REPUBLIC OF SOUTH AFRICA

GLOBAL MINIMUM TAX ADMINISTRATION BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 51421 of 23 October 2024)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

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BILL

To provide for the administration of the Global Minimum Tax Act; and to provide for matters connected therewith.

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

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Definitions

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

''**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 under section 4;

"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**—**

(a) in an international context, a return conforming to the requirements of Articles 8.1.4 to 8.1.6 of the GloBE Model Rules; and

(b) in a domestic context, a return under section 25 of the Tax Administration Act taking into account the GloBE Information Return as defined in the GloBE Model Rules;

"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 that is the subject of the GloBE Information Return due under section 2;

"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.

Obligation to submit GloBE Information Return

2. (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 a GloBE Information Return to the Commissioner.

(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 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 subparagraph (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.

Due date for submitting GloBE Information Return

3. 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 submit a GloBE Information Return in another jurisdiction for a previous Fiscal Year, ignoring Fiscal Years that precede the Fiscal Year described in subparagraph (i).

Exception for returns provided under automatic exchange of information agreement

4. (1) A Domestic Constituent Entity need not submit the GloBE Information Return under section 2 if 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, the Domestic Constituent Entity must notify the Commissioner no later than six months prior to the 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.

Due date for payment

5. (1) The Top-up Tax must be paid by the date under section 3*(a)* or *(b)*.

(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 fully comply with subsection (1) or (2), the Commissioner may 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.

Refunds

6. The Commissioner must pay a refund if the Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary 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.

Interest

7. 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.

Penalties

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

(2) The amount of penalty determined under subsection (1) is doubled if the amount of Top-up Tax not paid as a result of the failure to comply exceeds R5 000 000, and is tripled if the amount exceeds R10 000 000.

Record-keeping and extension of period

9. (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 keep the records to demonstrate compliance with the Global Minimum Tax Act and this Act.

(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 seven years.

Administration of Act

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

Regulations

11. The Minister of Finance may make regulations with respect to any ancilliary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

Short title and commencement

12. This Act is called the Global Minimum Tax Administration Act, 2024, comes into operation on the date that the Global Minimum Tax Act comes into operation, and applies to Fiscal years beginning on or after that date.

MEMORANDUM ON THE OBJECTS OF THE GLOBAL MINIMUM TAX ADMINISTRATION BILL, 2024

1. PURPOSE OF BILL

The Global Minimum Tax Administration Bill, 2024, proposes to introduce the administrative provisions relating to the Global Minimum Tax Bill, 2024 (the ''GMT Bill'').

Interpretation

The definitions and provisions of this Bill closely follow the GloBE Model Rules, except for such changes as required for consistency with domestic law, in order to ensure consistency in the treatment of multinational enterprises (''MNEs'') across jurisdictions.

In terms of the GMT Bill, the GloBE Model Rules must be applied and interpreted consistently with the most recent GloBE Commentary and Administrative Guidance to the GloBE Model Rules as they read before the start of each Fiscal Year.

In view of the definition of ''GloBE Model Rules'' in the GMT Bill and the fact that the GloBE Model Rules are incorporated into South African law, with modifications, and are to be applied consistently with the GloBE Commentary and Administrative Guidance to the GloBE Model Rules in terms of the GMT Bill, this memorandum should be read together with the GloBE Model Rules.

2. OBJECTS OF BILL

2.1 Clause 1: Definitions

Introductory wording

Subject to the context in which they appear, certain words or terms are specifically defined in this Bill. This includes words or expressions ascribed a meaning by the GMT Bill and the Tax Administration Act, 2011 (Act No. 28 of 2011).

In terms of section 4(3) of the Tax Administration Act, the GMT Bill will prevail in the event of any inconsistency between the GMT Bill and the Tax Administration Act.

2.1.1 **"Designated Filing Entity"**

A Designated Filing Entity means the Constituent Entity, other than the Ultimate Parent Entity, that has been appointed by the MNE Group to submit a GloBE Information Return (a ''GIR'') on behalf of the MNE Group. This enables the MNE Group to select a Constituent Entity that is better placed than the Ultimate Parent Entity to submit a GIR on behalf of the MNE Group.

2.1.2 **"Designated Local Entity"**

This means the Domestic Constituent Entity of a MNE Group that has been appointed by the other Domestic Constituent Entities of the MNE Group to submit the GIR to South African Revenue Service (''SARS'') on their behalf, so that they do not each have to do so.

2.1.3 **"GloBE Information Return"**

The GIR is a return in a standardised template form that provides a tax administration with the information it needs to evaluate the correct-

ness of a Constituent Entity's tax liability under the GloBE Model Rules.

