SINGAPORE AIRLINES LIMITED

5 March 2024

Director
International Tax Unit
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600

Dear Sir/Madam,

Public consultation feedback on Treasury Laws Amendment Bill 2024: Multinational Tax Transparency – Country by Country Reporting Exposure Draft

Singapore Airlines Limited ("**SIA**") and its wholly owned subsidiary, Scoot Pte Ltd ("**Scoot**"), both headquartered in Singapore, are mainly engaged in the provision of passenger and cargo air transportation services. SIA operates as a full-service carrier, while Scoot operates as a low-cost carrier. SIA and Scoot have a combined network that covers more than 130 destinations around the world.

SIA appreciates the opportunity to respond to the public consultation on the "Treasury Laws Amendment Bill 2024: Multinational tax transparency – country by country reporting" exposure draft ("**Public CbCR Draft Bill**") issued by Treasury in February 2024. We note that the implementation of the Public CbCR Draft Bill enhances transparency of tax information that multinational entities disclose to the public. However, we believe that the airline industry has unique characteristics that require specific guidance and consideration to ensure compliance with the Public CbCR Draft Bill.

In this submission, we focus on the issues for which further guidance is required to enable the airline industry to comply with the Public CbCR Draft Bill in Australia. We believe if this guidance was issued, it would provide certainty and clarity on the outcome for both, airlines, and the Australia Taxation Office.

1. Define AUD 10 million, Australian sourced, aggregated turnover

We note that Schedule 2, item 1, paragraph 3D(1)(e) of the Public CbCR Draft Bill documents that the publication of information by certain country by country reporting ("**CbCR**") entities apply to entities with aggregated turnover of AUD 10 million or more, for the income year, and when one or more amounts of income is from an Australian source.

Clarification is sought on the treatment of Australian sourced income generated from the operations of aircraft in international traffic regardless of the taxing rights. In general, (i) airlines operate via foreign branch structures as this is a regulatory requirement[1]; (ii) airlines are taxed on worldwide income in their home jurisdiction, and (iii) to the extent a Permanent Establishment ("**PE**") arises, taxes incurred in relation to the PE after considering foreign tax credits/deductions and tax incurred in the home jurisdiction, will equal the taxes incurred on the worldwide income of the airline.

Specifically, under Article 8 (Shipping, inland waterways transport and air transport) of the UN Model Double Taxation Convention and Article 8 of the OECD Model Tax Convention ("**MTC**") on

[1] International airlines exercise traffic rights under the Chicago Convention system, which are premised on their status as a (foreign) legal entity of their home country. As a result, it is not possible to exercise traffic rights granted to a foreign (home) country with a locally-incorporated subsidiary.

Income and on Capital, contained in most Double Taxation Treaties ("**DTA**"), there is a clear, long-standing guidance that profits derived from international air transportation services should only be taxable in the Contracting State where the aircraft is a resident or effective management of the airline is situated. Furthermore, this guideline harmonizes with the Air Services Agreements ("**ASAs**") adopted by most nations for the allocation of taxing rights for income derived from the operation of aircraft in international traffic and incidental ancillary services.

In addition, the purpose of Article 8 is to avoid the need for airlines to arbitrarily allocate income and profits associated with the operations of aircraft in international traffic to a particular jurisdiction. As such, irrespective of where airline profits are sourced for an international airline, airline profits are taxable in its home jurisdiction. As airline profits are wholly taxable in its home jurisdiction, there is no requirement to allocate airline revenue or expenses to the country that it is sourced.

By way of an example, Airline X which is organized and headquartered in Country X operates to Australia via a branch (let's assume it has a PE under a Tax Treaty or domestic law in each). Under a Tax Treaty between Country X and Australia, Country X has the right to tax the airline profits generated by Airline X from the operations of aircraft in international traffic, irrespective of its source (i.e., in Australia).

Further, we note that under Chapter V, Section D.3 paragraph 34 of the OECD/ G20 Base Erosion and Profit Shifting Project, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13: Final Report that "For purposes of Annex III to Chapter V of these Guidelines, the Country-by-Country Report should include all tax jurisdictions in which the multinational enterprise group has an entity resident for tax purposes, regardless of the size of business operations in that tax jurisdiction". In many instances where an airline's income is derived solely from international transport in a foreign jurisdiction and which is treaty protected, the airline is not considered a local tax resident.

Currently, the branches/ PEs of an international airline in a foreign jurisdiction, deriving income solely from international transport and which are treaty protected, are not considered local tax residents in the foreign jurisdiction and hence are not considered Constituent Entities for CbCR purposes.

