

Written Submission to

Exposure Draft (05/04/2023)

**Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational
tax transparency – Tax changes**

read together with

Exposure Draft Explanatory Materials

Submitter: TJ Holdings (III) Pte. Ltd.

(Incorporated in the Republic of Singapore)

Date of Submission: 27 April 2023

Introduction

TJ Holdings (III) Pte. Ltd. (the “Company”) is incorporated in the Republic of Singapore. The principal activity of the Company is investment holding.

The principal activities of the Company’s significant subsidiaries (which include CapitaLand Group) are those relating to investment holding, real estate development, consultancy services, investment in real estate financial products and real estate assets, investment advisory and management services as well as management of real estate assets.

TJ Holdings (III) Pte. Ltd. and its subsidiaries (collectively “TJ Holdings (III) MNE group”) is subject to Country-by-Country (“CbC”) reporting in the Republic of Singapore and TJ Holdings (III) MNE group has Australian constituent entities for purpose of CbC reporting.

We respectfully provide our comments to the Exposure Draft (05/04/2023) Treasury Laws Amendment (Measures for Future Bills) Bill 2023: Multinational tax transparency – Tax changes, Schedule 1 subsection 3D of the Taxation Administration Act 1953 (“TAA”) as follows:

1. Schedule 1, item 1, subsections 3D(4) and (9) of the TAA as extracted below:

Publication of information

- (4) An entity to which this section applies for an income year must, within 12 months after the end of the income year:
- (a) publish the information set out in subsection (5), except to the extent the entity and the information are specified in an exemption under subsection (15); and
 - (b) do so in accordance with the requirements set out in subsection (9).
- (9) For the purposes of paragraph (4)(b), the entity publishes information in accordance with the requirements set out in this subsection if the entity gives a document containing the information to the Commissioner in the approved form.

Comments:

- An MNE group would have to prepare and file CbC report (based on OECD recommendation) in the tax jurisdiction where the reporting entity is resident and the deadline is normally within 12 months from the end of their financial year.
- The proposed Australia CbC report requires disclosure beyond that of the current OECD CbC report and is to be made in an approved form to the Commissioner. The preparation of CbC report is an extensive exercise within the MNE group and consumes significant resources of the MNE group.
- We respectfully request that the timeline for an MNE group to publish the information in an approved form as required under Schedule 1, item 1, subsections 3D(4) and (9) be extended to within 18 months after the end of the income year for the first reporting, and within 15 months after the end of the income year for subsequent reporting, to allow the MNE group time post-filing of the OECD CbC report to customize existing CbC report with the requisite additional information in the approved format for which Australia CbC report is to be submitted as required by the proposed legislation.

2. Schedule 1, item 1, subsections 3D(6)(d) and (e) of the TAA as extracted below:

(6) For the purposes of paragraph (5)(c), the following information is listed:

- (d) revenue from related parties that are not tax residents of the jurisdiction;
- (e) expenses arising from transactions with related parties that are not tax residents of the jurisdiction;

Comments:

- Our concern is that there may be overlap of transactions with related parties being reported in Schedule 1, item 1, subsections 3D(6)(d) and (e) as certain expenses paid/payable by related parties under subsection 3D(6)(e) would be recorded as revenue from related parties under subsection 3D(6)(d). This may lead to double-counting of cross-border transaction values with related parties.
- Reporting under subsection 3D(6)(d) would provide an overview of the notable related parties transactions that the MNE group has and we respectfully request that subsection 3D(6)(e) be removed to avoid unintended confusion.
- We also note that disclosure of international related party dealings over A\$2 million is already required under the International dealing schedule for Australian entities and would respectfully request that the additional disclosure under subsection 3D(6)(e) be waived, to minimise compliance burden for taxpayers.