The GIR is defined in this Bill in both an international context and in a domestic context. In an international context direct reference is made to the GIR as defined in the GloBE Model Rules, since this is the international benchmark.

In a domestic context it is defined as a return under section 25 of the Tax Administration Act taking into account the GIR contemplated in the Globe Model Rules, so it is clear that all the administrative provisions of the Tax Administration Act in respect of returns apply.

The GloBE Model Rules specifically provide that a tax administration may modify the information, filing and notification requirements in respect of the GIR where this is agreed as part of the GloBE Implementation Framework. This is intended to provide some flexibility to jurisdictions and their tax administrations in the implementation of the filing and notification requirements that are developed under the GloBE Implementation Framework.

2.1.4 **"Global Minimum Tax Act"**

This means the Global Minimum Tax Act, 2024, which is a ''tax Act'' as defined in section 1 of the Tax Administration Act.

2.1.5 **"GloBE Model Rules"**

These are the GloBE Model Rules as defined in the GMT Bill and apply to this Bill in accordance with clause 2 of the GMT Bill, which essentially means that the Rules must be treated as applying ''consistently with'' the most recent GloBE Commentary and Administrative Guidance to the GloBE Model Rules.

2.1.6 **"Reporting Fiscal Year"**

This means the Fiscal Year referred to in clause 2 of the GMT Bill that is the subject of a GIR. A Fiscal Year is generally defined in the GloBE Model Rules as an accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its Consolidated Financial Statements.

2.1.7 **"Tax Administration Act"**

This means the Tax Administration Act, 2011 (Act No. 28 of 2011), and includes regulations and public notices issued under it.

2.1.8 **"Qualifying Competent Authority Agreement"**

This means a bilateral or multilateral agreement or arrangement between Competent Authorities that provides for the automatic exchange of GIRs. See paragraph 2.4 below.

2.2 **Clause 2: Obligation to submit GloBE Information Return**

Each Domestic Constituent Entity is obliged to file a GIR with SARS. The GIR can be filed by each Domestic Constituent Entity directly with SARS or through a Designated Local Entity on behalf of one or more Domestic Constituent Entities located in the Republic.

A Domestic Constituent Entity must notify the Commissioner, no later than six months prior to the filing due date of the GIR under clause 3 of this Bill, of the identity of the Designated Local Entity that is submitting the GIR. If,

subsequent to the notice, a new Entity is designated as the Designated Local Entity, a new notification must be provided to the Commissioner upon or immediately after such new designation.

However, all Domestic Constituent Entities must submit the GIR in the following circumstances:

- No Designated Local Entity is designated;
- 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
- The Designated Local Entity fails to submit the GIR.

2.3 **Clause 3: Due date for submitting GloBE Information Return**

In order to allow MNE Groups time to prepare the required information, MNE Groups are usually provided with up to 15 months after the last day of the Reporting Fiscal Year to file the GIR. For example, if a Fiscal Year ends on 31 December 2027, the GIR is due by 31 March 2029.

It is, however, appreciated that completing a GIR for the first time is a challenging exercise. MNE Groups are provided with up to 18 months after the last day of the Reporting Fiscal Year to file the GIR for:

(a) The Fiscal Year commencing on or after 1 January 2024 but before 1 January 2025; or

(b) The first Fiscal Year in which the MNE Group is liable to the Top-up Tax under the GMT Bill *and* has not been required to file a GIR in another jurisdiction for a previous Fiscal Year, ignoring Fiscal Years before Fiscal Years commencing on or after 1 January 2024 but before 1 January 2025.

The application of the first rule means that the earliest that a GIR must be filed with SARS is 30 June 2026.

An example of the application of the second rule is where an MNE Group exceeds the revenue threshold to be subject to the Top-up Tax for the first time in its Fiscal Year ending 31 December 2027. As it will not have previously had to file a GIR in any jurisdiction, its first GIR will be due by 30 June 2029.

2.4 **Clause 4: Exception for returns provided under an automatic exchange of information agreement**

The Bill recognises, as do the GloBE Model Rules, that a given Domestic Constituent Entity may not be in the best position to collect the information necessary to complete the GIR, particularly if most of the information for that return concerns other members of the MNE Group. In many cases, the Ultimate Parent Entity or a Designated Filing Entity appointed by the MNE Group would be in a better position to collect such information, much of which may already be collected in the preparation of the MNE Group's consolidated financial statements.

In essence, clause 4 provides that Domestic Constituent Entities need not file a GIR with SARS if the GIR has been filed by the Ultimate Parent Entity, or by a Designated Filing Entity appointed by the MNE Group, in a jurisdiction that has a Qualifying Competent Authority Agreement (QCAA) with the Republic.

The QCAA will enable the provision of the GIR to the Competent Authority of the Republic on an automatic basis by the Competent Authority of the jurisdiction where the Ultimate Parent Entity or Designated Filing Entity is located.

