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REPUBLIC OF SOUTH AFRICA

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DRAFT GLOBAL MINIMUM TAX BILL

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(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)

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(MINISTER OF FINANCE)

21 February 2024

DRAFT

BILL

The Bill proposes to introduce by reference the Global Anti-Base Erosion (GloBE) Rules in South Africa. The GloBE Rules are a global minimum tax developed by the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which is led by the Organisation for Economic Co-operation and Development (OECD) and to provide for matters connected therewith.

To provide for the imposition of top-up tax and to provide for matters connected therewith.

PREAMBLE

SINCE the Organisation for Economic Co-operation and Development has established an Inclusive Framework to counter BEPS;

AND SINCE the OECD/G20 Inclusive Framework on BEPS developed rules, known as the GloBE Rules, to introduce a global minimum tax as part of the solution for addressing the tax challenges of the digital economy, that are designed to ensure large multinational enterprises pay a minimum level of tax on the income arising in each jurisdiction where they operate.

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BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

PART I

Interpretation

1. Definitions. —(1) In this Act, unless the context indicates otherwise, any word or expression which is assigned a meaning in the GloBE Model Rules or the Global Minimum Tax Administration Act has the meaning so assigned, and the following terms have the following meaning—

"Administrative Guidance to the GloBE Model Rules" means administrative guidance on the GloBE Model Rules released by the Inclusive Framework including:

(a) OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two),* February 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;

(b) OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two),* July 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;

(c) OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two),* December 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris; and

(d) any similar document subsequently released by the Inclusive Framework

"Commentary to the GloBE Model Rules" or the **"GloBE Commentary"** means the commentary released in the document titled OECD (2022), *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two),* OECD, Paris and any update to that commentary released by the Inclusive Framework;

"Domestic Constituent Entity" means a Constituent Entity within the meaning of the GloBE Model Rules that is located in the Republic;

"Domestic Joint Venture" means a Joint Venture within the meaning of the GloBE Model Rules that is located in the Republic;

"Domestic Joint Venture Subsidiary" means a Joint Venture Subsidiary within the meaning of the GloBE Model Rules that is located in the Republic;

"Domestic Joint Venture Group" means a Domestic Joint Venture and its Domestic Joint Venture Subsidiaries that are located in the Republic;

"Global Anti-Base Erosion Model Rules" or **"GloBE Model Rules"** means the set of rules as developed by the Inclusive Framework, applied in accordance with Part II of this Act, and—

(a) set out in the document titled *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS,* which is a document—

(i) approved by the Inclusive Framework on 14 December 2021; and

(ii) published by the OECD; and

(b) as amended from time to time, except any amendments to the definition of minimum rate in Article 10.1.1 of the GloBE Model Rules referred to in paragraph *(a)*.

"Global Minimum Tax Administration Act" means the Global Minimum Tax Administration Act, 2024;

"Inclusive Framework" means the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS);

"location of an Entity" for the purposes of this Act, the location of an Entity is determined in accordance with Article 10.3 of the GloBE Model Rules;

"Minister" means the Minister of Finance;

"multinational enterprise group" or **"MNE Group"** means any group that includes at least one Entity or Permanent Establishment that is not located in the jurisdiction of the Ultimate Parent Entity as referred to in Article 1.2 of the GloBE Model Rules and is within scope of Article 1.1 of the GloBE Model Rules;

"Republic" means the Republic of South Africa and, when used in a geographical sense, includes the territorial sea thereof as well as any area outside the territorial sea which has been or may be designated, under international law and the laws of South Africa, as areas within which South Africa may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources;

"Safe Harbour" means an exception provided in Article 8.2.1 of the GloBE Model Rules whose design and eligibility conditions have been approved by the Inclusive Framework and set out in:

(a) OECD (2022), *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;

(b) Administrative Guidance to the GloBE Model Rules; and

(c) any similar document subsequently released by the Inclusive Framework;

"Top-up Tax" means Top-up Tax payable under Parts III and IV.

PART II

Application of GloBE Model Rules

2. Application of the GloBE Model Rules—The GloBE Model Rules are treated as applying at a time consistently with—

(a) the most recent Commentary to the GloBE Model Rules before the start of the Fiscal Year in which the time falls;

(b) Administrative Guidance to the GloBE Model Rules before the start of the Fiscal Year in which the time falls; and

(c) Safe Harbours before the start of the Fiscal Year in which the time falls.

