Singapore International Chamber of Commerce
Helping businesses and Singapore since 1837

Feedback to MOF

Public Consultation on the Draft Multinational Enterprise (Minimum Tax) Bill and the subsidiary legislation

Public Consultation on the Draft Multinational Enterprise (Minimum Tax) Bill and the subsidiary legislation

Legislative Change	Clause in Draft Multinational Enterprise (Minimum Tax) Bill	Clause in the subsidiary legislation	Proposed Change *[Please indicate your proposed change to the wording of the Bill. Leave blank if you are not proposing any change]*	Rationale for Proposed Change / General Comments *[You may also wish to refer to specific Articles in the GloBE Model Rules, if applicable.]*
Tax treatment for Domesitc Top-up Tax ("DTT") imposed by Singapore	94	17	NA	Where the DTT is regarded as a qualified Domestic Minimum Top-up Tax ("QDMTT") in the overseas jurisdiction, would the constituent entity still need to perform a detailed calculation to determine if the minimum effective tax rate is met? This is in view that there may be some differences in the legislative conditions in DTT in each jurisdiction. For example, under Section 17(2) of the subsidiary legislation, the exclusion only applies if in the financial year, the strategic or commercial management of any ship used in international shipping giving rise to the international shipping profits is effectively carried on within the jurisdiction where the constituent entity is located. However, under certain Multinational Enterprise Top-up Tax ("MTT") legislation, both strategic and commercial management have to be in the jurisdiction for the entity to qualify for international and ancillary shipping income exclusion. Seeking clarifications whether Singapore will regard the exclusion condition as not being met if the exclusion would not have been met for MTT purposes in the overseas jurisdiction.

Financial Accounting standard to be used for QDMTT purposes	15(13)			Section 15(13) requires the MNE group to use local GAAP instead of UPE GAAP if all CEs have the same financial year as the UPE and are required to prepare local financial statements under Singapore's Accounting Standards Act 2007 by law or if externally audited. The FANIL of each CE will be the net income or loss determined for that entity in its financial statements for the purpose of Singapore DTT calculation. Businesses have observed the potential for differences in the timing of inclusion of income / expenditure in the Singapore related data contained in the UPE consolidated group accounts vs that included in local financial statements (even where IFRS is used for both accounts) which could result in double taxation of the MNE group in a financial year. To mitigate the potential for double taxation, provide tax certainty and minimise the compliance burden of both business and the IRAS, it is important that the Singapore DTT qualifies for QDMTT safe harbour. In addition, having clarity of the dispute resolution process to elminate double taxation will be of paramount importance.
				On the issue of whether for the purpose of the QDMTT safe harbour, the Ultimate Parent Entity's financial accounting standard (i.e. "Group GAAP" in line with Articles 3.1.2 and 3.1.3 of the GloBE Model Rules) or the Local Financial Accounting Standards should be adopted, our view is that Group GAAP should be the single data source for a QDMTT for the reasons as follows:- • The rules for the Income Inclusion Rule ("IIR") require MNEs to determine Top-up Tax on the basis of the Group GAAP and so MNEs like us are undertaking actions to ensure that in our financial and systems framework such Group GAAP data is available on the required constituent entity basis and with the required granularity to be able to transpose that Group GAAP data into data required to calculate any possible IIR Top-up Tax liability in a compliant manner. The complexity, time and cost intensity of these actions should not be underestimated as in our case, these require years of preparation and cost millions of dollars in internal and external spend.

