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M&A in Asia Pacific- A tax-based perspective

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M&A IN ASIA PACIFIC: A TAX-BASED PERSPECTIVE

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With you today

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Agenda

A challenging tax environment in Asia Pacific

The impact of a global minimum tax

Structuring opportunities and pitfalls

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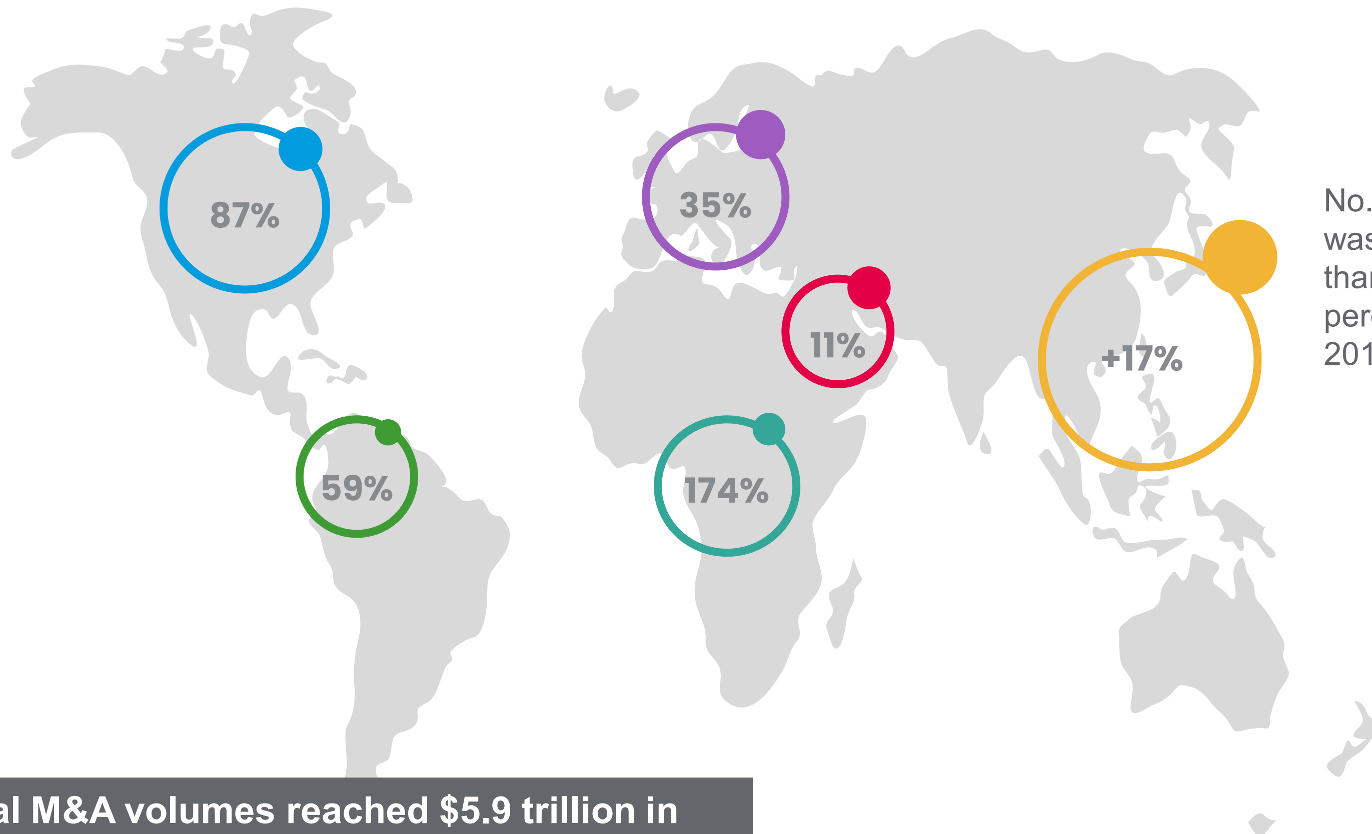
2021: A record-breaking year for M&A