3. Application of GloBE Model Rules to the Republic— Wherever the GloBE Model Rules refer to the term "[insert name of implementing jurisdiction]" this should be substituted with "the Republic" for purposes of this Act and the Global Minimum Tax Administration Act.

PART III

Income Inclusion Rule

4. Charge to Tax for Constituent Entities.—A Domestic Constituent Entity is liable to pay a Top-up Tax under the Income Inclusion Rule determined in line with the GloBE Model Rules for each Fiscal Year of the MNE Group that includes the Domestic Constituent Entity.

5. Inapplicable articles in the GloBE Model Rules.—(1) The following provisions of the GloBE Model Rules shall not apply for the purposes of this Part:

(a) Articles 2.4 to 2.6 (UTPR charging provisions); and

(b) Article 9.3 (exclusion from the UTPR of MNE Groups in the initial phase of their international activity).

PART IV

Domestic Minimum Top-up Tax

A. Constituent Entity liability

6. Charge to Tax for Domestic Constituent Entities.—(1) Each Domestic Constituent Entity is jointly and severally liable to pay a Domestic Minimum Top-up Tax for each Fiscal Year of the MNE Group that includes the Domestic Constituent Entity.

(2) The Domestic Minimum Top-up Tax for the Fiscal Year must be equal to the Top-Up Tax determined for all Domestic Constituent Entities of the MNE Group.

7. Charge to Tax for Domestic Joint Ventures. (1) Each Domestic Joint Venture and Domestic Joint Venture Subsidiary of a Domestic Joint Venture Group is jointly and severally liable to pay a Domestic Minimum Top-up Tax for each Fiscal Year of the MNE Group that includes the Domestic Joint Venture or Domestic Joint Venture Subsidiary.

(2) The Domestic Minimum Top-up Tax for the Fiscal Year shall be equal to the Top-up Tax for the Domestic Joint Venture Group determined for the Domestic Joint Venture Group.

8. Calculation of the Domestic Minimum Top-up Tax.—(1) The Domestic Minimum Top-up Tax of Domestic Constituent Entities of the MNE Group and Domestic Minimum Top-up Tax of a Domestic Joint Venture Group shall be determined under the GloBE Model Rules, as modified by sections 9 to 19.

B. Articles that do not apply

9. Inapplicable articles in the GloBE Model Rules.—(1) The following provisions of the GloBE Model Rules shall not apply for the purposes of this Part:

(a) Article 2 (Charging Provisions);

(b) Article 5.2.4 (allocation of Top-up Tax amongst Constituent Entities);

(c) Article 5.2.5 (allocation of Top-up Tax amongst Constituent Entities when no Net GloBE Income for Fiscal Year);

(d) Article 5.4.2 (allocation of Additional Current Top-up Tax in connection with Article 5.4.1);

(e) Article 5.4.3 (allocation of Additional Current Top-up Tax in connection with Article 4.1.5);

(f) Article 5.4.4 (determination as Low-taxed Constituent Entity);

(g) Article 6.2.1(h) (application of Income Inclusion Rule in respect of acquisition of a target entity);

(h) Article 6.4.1(b) and (c) (application of Income Inclusion Rule and UTPR in connection with Joint Venture and Joint Venture Subsidiaries);

(i) Article 6.5.1(e) and (f) (application of Income Inclusion Rule and UTPR in connection with Multi-Parented MNE Groups);

(j) Article 7.3 (Eligible Distribution Tax System); and

(k) Article 9.3 (exclusion from the UTPR of MNE Groups in the initial phase of their international activity)

10. Qualified Domestic Minimum Top-up Tax definition in Article 10.1 of the GloBE Model Rules.—The definition of Qualified Domestic Minimum Top-up Tax in Article 10.1 of

the GloBE Model Rules shall not apply except for the purpose of determining whether Article 9.1.3 of the GloBE Model Rules applies to a transfer of assets to a Domestic Constituent Entity.

11. Inapplicable Safe Harbours.—The GloBE Commentary on the Qualified Domestic Minimum Top-up Tax Safe Harbour shall not apply for the purposes of this Part or the Global Minimum Tax Administration Act.

