10.9 The NMCE definition only applies if it meets the following conditions:

(a) The Consolidated Financial Statements need to meet paragraphs (a) or (c) of the definition of Consolidated Financial Statements in subsection 157(1) of the ITA, and the Consolidated Financial Statements must be externally audited; and

(b) In the case of an Entity whose Total Revenues exceed EUR 50 million, the financial accounts that are used to fill in the CbC Report must be prepared in accordance with either an Acceptable Financial Accounting Standard or an Authorised Financial Accounting Standard.

10.10 Under the NMCE simplified calculations:

(a) GloBE Revenue and GloBE Income of an NMCE is equal to the Total Revenue; and

(b) The Adjusted Covered Taxes of an NMCE is equal to the Income Tax Accrued (Current Year)

as determined in accordance with the Relevant CbC Regulations.

10.11 Relevant CbC Regulations mean the CbCR regulations of the Ultimate Parent Entity jurisdiction or of the surrogate parent entity jurisdiction if a CbC Report is not filed in the Ultimate Parent Entity jurisdiction. If a jurisdiction does not have domestic CbC regulations, Relevant CbC Regulations shall mean the OECD BEPS Action 13 Final Report and the OECD Guidance on the Implementation of Country-by-Country Reporting (OECD CbCR Guidance).

11. DISCLAIMER

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

INLAND REVENUE BOARD OF MALAYSIA

2 DECEMBER 2024