No. of deals in Asia was 20 percent higher than 2020 and 30 percent higher than 2019

Global M&A volumes reached $5.9 trillion in value – a 64 percent increase compared to 2020

Global cross-border activity grew by 68% to $2.1 trillion

*% calculation based on deal value

- Africa 174%
- U.S.& Canada 87%
- Latin America & the Caribbeans 59%
- Europe 35%
- Asia Pacific 17%
- Middle East 11%

Source: https://www.spglobal.com/marketintelligence

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A challenging tax environment in Asia Pacific

Key factors with tax implications

- Capital gain vs revenue
- Target structure (substance)
- Indirect share transfer
- Financing structure (interest deduction)
- Government stimulus
- TP risks

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Key considerations

Capital gain vs. revenue

- Challenge from tax authorities on whether a gain should be capital or revenue in nature
- Examples: Hong Kong, New Zealand and Singapore

Indirect share transfer

- Historical tax risks and transaction risks in non-reporting scenario
- Examples: China and Vietnam

Government stimulus

- Tax authorities' review on COVID-19 pandemic stimulus recipients
- Example: Australia

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Key considerations (continued)

Target legal structure

- Challenge from tax authorities from ‘treaty shopping’ perspective for entities with insufficient substance

Financing structures

- Interest payments deductibility
- TP risks, thin-capitalization and anti-hybrid mismatch

Transfer Pricing (TP) risks

- TP documentation compliance (e.g. Thailand)
- Related party transactions analysis

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Trends and outlook

How to navigate the Asia Pacific tax environment

Predictability & consistency

Significant discrepancy across AP jurisdictions in consistency

Future tax developments in less mature economies

Appeal system

More established in mature economies, e.g. Australia, Japan, Hong Kong, New Zealand and Singapore

Developing countries will need to improve appeal systems for independent or judicial review

Digitalization

Electronic filing of tax returns and the electronic transfer of payments increased efficiency and improved compliance