C. Computation of Adjusted Covered Taxes

12. Exclusion of certain foreign taxes on domestic income.—(1) The Adjusted Covered Taxes for each Domestic Constituent Entity, Domestic Joint Venture, and Domestic Joint Venture Subsidiary are to be calculated excluding any tax accrued by a Constituent Entity-owner located in another jurisdiction—

(a) with respect to the GloBE Income of a Domestic Constituent Entity, Domestic Joint Venture, and Domestic Joint Venture Subsidiary which would otherwise be allocated to that Domestic Constituent Entity under Article 4.3.2(a), Article 4.3.2(c) or 4.3.2(d) of the GloBE Model Rules; and

(b) that is allocable to a distributing Domestic Constituent Entity, Domestic Joint Venture, and Domestic Joint Venture Subsidiary under Article 4.3.2(e) of the GloBE Model Rules, except that this shall not apply to a withholding tax imposed by the Republic.

13. Exclusion of domestic taxes on certain foreign income.—The Adjusted Covered Taxes for each Domestic Constituent Entity, Domestic Joint Venture, and Domestic Joint Venture Subsidiary are to be calculated excluding tax accrued by Domestic Constituent Entities with respect to the income of, or dividends received from, Constituent Entities located in another jurisdiction.

D. Computation of Top-up Tax

14. Total Top-up Tax of Domestic Constituent Entities of the MNE Group.—The Top-Up Tax of Domestic Constituent Entities of the MNE Group shall be equal to the sum of the Domestic Minimum Top-up Tax calculated in accordance with section 16 but shall not include

Domestic Minimum Top-up Tax calculated for any Domestic Joint Venture or Domestic Joint Venture Subsidiary.

15. Top-up Tax of a Domestic Joint Venture Group. The Top-up Tax of a Domestic Joint Venture Group shall be equal to the Domestic Minimum Top up Tax calculated for that Domestic Joint Venture Group.

16. Domestic Minimum Top-up Tax calculation.—(1) There shall be separate Domestic Minimum Top-up Tax calculations for Domestic Constituent Entities that are Minority-Owned Constituent Entities, Domestic Constituent Entities that are Investment Entities, Domestic Joint Venture Groups and other Domestic Constituent Entities.

(2) The Domestic Minimum Top-up Tax for an Investment Entity shall be calculated under Articles 7.4 to 7.6 of the GloBE Model Rules and Article 2.2.2 of the GloBE Model Rules shall be applied to the extent necessary for this purpose.

(3) In all other cases, the Domestic Minimum Top-up Tax shall be calculated using the following formula in lieu of the formula set out in Article 5.2.3 of the GloBE Model Rules:

Top-up Tax = (Top-up Tax Percentage x Excess Profits) + Additional Current Top-up Tax

E. Transition Rules

17. Transition Year.— Except where section 18 applies, the Transition Year for the Republic shall be the earlier of the Fiscal Year that the MNE Group first becomes subject to this Act or the first Fiscal Year that Domestic Constituent Entities, Domestic Joint Ventures, and Domestic Joint Venture Subsidiaries of the MNE Group become subject to a Qualified IIR or Qualified UTPR in another jurisdiction.

18. Later Transition Year.—(1) This paragraph applies when the Transition Year under section 17 was the first Fiscal Year that the MNE Group became subject to this Act, and Domestic Constituent Entities were not subject to a Qualified IIR in that Fiscal Year.

(2) Where one or more Domestic Constituent Entities, Domestic Joint Ventures, and Domestic Joint Venture Subsidiaries become subject to a Qualified IIR for a subsequent Fiscal Year in another jurisdiction, the transition year for the Republic shall be revised to the Fiscal

Year a Domestic Constituent Entity first became subject to a Qualified IIR for that, and all, subsequent Fiscal Years.

19. Effect of a change in the Transition Year.—Paragraphs 118.49.1 and 118.49.2 of the GloBE Commentary shall apply when there is a change in the Transition Year as a result of section 18.

PART V
Imposition of and liability for top-up tax

20. Imposition of top-up tax.—The top-up tax must be levied and collected in accordance with Parts II, III and IV for the benefit of the National Revenue Fund.

21. Persons subject to tax.—

(1) Any Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary is—

(a) a taxpayer for the purposes of this Act; and

(b) liable to pay the top-up tax as set out in Parts II, III and IV in respect of the relevant Fiscal Year.

(2) The top-up tax must be paid at the time and in the manner set out in the Global Minimum Tax Administration Act.

22. Top-up tax liability in domestic currency.—If the top-up tax amount calculated in Parts II, III and IV is in a foreign currency, the top-up tax for the Fiscal Year shall be translated into Rands by using the average exchange rate as defined in the Income Tax Act for the Fiscal Year to which the tax relates.

PART VI
Short title and commencement

23. (1) This Act is called the Global Minimum Tax Act, 2024.

