Consultation on implementation of global minimum tax and minimum top-up tax in Hong Kong

The Government today (December 21) launched a consultation exercise to gather views on the implementation details of the global minimum tax under Pillar Two of the international tax reform proposals drawn up by the Organisation for Economic Co-operation and Development (OECD) to address base erosion and profit shifting risks arising from the digitalisation of the economy (commonly known as BEPS 2.0).

The Secretary for Financial Services and the Treasury, Mr Christopher Hui, said, "As an international financial centre and a responsible member of the international community, Hong Kong has all along been supportive of international efforts to enhance tax transparency and combat tax evasion. To fulfil our obligation as a co-operative player in international tax co-operation and safeguard Hong Kong's taxing rights, Hong Kong is fully committed to implementing Pillar Two of BEPS 2.0 in accordance with international consensus."

The BEPS 2.0 package was promulgated by the OECD in October 2021. The goal of the global anti-base erosion (GloBE) rules under Pillar Two of the package is to ensure that large multinational enterprise (MNE) groups with consolidated annual revenue of at least 750 million euros pay a global minimum tax of at least 15 per cent on income derived by their constituent entities in every jurisdiction where they operate, thereby putting a floor on competition over corporate income tax. The implementation of the global minimum tax will reduce the latitude for jurisdictions to introduce tax exemption or extremely low preferential tax rate as a means to enhance their tax competitiveness in future, thus creating a more level playing field in terms of taxation. In 2021, Hong Kong joined more than 130 jurisdictions in committing to implementing BEPS 2.0.

As announced by the Financial Secretary in the 2023-24 Budget, Hong Kong will apply the global minimum effective tax rate of 15 per cent on in-scope MNE groups starting from 2025 onwards. Only in-scope large MNE groups will be subject to the global minimum tax. The vast majority of corporate taxpayers, including local small and medium enterprises, will not be affected.

Under the global minimum tax, if the effective tax rate of an in-scope MNE group in Hong Kong is lower than 15 per cent, other relevant jurisdictions have the right to collect top-up tax in respect of the low-taxed Hong Kong MNE entities concerned. To preserve Hong Kong's taxing rights with respect to such entities instead of ceding them to other jurisdictions, Hong Kong will apply the Hong Kong minimum top-up tax (HKMTT) to in-scope MNE groups starting from 2025 onwards so that the effective tax rate of these entities will be brought up to 15 per cent. By introducing the HKMTT, in-scope MNE groups will be spared the need to pay top-up tax in every jurisdiction where they operate. This will help reduce their compliance burden.

"It would be in Hong Kong's best interest to implement the HKMTT to fulfil Hong Kong's international tax commitment and preserve its taxing rights," Mr Hui said.

Hong Kong will need to amend the Inland Revenue Ordinance (Cap. 112) to implement the global minimum tax and the HKMTT. To take forward the legislative exercise, a consultation exercise will be launched. A consultation paper has been published today to explain the concepts of the GloBE rules, which will be strictly followed by Hong Kong and other jurisdictions, and the HKMTT, and seek views on specific implementation issues. Such issues include:

- the Government's proposed approach with respect to certain areas relating to the implementation of the GloBE rules;
- the design and implementation of the HKMTT; and
- the tax compliance and administration framework.

"In formulating the legislative proposal, the Government will strive to maintain Hong Kong's tax competitiveness by upholding Hong Kong's simple, certain and low tax regime. Insofar as the implementation of the global minimum tax and the HKMTT is concerned, emphasis is laid on minimising tax compliance burden of in-scope MNE groups and maintaining the simplicity of the tax regime," Mr Hui added.

To reduce compliance burden and enhance tax certainty, the Government has proposed business-friendly features in the overall framework of the implementation of the global minimum tax and the HKMTT. These include:

- aligning the design of the HKMTT, including the scope and tax rate, with that of the global minimum tax to ensure simplicity of the regime;
- allowing an in-scope MNE group to decide on how the HKMTT payable is allocated among its Hong Kong entities to provide for flexibility;
- providing for safe harbours in the framework to relieve compliance burden and enhance tax certainty; and
- requiring an in-scope MNE group to only furnish a single top-up tax return for the purpose of both the global minimum tax and the HKMTT to minimise compliance burden.

The consultation paper is available on the website of the Financial Services and the Treasury Bureau (www.fstb.gov.hk/tb/en/others/consultation.htm). Members of the public are welcome to send their views to the Financial Services and the Treasury Bureau by post (24/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong) or email (beps@fstb.gov.hk). The three-month consultation will end on March 20, 2024.

Subject to the outcome of the consultation exercise, the Government targets to introduce the legislative amendments into the Legislative Council in the second half of 2024.