THE NATIONAL ASSEMBLY	THE SOCIALIST REPUBLIC OF VIETNAM Independence - Freedom - Happiness
Resolution No. 107/2023/QH15	

RESOLUTION

On imposition of top-up enterprise income tax under the Global Anti-Base Erosion Rules

THE NATIONAL ASSEMBLY

Pursuant to the Constitution of the Socialist Republic of Vietnam;

Pursuant to the Law on Organization of the National Assembly No. 57/2014/QH13, amended and supplemented under the Law No. 65/2020/QH14;

Pursuant to the Law on Promulgation of Legal Documents No. 80/2015/QH13, which was amended and supplemented under Law No. 63/2020/QH14;

RESOLVES:

Article 1. Scope of regulation

This Regulation regulates the imposition of top-up enterprise income tax under the Global Anti-Base Erosion Rules.

Article 2. Taxpayers

1. Constituent entities of multinational enterprise (MNE) Groups which earn an annual revenue of EUR 750 million or more as stated in the consolidated financial statements of the ultimate parent companies in at least two out of the four fiscal years preceding the fiscal year, except for the following cases:

a) Governmental organizations;

b) International organizations;

c) Non-profit organizations;

d) Pension funds;

dd) Investment funds that are ultimate parent companies;

e) Real estate investment organizations that are the ultimate parent companies;

g) Organizations with at least 85% of asset value owned directly or indirectly through organizations specified at Points a to e of this Clause.

2. The Government shall detail this Article.

Article 3. Interpretation of terms

In this Decree, the terms below are construed as follows:

1. Global Anti-Base Erosion Rules mean the provisions specified in this Resolution and the Government's regulations in accordance with the set of global minimum tax regulations of the Global Base Erosion and Profit Shifting (BEPS) Cooperation Forum to which Vietnam is a member (hereinafter referred to as the GloBE rules).

2. *Group* means any of the following:

a) A collection of companies and organizations that have an affiliated relationship through ownership or control, according to which the types of assets, liabilities, income, expenses and cash flows of such companies and organizations are included in the consolidated financial statements of the ultimate parent company, and companies and organizations are excluded from the consolidated financial statements due to the size, materiality or held for sale;

b) A company residing in one country and having one or more permanent establishments in another country, provided that the company is not a company or organization of another group.

3. *MNE group* means a group having at least one constituent entity or permanent establishment that does not reside in the same country as the ultimate parent company.

4. *Ultimate parent company* means a company belonging to an MNE group that has direct or indirect control and ownership rights in other companies or organizations of an MNE group not subject to the control or ownership by any other company or organization and the consolidated financial statements of the ultimate parent company are not consolidated into any financial statements of another company or organization globally.

5. *Intermediate parent company* means a constituent entity of an MNE group (other than an ultimate parent company, a partially owned parent company, a permanent establishment or an investment company) that directly or indirectly holds an ownership in another constituent entity within the same MNE group.

6. *Partially owned parent company* means a constituent entity of an MNE group (other than an ultimate parent company, permanent establishment or investment company) that meets the following conditions:

a) Directly or indirectly holds ownership of another constituent entity of that MNE group;

b) Having more than 20% of the right to profit that is held directly or indirectly by companies and organizations other than constituent entities of that MNE group.

7. *Constituent entity of an MNE group* means any company or organization belonging to the group and any permanent establishment of a company or organization belonging to the group, including:

a) Ultimate parent company;

b) Intermediate parent company (if any);

c) Partially owned parent company (if any);

d) Other company, organization, entity or business establishment affiliated to the group.

8. *Low-tax country* means a country where the MNE group, in the financial year, has net income under the GloBE rules and the effective tax rate for that financial year lower than the minimum tax rate.

9. *Low-taxed constituent entity* means a constituent entity of an MNE group residing in a low-tax country or a stateless constituent entity that during the fiscal year has income under the GloBE rules and the effective tax rate for that financial year lower than the minimum tax rate.

10. *Consolidated financial statement* means:

a) Financial statements that are prepared by a company according to accepted financial accounting standards, including assets, liabilities, income, expenses and cash flows of that company and other companies controlled by that company, presented in the reporting form of a single economic entity;

b) In case the company is a group specified at Point b Clause 2 of this Article, the consolidated financial statements are the company's financial statements prepared according to accepted financial accounting standards;

c) In case the ultimate parent company has financial statements specified at Points a and b of this Clause that are not prepared according to accepted financial accounting standards, the consolidated financial statements are those adjusted to eliminate any material differences;

d) In case the ultimate parent company does not prepare the financial statements specified at Points a, b and c of this Clause, the consolidated financial statements of the ultimate parent company are reports prepared according to applicable financial accounting standards, including an accepted financial accounting standard or another financial accounting standard modified to eliminate any material differences.