e.g. China and India

BEPS 2.0 & local laws

Local adaptations leading to new planning opportunities

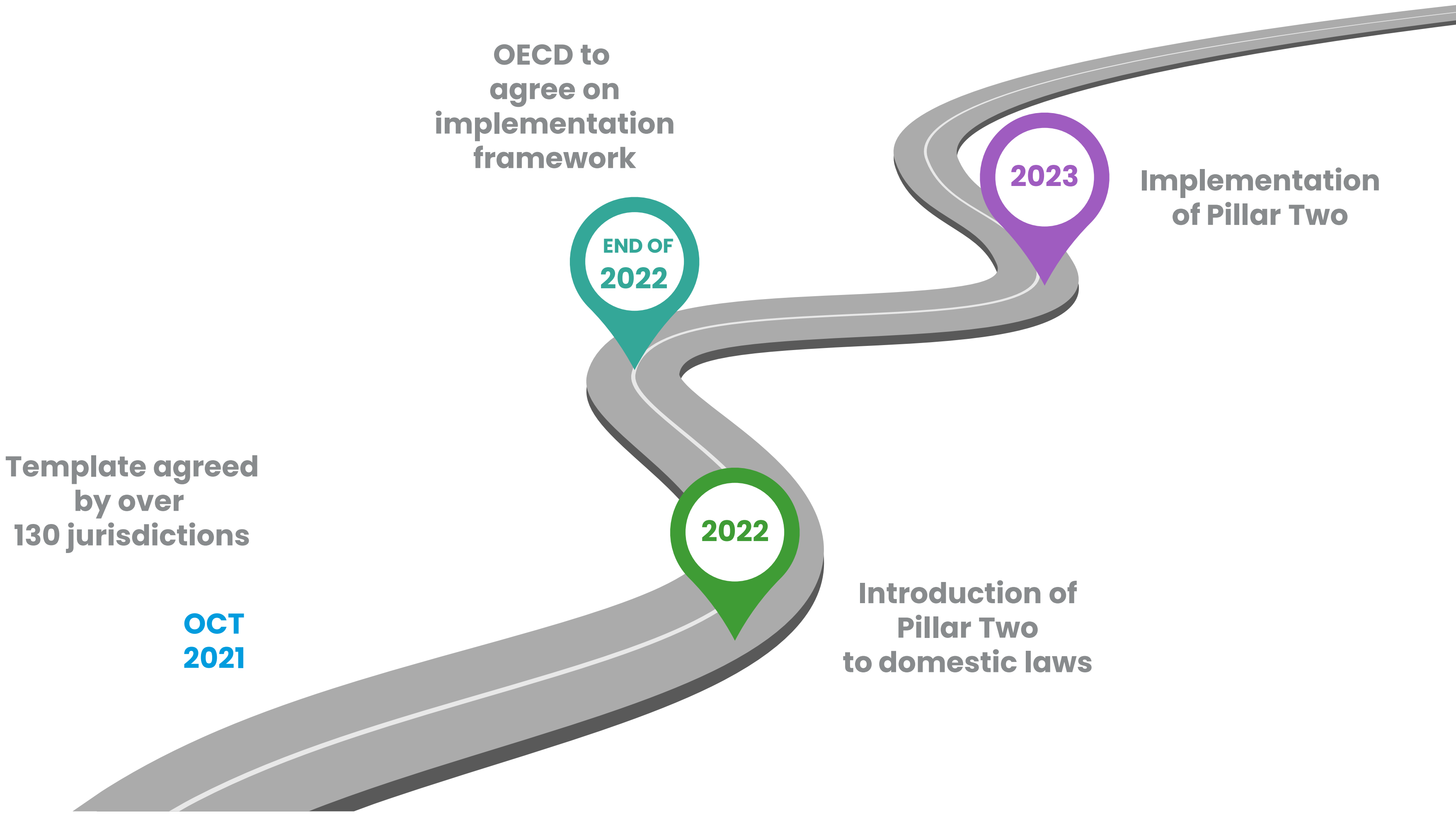
The impact of a global minimum tax

Base erosion and profit shifting (BEPS) 2.0

New global tax framework with two components

Pillar One	Pillar Two
Reallocation of taxable profits from multinational enterprises (MNEs)	Global minimum effective tax rate of 15 percent
More than 20 billion Euros in global turnover and profitability above 10 percent	Global turnover of 750 million Euros or more

Timeline: Pillar Two implementation



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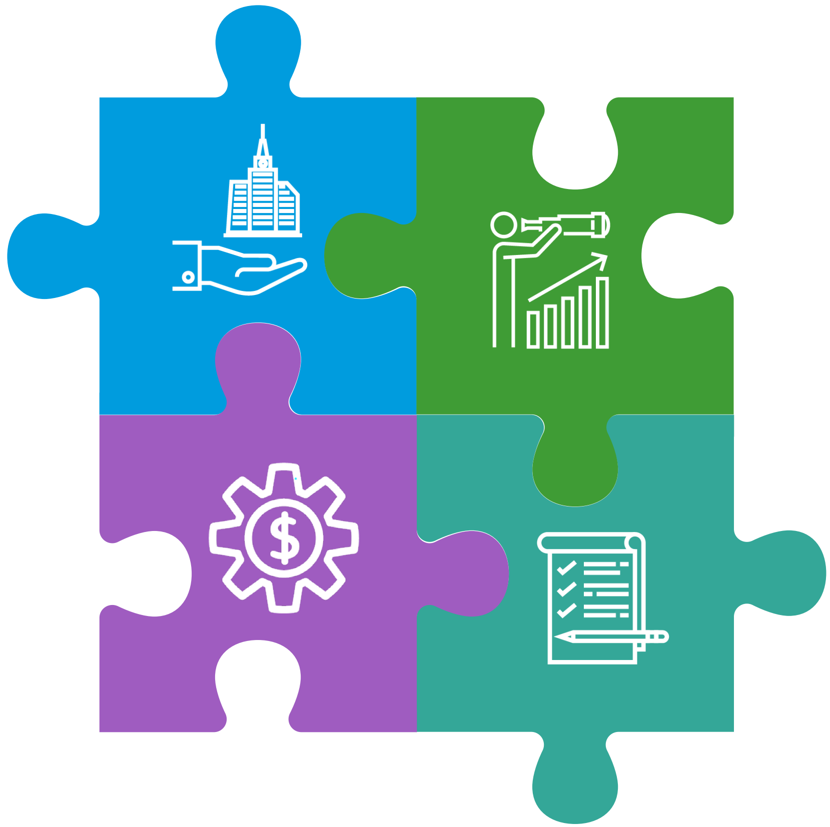
Pillar Two: Impact on tax incentives

