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1200 G Street, N.W., Suite 300
Washington, D.C. 20005-3814
202.638.5601
tei.org

10 July 2024

Ministry of Finance
100 High Street
#06-03 The Treasury
Singapore 179434

Via email: pc_mmtbill@mof.gov.sg

RE: Public Consultation on Proposed Multinational Enterprise (Minimum Tax) Bill and Subsidiary Legislation

Dear Sir or Madam:

On 10 June 2024, the Ministry of Finance ("MOF") issued Singapore's draft legislation (the "Draft Legislation") to impose a Multinational Enterprise Top-up Tax ("MTT") and Domestic Top-up Tax ("DTT") on certain corporate taxpayers. The MTT and DTT are part of Singapore's effort to implement Pillar Two of the OECD's project on the digitalization of the economy. The MOF invited stakeholders to provide feedback on the Draft Legislation and on behalf of Tax Executives Institute, Inc. ("TEI"), I am pleased to provide our comments.

About TEI

TEI was founded in 1944 to serve the needs of business tax professionals. Today, the organization has 56 chapters in Asia, Europe the Middle East & Africa ("EMEA"), and North and South America. TEI, as the preeminent association of in-house tax professionals worldwide, has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our over 6,200 individual members represent over 2,800 of the leading companies around the world.

TEI Comments

TEI commends the MOF for seeking stakeholder input on the MTT and DTT legislation as Singapore implements the GloBE model rules set forth in the OECD's Pillar Two guidance. We hope our comments, questions, and recommendations below are helpful to MOF as it drafts Singapore's Pillar Two legislation as TEI members are the corporate personnel who will spearhead compliance with any final legislation implementing Pillar Two.

1. Proposed Clarifications to the Draft Legislation

Section 12(3) of the Draft Legislation provides that any "right, obligation, debt or liability in this Act of a constituent entity that is a permanent establishment is that of its main entity." This language raises the question of whether the liability to pay the DTT of a Singapore branch of a foreign corporation lies with the foreign head office. Though section 54 discusses payment of DTT by the Designated Local DTT Filing Entity, section 12(3) seems to imply that the liability to pay the top up tax resides with the main entity instead of the Singapore constituent entity ("CE") in instances where the Singapore CE is a branch. It is important for purpose of DTT that the branch be liable for the DTT, like it is liable for taxes arising from the branch's operations in Singapore.

Section 15(5)(c) of the Draft Legislation states that "covered taxes" of a CE include "taxes imposed as a substitute for a tax on profits that generally applies in a jurisdiction, including withholding taxes on income." Regarding withholding taxes, it would be helpful to clarify whether they are based on foreign income tax reported on an income statement, which would include accrued amounts, or merely foreign withholding tax actually paid.

Section 15(13) of the Draft Legislation prescribes the Financial Accounting Net Income or Loss ("FANIL") of CEs of a Multinational Enterprise ("MNE") group located in Singapore for DTT purposes. It is important to provide MNEs the option to adopt their Ultimate Parent Entity's ("UPE") accounting standards for purposes of DTT. This will avoid creation of potential mismatches and complex additional compliance processes needed to determine the amount of minimum tax at both the country and group levels. Also, country-by-country reports ("CbCR") and the GloBE Information Return ("GIR") are prepared based on the UPE's accounting standards. Thus, to maintain global uniformity, it is critical for CEs located in Singapore to be given the option to apply the UPE's accounting standard, including to submit unaudited financial statements under those standards.

Under Section 23 – "Responsible members of MNE group" – it would be helpful to provide examples to illustrate how the different rules operate in determining the "responsible entity" chargeable with MTT for a financial year.

Section 28(4) addresses the substance-based income exclusion for CEs other than "special entities." For purposes of the exclusion, this section defines an "eligible employee" to include an "independent contractor participating in the ordinary operating activities of the constituent entity . . . ." TEI recommends the MOF clarify that an independent contractor includes any personnel formally employed by an agency but working for the CE.

The application of the GloBE Safe Harbours is addressed by Section 30 of the Draft Legislation, but the Safe Harbours themselves are not set forth in the Legislation. GloBE Safe Harbours such as the CbCR Safe Harbour for DTT purposes are important to MNEs to simplify compliance and reporting. TEI

recommends the GloBE Safe Harbours themselves (including transitional ones) be specified in any final legislation for taxpayer certainty.

