



October 26, 2023

Ministry of Finance
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Re: NFTC Comments Concerning Bulgaria's Law on Amendments and Supplements to the Law on Corporate Income Taxation

Thank you for the opportunity to submit comments on the Republic of Bulgaria's ("Bulgaria's") draft Law on Amendments and Supplements to the Law on Corporate Income Taxation (the "Draft Law") released in September 2023.

The National Foreign Trade Council ("NFTC"), organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. Our members value the work of the Organization for Economic Cooperation and Development ("OECD") and the Inclusive Framework in establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

The Draft Law seeks to simultaneously implement EU Directive (EU) 2022/2523, which relates to Pillar Two, along with a national additional tax imposed on the constituent entities of a multinational group of enterprises ("MNE") located in Bulgaria, or a large national group of enterprises. The purpose of the Draft Law is to fulfill Bulgaria's commitments to introduce EU legislation into national legislation, as well as the requirements for minimum effective taxation of multinationals and large national groups of enterprises. Our comments relate to the Qualified Domestic Minimum Top-up rule ("QDMTT"), an element of Pillar Two of the OECD's Inclusive Framework. We are extremely grateful to have the opportunity to provide our consultation response and to give our views on the Draft Law.

We strongly recommend that Bulgaria includes the Substance Based Income Exclusion ("SBIE") as part of the proposed QDMTT. We want to express our concerns regarding the proposed Bulgarian approach to omit the SBIE from the QDMTT.

The SBIE is a formulaic, substance-based carve-out based on payroll and tangible assets. The SBIE ensures that a return for in-country substance is considered when calculating the profit subject to a Pillar Two top-up tax. This calculation reflects long-standing international tax best practices and is aligned with the overall objective of the OECD's BEPS initiative. The SBIE is based on a fixed return for substantive

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in-country activities with regard to payroll and tangible assets – this reflects actual economic activity that the business is bringing to the country in question.

Not having an SBIE in Bulgaria will result in comparably unjust treatment for businesses operating in Bulgaria compared to businesses operating in other EU jurisdictions. Given the relatively low corporate income tax rate in Bulgaria (10% vs. the minimum rate of 15%), the exclusion of the SBIE for many businesses operating in Bulgaria will result in additional tax for MNEs who owe under the QDMTT. This will be an additional cost for MNEs and puts additional pressure on taxpayers.

We believe that the exclusion of an SBIE, particularly where Bulgaria is the only country to adopt the approach forgoing an SBIE, will prove detrimental to attracting foreign investment into Bulgaria. Foreign investment will become more enticing in EU jurisdictions outside of Bulgaria that apply a 15% minimum top-up tax and give relief for in-country substance (i.e., the SBIE). In this regard, the OECD Commentary on the Pillar Two rules states that the SBIE calculation “...is limited to a routine return and considering the computational rules of the Top-up Tax, the design avoids any tax induced distortions of investment decisions.”

Furthermore, it is important to ensure consistency across jurisdictions to help businesses navigate the complex challenges Pillar Two is bringing. All other EU countries have introduced an SBIE as part of their domestic minimum top up taxes. Pillar Two brings significant changes to the international tax framework; businesses must work extremely hard in a short amount of time to ensure that they are prepared for Pillar Two, including understanding the tax cost involved for the business, awareness of the differing laws in different jurisdictions, and building the systems and processes to comply with the complex rules. The complex nature of Pillar Two becomes even more cumbersome having QDMTTs, which do not adopt an SBIE and are therefore inconsistent across jurisdictions. These inconsistencies are another hurdle for businesses to overcome, especially in the initial years of Pillar Two, where many provisions of the rules remain uncertain.

We are also concerned about the significant penalties in the proposed legislation relating to misdeclarations leading to an understatement of additional tax due, or an unjustified reduction or exemption. The penalties incurred for misdeclarations are disproportionate when considering the complexity of the proposed rules. We encourage Bulgaria to reconsider these penalties to ensure they are reasonable and also to provide a safe harbor for inadvertent errors.

Since the burden is on the taxpayer to calculate the SBIE amount, we strongly believe that it should be left to taxpayers to decide whether they wish to claim the SBIE to reduce the profits subject to top-up tax rather than Governments denying the choice to businesses operating in their country.

Finally, we strongly encourage Bulgaria to ensure its national law implementing Pillar Two incorporates all current guidance and commentary concerning the SBIE in a legally binding manner. We recognize that the OECD has recently issued additional Pillar Two guidance and will continue to do so in the coming months. We encourage Bulgaria continue to consider all relevant proposed guidance when developing its domestic tax laws so that the tax policies which best support the Bulgarian economy can be identified and implemented.

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