

DOMESTIC MINIMUM TOP-UP TAX BILL, 2024

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DOMESTIC MINIMUM TOP-UP TAX BILL, 2024

A BILL FOR AN ACT TO IMPLEMENT, THROUGH THE INCORPORATION AND APPLICATION OF THE GLOBE MODEL RULES, A DOMESTIC MINIMUM TOP-UP TAX AND FOR CONNECTED PURPOSES

Enacted by the Parliament of The Bahamas

PRELIMINARY

1. Short title and commencement.

- (1) This Act shall be cited as the Domestic Minimum Top-Up Tax Act, 2024.
- (2) This Act shall be deemed to have come into force on January 1, 2024 and applies to Fiscal Years of an MNE Group that begins after December 31, 2023, except that it does not apply to a Constituent Entity of the Group in respect of a Fiscal Year of the Group that begins before January 1, 2025 unless the Group or any of its Constituent Entities is subject to an IIR or UTPR in another jurisdiction in respect of that Fiscal Year.

INTERPRETATION

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
“**authorized person**” means a person authorized by the Secretary to exercise certain powers delegated to the Secretary under this Act, while the person is acting within the scope of that authority;
“**Domestic Minimum Top-Up Tax**” or “**DMTT**” means a domestic minimum top-up tax imposed under section 4;

“GloBE Model Rules” means the set of rules set out in the document, reproduced in the *Schedule*, with the citation OECD 2021, Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, as those rules may be clarified, qualified or amended from time to time by —

- (a) the document, reproduced in the *Schedule*, with the citation OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris;
- (b) the document, reproduced in the *Schedule*, with the citation OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024, OECD/G20 Inclusive Framework on BEPS, OECD, Paris;
- (c) any further document approved by the Inclusive Framework pertaining specifically to the rules that the Minister may specify by order;

“Minister” means the Minister of Finance;

“prescribed” means —

- (a) in the case of the form or content of a return, notice, election or other document or the manner in which it is to be filed, sent or otherwise provided, the form, content or manner prescribed by the Secretary in rules; or
- (b) in any other case, prescribed by regulation;

“Secretary” means the Financial Secretary;

“The Bahamas” means the Commonwealth of The Bahamas and, when used in a geographical sense, includes its territorial sea as well as any area outside the territorial sea that has been or may be designated, under international law and the laws of The Bahamas, as areas within which it may exercise sovereign rights or jurisdiction with regard to the exploration or exploitation of natural resources.

- (2) Unless the context otherwise requires, any capitalised word or expression that is assigned a meaning in the GloBE Model Rules has the meaning so assigned for the purposes of this Act.

- (3) For the purposes of this Act and the application of the GloBE Model Rules, an Entity, other than a Flow-through Entity, is deemed to be resident in The Bahamas if —
 - (a) the Entity was incorporated, created or organized in The Bahamas;
or
 - (b) the place of effective management of the Entity is in The Bahamas.

3. Application of the GloBE Model Rules.

- (1) The main purpose of this Act is to implement, through the incorporation and application of the GloBE Model Rules, a domestic minimum top-up tax that meets the requirements to be a Qualified Domestic Minimum Top-up Tax under the OECD Inclusive Framework peer review process and to the extent that there is any uncertainty or ambiguity about the interpretation or application of the provisions of this Act or the Rules, the interpretation or application that best achieves the purpose is to be preferred.
- (2) To the extent that there is any uncertainty or ambiguity about the interpretation or application of the provisions of this Act or the GloBE Model Rules, the interpretation or application that best achieves the purpose specified in subsection (1), is to be preferred.
- (3) The following parts of the GloBE Model Rules do not apply for the purposes of this Act —
 - (a) Chapter 2 (charging provisions);
 - (b) Article 4.3.2(c) (allocation of covered Taxes in respect of Controlled Foreign Company Regime) and Article 4.3.3 (limitation with respect to Article 4.3.2(c));
 - (c) Article 4.3.2(d) (allocation of covered Taxes in respect of a Hybrid Entity) and Article 4.3.3 (limitation with respect to Article 4.3.2(d));
 - (d) Article 5.2.4 (allocation of Top-up Tax amongst Constituent Entities);
 - (e) Article 5.2.5 (allocation of Top-up Tax amongst Constituent Entities when no Net GloBE Income for Fiscal Year);
 - (f) Article 5.4.2 (allocation of Additional Current Top-Up Tax in connection with Article 5.4.1);
 - (g) Article 5.4.3 (allocation of Additional Current Top-Up Tax in connection with Article 4.1.5);
 - (h) Article 5.4.4 (determination as Low-Taxed Constituent Entity);
 - (i) Article 6.2.1(h) (application of IIR in respect of acquisition of a target entity);