(2) This Act is deemed to have come into operation on 1 January 2024 and applies to Fiscal Years beginning on or after that date.



NATIONAL
TREASURY

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

GLOBAL MINIMUM TAX BILL, 2024

(DRAFT)

21 February 2024

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PREFACE

This Explanatory Memorandum (EM) is aimed at clarifying the implementation of the Global Anti-Base Erosion (GloBE) Model Rules in South Africa. The GloBE Model Rules are model rules agreed by the Base Erosion and Profit Shifting (BEPS) Inclusive Framework that are designed to be introduced into a jurisdiction's domestic law and work together with those of other jurisdictions to create a coordinated and comprehensive system of minimum taxation – ensuring that large multinational enterprise groups (MNE Groups) pay a minimum level of tax on their income in respect of every jurisdiction where they operate.

The GloBE Model Rules were released by the OECD/G20 Inclusive Framework on BEPS in December 2021 and are supported by a Commentary, which was released in March 2022. The Commentary is intended to promote a consistent and common interpretation of the GloBE Model Rules that will facilitate coordinated outcomes for both tax administrations and MNE Groups. The Inclusive Framework may amend the Commentary from time to time through the release of further Administrative Guidance.

The purpose of implementing the GloBE Model Rules in South Africa is to enable South Africa to impose a multinational top-up tax at a rate of 15 per cent on the excess profits of in-scope MNE Groups. It is proposed that the multinational top-up tax be imposed under:

- an Income Inclusion Rule (IIR) which taxes the domestic entity of an MNE Group on its allocable share of Top-up Tax arising in respect of the low-taxed income of any foreign group company in which it has a direct or indirect ownership interest; and
- a Domestic Minimum Top-Up Tax (DMTT) which imposes a joint and several tax liability on the domestic entities of an MNE Group for any Top-up Tax arising in respect of low-taxed income of those domestic entities (calculated on an aggregate basis but only with respect to entities located in South Africa).

The tax is designed to follow the GloBE Model Rules and Commentary and to be co-ordinated with the same tax in other jurisdictions with effect from 1 January 2024.

1. OVERVIEW

1.1. Rationale

In October 2021, South Africa joined with over 135 other jurisdictions to agree a two-pillar solution to reform the international taxation rules and ensure that multinational enterprises pay a fair share of tax wherever they operate and generate profits[1]. The GloBE Model Rules are one component of this two-pillar solution.

The GloBE Model Rules (also known as the global minimum tax) aim to limit the 'race to the bottom' for large MNE Groups, where jurisdictions compete to attract mobile income (for example, interest, dividends and royalties) through offering low tax rates and tax incentives. The global minimum tax ensures that any multinational with annual revenue exceeding 750 million Euros will be subject to an effective tax rate of at least 15 per cent, regardless of where its headquarters, operations, sales or profits are located. Implementing the global minimum tax in South Africa will bolster the corporate income tax base.

The GloBE Model Rules were developed by members of the Inclusive Framework (IF) and approved by consensus. They were released in December 2021 as model rules[2] which were drafted in the form of a template that jurisdictions can translate into domestic law. The approval of the GloBE Model Rules was followed by the release of detailed commentary (the Commentary) in March 2022[3].

Under the agreement reached in October 2021, a jurisdiction that chooses to implement the GloBE Model Rules must implement and administer those rules in a way that is consistent with the outcomes provided for under those rules and the associated commentary. Further, to ensure consistent and coordinated outcomes under the rules, the GloBE Model Rules require an implementing jurisdiction to apply the rules in accordance with any updates to the Commentary that have been agreed by the IF through the release of Agreed Administrative Guidance (including

[1] https://www.oecd.org/tax/beps/outcome-statement-on-the-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2023.htm

[2] OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD, Paris, https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm

[3] OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), OECD, Paris, https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two-commentary.pdf

guidance on the application of any safe harbours).

The following Administrative Guidance has been released by the Inclusive Framework since March 2022:

- OECD (2022), Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/safe-harbours-andpenalty-relief-global-anti-base-erosion-rules-pillar-two.pdf;
- OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), OECD/G20 Inclusive Framework on BEPS, OECD, Paris. www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two.pdf;
- OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), July 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosionrules-pillar-two-july-2023.pdf;
- OECD (2023), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), December 2023, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, http://www.oecd.org/tax/beps/administrative-guidance-global-antibase-erosion-rules-pillar-two-december-2023.pdf;

Further Administrative Guidance may be periodically issued by the IF to provide additional guidance on the interpretation and intended operation of the GloBE Model Rules (including safe harbours). Future Administrative Guidance may also have the effect of modifying the GloBE Model Rules.

