COST
COUNCIL ON STATE TAXATION

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Via MyMGA

Senator Guy Guzzone, Chair
Senator Jim Rosapepe, Vice Chair
Senate Budget and Taxation Committee
Maryland General Assembly

Re: Opposition to S.B. 859 – Mandatory Worldwide Combined Reporting

Dear Chair Guzzone, Vice Chair Rosapepe, and members of the Senate Budget and Taxation Committee:

On behalf of the Council On State Taxation (COST), I respectfully submit this testimony in opposition to Senate Bill 859, the so-called "Fair Share for Maryland Act of 2025", which would, among other things, repeal Maryland's current corporate income tax reporting system and impose mandatory worldwide unitary combined reporting on Maryland corporate taxpayers. With one very narrow exception, no other state or country in the world currently utilizes mandatory worldwide combined reporting to calculate a corporation's income attributable to their jurisdiction.[1] Because mandatory worldwide combined reporting would have an unpredictable (and possibly negative) effect on State revenue, would impose significant administrative burdens on both businesses and the State, and would place Maryland at a huge competitive disadvantage among the states this committee should issue an unfavorable report on S.B. 859..

About COST

COST is a nonprofit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of approximately 500 major corporations engaged in interstate and international business, many of which have significant operations in Maryland. COST's objective is to preserve and promote equitable and nondiscriminatory state and local taxation of multistate and multijurisdictional business entities.

Mandatory Worldwide Combined Reporting Rejected by Other States

In the past eight years, several states have rejected the move to mandatory worldwide combined reporting. In 2017, Indiana decided to forego mandatory worldwide

1 Alaska is the only state that mandates worldwide combined reporting, but only for oil companies that either explore and produce or own a pipeline interest in the state.

combined reporting, with the observation that, though it might increase tax revenues, in the short term, those gains were almost certain to be fleeting and result in no net gain over the longer term.[2] A 2023 Minnesota bill that would have adopted mandatory worldwide combined reporting passed the House but died in the Senate without a hearing or discussion in any Senate committee. In 2023, the New Hampshire Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax rejected mandatory worldwide combined reporting stating that "WWCR is a grossly overbroad remedy for concerns that transfer pricing is misused for tax advantage, as it sweeps all foreign profits into the base, regardless of whether any transfer pricing has been used, or its extent, or its alleged misuse."[3] Subsequent to the release of the report, New Hampshire House Bill 121 of 2024 and House Bill 502 of 2025, both of which would have implemented mandatory worldwide combined reporting, were heard in the New Hampshire House Ways and Means Committee and determined to be "inexpedient to legislate."

Finally, in 2024 in this State, neither House Bill 1007 or Senate Bill 766, both of which would have implemented mandatory worldwide combined reporting, advanced beyond the first committee in their chamber of origin and an amendment to implement mandatory worldwide combined reporting that was added late in the session to the Budget Reconciliation and Financing Act of 2024 was not included in the BRFA conference committee report.

Worldwide Unitary Combined Reporting: Historical Context

Worldwide combined reporting is not a new concept; nearly a dozen states imposed the filing methodology by the early 1980's. In a series of actions beginning in 1984 and accelerating over the next ten years all those states moved away from mandatory worldwide combined reporting, granting taxpayers the right to file (or elect to file) using the water's-edge methodology. This position has held fast in the states over the last 40 years.

Pressure against mandatory worldwide combination had been building through the 1970s and early 1980s among both foreign governments and foreign and domestic multinational business enterprises, threatening to instigate an international tax war. In particular, the British and Japanese governments threatened retaliatory tax measures against the U.S. to counter the trend toward mandatory worldwide combined filing.

Although the U.S. Supreme Court upheld the constitutionality of California's imposition of mandatory worldwide combined reporting for domestic multinational corporations in 1983, pressure from the international community continued to build, spurring President Ronald Reagan to convene the Worldwide Unitary Taxation Working Group in 1984. The Working Group was led by Treasury Secretary Donald Regan and comprised representatives of the federal government, state governments, and the business community. Although the Working Group found it difficult to reach an agreement on several issues, it did agree on a set of principles designed to guide the formulation of state tax policy. Among those principles was a

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2 Office of Fiscal and Management Analysis, Indiana Legislative Services Agency, A Study of Practices Relating to and the Potential Impact of Combined Reporting, Oct. 1, 2016.
3 Final Report of the Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business Profits Tax RSA 77-A:23-b (HB 102, Chapter 12, Laws of 2022)

recommendation that states only enact "water's-edge" unitary combination for both U.S. and foreign-based companies.

Under the water's-edge method, only the income and the apportionment factors derived from operations within the domestic United States (i.e., up to the "water's edge") are used to calculate state corporate income tax liability. That principle has held to the current day. No state has returned to a mandatory combined reporting regime for all business corporations and even the Multistate Tax Commission's model combined reporting statute includes a water's-edge election.

Global Profit Shifting and State Corporate Tax Revenues

Proponents of mandatory worldwide combined reporting assert that the filing method recoups tax revenues lost to states through profit-shifting by U.S.-based multinational entities. The proponents' arguments, however, fail to acknowledge the current international initiatives to significantly limit profit-shifting on a global basis.

Over the last fifteen to twenty years, many countries lowered their corporate income tax rates to incentivize businesses to locate and expand there. As the disparity between corporate tax rates imposed by various countries grew, policy makers at the international level became concerned with the increased use of global profit shifting – the shifting of business activity and income from high-tax jurisdictions to low-tax jurisdictions.

