REPUBLIC OF SOUTH AFRICA

GLOBAL MINIMUM TAX BILL

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

(MINISTER OF FINANCE)

[B 20—2024]

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BILL

To provide for the introduction of the Global Anti-Base Erosion (GloBE) Rules in South Africa; to provide for the imposition of Top-up Tax; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Organisation for Economic Cooperation and Development (OECD)/G20 Inclusive Framework to counter Base Erosion and Profit Shifting (BEPS) has developed the GloBE Rules, with the Republic being an active member of the OECD/G20 Inclusive Framework on BEPS;

AND WHEREAS the GloBE Rules introduce a global minimum tax, designed to ensure large multinational enterprises pay a minimum level of tax on the income arising in each jurisdiction where they operate, as part of the solution for addressing the tax challenges of the digital economy;

AND WHEREAS the Republic wishes to adopt the GloBE Rules, with the necessary changes for its context,

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

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PART I

Interpretation

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 being:

(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 as specified under section 23;

"Commentary to the GloBE Model Rules" or **"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, as specified under section 23;

"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 Group" means a Domestic Joint Venture and its Domestic Joint Venture Subsidiaries that are 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;

"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)*, as specified under section 23;

"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, means the location of an Entity 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 as specified under section 23; and

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

PART II
Application of GloBE Model Rules

Application of GloBE Model Rules

2. For purposes of this Act, the GloBE Model Rules apply for a Fiscal Year on the basis of the—

(a) Commentary to the GloBE Model Rules before the start of the Fiscal Year;

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

(c) Safe Harbours before the start of the Fiscal Year.

Application of GloBE Model Rules to Republic

3. 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

Charge to Tax for Constituent Entities

4. 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.

Inapplicable articles in GloBE Model Rules

5. 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

Charge to Tax for Domestic Constituent Entities

6. (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.

Charge to Tax for Domestic Joint Ventures

7. (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 must be equal to the Top-up Tax for the Domestic Joint Venture Group determined for the Domestic Joint Venture Group.

Calculation of Domestic Minimum Top-up Tax

8. 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

Inapplicable articles in GloBE Model Rules

9. (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).

Qualified Domestic Minimum Top-up Tax

10. 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.

Inapplicable Safe Harbours

11. 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

Exclusion of certain foreign taxes on domestic income

12. 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)*, *(c)* or *(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.

Exclusion of domestic taxes on certain foreign income

13. 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

Total Top-up Tax of Domestic Constituent Entities of MNE Group

14. 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.

Top-up Tax of Domestic Joint Venture Group

15. 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.

Domestic Minimum Top-up Tax calculation

16. (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 × Excess Profits) + Additional Current Top-up Tax

E. Transition Rules

Transition Year

17. 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.

Later Transition Year

18. (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.

Effect of change in Transition Year

19. 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

Imposition of Top-up Tax

20. 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.

Persons subject to tax

21. (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.

Top-up Tax liability in domestic currency

22. 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
General provisions

Amendments of international standards

23. (1) The Minister may by notice in the *Gazette* specify that any document released by the Inclusive Framework as contemplated in the definitions of Administrative Guidance to the GloBE Model Rules, Commentary to the GloBE Model Rules, Global Anti-Base Erosion Model Rules or Safe Harbour will apply for purposes of this Act, subject to such changes as may be specified by the Minister.

(2) Any notice under this section in any calendar year shall, unless Parliament otherwise provides, lapse on the last day of the next calendar year, but without detracting from the validity of such notice before it has so lapsed.

Regulations by Minister

24. The Minister may make regulations regarding—

(a) any ancillary or incidental procedural matter that is necessary to prescribe for the proper implementation of this Act; and

(b) any matter which under this Act is required or permitted to be prescribed.

Short title and commencement

25. (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.

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