To ensure the Republic adheres to its commitment to implement and administer the GloBE Model Rules consistently with the outcomes provided for under the GloBE Model Rules and the Commentary (as updated from time to time through Administrative Guidance), it has been decided to incorporate the GloBE Model Rules into the Republic's legislation by reference to the GloBE Model Rules, Commentary and Agreed Administrative Guidance.

1.2. Application of the GloBE Model Rules

I. Clarifying the application of amendments to the Commentary and Administrative Guidance

The current wording of the Draft Bill proposes to adopt an ambulatory approach[4] to applying the GloBE Model Rules and Commentary. Under this approach, it is proposed that where applying the GloBE Model Rules and Commentary, the most recent version of the Commentary will apply (updated by any Administrative Guidance that has been published before the start of the fiscal year) in respect of calculations that are being performed. This ambulatory treatment will ensure consistent application of the GloBE rules in line with the policy intention.

II. Interpretation of the GloBE Model Rules

The proposed wording provides that the GloBE Model Rules are treated as applying "consistently with" the most recent Commentary and Administrative Guidance. The policy intention is that the Model Rules must be interpreted in accordance with the Commentary and Administrative Guidance. Where there are inconsistencies, the Commentary and Administrative Guidance should modify or override the GloBE Model Rules.

III. Entities that are in-scope for the GloBE Model Rules

The GloBE Model Rules apply to MNE Groups that have a consolidated annual revenue of at least 750 million Euros in at least two of the four fiscal years immediately preceding the tested fiscal year. The fiscal year is the period covered by the MNE Group's consolidated financial statements.

IV. MNE group

An 'MNE Group' is a group with at least one entity or permanent establishment that is not located in the jurisdiction of the UPE. A member of an MNE Group (including a permanent establishment) is referred to as a 'Constituent Entity'. The MNE Group's Consolidated Financial Statements are used to determine what entities are within the group.

[4] An ambulatory approach means that the reference in domestic law automatically updates every time the Commentary and Administrative Guidance is updated.

The Ultimate Parent Entity (UPE) of an MNE group is the entity that owns directly or indirectly a controlling interest in any other group entity but is not controlled directly or indirectly by another group entity. The identity of the UPE is important because the IIR is applied at the UPE level if the UPE's jurisdiction has implemented a Qualified IIR.

V. Excluded entities

The following entities are excluded from the GloBE Model Rules:

- Governmental entities;
- International organisations;
- Non-profit organisations;
- Pension funds;
- Investment funds that are UPEs; and
- Real estate investment vehicles that are UPEs.

An entity owned by an Excluded Entity can also qualify as an Excluded Entity if it meets certain criteria relating to its ownership, assets and income.

Entities that meet the definition of Excluded Entities are not subject to the operative provisions of the GloBE Model Rules. However, Excluded Entities are still members of an MNE Group and therefore their revenue is taken into account for purposes of assessing whether the MNE Group meets the revenue threshold of EUR 750 million Euros.

VI. Application of the GloBE Model Rules

In general, the GloBE Model Rules apply a minimum of tax on the excess profits of an in-scope MNE Group in each jurisdiction where those profits are taxed below the minimum 15 per cent rate.

To determine whether Top-up Tax is due by an MNE Group, the Effective Tax Rate ('ETR') must be computed on a jurisdictional basis (see Part VII). Where this calculation results in an ETR that is below 15 per cent, the MNE Group is required to pay a Top-up Tax, to bring the total amount of tax in that low-tax jurisdiction up to the 15 per cent rate. The Top-up Tax is only computed in relation to the excess profits, which is the profit after applying a 'substance-based income exclusion' (see Part VIII).

VII. The Effective Tax Rate

The ETR calculation is set out in Chapters 3 to 5 of the GloBE Model Rules. These chapters set out the main features of the rules and include special rules that apply in certain circumstances.

The ETR for a jurisdiction is computed by dividing the total adjusted tax of local Constituent Entities by the total adjusted profit of those entities. There are detailed rules prescribing what taxes can be included in this calculation, which are known as 'Covered Taxes' and how to calculate the profit in the jurisdiction which is referred to as GloBE Income or Loss.

