Global Minimum Tax in Malaysia

Reconsidering tax incentives

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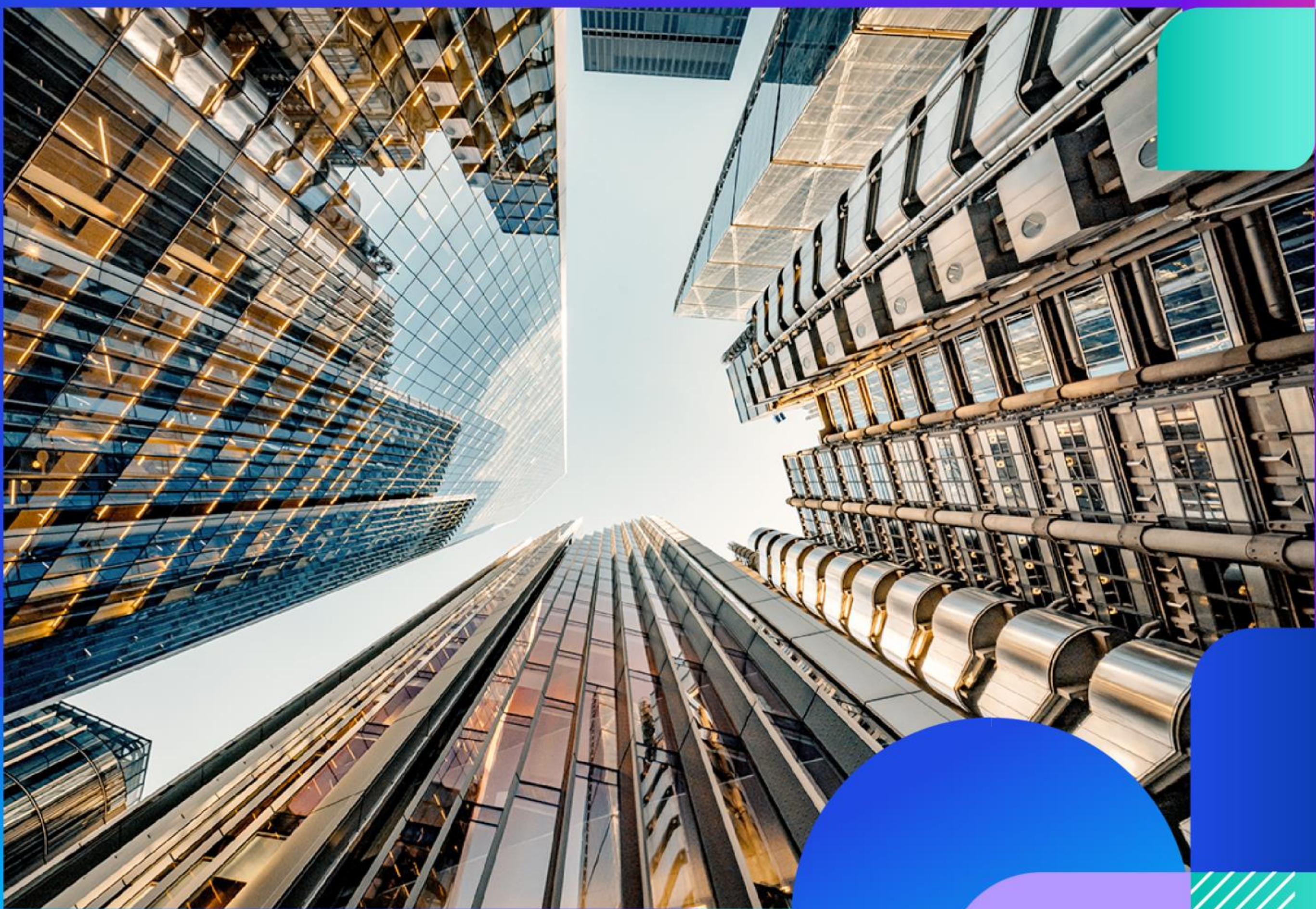
KPMG in Malaysia



Overview and Commentary

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Key Message

"The announcement of the Malaysian Government's commitment to relook at tax and non-tax incentives as well as the feasibility of the *Kredit Cukai Pelaburan Strategik* is **a step in the right direction**."

Malaysia, like many other countries in Southeast Asia, has relied on tax incentives to attract Foreign Direct Investments ("FDIs"). Tax incentives such as tax holidays, pioneer status and investment tax allowance play a vital role in positioning Malaysia as an attractive place of investment. However, the implementation of Global Minimum Tax ("GMT") in Malaysia, which takes effect from the financial years beginning on or after 1 January 2025, may have shaken the Malaysian tax incentive landscape.