Tax holidays & special economic zones

R&D incentives & enhanced deductions



Activity & industry-based tax incentives

Exempt income classes

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Pillar Two: Impact on tax incentives (continued)

Tax holidays and special economic zones

- Tax holidays for certain industries (e.g. manufacturing)
- Concessional tax rates for entities set up in special economic zones (e.g. Hainan Free Trade Port in China)

Activity and industry-based tax incentives

- Low tax rate incentives for certain activities / industries (e.g. regional headquarter, treasury centres, financial services, etc.)

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Pillar Two: Impact on tax incentives (continued)

R&D incentives and enhanced deductions

- Non-refundable /refundable tax credits
- Enhanced / accelerated deductions / grants

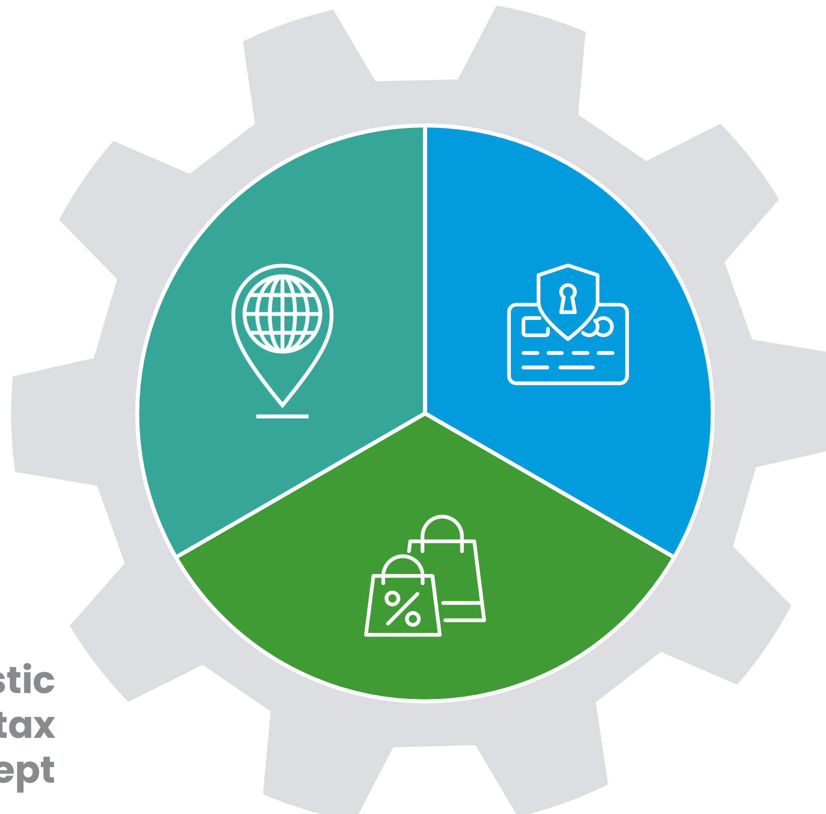
Exempt income classes

- Exemption from certain types of income (e.g. government bond income, debt securities, etc.)
- Exempt foreign-sourced income & capital gains in territorial / semi-territorial regimes

Pillar Two: Potential policy responses

Tax incentives unwound / rate increased

- No or low-interest tax incentives may not survive
- Jurisdictional blending may help



Alternative non-tax revenue

- As replacement of tax incentives
- e.g. Payroll Incentives, reduced regulatory burdens

Domestic minimum tax concept

- For in-scope multinationals only
- Incentives to be maintained for out of scope taxpayers

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Overall impact to Asia Pacific

Country	Corporate Tax Rate
UAE	0%
Bahrain	0%
Uzbekistan	7.5%
Qatar	10%
Macau	12%

Within AP, only Macau has a headline rate of 12 percent. As such, the impact will largely depend on the type of tax incentives its group entities are enjoying.