Efforts to combat global profit shifting have been underway at the Organisation for Economic Co-operation and Development (OECD) for many years, culminating in its 2014 Base Erosion and Profit Shifting (BEPS) project that recommended measures to address the global shifting of income by multinational entities, improve the coherence of international tax rules, and ensure a more transparent international tax environment. While during its initial deliberations, the OECD considered the use of mandatory worldwide combined filing, it ultimately decided not to move forward with the approach. Rather, the OECD (now joined by the G20 countries) adopted the current Pillar 1 and 2 proposals for reforming international taxation in principle

Among the Pillar 2 solutions that specifically address global profit shifting is a 15 percent global minimum tax (GMT) on the income of large multinational entities in every country in which they operate.[4] The January 9, 2024, OECD Taxation Working Paper[5], analyzing the impact of the 15 percent GMT concludes the GMT significantly reduces the incentive to shift profits and as a result, global profit shifting will be reduced by nearly 50 percent. More importantly, the percentage of profits in low-tax jurisdictions (those with tax rates below 15 percent) is expected to fall by two-thirds, with a concomitant increase in global corporate income tax revenues of nearly $200 billion.

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[4] In October 2021, more than 130 countries participating in the OECD/ G20 inclusive framework endorsed the new tax rules. As of the date of this testimony, about 60 countries have adopted or are in the process of adopting some or all of Pillar 2's provisions.
[5] *The Global Minimum Tax and the taxation of MNE profit* can be seen at https://www.oecd.org/en/publications/the-global-minimum-tax-and-the-taxation-of-mne-profit_9a815d6b-en.html.

Additionally, in 2017 the U.S. Government adopted sweeping tax reform with the passage of the Tax Cuts and Jobs Act (TCJA) that sharply curtailed the incentive to shift profits outside the United States by implementing a federal rate reduction from 35 to 21 percent, a tax on global intangible low-taxed income (GILTI) and a base-erosion and anti-abuse tax (BEAT) specifically targeting profit shifting. Subsequently, the U.S. enacted a 15 percent alternative minimum tax on financial statement (book) income.

Several economic studies, issued prior to the adoption of the GMT, attempted to quantify the global impact of profit shifting. Not surprisingly, the results of these studies vary dramatically, and each study contains disclaimers regarding the complexity, difficulty, and uncertainty of its conclusions. A 2019 report by a progressive-leaning think tank seized on the high point of these studies and extrapolated that number to individual states through a series of assumptions and estimates. It then presented those revenue numbers to the states as "money left on the table," and there for the taking if the state would only enact the discredited and still-controversial filing method known as mandatory worldwide combined reporting. However, the initial report made no effort to customize its estimates to reflect the laws of the individual states or adjust the estimates to reflect the recent changes in national and international corporate income tax laws. A revised version of the report has been released. Once again, the report concludes that adopting mandatory worldwide combined reporting would as a whole boost state corporate income tax revenue. The revised report acknowledges the revenue impact would vary among the states, with some states experiencing revenue declines. Additionally, the report does not quantify the impact that net operating loss carryforwards and credits would have on the revenue derived from adopting mandatory worldwide combined reporting and minimizes the revenue impacts of addback statutes. More importantly, the revised report ignores the changes in the international tax structures, specifically Pillar 2, that have been adopted to address global profit shifting.

Practical Problems with Mandatory Worldwide Combined Reporting

In addition to the foreign policy implications, states have also rejected the mandatory worldwide combined reporting approach because of the inequities among taxpayers and embedded compliance complexities. Compliance burdens vary from taxpayer group to taxpayer group depending on several group-specific factors, such as the international location of subsidiaries, the composition of the unitary group, merger and acquisition activity, financial reporting systems, and income producing activities. For many multinational corporate groups, often comprising hundreds of subsidiaries, the compliance requirements are expensive and time consuming particularly when partnerships and other pass-through entities are involved.

Typical hurdles to overcome include: (1) a unitary analysis for each affiliate to determine the composition of the unitary group; (2) a combined calculation of worldwide apportionable income (in U.S. dollars) for all affiliated entities, many using different international accounting standards, and without the benefit of a federal taxable income figure for foreign subsidiaries; (3) application of the state apportionment formula, which entails several policy choices that can be second-guessed by audit teams; and (4) administrative and corporate governance issues to be addressed when combining foreign and domestic subsidiaries. The audit burdens imposed on a company will be equally difficult for state tax administrators who must invest significant resources to manage and evaluate best-guess scenarios when seeking reasonable approximations for the worldwide combined return.

Although proponents are quick to point out that some corporate groups elect to file on a worldwide basis in the (minority of states that provide such an election, that decision requires an assessment of the administrative burden including compliance costs and availability of the required data. This will differ from company to company and is often dictated by a weighing of compliance costs and tax savings achieved by including foreign-based loss companies in the combined return.

Conclusion

Mandatory worldwide combined reporting is contrary to the approach to taxing corporate profits currently employed by all other states and nations with corporate income taxes. Its adoption would have an unpredictable effect on state revenue, impose significant administrative burdens on both the taxpayers and the State, and most importantly would place Maryland at a huge competitive disadvantage among states by sending a warning flag to multinational businesses that the state is a hostile environment for business expansion and relocation.

For these reasons, COST urges the committee to issue an unfavorable report on S.B. 859.

Respectfully,

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CC: COST Board of Directors
Patrick J. Reynolds, President and Executive Director