Whilst the Malaysian headline corporate income tax rate of 24% is well above the GMT rate of 15%, an MNE Group's Global Anti-base Erosion ("GloBE") Effective Tax Rate ("ETR") in Malaysia may be less than 15% subsequent to making a series of GloBE adjustments. This is particularly so for MNE Groups enjoying tax incentives in Malaysia. In the event where the tax incentive drives the MNE Group's GloBE ETR to less than 15%, a top-up tax could be imposed.

Given the implementation of the GloBE Rules may nullify the effects of tax incentives, MNE Groups that have invested significantly in Malaysia to avail themselves of tax incentives have found themselves in a disadvantageous position as the commitments made may no longer commensurate with the promised tax benefits. Hence, the onus is on the Malaysian Government and MNE Groups to reassess the effectiveness of the existing tax incentives regime and to explore any feasible alternatives.

Developments in Southeast Asia

It is certainly worth considering the measures taken by other jurisdictions in striking a balance between maintaining their competitive advantage and meeting the Pillar 2 requirements.

Looking closer to home, the following regional developments are of particular note:

Jurisdiction	Developments in relation to tax incentives
Singapore	**Refundable Investment Credit Scheme ("RICS")** Tax credits on qualifying expenditure and consistent with the Qualified Refundable Tax Credit ("QRTC") requirements under the GloBE Rules.
Thailand	**Competitiveness Enhancement Fund** Financial support to qualifying investors where stipulated conditions are met. **Election to apply a 10% corporate income tax ("CIT") rate** Election for a 10% CIT rate in lieu of income tax exemption which will also double the taxpayer's tax incentive period by the remaining tax exemption period
Vietnam	**Investment Support Fund** Investment support for eligible taxpayers in targeted industries where stipulated conditions are met.

What's in store for Malaysia ?

On the home front, the Malaysian Government had issued a GMT Survey Form earlier this year to affected MNE Groups which are enjoying tax incentives in Malaysia. The GMT Survey Form serves as a medium for the Malaysian Government to collect information and feedback from such MNE Groups to evaluate the potential impact of existing tax incentives to GMT. It could also be used as a starting point for affected MNE Groups to renegotiate existing tax incentives.

While our neighboring countries have announced measures as mentioned above to remain competitive, the Prime Minister and Minister of Finance YAB Dato' Seri Anwar bin Ibrahim expressed in the 2025 Budget Announcement tabled on 18 October 2024 that the Malaysian Government is committed to streamlining existing tax incentives and introducing new non-tax incentives. It was also announced that the feasibility of a *Kredit Cukai Pelaburan Strategik* would be assessed. *Kredit Cukai Pelaburan Strategik* is not defined at this juncture.

If the *Kredit Cukai Pelaburan Strategik* is a QRTC, then it is essentially a tax credit that is creditable against tax liabilities. It has less negative impact on the GloBE ETR as compared to other tax incentives such as tax holidays. Nevertheless, there are various conditions to the design of the refundable tax credit to be considered a QRTC. Amongst others, tax authorities are required to refund any unutilised tax credit within a stipulated period. Otherwise, the refundable tax credit will be treated as a non-QRTC which would have a negative effect on the GloBE ETR. In this regard, if the Malaysian Government is to introduce a refundable tax credit mechanism in Malaysia, careful consideration needs to be exercised in the design of the rule.

Meanwhile, we would be remiss if we did not acknowledge that the ongoing discussions pertaining to the above have brought the question of how certain tax incentive-centric provisions of the GloBE Rules may be interpreted. Differing jurisdictional viewpoints and nuances in legislative interpretation have been observed, and we will therefore be keeping a keen eye on the Malaysian Government's position.

For instance, the GloBE Rules provides that deferred tax assets created under certain circumstances would be disregarded for GloBE Rules purposes. It would be interesting to see how this would impact tax attributes generated from tax incentives in Malaysia, e.g. pioneer losses and investment tax allowance balances carried forward.

In a nutshell

Though FDIs have undoubtedly played a pivotal role in the economic transformation of the Malaysian economy, Malaysia's relative attractiveness for foreign investors could be impacted due to the regional emerging markets. With the GloBE Rules being brought into the mix recently, these authors are of the view that the announcement of the Malaysian Government's commitment to relook at tax and non-tax incentives as well as the feasibility of the *Kredit Cukai Pelaburan Strategik* is a step in the right direction for both existing investors and attracting new ones. This is particularly so given the theme of the 2025 Budget "*Membugar Ekonomi, Menjana Perubahan, Mensejahtera Rakyat*".

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