Without a clear definition of Australian sourced aggregate turnover, international airlines may not be able to determine if the AUD 10 million threshold is met and if it should comply with the Public CbCR Draft Bill in Australia.

Recommendations: Revenues generated by branches/PEs of international airlines from:

1) the operation of aircraft in international traffic in Australia; or
2) activities that are considered ancillary or incidental to the operation of aircraft in international traffic in Australia,

be exempted from the definition of Australian sourced aggregate turnover for an income year.

Alternatively, on the basis that international airlines derive income solely from the operations of aircraft in international traffic and are taxed on worldwide income in their home jurisdiction, we recommend that airline revenue is deemed to be sourced in its home jurisdiction and should not be considered as Australian sourced when determining the AUD 10 million or more aggregated turnover for the income year.

2. Source of tax information for Public CbCR disclosure

We note that Schedule 2, item 1, paragraph 3DA(6)(a) and 3DA(6)(b) of the Public CbCR Draft Bill documents that selected tax information to be published by the entities should be retrieved from audited consolidated financial statements ("**AFS**") or if AFS is not prepared, information must be based on amounts that would be shown in such statements, had the entity been a listed company within the meaning of section 26BC of the Income Tax Assessment Act ("**ITAA**") 1936 and been required to prepared them.

For the airline industry, no separate financial statements are typically available for the PEs of an international airline as the revenue/profit allocations/calculations are often based on practical approaches and formulas. Even if separate financial statements for a PE of an international airline were prepared, they would be very different from financial information shared with tax authorities in the context of an airline's existing corporate income tax ("**CIT**") obligations.

Further, there are significant differences between the accounting for the operation of the local PE of an international airline and the local PE of a foreign manufacturer or distribution company. These differences give rise to extraordinary difficulties in fairly and consistently attributing profits from the operation of aircraft in international traffic to the countries where an airline operates. The difficulties faced in preparing local PE Financial Statements and reasons why international airlines' PEs do not currently prepare separate financial statements are as shown below:

i. Regulatory

In most countries, international airlines have no statutory or regulatory requirement to prepare separate accounts or financial statements. Airlines often operate via simplified legal structures that may not even require a formal branch registration.

ii. Challenges with Expense Allocations

More so than other industries, there are various and very significant expenses related to airline operations, which are not incurred or paid at the PE level. Most fixed costs (e.g., aircraft ownership/lease expenses, maintenance, crew payroll, or training) are acquired at a head office level. There are also several significant operation costs that are acquired centrally rather than at a PE level, such as fuel, navigation fees, IT, and reservation systems costs. Note that an airline head office expense would also include indirect costs, such as interest and selling / network planning, or general and administrative expenses. In addition, the expenses which are actually incurred in the foreign jurisdiction are not necessarily appropriately chargeable solely against the revenue attributable to that country.

As previously mentioned, airlines are required to be organized in one jurisdiction (the home jurisdiction) and operate through branches/PEs and not subsidiaries on a worldwide basis. This exacerbates the common problem of allocating headquarter expenses to PEs for the airline industry due to the sheer number of countries in which an international airline typically operates.

iii. Limitation of Current Separate Accounts

In the limited jurisdictions where separate accounts or financial statements are prepared for an international airline's PE to meet local obligations, these separate accounts or financial statements are not aligned with an Acceptable Financial Accounting Standard. By way of example, revenue recognition methods for an international airline used by several countries are often based on a cash basis instead of on an accrual basis (recognized when the services have been rendered / passenger or cargo flown). Furthermore, the definition of revenues themselves is also different from one jurisdiction to the other, as some countries consider the local revenues either based on where the

tickets have been sold (point of sale) or where the services are delivered (point of origin of the itinerary/flight).

Hence, where no separate financial statements are typically available for the PEs of an international airline, the retrieval of tax information from AFS or statements prepared for listed companies, for the purpose of complying with the Public CbCR Draft Bill, may not be readily available.

> ***Recommendations:*** In the absence of separate AFS for branches/ PEs of an international airline, we recommend that tax information shall be retrieved from reports prepared for tax reporting purposes, such as the PE's corporate income tax return (if any) prepared to comply with the foreign tax jurisdiction's tax requirements or reports prepared for internal management control purposes.

We appreciate the opportunity to submit our comments and would be happy to provide further information to clarify any queries that you may have regarding our comments or recommendations.

Yours sincerely,

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