3. Schedule 1, item 1, subsections 3D(6)(g) and (h) of the TAA as extracted below:

(6) For the purposes of paragraph (5)(c), the following information is listed:

- (g) a list of tangible and intangible assets as at the end of the income year;
- (h) the book value at the end of the income year of tangible and intangible assets, other than cash and cash equivalents;

Comments:

- In respect of the proposed disclosure under Schedule 1, item 1, subsections 3D(6)(g) and (h) of the TAA above, we respectfully request that disclosure be made in broad categories and based on carrying amounts as disclosed in financial statements in accordance with International Accounting Standards ("IAS") 16 – Property, Plant and Equipment and IAS 38 – Intangible Assets.
- For a large MNE group, it would not be practical to list down every single tangible and intangible assets as at the end of the income year given that this would be very voluminous and creates onerous administrative burden on the group.

4. Schedule 1, item 1, subsection 3D(6)(k) of the TAA as extracted below:

(6) For the purposes of paragraph (5)(c), the following information is listed:

(k) effective tax rate;

Comments:

- In providing the effective tax rate (“ETR”) under Schedule 1, item 1, subsection 3D(6)(k) of the TAA above, we respectfully request that the MNE group is allowed to rely on any applicable safe harbours as provided in “Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)” approved by the OECD/G20 Inclusive Framework on BEPS on 15 December 2022.

5. Schedule 1, item 1, subsection 3D(8) of the TAA as extracted below:

(8) The information published by the entity under subsection (5) must be based on amounts as shown in the audited consolidated financial statements for the entity for the period that corresponds to the income year.

Comments:

- Currently, the CbCR information (based on OECD recommendation) can be based on amounts as shown in the **local** financial statements for the entity.
- The requirement to use only amounts as shown in the audited consolidated financial statements for the entity would impose onerous compliance requirements for MNE groups as this would deviate from the existing CbCR filing rules and requirements.
- We respectfully request that the information published by the entity under subsection (5) be provided the option to use amounts as shown in the **local** financial statements.

6. Schedule 1, item 3, Application of the TAA as extracted below:

3 Application

The amendments made by this Schedule apply in relation to the 2023-24 income year and later income years.

Comments:

- With the introduction of the global minimum effective tax rate under the Pillar 2 Global Anti-Base Erosion (“GloBE”) Rules expected to take effect for tax years beginning on or after 31 December 2023, affected MNE groups have to navigate through the complex rules and face significant added compliance burden of reworking their processes to collect numerous data needed for undertaking GloBE calculations. Against the backdrop of global uncertainty to businesses due to geopolitical

tensions, inflationary and interest rate pressures, increased global compliance has created significant resources and cost pressures on MNE groups.

- As countries review the GloBE rules and seek to adapt the rules for implementation, it is expected that more countries will be able to implement the GloBE rules only from financial year starting on or after 1 January 2025.
- While we support the move to enhance transparency, we respectfully request that the proposed amendments made by Schedule 1 of the TAA to apply only after income year starting on or after 1 January 2026. This is to allow MNE groups to focus on building their systems to meet the implementation of the global minimum effective tax rate under the Pillar 2 GloBE Rules.
- Once the MNE groups are onboard in terms of compliance with the global minimum effective tax rate under the Pillar 2 GloBE Rules which would entail calculation of ETR, the ETR information can thus be used to meet the information required in Schedule 1, item 1, subsection 3D(6)(k) of the TAA.

**7. Exposure Draft Explanatory Materials: Chapter 1: Multinational tax transparency reporting,
Paragraph 1.32 Correction of errors
Paragraph 1.36 Penalties for non-compliance**

Comments:

- We respectfully request that MNE groups subject to the CbC reporting under Schedule 1, item 1 subsection 3D of the TAA be provided transitional penalty relief and that penalty be waived in the initial 3 years of implementation if the error(s) and/or non-compliance e.g. late filing is a result of e.g. honest mistake or unforeseen technical issues where the MNE groups have taken reasonable measures to be compliant while navigating the complex rules and systems requirements needed to be compliant with various global reporting obligations.

We shall be grateful for the Treasury's kind consideration of our above comments.

If you have any questions in relation to the above, please do not hesitate to contact Patricia Ho (email : patricia.ho@capitaland.com) or Melvin Song (email : melvin.song@capitaland.com).