				• A Domestic Minimum Top-Up Tax ("DMTT") is principally expected to follow the IIR rules methodology, as a result of which it would be considered Qualified DMTT ("QDMTT"). Nevertheless, jurisdictions may conditionally require that for (Q)DMTT purposes data is used that comes from a different source than the Group GAAP data. The impact of this on MNEs is vastly underestimated in associated publications and commentaries. To use any other data than that which is already used for IIR purposes would mean that MNEs would need to duplicate efforts outlined in the previous bullet point. It would mean that a MNE's financial and systems framework needs to ensure that, in addition to Group GAAP data, such other (Local) GAAP data is also available on the required constituent entity basis and with the required granularity to be able to also transpose that other (Local) Group GAAP data into data required to calculate any possible IIR Top-up Tax liability. • With each jurisdiction that decides to require their specific other (Local) GAAP for QDMTT Top-up Tax calculation, an additional layer to the financial and systems framework needs to be added and further complexity arises. • Even when the Group and Local GAAP fundamentally appear to be based on similar principles, there are still numerous differences in rules and application that imply that Group GAAP data will be of limited or no use in complying with another (Local) GAAP based (Q)DMTT Top-up Tax calculation.

				• The QDMTT Safe Harbour (QDMTT SH) rules require jurisdictions to not leave a choice to a MNE to make use of the Group GAAP data or any other (Local) GAAP data for the QDMTT Top-up Tax calculation, or else the QDMTT SH would not apply. When the QDMTT SH does not apply, the burden is on the MNE to still perform an IIR Top-up Tax calculation at the level of the UPE in addition to the QDMTT Top-up Tax calculation. • When jurisdictions decide to require use of the Group GAAP data for the QDMTT Top-up Tax calculation, the MNE will be able to then perform that calculation based on data already available for IIR purposes and the QDMTT SH truly works as an administrative simplification. • However, when jurisdictions decide to require use of other (Local) GAAP data, the MNE will need to put in place an additional financial and systems framework to comply with the QDMTT, which in terms of administrative complexity by far outweighs performing an UPE's level IIR Top-up Tax calculation based on Group data that is required to be available anyway. In such scenario, the decision forced by the QDMTT SH rules to allow only one GAAP would only increase the administrative burden for MNEs. In summary, we request that the Group GAAP data that is consciously required for IIR purposes is equally chosen by P2 implementing jurisdictions as the single data source for purposes of QDMTT rules, as this is the only way in which the administrative complexity for MNEs, and therefore indirectly also tax authorities, is kept at the lowest possible level.
	37(1)			We welcome Singapore's intent for the DTT to be a QDMTT, and believe it to be important in mitigating the potential for double taxation, providing tax certainty and minimising the compliance burden of both business and the IRAS. Proposing for IRAS to consider implementing Safe Harbour rules for the DTT.
Interpretation: "Joint venture", "JV group" and "JV subsidiary"	9			It is not clear if the Act is subjecting 100% of a joint venture's income to QDMTT even if the joint venture is not 100% owned by a UPE of a MNE Group subject to this Act. The OECD Administrative Guidance (July 2023) essentially stipulates that joint ventures should only be subject to QDMTT to the extent there is (indirectly) a shareholder which is a UPE of a MNE Group subject to the Act.

Jurisdiction where entity is located: 2 or more jurisdictions	14(3) (c) - (e)			Query whether the definitions in these clauses are enforceable under DTAs and specifically, MAP. If not, seeking clarification how disputes between jurisdictions will be resolved.
"GLoBE income or loss" and "FANIL"	15(3)(b) (iii) (A)			Where, through the use of an acceptable accounting standard that is not IFRS, there is a difference > Euro 1M that is not eliminated over time, adjustments are made to eliminate the difference. Seeking clarification how this aligns with the stated 'material competitive distortion' as noted in section 2(1).
GloBE Safe Harbours	30(1)			In the event that Singapore's definition of "safe harbour" (or alternatively respecting taxpayer elections under section 93 in respect of safe harbours) is subject to challenge by other counterparty jurisdictions, please clarify how such challenges may be resolved.
Registration of MNE Group	41(1)			Seeking confirmation whether the IRAS, under any information sharing arrangements with other Competent Authorities, required to share the information captured in Singapore by a UPE or MNE regarding their registration for payment of DTT or MTT on behalf of the Group. Are there any limitations?
Record Keeping	47(1)			Seeking clarification whether there will be sufficient guidance provided to taxpayers (or is this the intention) on the minimum required type and level of record keeping in respect of payment of DTT, MTT etc.
Assessment in event of fraud	61(1)			We would be grateful for confirmation whether there is a time limit on assessments for past MTT or DTT due from fraud or wilful default.
Failure to keep proper records	75			Seeking confirmation whether the IRAS has been or will be providing guidance on what proper records are acceptable under this clause. Given the following guidance under the explanatory statement (Clause 76 provides that it is an offence for a person to fail to comply with Clause 50(1) (relating to the furnishing of a GloBE information return) without reasonable excuse.), it is encumbent on the IRAS to provide guidance on the required proper records required.