- (j) Article 6.4.1(b) and (c) (application of IIR and UTPR in connection with Joint Venture and JV Subsidiaries);
 - (k) Article 6.5.1(e) and (f) (application of IIR and UTPR in connection with Multi-Parented MNE Groups);
 - (l) Article 8.1 (filing obligation);
 - (m) Article 8.3 (application of Administrative Guidance);
 - (n) Article 9.3 (Exclusion from the UTPR of MNE Groups in the initial phase of their international activity); and
 - (o) all provisions relating to Stateless Entities.
- (4) If the GloBE Model Rules are updated, amended or otherwise changed during a Fiscal Year of an MNE Group such that the application of the changed Rules would produce a different outcome for the Group or its Constituent Entities than before the change, the Rules as they read at the beginning of the Fiscal Year shall apply.

IMPOSITION

4. Liability for DMTT.

- (1) If an MNE Group is within the scope of the GloBE Model Rules, each of its Constituent Entities that is located in The Bahamas is jointly and severally liable to pay a tax, to be known as a domestic minimum top-up tax, to The Bahamas for each Fiscal Year.
- (2) The amount of DMTT payable under subsection (1) is equal to the amount of Jurisdictional Top-up Tax that would be computed under Article 5.2.3 of the GloBE Model Rules if both the reference to “Domestic Top Up Tax” in the formula and paragraph (d) in Article 5.2.3 had been deleted.
- (3) For greater certainty, if Article 6.4.1.(a) of the GloBE Model Rules applies to a Joint Venture or its JV Subsidiaries located in The Bahamas, they are each a Constituent Entity and together form an MNE Group for the purposes of subsection (1).

REPORTING AND PAYMENT OF DMTT

5. Reporting of DMTT.

- (1) Each Constituent Entity that is located in The Bahamas of an MNE Group that is within the scope of the GloBE Model Rules must file, or have filed on their behalf, a return in the prescribed form and manner and containing prescribed information no later than the day that is fifteen months after the last day of the Fiscal Year of the MNE Group.

- (2) A Constituent Entity located in The Bahamas of an MNE Group must notify the Secretary in the prescribed form and manner at the beginning of each Fiscal Year whether or not the Group is likely to be within the scope of the GloBE Model Rules for the Year.
- (3) An election permitted under the GloBE Model Rules must be made by, or on behalf of, a Constituent Entity in accordance with those Rules and in the prescribed form and manner.

6. Payment of DMTT due.

- (1) All amounts of DMTT in respect of the Fiscal Year of an MNE Group for which a Constituent Entity is liable must be paid no later than the day that is fifteen months after the last day of the Fiscal Year.
- (2) All amounts of DMTT must be paid to or collected by the Secretary in the currency of The Bahamas and paid into the Consolidated Fund.

RESPONSIBILITY AND AUTHORITY OF SECRETARY

7. Secretary.

- (1) The Secretary has responsibility for the administration of this Act.
- (2) Subject to this Act, the powers, functions and duties of the Secretary are to —
 - (a) ensure the effective and efficient assessment and collection of tax in accordance with the provisions of this Act and the regulations;
 - (b) prepare a national framework for the imposition and collection of tax, including administrative procedures, standards and protocols; and
 - (c) advise the Minister on the information technology systems, personnel, skills and other resources required to ensure optimal administration and enforcement.
- (3) Despite any provision to the contrary contained in the Data Protection (Privacy of Personal Information) Act (*Ch. 324A*) —
 - (a) the Secretary may, in the exercise of his functions and powers under subsection (2), request in writing from any ministry, department, statutory body, agency, local government council, or other entity of Government any documents and information that the Secretary considers to be necessary or desirable to facilitate the administration and enforcement of this Act; and
 - (b) a ministry, department, statutory body, agency, local government council, or other entity of Government receiving a request by the

Secretary must provide the documents and information contained in the request to the Secretary.

