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REPUBLIC OF SOUTH AFRICA

DRAFT GLOBAL MINIMUM TAX ADMINISTRATION BILL

(As introduced in the National Assembly (proposed section 76)

(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

21 February 2024

DRAFT

BILL

The Bill proposes to introduce by reference the administrative provisions of the Global Anti-Base Erosion (GloBE) Model Rules in South Africa for purposes of the administration of the Global Minimum Tax Bill.

ARRANGEMENT OF SECTIONS

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

1. Definitions. —In this Act, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Global Minimum Tax Act, has the meaning so ascribed, and—

"Constituent Filing Entity" is a Domestic Constituent Entity that must submit the GloBE Information Return under section 2 in accordance with Article 8.1 of the GloBE Model Rules;

"Designated Filing Entity" means the Constituent Entity, other than the Ultimate Parent Entity, that has been appointed by the MNE Group to submit the GloBE Information Return on behalf of the MNE Group;

"Designated Local Entity" means the Domestic Constituent Entity of an MNE Group that has been appointed by the other Domestic Constituent Entities of the MNE Group to submit the GloBE Information Return;

"GloBE Information Return" means, subject to section 2(1)*(c),* the return referred to in the document entitled OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;

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

"GloBE Model Rules" are the GloBE Model Rules as defined in the Global Minimum Tax Act and applied in accordance with that Act;

"Reporting Fiscal Year" means the fiscal year referred to section 4;

"Tax Administration Act" means the Tax Administration Act, 2011 (Act No. 28 of 2011); and

"Qualifying Competent Authority Agreement" means a bilateral or multilateral agreement or arrangement between Competent Authorities that provides for the automatic exchange of GloBE Information Returns.

2. Obligation to submit GloBE Information Return.—(1) A Domestic Constituent Entity of an MNE Group, Domestic Joint Venture or Domestic Joint Venture Subsidiary of a Domestic Joint Venture Group must submit to the Commissioner a GloBE Information Return that—

(a) complies with Articles 8.1.4, 8.1.5 and 8.1.6 of the GloBE Model Rules;

(b) is subject to Article 8.1.7 of the GloBE Model Rules; and

(c) complies with any further requirements prescribed under the Tax Administration Act or by the Commissioner by public notice.

(2) A Designated Local Entity may submit the GloBE Information Return to the Commissioner on behalf of all Domestic Constituent Entities.

(3) Where subsection (2) applies—

(a) a Domestic Constituent Entity must provide to the Designated Local Entity all information necessary for the correct application of the Top-Up Tax imposed under the Global Minimum Tax Act; and

(b) a Domestic Constituent Entity or Domestic Joint Venture Subsidiary must—

(i) notify the Commissioner no later than six months prior to the filing due date of GloBE Information Return under section 3 of the identity of the Entity that is submitting the GloBE Information Return; and

(ii) if subsequent to a notice under item (i), a new Entity is designated as the Domestic Designated Entity, a new notification must be provided the Commissioner upon or immediately after such new designation.

(4) All Domestic Constituent Entities must submit the GloBE Information return if—

(a) no designation is made in accordance with subsection (2);

(b) the Designated Local Entity is no longer a member of the same MNE Group as the Domestic Constituent Entities and the MNE Group does not appoint an alternative Designated Local Entity; or

(c) the Designated Local Entity fails to submit the return.

3. Due date for filing GloBE Information Return.—The GloBE Information Return must be submitted by—

(a) the date that is 15 months after the end of the Fiscal Year; or

(b) the date that is 18 months after the end of the Fiscal Year, if it is the first Fiscal Year:

(i) commencing on or after 1 January 2024 but before 1 January 2025; or

(ii) in which the MNE Group, that includes the Constituent Entity, or the Domestic Joint Venture or Domestic Joint Venture Subsidiary of a Domestic Joint Venture Group, is liable to the Top-Up Tax and the MNE Group or Domestic Joint Venture Group has not been required to file a GloBE Information Return in another jurisdiction for a previous Fiscal Year, ignoring Fiscal Years that precede the fiscal year described in item (i).

4. Exception for returns provided under an automatic exchange of information agreement.—(1) A Domestic Constituent Entity need not submit the GloBE Information Return under section 2 if the Commissioner is notified that the return has been submitted by—

(a) the Ultimate Parent Entity located in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with the Republic for the reporting fiscal year; or

(b) a Designated Filing Entity located in a jurisdiction that has a Qualifying Competent Authority Agreement in effect with the Republic for the reporting fiscal year.

(2) Where subsection (1) applies, a Domestic Constituent Entity must notify the Commissioner no later than six months prior to the filing due date of the GloBE Information Return under section 3 of the identity of the Entity that submits the GloBE Information Return and the jurisdiction in which it is located.

5. Due date for payment.—(1) The Top-Up Tax must be paid on or before the due date for submitting the GloBE Information Return under section 3.

(2) The Designated Local Entity or Designated Filing Entity may pay the Top-Up Tax on behalf of all Domestic Constituent Entities.

(3) If a Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary does not comply with any provision for purposes of the computation or payment of the Top-Up Tax under the Global Minimum Tax Act or this Act, the Commissioner may estimate the Top-Up Tax due and assess one or more Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary for the full or part of the amount of Top-Up Tax due.

6. Refunds.— The Commissioner must pay a refund if the Entity that paid Top-Up Tax under the Global Minimum Tax Act is entitled to a refund in accordance with section 190 of the Tax Administration Act.

7. Interest.—The provisions of Chapter 12 of the Tax Administration Act apply in respect of any tax debt or refund due under the Global Minimum Tax Act or this Act that is not paid in full by the effective date.

8. Penalties.—For any failure to comply an obligation imposed under section 2, an administrative non-compliance penalty of R50,000 may be imposed by the Commissioner, which penalty is regarded as a fixed amount administrative penalty imposed under section 210 and column 3 of the Table in section 211 of the Tax Administration Act for purposes of Chapter 15 of that Act.

9. Records keeping and expiry of period of limitations.—(1) In addition to the records required under the Tax Administration Act, a Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture subsidiary must retain the records to demonstrate compliance with Articles 8.1.4 and 8.1.5 of the GloBE Model Rules.

(2) For purposes of section 29(3) of the Tax Administration Act, the period that records, books of account or documents must be retained for purposes of this Act is extended to six years.

(3) For purposes of section 99(1) of the Tax Administration Act, the period of limitations for the issuance of assessment of tax due under the Global Minimum Tax Act is extended to six years.

10. Administration of the Act.—(1) The Commissioner is responsible for the administration of this Act and the Global Minimum Tax Act, in accordance with, where applicable, the provisions of the Tax Administration Act.

(2) Administrative requirements and procedures for the purposes of the performance of any duty, power or obligation or the exercise of any right in terms of the Global Minimum Tax Act and this Act are, to the extent not regulated in these Acts, regulated by the Tax Administration Act.

11. Regulations.—The Minister of Finance may make regulations with respect to any matter necessary to regulate and administer this Act.

12. Short title and commencement.—This Act is called the Global Minimum Tax Administration Act, 2024, and comes into operation on the date that the Global Minimum Tax Act comes into operation.