Singapore International Chamber of Commerce

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SICC Submission to OECD re Public Consultation on BEPS2.0 Implementation Framework

Appendix A: SICC Feedback on the Implementation Framework of the Global Minimum Tax

No.	Public Consultation Question	Comments
1	Do you see a need for further administrative guidance as part of the Implementation Framework? If so, please specify the issues that require attention and include any suggestions for the type of administrative guidance needed.	**The Model Rules do not have a complete explanation of how the system should work and contain inconsistencies that need to be addressed. The proposed solutions provided in the Commentary are also inadequate, for example, for the purposes of the ETR calculation in the Module Rules, the tax numerator is from entity-level statutory accounts whereas the income denominator is from group-level consolidated financial statements. This lack of a consistency will result in ETR calculations that have no relation to actual tax paid expressed as a percentage of profit. Furthermore, deferred tax calculations would not reconcile. SICC recommends the use of consolidated financial statements to calculate the tax numerator as well.** **It is also unclear whether it is the Implementation Framework, or domestic governments, that are expected to set out the XML schema MNEs should use for collecting data in the correct format. Until this schema is available, MNEs cannot create the systems and processes required to collect such data in the correct format.** **More details and further guidance on the following topics from either the Implementation Framework or Administrative Guidance are welcomed for efficient implementation by businesses:** • **Treatment of hedging – para 57** • **Transfer pricing adjustments – para 105** • **P1 taxes – para 29** • **Allocation of covered tax – para 44** • **Treatment of PEs – para 54** • **Deferred taxes recapture - para 90** • **Location of employees for substance carve out – para 33** • **Location of tangible assets for substance carve out – para 38** • **Dealing with errors in GLoBE income - para 67**

		• **Domestic treatment of restructuring, incl elections, DTA/DTLs/CE joining/leaving group - para7** • **GLoBE return standard filing format – para 13** • **Format of corporate structure information - para 15** • **Further information requirements, as yet undefined – para 22** • **Expansion, specified or restricted info in GLoBE return – para 22** • **Development simplified reporting procedures - para 22** • **Information re excluded entities – para 23** • **Definitions and instructions for GLoBE return – para 24** • **Amendments to GLoBE return – para 26** • **Modifications to GLoBE return - para 27** • **Safe-harbours (avoiding ETR calc/improving tax certainty/transparency re risk assessment) – para 30** • **Safe-harbour Tax authority challenge – para 31** • **Safe-harbour development re QDMT – para 32** • **Information requirements when safe-harbour elected – para 33** • **Starting point for safe-harbour Tax authority challenge - para 36** • **Safe-harbour tax authority challenge notification and response process – para 36** • **Consequences where safe-harbour Tax authority challenge is successful – para 39** • **Administrative guidance development - para 40** • **Tax authority co-ordination when GLoBE rules involved multiple tax authorities – para 41** • **Deferred tax measurement on transition – para 6** • **Treatment of fiscal years greater than 12 months – para 18** • **Treatment of elections when a CE joins/leaves a group – para 20** • **Mechanics for dealing with a material competitive distortion - para 60** • **Details on employees for UTPR allocation purposes – para 78** • **Qualified DMT determinations – para 118** • **Qualified IIR determinations - para 127** • **Qualified Imputation Tax determinations - para133** • **Consistent treatment of tax credits – para 139**

		• **Qualified UTPR determinations – para 143**
2.	Do you have any suggestions on measures to reduce compliance costs for MNEs including through simplifications and the use of safe-harbours?	**<u>CbCR Safe-Harbour Use</u>** **CbCR safe-harbour is preferred as the CbCR regime is fully understood by MNEs affected by the Model Rules and this would reduce the compliance burden of the MNEs. Any safe-harbour should align as closely as possible with the current CbCR requirements to reduce the risk of a double compliance burden.** **<u>Appropriate Safe-Harbour rules</u>** **Appropriate safe-harbour rules should be introduced to prevent an MNE with GloBE losses to pay top-up tax as currently included in the Model Rules and Commentary.** **<u>Substance-based Income Exclusion</u>** **a. It is intended that the excess of the Substance-based Income Exclusion over the Net GloBE Income of a jurisdiction for a Fiscal Year cannot be carried forward or backward to reduce GloBE income of another Fiscal Year (para 27 of the commentary). We believe that such excess should be allowed to be carried forward or backward, since businesses often incur more capex when first setting up in a jurisdiction without necessarily deriving high profits, which means that the chances of the carrying value of the Tangible Assets being in excess of the Net GloBE Income in the initial years are high. The disallowance of such excess Substance-based Income Exclusion to be carried forward also appears to run counter to the recommendation of OECD/IMF/UN/World Bank (in their Report to the G20 Working Group on Development relating to the effective and efficient use of tax incentives for investment for low-income countries) that cost-based tax incentives are to be preferred over profit-based tax incentives.** **b. The deemed routine return for payroll carve-out should be increased, given that some types of businesses and operations are less reliant on Tangible Assets.**

		<u>Exclusion of MNE Groups in their initial phase of internationalization from the UTPR</u> **The exclusion applies only if: (a) the MNE Group has Constituent Entities in no more than 6 jurisdictions (Article 9.3.2(a) of the Model Rules); and (b) the sum of Net Book Value of Tangible Assets of all Constituent Entities located in all jurisdictions outside the Reference Jurisdiction does not exceed €50 million (Article 9.3.2(b) of the Model Rules). We consider condition (a) to be unnecessarily restrictive, as it is quite possible that a MNE Group may begin its internationalization exercise in more than 5 jurisdictions outside the Reference Jurisdiction. Instead, a cap on the total Net Book Value of Tangible Assets (preferably with a higher threshold than the currently prescribed threshold of €50 million) would be sufficient as proxy for the phase of internationalization undertaken by a MNE Group.** **<u>Effective dates</u>** **The complexity of the rules under Pillar Two presents compliance challenges for affected multinationals. Further, there is still a lack of clarity in several aspects of Pillar Two, crucially, how the US GILTI system will interact with Pillar Two. We suggest that the implementation of IIR and UTPR be postponed by at least one year.**