An MNE group must register with the Inland Revenue Authority of Singapore ("IRAS") under Section 41(2) of the Draft Legislation via the group's UPE. TEI recommends, instead of the UPE registering, final legislation permit a local CE – appointed by the UPE – to register the MNE group with the IRAS. It would be more efficient and effective to have the local constituent entity manage the MNE group's relationship with local tax authorities rather than the UPE.

Filing the GIR is addressed in Section 50. Given that GloBE information could be based on UPE accounting standards, which may differ from Singapore IFRS, to manage compliance burden and to avoid confusion it should be clarified that MNE groups do not need to reconcile GIR data to local GAAP tax data in each jurisdiction and that GIR data should not be used for purposes other than to administer the Draft Legislation.

In addition, we welcome the central filing option for the GIR under Section 50(2) whereby a filing CE of a MNE group could file the GIR return with a competent authority in a jurisdiction outside Singapore pursuant to a qualifying competent authority agreement. This will ease the compliance burden for in-scope MNE groups. That said, based on our members' CbCR experience, there have been challenges implementing exchange agreements between some jurisdictions. It is therefore important for Singapore to adopt a globally consistent implementation approach instead of a Singapore specific requirement to avoid imposing an additional reporting burden on MNE groups.

Section 55 provides an election to pay an amount attributable to CE separately. The Draft Legislation permits an MNE group to elect to allocate a share of the group's DTT liability to a qualifying CE of the group, which then pays this share of the DTT on behalf of the group. We assume that such allocation is only allowed for the first DTT return, although the Draft Legislation does not specify this as such. If the intention is for such allocation to be allowed for supplementary returns, the law should so provide and explain how the allocation would apply in scenarios involving additional DTT payments and refunds.

Section 63 "Objections" sets the process for disputing an assessment of MTT or DTT and that an application to object an assessment must be made within two months from IRAS' service of the assessment notice. Given that taxpayers would need to work through extensive information gathering and analysis, as well as discussions with internal stakeholders (both locally and globally) before assessing if it should object to an assessment, we recommend taxpayers be given a longer objection period of at least four months from the service of the notice of assessment.

2. Other Areas for Draft Legislation to Address

a. GIR

It would be helpful to clarify in legislation or future guidance whether the revenue of excluded entities defined in Section 6 of the Draft Legislation (and their subsidiaries) will be excluded from GIR reporting.

b. Exchange rate applicable for MTT or DTT purposes

For greater taxpayer certainty, it would be helpful to prescribe the acceptable exchange rates in final legislation.

c. Transitional penalty relief for MTT and DTT

Section 8 prescribes the potential penalties for various offences. We understand from an earlier consultation that Singapore is open to considering transitional penalty relief for errors/mistakes made in the initial years of implementation if the MNE group can demonstrate that it has, in good faith, put in place appropriate systems to understand and comply with the rules. We recommend enshrining the specific transitional penalty relief provisions and period in Draft Legislation to provide greater certainty to taxpayers.

3. Other Comments

a. Whether CFC blended taxes (for example, the U.S. GILTI regime) will be creditable against the DTT

We understand from an earlier consultation that for purposes of computing the effective tax rate in Singapore, the DTT does not account for the allocation of controlled foreign corporation ("CFC") taxes. We wish to highlight our concern that if CFC blended taxes (e.g., under the U.S. global intangible low-taxed income regime) are not creditable against the DTT in Singapore, it would likely lead to double taxation for certain MNE groups with constituent entities in Singapore.

b. Regulations

It is important that any new or updated OECD Administrative Guidance be incorporated into Singapore legislation quickly to ensure Singapore's rules are consistent with other jurisdictions globally. We suggest including a provision to enable taxpayers to adopt any new or updated OECD Administrative Guidance in their interpretation of the rules as and when they are released by the OECD.

c. Certainty and dispute resolution mechanism

We understand that provisions relating to certainty will be released in due course. Having early certainty and an effective dispute resolution mechanism is important for MNEs to ensure certainty in the

calculations could be achieved and maintained, especially if the adoption of UTPRs under the GloBE rules becomes prevalent.

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TEI appreciates the opportunity to comment on the Draft Legislation. TEI's comments were prepared under the aegis of its Asia Tax Committee, whose Chair is Nicholas Neo of Meta. Should you have any questions regarding TEI's comments, please do not hesitate to contact Mr. Neo at nicholasneo@meta.com or +65-9677-3955; or Benjamin R. Shreck, Tax Counsel for TEI, at bshreck@tei.org or +1 202 464 8353.

Respectfully submitted,

Sandhya Edupuganty

Sandhya Edupuganty
International President
TAX EXECUTIVES INSTITUTE