

20 March 2024

The Treasury Branch
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

By Email: bepts@fstb.gov.hk

Dear Sir/Madam,

CPA Australia's response to Implementation of Global Minimum Tax and Hong Kong Minimum Top-up Tax

As one of the largest professional accounting bodies in the world, CPA Australia represents the diverse interests of over 173,000 members working in 100 jurisdictions and regions around the world. This includes over 15,000 members in Hong Kong. We make this submission on behalf of our members and in the broader public interest.

CPA Australia provide the following comments and suggestions in response to the Financial Services and the Treasury Bureau and Inland Revenue Department consultation paper [Implementation of Global Minimum Tax and Hong Kong Minimum Top-up Tax](#).

General comments

The consultation paper seeks views only on the detailed technical and administrative aspects of the implementation of the Pillar Two Global Anti-Base Erosion Rules (GloBE rules) in Hong Kong. However, we suggest the Government more broadly consider the pros and cons of the early adoption of Pillar Two in full, i.e. the Income Inclusion Rule (IIR), the Undertaxed Profits Rule (UTPR) and the Qualifying Domestic Minimum Top-up Tax (QDMTT). We note that mainland China has not announced its position on Base erosion and profit shifting (BEPS) Pillar Two implementation and Singapore recently stated it will only consider the implementation of UTPR after their Domestic Top-up Tax (DTT) and IIR have been implemented.

Other jurisdictions are also not implementing Pillar Two in full. For example, Switzerland implemented the QDMTT on 1 January 2024 and postponed the implementation of IIR and the UTPR to a later date. We understand they adopted this approach after developments in other jurisdictions and weighing up the associated advantages and disadvantages for Switzerland.

Another consideration is how the IIR will work with the territorial basis of taxation in Hong Kong.

We take a different view to the Consultation paper (paragraph 1.11) on incorporating the GloBE rules and Hong Kong Minimum Top-up Tax (HKMTT) into the Inland Revenue Ordinance (IRO). Instead, we suggest that the GloBe Model Rules be legislated under its own separate Ordinance. The reason for this is that the GloBe Model Rules are not drafted for Hong Kong and are incongruent with existing provisions of the IRO. In short, they are not a good fit and may complicate the IRO if incorporated into that law. For example, concepts and terms such as 'Hong Kong tax resident' are introduced for the

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calculation of the Pillar Two amounts and are separate to Hong Kong's existing corporate tax regime under the IRO.

Furthermore, the GloBe Model Rules are subject to continuous revisions and modifications that require independent legislative consideration and review for their inclusion into Hong Kong law. As such, we believe it warrants a separate Ordinance.

Please refer to the Appendix for our responses to some of the questions raised in the consultation paper. If you would like to discuss this submission, please contact Bill Leung, Tax Technical Advisor at bill.leung@cpaaustralia.com.au.

Yours sincerely,

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Acknowledgements

CPA Australia would like to acknowledge the following members for their input and guidance in shaping this submission:

- Mr Anthony Lau FCPA (Aust.), Co-Chairperson of Taxation Committee – Greater China
- Ms Karina Wong FCPA (Aust.), Deputy Chairperson of Taxation Committee – Greater China
- Mr Danny Kwan CPA (Aust.), Committee Member of Taxation Committee – Greater China
- Ms Irene Lee CPA (Aust.), Committee Member of Taxation Committee – Greater China

Detailed Discussion

Please note, we only include questions for which we provide a response. For all other questions, we do not have a response at this stage.

Charging Provisions (Chapter Three)

2. Do you have any views on the proposed allocation and payment mechanism for the UTPR top-up tax? (para 3.21)

The proposed allocation is silent on whether such allocation will be made on an annual basis. As such we suggest making an annual election for the UTPR top-up tax.

4. Do you have any views on the retrospective application of the meaning of a Hong Kong resident entity from 1 January 2024 (para 3.23)?

In this situation, we support retrospective application. The reason is Hong Kong does not currently have a tax residency concept, apart from in a tax treaty context. Without a formal definition of tax residence, and the fact that many conglomerates are incorporated in other jurisdictions such as the British Virgin Island (BVI) and the Cayman Islands, it is easy for such entities to be considered stateless entities. If that is the case, the calculation of the effective tax rate will need to be on a stateless entity by stateless entity basis.