In particular, MNEs with a higher proportion of single operation in a jurisdiction

(e.g., manufacturing plant benefiting from concessional tax rates) may be more adversely affected.

As there is no grandfathering of existing structures or transitional relief from Pillar Two for existing incentives, it is important to assess the impact and plan for further action as soon as possible.

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Our takeaway

1. The complex rules are likely to trigger changes in domestic rules and rates

2. Adoption of Global Anti-Base Erosion Model (GloBE) rules by jurisdictions ensures the collection of top-up tax

3. Early impact assessments and scenario modelling can help with planning of how to respond to the changes

4. Financial statements and accounts of MNEs will pay a crucial role in effective tax rate calculation

Structuring opportunities and pitfalls

Structuring opportunities

Jurisdictional blending

- Restructuring to centralize operations in certain jurisdictions can mitigate the impact of global minimum tax

Example: Hong Kong

- Relocate operations from other jurisdictions with high taxed profits to Hong Kong to blend with any pre-existing Hong Kong low taxed profits
- This may result in simplified group structures or transaction flows while preserving pre-existing Hong Kong tax incentive benefits

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Structuring opportunities

Tax exemption applied to mergers/demergers

- Tax impact of mergers, de-mergers and transfers of branches of activities may be neutralized to the extent that a number of requirements are met

Example: Malaysia

- Relief from stamp duty and real property gains tax may be available, subject to certain conditions:
  - For transfer of shares or undertaking in connection with a scheme for the reconstruction or the amalgamation of companies
  - For transfer of property (including shares) between associated companies with the objective of achieving greater efficiency in operation

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Structuring opportunities

Group tax regime

- Specific incentives may apply to groups of companies (participation exemption, assessment of corporate income tax charges based on the aggregated income of the group members, etc.)

Example: Singapore

- Transfer of excess current year trade losses, tax depreciation, and approved donations to another company within the same group is allowed if certain conditions are satisfied:
  - All companies must be incorporated in Singapore
  - At least a 75 percent ownership relationship between claimant and transferor
  - Claimant and transferor have the same accounting year-end

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Structuring pitfalls

Limitation on tax deduction of financial costs

- Certain jurisdictions put limitations on the deduction of financial expenses

Example: Japan

- Generally, foreign related party debts must not exceed three times of the amount of the lender's share in the borrowing Japanese company's net equity
- Also, interest on related party borrowing exceeding 20 percent of the adjusted taxable profits is not allowed as a deduction under the earnings stripping rule

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Structuring pitfalls

Transfer pricing (TP) rules

- TP rules vary from jurisdiction to jurisdiction. In certain cases, updated TP documentation is required at corporate taxpayer level to support all intercompany transactions. Potential tax risks arise from failure to comply with such requirements

Example: Malaysia

- Malaysian companies which fail to prepare contemporaneous transfer pricing documentation would be subject to a penalty of not less than RM 20,000 and not more than RM 100,000
- Non-arm’s length transactions may be adjusted or disregarded. Any tax undercharged due to such adjustment would be subject to penalty and surcharge

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Conclusion

- Possible discrepancy may arise from BEPS 2.0 leading to more uncertainty and tax risks
- Essential to understand thoroughly the rapidly changing tax landscape and prepare for compliance with a global view
- Tight timeline for impact assessment. Opportunity to rethink choice of capital structure, location of intangibles and related R&D activities etc.
- Develop an efficiency plan
- Continue to monitor and work with tax professionals to transition into post-BEPS global landscape

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QUESTIONS AND ANSWERS?

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Thank you
for your time
and attention

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