In-scope MNE Groups must calculate their ETRs for each jurisdiction annually. The calculation of the ETR for a jurisdiction broadly involves four steps:

- Firstly, the MNE Group must identify its Constituent Entities in the jurisdiction.
- Secondly, the MNE Group must determine the GloBE Income or Loss of each Constituent Entity in the jurisdiction. This starts with the entity's financial accounts which were used in the preparation of the MNE Group's Consolidated Financial Statements. Adjustments are then made to the accounting profit to obtain the GloBE Income (or Loss).
- Thirdly, the MNE Group must determine the Covered Taxes of the Constituent Entities in the jurisdiction. The starting point for calculating Covered Taxes is the current tax expense as shown in the same financial accounts as the ones used to determine the GloBE Income or Loss. Adjustments are then made to the current tax expense, including an adjustment based on deferred tax to address timing differences between accounting and tax.
- Lastly, the ETR is derived by aggregating Covered Taxes and GloBE Income and Loss of the Constituent Entities in a jurisdiction. The aggregated Covered Taxes is divided by the aggregated GloBE income or Loss to determine the jurisdictional ETR. However, calculation of the ETR will not be required where the de minimis exclusion in Article 5.5 of the GloBE Model Rules applies (i.e. where the Average GloBE Revenue of the jurisdiction is less than 10 million Euros and the Average GloBE Income or Loss of the jurisdiction is a loss or less than 1 million Euros). In addition, a simplified methodology for calculating the ETR may be available under a safe harbour.

VIII. Calculating the Top-up Tax

When the jurisdictional ETR is below the 15 per cent minimum rate, the next step is to determine how much Top-up Tax is owed.

MNE Groups must determine the Top-up Tax percentage, which is the difference between the 15

per cent minimum rate and the ETR in the jurisdiction. That Top-up Tax percentage is applied to the GloBE Income or Loss in the jurisdiction, after deducting a substance-based income exclusion to calculate the jurisdictional Top-up tax. The substance carve-out excludes from the GloBE tax base a certain amount of income calculated by reference to a fixed return on assets and payroll expenses in each jurisdiction. The result, which is the jurisdictional Top-up Tax, is allocated between the Constituent Entities located in the jurisdiction.

IX. Multinational top-up tax liability in domestic currency

If the multinational top-up tax amount computed under the GloBE Model Rules is in a foreign currency, the amounts shall be translated into Rands by using the average exchange rate for the Fiscal Year to which the tax relates.

2. INCOME INCLUSION RULE

A UPE located in the Republic may be liable for the multinational top-up tax under the IIR determined in accordance with Articles 2.1 to 2.3 of the GloBE Model Rules. Articles 2.4 to 2.6 of the GloBE Model Rules will not be applicable as they relate to the charging provisions of the Undertaxed Payments Rule (UTPR). Furthermore, Article 9.3 of the GloBE Model Rules is not applicable as it relates to the exclusion from the UTPR of MNE Groups in the initial phase of their international activity.

3. DOMESTIC MINIMUM TOP-UP TAX

3.1 Definition of Domestic Minimum Top-up tax (DMTT)

The Domestic Minimum Top-up Tax (“DMTT”) is a minimum top-up tax included in domestic law that:

i. calculates the excess profits of Constituent Entities located in the jurisdiction in a way that is consistent with the GloBE Model Rules;
ii. increases the domestic tax liability to the minimum rate on the domestic excess profits for a fiscal year; and

iii. is implemented and administered in a way that is consistent with the GloBE Model Rules and the Commentary.

3.2 Tax payable pursuant to DMTT and inapplicable articles in the GloBE Model Rules

A Domestic Constituent Entity is liable for the multinational top-up tax under the DMTT determined in accordance with the GloBE Model Rules.

However, the following provisions of the GloBE Model Rules are disapplied for purposes of the DMTT calculation:

i. Charging Provisions under Chapter 2 of the GloBE Model Rules

Charging provisions for the IIR and UTPR shall not apply as they are irrelevant to a DMTT.

ii. Provisions in the GloBE Model Rules that allocate the Jurisdictional Top-up Tax