11. *Accepted financial accounting standards* mean international financial reporting standards (IFRS) and generally accepted accounting principles of

Australia, Brazil, Canada, member states of the European Union (EU), member states of the European Economic Area (EEA), Hong Kong (China), Japan, Mexico, New Zealand, China, India, South Korea, Russia, Singapore, Switzerland, United Kingdom and United States.

12. *Applicable financial accounting standard* means a set of generally accepted accounting principles that is allowed to be applied by the competent accounting authority in the country where the constituent entity is headquartered.

13. *Income or loss of each constituent entity* means the net income or loss in the financial statement that is determined for that constituent entity during the financial year under the GloBE rules.

14. *Average revenue, income or loss in a country* means the average value of 03 years (including the current financial year and 02 immediately preceding years) of revenue, income or loss in that country under the GloBE rules.

15. *Revenue in a country for a financial year* means the total revenue of all constituent entities in that country during the financial year under the GloBE rules.

16. *Income or loss in a country for a financial year* means the net income or loss in that country under the GloBE rules.

17. *Place of residence* of a constituent entity is determined as follows:

a) If the constituent entity is tax resident in a country based on the place of management, place of establishment or similar criteria, then the constituent entity is deemed to be resident in that country;

b) In other cases, the constituent entity is considered to be resident in the country in which it is established.

Article 4. Regulations on qualified domestic minimum top-up (QDMTT)

1. A constituent entity or collection of constituent entities of an MNE group specified in Article 2 of this Resolution that has production and business activities in Vietnam during the fiscal year must apply the regulations on QDMTT.

In case a constituent entity or collection of constituent entities in Vietnam generates income under the GloBE rules and the effective tax rate in Vietnam is below the minimum tax rate, the QDMTT in Vietnam shall be determined in accordance with Clauses 2 and 9 of this Article.

2. The QDMTT amount shall be calculated according to the following formula:

QDMTT = (Top-up tax percentage x Excess profit) + Additional top-up tax adjusted for the current year (if any).

3. Top-up tax percentage shall be calculated according to the following

formula:

Top-up tax percentage = Minimum rate - Effective tax rate.

4. The minimum tax rate is 15%.

5. The effective tax rate in Vietnam shall be calculated for each financial year according to the following formula:

$$\text{Effective tax rate in Vietnam} = \frac{\text{Total amount of enterprise income tax in Vietnam within the scope of application that has been adjusted during the fiscal year of constituent entities in Vietnam}}{\text{Net income in Vietnam for the following fiscal year under the GloBE rules}}$$

6. Excess profit shall be calculated according to the following formula:

Excess profit = Net income under the GloBE rules - Substance-based income exclusion (payroll and tangible asset carve-out) under the GloBE rules.

7. Net income under the GloBE rules shall be calculated according to the following formula:

Net income under the GloBE rules = Income under the GloBE rules of all constituent entities - Losses under the GloBE rules of all constituent entities.

8. Substance-based income exclusion under the GloBE rules when determining the excess profit is equal 5% of the total annual average tangible asset value of all constituent entities in Vietnam and 5% of the total payroll costs of all constituent entities in Vietnam under the GloBE rules. During the transition period from 2024, the substance-based income exclusion for each year shall comply with the rate specified in the Appendix to this Resolution.

9. The QDMTT amount shall be determined to be zero (0) in a financial year if the constituent entity or collection of constituent entities in the relevant fiscal year simultaneously meets the following conditions:

a) Having an average revenue under the GloBE rules in Vietnam of less than EUR 10 million;

b) Having an average income under the GloBE rules in Vietnam of less than EUR 01 million, or is suffering financial loss.

Every year, if the constituent entity satisfies the conditions specified in this Clause, it may choose to apply or not apply the QDMTT rate of 0 (zero).

10. The Government shall detail this Article.

Article 5. Regulations on income inclusion rules (IIR)

1. An ultimate parent company, partially owned parent company, or

intermediary parent company in Vietnam that is a constituent entity specified in Article 2 of this Resolution, that directly or indirectly holds ownership of a constituent entity subject to low tax rates abroad (hereinafter referred to as the low-taxed constituent entity) under the GloBE rules, at any time during the fiscal year, shall declare and pay tax in accordance with the IIR corresponding to the allocable share of the top-up tax under the GloBE rules of the low-taxed constituent entities during the fiscal year, unless the top-up tax has been paid in another country where there is qualified IRR to be given priority under the GloBE rules on tax priority order.

