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REPUBLIC OF SOUTH AFRICA

DRAFT 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)

21 February 2024

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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;

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“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;

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“**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.

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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.

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(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

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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

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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:

$$\text{Top-up Tax} = (\text{Top-up Tax Percentage} \times \text{Excess Profits}) + \text{Additional Current Top-up Tax}$$

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

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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.