Certain provisions of the GloBE Model Rules that allocate the Jurisdictional Top-up Tax to individual Constituent Entities shall not apply, because the DMTT charges the total Jurisdictional Top-up Tax so it is not necessary to allocate this amount between Constituent Entities. The following provisions of the GloBE Model Rules shall not apply:

i. Article 5.2.4 that allocates the Jurisdictional Top-up Tax computed for a Low-Tax Jurisdiction among the Constituent Entities in the jurisdiction;
ii. Article 5.2.5 that deals with the allocation of Top-up Tax amongst Constituent Entities when there is no Net GloBE Income for the Fiscal Year.
iii. Article 5.4.2 that provides a special rule for when there is additional Top-Up Tax due as a result of a recalculation performed in accordance with Article 5.4.1 and there is no Net Globe Income for the jurisdiction for the current Fiscal Year. The rule provides that the GloBE Income of the Constituent Entities in the jurisdiction shall be increased for the purposes of Article 2.2.2 in an amount equal to the additional Top-Up Tax due divided by the Minimum Rate.
iv. Article 5.4.3 that deals with allocation of Additional Current Top-up Tax arising under Article 4.1.5. Under Article 4.1.5, Top-Up Tax may be due because of a negative Adjusted Covered Taxes Amount that represents a larger loss for the jurisdiction than the Expected Adjusted Covered Taxes Amount.

v. Article 5.4.4 that treats the Constituent Entity to which the Additional Current Top-Up Tax is allocated as a Low-Tax Constituent Entity for purposes of Chapter 2 when Additional Top-Up Tax arises from a re-calculation under Articles 5.4.1 to 5.4.3.

iii. Provisions in the GloBE Model Rules that modify how Chapter 2 of the GloBE Models Rules applies to particular structures

Certain provisions of the GloBE Model Rules modify how Chapter 2 applies to particular structures and do not need to be incorporated into the DMTT. The following provisions of the GloBE Model Rules shall not apply:

i. Article 6.2.1(h) deals with the situation in which the target is required to apply the IIR as a Parent Entity of one or both MNE Groups. It provides that the target shall apply the IIR separately to its Allocable Shares of the Top-Up Tax of Low-Taxed Constituent Entities determined for each MNE Group.
ii. Articles 6.4.1(b) and 6.4.1(c) which describes how the IIR and UTPR is applied in the context to Joint Ventures (JVs) and JV Subsidiaries.
iii. Article 6.5.1(e) and (f) that describes how the IIR and UTPR is applied in the context of Multi-Parented MNE Group.

iv. Article 7.3 dealing with Eligible Distribution Systems

Article 7.3 of the GloBE Model Rules (Eligible Distribution Tax Systems) shall not apply because these rules will have no effect for a DMTT unless the jurisdiction had a distribution tax system prior to 1 July 2021.

v. Definition of a QDMTT in Article 10.1 of the GloBE Model Rules

i. The definition of a Qualified DMTT (QDMTT) in Article 10.1 of the GloBE Model Rules is disapplied because the Commentary to the QDMTT sets out multiple ways a jurisdiction could design its DMTT. It would be consequently unclear which of these ways applied if the QDMTT Commentary was incorporated.
ii. The QDMTT Safe Harbour is disapplied because the safe harbour only affects the application of the IIR and UTPR.

3.3 Computation of Adjusted Covered Taxes

i. Exclusion of certain foreign taxes on domestic income.

The GloBE Model Rules stipulate that the Adjusted Covered Taxes for each Domestic Constituent Entity are to be calculated by including any tax accrued by a Constituent Entity-owner located in another jurisdiction with respect to the GloBE Income of a Domestic Constituent Entity. The GloBE rules that allocate taxes of a Constituent Entity-owner are:

(i) Article 4.3.2(a) of the GloBE Model Rules which allocates such taxes to a Permanent Establishment,

(ii) Article 4.3.2(c) of the GloBE Model Rules which allocates such taxes to a controlled foreign company; and

(iii) Article 4.3.2(d) of the GloBE Model Rules which allocates such taxes to hybrid entities.

All these allocations are disregarded under the DMTT. In addition, taxes on dividends or other distribution that would otherwise be allocated to a distributing Domestic Constituent Entity under Article 4.3.2(e) of the GloBE Model Rules shall also be excluded from the DMTT calculation.

ii. Exclusion of domestic taxes on certain foreign income

The Adjusted Covered Taxes for each Domestic Constituent Entity are to be calculated excluding tax accrued by Domestic Constituent Entities with respect to the income of, or dividends received from, Constituent Entities located in another jurisdiction.

3.4 Computation of Top-up Tax

i. Total Top-up Tax of Domestic Constituent Entities of the MNE Group

The Top-Up Tax of Domestic Constituent Entities of the MNE Group shall be equal to the sum of the DMTT Jurisdictional Top-up Tax. The Jurisdictional Top-up Tax that is subject to the DMTT is based on the whole amount of the Jurisdictional Top-up Tax computed under Article 5.2.3 of the GloBE Model Rules, irrespective of the Ownership Interests held in the Constituent Entities located in the Republic by any Parent Entity of the MNE Group.