2. Total amount of top-up tax in a country shall be calculated according to the following formula:

Total top-up tax in a country = (Top-up tax percentage x Excess profit) + Additional top-up tax adjusted for the current year (if any) - QDMTT (if any)

3. Top-up tax percentage shall be calculated according to the following formula:

Top-up tax percentage = Minimum rate - Effective tax rate.

4. The minimum tax rate is 15%.

5. The effective tax rate in a country shall be calculated for each financial year according to the following formula:

$$\text{Effective tax rate in a country} = \frac{\text{Total amount of enterprise income tax in a country within the scope of application that has been adjusted during the fiscal year of constituent entities in that country}}{\text{Net income in that country for the following fiscal year under the GloBE rules}}$$

6. Excess profit shall be determined in accordance with Clause 6 Article 4 of this Resolution.

7. Net income under the GloBE rules in a country shall be determined in accordance with Clause 7 Article 4 of this Resolution.

8. Substance-based income exclusion under the GloBE rules when determining the excess profit is equal 5% of the total annual average tangible asset value of all constituent entities in a country and 5% of the total payroll costs of all constituent entities in a country under the GloBE rules. During the transition period from 2024, the substance-based income exclusion for each year shall comply with the rate specified in the Appendix to this Resolution.

9. The QDMTT is the payable amount under the regulations on QDMTT in another country for the fiscal year.

10. The top-up tax amount of each constituent entity in a country

generating income under the GloBE rules for the fiscal year that has been included when calculating net income under the GloBE rules in that country shall be calculated according to the following formula:

$$\text{Top-up tax of a constituent entity} = \text{Total top-up tax in a country} \times \frac{\text{Income under the GloBE rules of that constituent entity}}{\text{Aggregate income under the GloBE rules of all constituent entities in that country}}$$

11. Parent company's allocable share of the top-up tax of a low-taxed constituent entity is equal to Top-up tax of a low-taxed constituent entity under the GloBE rules multiplied by Parent company's inclusion ratio for the low-taxed constituent entity for a fiscal year. Parent company's inclusion ratio for the constituent entity shall be calculated according to the following formula:

$$\text{Parent company's inclusion ratio for the low-taxed constituent entity for a fiscal year} = \frac{\text{Income under the GloBE rules of the low-taxed constituent entity for the fiscal year - Income attributable to ownership interests held by other owners}}{\text{Income under the GloBE rules of the low-taxed constituent entity for the fiscal year}}$$

12. The top-up tax in a country shall be determined to be zero (0) in a financial year if the constituent entity or collection of constituent entities in the relevant fiscal year simultaneously meets the following conditions:

a) Having an average revenue under the GloBE rules in that country of less than EUR 10 million;

b) Having an average income under the GloBE rules in that country of less than EUR 01 million, or is suffering financial loss.

Every year, if the constituent entity satisfies the conditions specified in this Clause, it may choose to apply or not apply the QDMTT rate of 0 (zero).

13. The Government shall detail this Article.

Article 6. Tax declaration, payment and administration

1. Regarding QDMTT, the deadline for submission of the information return under the GloBE rules, top-up tax declaration along with an attached explanation of any discrepancies due to differences in financial accounting standards; and the deadline for payment of the top-up tax is no later than 12 months after the end of the fiscal year.

2. Regarding IIR, the deadline for submission of the information return under the GloBE rules, top-up tax declaration along with an attached explanation of any discrepancies due to differences in financial accounting standards; and the

deadline for payment of the top-up tax is no later than 18 months after the end of the fiscal year (for the first year in which the MNE group is subject to tax), or 15 months after the end of the fiscal year (for subsequent years).

3. The constituent entity that make tax declaration and payment shall be determined as follows:

a) If the MNE group has only one constituent entity in Vietnam, that constituent entity shall be in charge of filing declarations and paying top-up tax under the GloBE rules;

b) If the MNE group has more than one constituent entity in Vietnam, the MNE group shall issue, within 30 days from the end of the fiscal year, a written notice appointing one of the constituent entities in Vietnam as its designated entity to be in charge of filing declarations and paying top-up tax under the GloBE rules.

Past the time limit of 30 days from the end of the fiscal year, if the MNE group fails to issue a written notice appointing one constituent entity in Vietnam as its designated entity to be in charge of tax filing and payment, the tax office shall appoint a constituent entity in Vietnam to make tax declaration and payment;

c) When there is an event that leads to a change in the constituent entity in charge of tax filing and payment, within 10 days from the date of the occurrence of the event, the MNE group shall notify such to the tax office. Past the above time limit, if the MNE group fails to send notification, the tax office shall, within 10 days from the date of obtaining the information, notify to appoint the designated entity to submit declarations and pay tax;

d) In case the tax office has announced the designated entity to submit a declaration and pay tax as specified at Point b or c of this Clause and the tax office has information about the event leading to the change of the designated entity in charge of tax filing and payment, the tax office shall, within 10 days from the date of obtaining the information, notify to appoint another designated entity to submit declarations and pay tax.