A Domestic Constituent Entity must notify the Commissioner no later than six months prior to the filing due date of the GIR under clause 3 of the identity of the Designated Filing Entity that files the GIR and the jurisdiction in which it is located.

2.5 **Clause 5: Due date for payment**

The Top-up Tax due under the GMT Bill must be paid by the date referred to in clause 3 of this Bill.

The GloBE Model Rules do not seek to harmonise tax filing and payment obligations for the Rules themselves. They aim to provide core information to jurisdictions implementing the GloBE Rules information reporting requirements. The operation of tax filing and payment obligation rules, including, for example, late payment interest and time limits for auditing and correcting returns, is left to the determination of each implementing jurisdiction based on the design of that jurisdiction's existing tax filing and payment procedures.

The Top-up Tax must be paid by the due date for filing the GIR under clause 3. The Designated Local Entity or Designated Filing Entity may pay the Top-up Tax on behalf of all Domestic Constituent Entities in the Republic.

If a Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary does not fully comply with clause 5(1) or (2), the Commissioner may 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 using the Commissioner's powers of assessment under the Tax Administration Act. This would include making an assessment based in whole or in part on an estimate under section 95 of that Act.

2.6 **Clause 6: Refunds**

The Commissioner must pay a refund if the Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture Subsidiary that paid Top-up Tax under the GMT Bill is entitled to a refund in accordance with section 190 of the Tax Administration Act.

2.7 **Clause 7: Interest**

The provisions of Chapter 12 of the Tax Administration Act apply in respect of any tax debt or refund due under the GMT Bill or this Bill that is not paid in full by the effective date as defined in the Tax Administration Act.

2.8 **Clause 8: Penalties**

The GloBE Model Rules provide that the laws of each jurisdiction with respect to penalties and sanctions also apply to the GIR. In the case of penalties and sanctions, this means that appropriately dissuasive domestic penalties and sanctions, given the size of the MNE Groups within scope of the GMT Bill, must apply if the GIR is not submitted on time or if there is any false or incomplete information. Jurisdictions are free to extend existing penalties or sanctions (as well as any penalty or sanction mitigation provisions) or to create new ones for the GIR.

Thus, for any failure to comply with an obligation imposed under clause 2, an administrative non-compliance penalty of up to R50 000 may be imposed by the Commissioner, which penalty is regarded as a fixed amount administrative penalty imposed under section 210 and section 211 of the Tax Administration Act for purposes of Chapter 15 of that Act. Furthermore, the amount of the penalty is doubled if the amount of Top-up Tax not paid as a result of the failure to comply exceeds R5 000 000, and is tripled if the amount exceeds R10 000 000. These amounts take into account the size of the MNE Groups

concerned and are aligned with those used in respect of reportable arrangements in terms of the Tax Administration Act.

It should be noted that clause 8 provides that the Commissioner ''may impose'' the penalty in contrast to the use of the term ''must impose'' in section 210 of the Tax Administration Act. This discretionary power is intended to cater for initial interpretive and operational challenges and the transition relating to the implementation of the GMT Bill and this Bill.

The normal remittance, objection and appeal remedies under Chapter 15 of the Tax Administration Act will apply.

2.9 **Clause 9: Record-keeping and extension of period**

A Designated Local Entity, Domestic Constituent Entity, Domestic Joint Venture or Domestic Joint Venture subsidiary must retain the records to demonstrate compliance with the obligations as prescribed by section 29 of the Tax Administration Act. 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 Bill is extended to seven years.

This is required as the GloBE Model Rules envisage the revisiting of GIRs after five years to take account of certain deferred tax liabilities claimed that have not reversed (i.e. have not crystalised) within this period. The GIR for the fifth year, which will take up any adjustments in this regard, must only be submitted 15 months after the end of the year. It may only be in the process of preparing (and evaluating) this return that the need for a reversal is detected.

2.10 **Clause 10: Administration of Act**

The Commissioner is responsible for the administration of this Bill and the GMT Bill, in accordance with the provisions of the Tax Administration Act. 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 GMT Bill and this Bill are, to the extent not regulated in these Bills, regulated by the Tax Administration Act.

2.11 **Clause 11: Regulations**

The Minister of Finance may make regulations with respect to any ancilliary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Bill.

2.12 **Clause 12: Short title and commencement**

This clause makes provision for the short title of the proposed Act and comes into operation on the date that the GMT Bill comes into operation, and applies to fiscal years beginning on or after that date.

3. CONSULTATION

The amendments proposed by this Bill were published on SARS' and National Treasury's websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large have been consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2024 Budget Review, tabled in Parliament on 21 February 2024.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the National Treasury and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.