Although Hong Kong will not adopt GloBe rules in 2024, some other jurisdictions are adopting GloBe rules in 2024, and they may collect the top-up tax for Hong Kong if Hong Kong's effective tax rate is less than 15 per cent. If we have a retrospective effect of the tax residency concept, that means it is easier for Hong Kong to pool all these entities together and then to calculate the Effective Tax Rate on a jurisdiction basis for Hong Kong as a whole. As an example, if there are ten companies, of which two are Hong Kong-incorporated companies, and the rest are not Hong Kong-incorporated companies, being BVI entities. If the eight BVI entities become stateless entities, then it will not be advantageous to Hong Kong. It is therefore beneficial for Hong Kong to pool these ten entities together to calculate the Effective Tax Rate.

We therefore support the retrospective application to 1 January 2024 as it lowers the probability of other jurisdictions seeking to impose their own top-up tax under the Income Inclusion Rule or Undertaxed Profits Rule. If we align the definition of tax residency in Hong Kong retrospectively, that will be more straightforward for both Hong Kong and non-Hong Kong entities that have a presence in Hong Kong.

Design of Hong Kong Minimum Top-up Tax (Chapter Seven)

10. Do you have views on the allocation rules of HKMTT liability? (para 7.9)

On a practical note, it is very difficult to obtain the necessary data to perform the Pillar Two calculation, including the HKMTT liability calculation. As an example, for a large joint venture (JV) group with twenty or thirty JV groups, where the JV partner itself does not exceed this threshold, there is no technical need for them to perform the HKMTT calculation. Instead, it is only for the JV group that needs the data from

the joint venture partner to perform the calculation that the joint venture partner needs to keep and make available the data to the JV group.

We therefore submit that the calculation cannot easily be computed as there is not the requirement or the incentive for the joint venture partner to gather and maintain the data for other entities to satisfy their HKMTT liability.

11. Do you agree with the adoption of the local financial accounting standard for the purposes of the HKMTT? (para 7.11)

This may have an impact on BVI or Caymen Island entities who have a presence in Hong Kong or they are residents of Hong Kong. For Hong Kong filing purposes, these entities are not required to comply with Hong Kong Financial Reporting Standards, therefore there is no regulatory requirements. As such, for those entities what accounting standards they should adopt?

Simplification (Chapter Eight)

14. Do you have views on whether the transitional country-by-country reporting safe harbour should be adopted? If not, why not? (para 8.17)

We agree with the adoption of the country-by-country reporting safe harbour. We submit there should also be an HKMTT safe harbour.

15. Given additional standards need to be met, do you have views on whether the Qualified Domestic Minimum Top-up Tax (“QDMMT”) safe harbour should be adopted? If not, why not? (para 8.19)

We agree with the adoption of the QDMMT safe harbour.

Tax Compliance and Administration (Chapter Nine)

21. Do you have any views on the necessary modifications of the existing administrative provisions of the Inland Revenue Ordinance to deal with the record keeping requirements, objection procedures, collection and recovery of tax, anti-avoidance issues, etc.?

The general anti-avoidance rules of the IRO are contained in sections 61 and 61A, using the sole or dominant purpose of changing the anti-avoidance arrangement. At present, the GloBe rules do not have general anti-avoidance rules, only specific anti-avoidance rules. Accordingly, the general anti-avoidance rules should not apply to the GloBe Model Rules on the basis that these rules do not have general anti-avoidance rules.

Given there will be subsequent OECD Pillar Two administrative guidance, and such guidance may also need to be incorporated into Hong Kong's tax legislation. There are two options in which this can be incorporated, either through amendments to the legislation or through subsidiary legislation which only requires a negative vetting process. We submit that any future OECD GloBe Model Rules which will be incorporated into Hong Kong tax legislation should only be through the main legislation process after proper due consideration has been completed by the Legislative Council. The reason is the GloBe Model Rules could have significant impacts on the economy and jobs. We therefore do not recommend the incorporation of future OECD Pillar Two rules or administrative guidance through subsidiary legislation.