4. Top-up tax under the GloBE rules shall be paid to the central budget.

5. The foreign currency exchange rate for determining the revenue and income threshold specified in Articles 2, 4, 5 and 6 of this Resolution is the average of the central exchange rate announced by the State Bank of Vietnam for the 12th month of year preceding the year in which the related revenue and income is generated.

6. Transitional safe harbor applies to fiscal years beginning on or before December 31, 2026 but not including a fiscal year that ends after June 30, 2028 (hereinafter referred to as the transitional period) as follows:

a) In the transitional period, the top-up tax in a country for a fiscal year is equal 0 (zero) when any of the following criteria is met:

a.1) In the fiscal year, the MNE group has a qualified Country-by-Country Report (CbCR) reflecting total revenues of less than EUR 10 million and pre-tax profit of less than EUR 1 million or incurs a loss in that country;

a.2) In the fiscal year, the MNE group has a simplified effective tax rate in that country equivalent to at least 15% for 2023 and 2024, 16% for 2025 and 17% for 2026;

a.3) The MNE group's profit (or loss) before income tax in that country is equal to or less than the substance-based income exclusion amount as calculated under GloBE rules for the constituent entities resident in that country according to the CbCR;

b) During the transition period, there shall be no administrative tax penalties for violations of filing and submission of the information return under the GloBE rules, and top-up tax declaration along with an attached explanation of any discrepancies due to differences in financial accounting standards.

7. The constituent entities may choose and use a simplified calculation method to determine the satisfaction of the liability reduction criteria for excess profits, average revenue and income, and effective tax rate.

8. The top-up tax amount paid under this Resolution shall be offset when determining the payable enterprise income tax amount in Vietnam corresponding to the income received from offshore investment.

9. Pursuant to this Article, the Law on Tax Administration and relevant laws, the Government shall provide regulations on tax administration applicable to top-up enterprise income tax under the Global Anti-Base Erosion Rules.

Article 7. Implementation organization

1. The Government and ministries shall, within the ambit of their duties and powers, assume the prime responsibility for organizing and implementing the provisions and policies specified in this Resolution; urgently prepare conditions necessary for the implementation of the Resolution; focus on organizing and implementing multilateral cooperation activities on automatic information exchange to serve the collection of global minimum tax; develop an official implementation plan and roadmap, assign responsibilities, organize apparatus and resources for the tax offices to promptly meet the requirements in terms of capacity, and take measures to improve voluntary compliance for taxpayers.

2. The National Assembly Standing Committee, the Ethnic Council and Committees of the National Assembly, National Assembly delegations, National Assembly deputies, People's Councils of provinces and centrally-run cities, the Fatherland Front Vietnam and its member organizations shall, within the ambit

of their duties and powers, supervise the implementation of this Resolution.

Article 8. Effect

1. This Resolution takes effect from January 1, 2024 and applies from the 2024 fiscal year.

The Government shall urgently implement the revised Enterprise Income Tax Project in accordance with the Law on Promulgation of Legal Documents, submit it to the National Assembly Standing Committee and the National Assembly for consideration and inclusion in the 2024 Law- and Ordinance-Making Program.

2. If there are different provisions on the same issue between this Resolution and laws or other resolutions of the National Assembly, this Resolution shall prevail.

3. In case the Global Base Erosion and Profit Shifting (BEPS) Cooperation Forum provides any guidance, amendment or supplementation to the GloBE rules after this Resolution comes into force, the Government shall provide detailed provisions for implementation. If such guidance, amendment or supplementation is different from this Resolution, such difference should be reported to the National Assembly for consideration and decision; or submitted to the National Assembly Standing Committee for consideration, decision and report to the National Assembly at the nearest session, in urgent cases while the National Assembly is not in session./.

This Resolution was adopted on November 29, 2023, by the XVth National Assembly of the Socialist Republic of Vietnam at its 6th session.

CHAIRMAN OF THE NATIONAL ASSEMBLY

Vuong Dinh Hue

APPENDIX

SUBSTANCE-BASED INCOME EXCLUSION FOR EACH YEAR IN THE TRANSITIONAL PERIOD

(Attached to the National Assembly's Resolution No. 107/NQ-CP dated November 29, 2023)

Fiscal year beginning from	Payroll rate (%)	Ratio of tangible assets (%)
2024	9.8	7.8
2025	9.6	7.6
2026	9.4	7.4
2027	9.2	7.2
2028	9	7
2029	8.2	6.6
2030	7.4	6.2
2031	6.6	5.8
2032	5.8	5.4