Profits adjusted to be before tax		3(2)(e)	any disqualified refundable imputation tax (as defined in section 16(6)) of the Act);	Amendment proposed for clarity. We note that similar references are used throughout the bill (e.g., in regulation 15(3) where the definition of "relevant effective tax rate" makes reference to a number of sections in the parent legislation.
Included revaluation method gain or loss		7(2)(b) under definition of "property, plant and equipment"		We assume that this limb is satisfied by default given the difficulty in evidencing expectation. Seeking advise if this is otherwise.
Arm's length requirement for certain transactions		13(1)		The regulation applies where an MNE has related party (relevant) transactions not conducted at arm's length or not accounted for in the same amount for both constituent entities. Such amounts need to be converted to arm's length amounts and then netted off the consolidated financial accounts. For the purposes of evidencing that related party transactions are conducted between counterparties in the same amount, what is the minimum required documentation to be maintained by Singapore taxpayers (e.g. a benchmark to evidence the arm's length price (for a transaction) and / or asset valuation (for an asset transfer)? Seeking clarification if IRAS guidance will be issued for this and whether TPD is required under the Singapore ITA S34 or not.
		13(6)(a)		Regarding the use of "nominal" in the phrase "nominal income tax rate below 15%", Parliament may wish to consider defining "nominal" or replacing it with a more commonly used term like "effective" or "headline". It is unclear what "nominal" denotes in this context.
Election to exclude intra-group transactions		25		If in Singapore there is a claim by IRAS against a taxpayer amount in the taxable period (e.g. a royalty payable to a European HQ that may be subject to dispute in Singapore), that is still outstanding during the GloBE reporting period, how is this treated in the GloBE world, specifically GIR? Is it considered a post-filing adjustment? Can the taxpayer be protected from non-compliance if the decision with regard to the MAP etc is still outstanding at GIR preparation time? It is noted that the treatment of a transfer of assest/liabilities is spelt out in section 43.

Annex A: Tax treatment for Domestic Minimum Top-up Tax ("**DMTT**") imposed by foreign jurisdictions	Sections 2(1), 2A(6)(b), 13(9)(a) and (9)(b), 15(1)(ga), 49(1), 50(1A)(b), 50A(1A)(b), and 50C(2)(a) and (2)(b)			We assume the conditions herein refer to the typical conditions to apply for foreign tax credits (i.e. Singapore tax residence, tax has been paid or is payable on the same income in the foreign jurisdiction, and the income is subject to Singapore income tax). Seeking clarification whether there are any limitations in the application of the foreign tax credits, given that the DMTT is calculated using GloBE rules and IFRS accounting standard - are there differences to how FTCs and DMTT are calculated? If there is a disagreement with foreign jurisdictions, is this supportable under MAP or under DTAs?
Additional feedback: Transitional penalty relief	N/A			Seeking clarification whether a transitional penalty relief will be introduced and if so, when. We understand from the previous round of consultation that further details on transitional penalty relief would be provided in due course, but this is absent from the current draft legislation.
Additional feedback: Information sharing	N/A			You may wish to consider legislatively obligating Singapore constituent entities to share with their UPE any information the UPE may require for its Pillar Two obligations in their respective jurisdiction. This will faciliate compliance and streamline information submitted for PIllar Two purposes.