Under Article 6.4 of the GloBE Model Rules, the ETR and Top-up Tax for Joint Ventures and JV Subsidiaries located in each jurisdiction are computed separately from the ETR and Top-up Tax of the Constituent Entities in the same jurisdiction. As the results of these computations may be

different from the results of a blended ETR and Top-up Tax computation, a DMTT must also determine a separate ETR and Top-up Tax amount for Joint Ventures and JV Subsidiaries located in the jurisdiction to be functionally equivalent to the GloBE Model Rules.

ii. Top-up Tax of a Domestic JV Group.

The Top-up Tax of a Domestic JV Group shall be equal to the DMTT Jurisdictional Top-up Tax calculated for a JV Group.

iii. DMTT Jurisdictional Top-up Tax

In general, Top-up Tax is computed for the jurisdiction as a whole, but excluding the income and taxes of Investment Entities, JVs, and Minority-Owned Constituent Entities. The ETR and Top-up Taxes of these various categories of Entities must be computed separately under a QDMTT to produce functionally equivalent outcomes to the GloBE Model Rules. As such, the DMTT Jurisdictional Top-Up Tax computations for Domestic Constituent Entities that are Minority-Owned Constituent Entities, Domestic Constituent Entities that are Investment Entities, Domestic JV Groups and other Domestic Constituent Entities shall be computed separately.

The DMTT Jurisdictional Top-up Tax for an Investment Entity shall be computed under Article 7.4 of the GloBE Model Rules (effective tax rate computation for investment entities), Article 7.5 of the GloBE Model Rules (investment entity tax transparency election) and Article 7.6 of the GloBE Model Rules (taxable distribution method election). Article 2.2.2 of the GloBE Model Rules that defines the Parent Entity's Inclusion Ratio for the purposes of applying the IIR shall be applied to the extent necessary for this purpose. This is because the DMTT that applies to Investment Entities and Insurance Investment Entities must compute the ETR and Top-up Tax pursuant to Article 7.4 of the GloBE Model Rules in the same manner as the GloBE rules, except taxes that would be allocated to the Entity pursuant to Article 4.3.2(c) and (d) of the GloBE Model Rules are not taken into account in the ETR computation. However, the DMTT must also include all elections that are permitted under the GloBE Rules and require the MNE Group to make the same elections for both DMTT and GloBE purposes. To provide outcomes that are consistent with the GloBE Model Rules, the DMTT includes provisions similar to Articles 7.5 and 7.6 of the GloBE Model Rules.

In all other cases, the DMTT Jurisdictional Top-up Tax shall be computed using the following

formula in lieu of the formula set out in Article 5.2.3 of the GloBE Model Rules that provides the formula for computing the Jurisdictional Top-Up Tax:

Top-up Tax = (Top-up Tax Percentage x Excess Profits) + Additional Current Top-up Tax

The formula is different from the one set out in Article 5.2.3 of the GloBE Model Rules because the latter subtracts tax paid under a QDMTT from the current GloBE Top-up Tax. This formula needed to be modified for purposes of a DMTT to eliminate that subtraction, else the computation would be circular.

3.5 Transitional rules in respect of transition year or later transition year

The transition year for the Republic shall be the earlier of the fiscal year that the multinational enterprise group first becomes subject to this Act, or the first fiscal year that Domestic Constituent Entities of the MNE Group become subject to a Qualified IIR in another jurisdiction.

However, where one or more Domestic Constituent Entities become subject to a Qualified IIR or Qualified UTPR for a subsequent fiscal year in another jurisdiction, the transition year shall be revised to the fiscal year a Domestic Constituent Entity first became subject to a Qualified IIR and Qualified UTPR for those subsequent years.

4. DRAFT GLOBAL MINIMUM TAX ADMINISTRATION BILL

. As required by the Constitution, the separate Global Minimum Tax Administration Bill deals with administrative aspects of the proposed tax. That Bill proposes to introduce by reference the administrative provisions of the GloBE Model Rules in South Africa, while locating them within the existing legislative framework provided by the Tax Administration Act, 2011.

5. EFFECTIVE DATE

This Act is deemed to have come into operation on 1 January 2024 and applies to fiscal years beginning on or after that date.