8. Delegation of functions and powers of the Secretary.

The functions and powers of the Secretary are exercisable and may be performed by —

- (a) the Controller of Inland Revenue;
- (b) officers of the Department of Inland Revenue; or
- (c) an authorized person.

9. Power of Secretary to prescribe forms and procedures.

- (1) The Secretary may from time to time prescribe forms and procedures for the purpose of the administration of this Act and make them accessible by publishing them on an official website of the Government.
- (2) The production by the Secretary of any document purporting to be a form prescribed by the Secretary, or a copy of or extract from a prescribed form, shall in all courts and in all proceedings, including proceedings before the Tax Appeal Commission, be sufficient evidence of the fact that the form or electronic format was prescribed by the Secretary.
- (3) In this section, “**form**” includes a letter, notice, return, application, election, declaration or any other document and may be in an electronic format.

10. Minister may give policy directions.

- (1) Subject to subsection (2), the Minister may give the Secretary directions of a general character as to the policy the Minister considers to be necessary in the public interest to be followed by the Secretary in the exercise and discharge of the Secretary’s powers, functions and duties under this Act.
- (2) The Minister may not —
 - (a) intervene in matters relating to the day-to-day administration and collection of tax revenues or implementation of tax policy;
 - (b) participate in the making of, or influence, any decision by the Secretary concerning the —
 - (i) affairs of a particular taxable person;
 - (ii) enforcement of this Act in relation to a particular taxable person; or
 - (c) access, except by written request made to the Secretary, information in the possession of the Department of Inland Revenue regarding the income, business or affairs of a particular taxable person.

11. Tax rules and guidelines.

- (1) The Secretary may, in performing his functions and duties in carrying out the administration and enforcement of this Act, make tax rules providing for any matters that may be necessary to perform those functions and duties or to give effect to the intent and purposes of this Act.
- (2) Tax rules —
 - (a) have the force of law and are effective on the date published in the *Gazette* or any other date that may be specified in the rules; and
 - (b) are subject to the regulations and, where a rule conflicts with a regulation, the regulation made by the Minister prevails.
- (3) The Secretary may from time to time publish tax guidelines in order to clarify, explain, illustrate, or illuminate any procedure, process, or matter in respect of the administration and enforcement of this Act, the regulations and tax rules.
- (4) Tax guidelines do not have the force of law and must be published in accordance with the regulations.
- (5) A tax rule or guideline must not be inconsistent with the GloBE Model Rules.

12. Advance tax rulings.

- (1) The Secretary may, on application by a person in the prescribed form, set out the Secretary's position regarding the application of the Act to the person with respect to a transaction, venture or other activity proposed or entered into by the person.
- (2) An advance tax ruling shall not be provided —
 - (a) where the applicant has not provided all the information determined by the Secretary to be necessary;
 - (b) where the Secretary is of the opinion that there are no genuine points of uncertainty;
 - (c) where the applicant is asking the Secretary to give tax planning advice;
 - (d) where the request relates to transactions which, in the Secretary's view, are for the purposes of avoiding tax; or
 - (e) in any other circumstances outlined by the Secretary in tax rules.
- (3) Subject to subsection (5), an advance tax ruling —
 - (a) is binding on the Secretary for the time period determined by the Secretary and stated in the ruling; and

- (b) may state a time period, during which the ruling is binding on the taxpayer, to include transactions commenced or completed prior to the application being made for the ruling.
- (4) The application by a person for an advance tax ruling under this section shall not affect or impede an audit in progress.
- (5) An advance tax ruling issued by the Secretary on the basis of false, misleading or incorrect information provided in the application for the ruling is void.

13. Investigatory powers of the Secretary.

- (1) The Secretary or an authorized person may, for purposes of the administration and enforcement of this Act, by notice in writing in the prescribed form, require any person to —
 - (a) furnish all information, documents or other records specified in the notice that the Secretary considers relevant to any liabilities under this Act of the person or any other person;
 - (b) attend at such time and place as the Secretary specifies in the notice to be examined on oath before the Secretary or authorized person, concerning the tax affairs of the person or any other person;
 - (c) for the purposes of paragraph (b), produce any record or computer in the person's custody or control that the Secretary or authorized person may require the person to produce; and
 - (d) provide the Secretary or authorized person with access to the premises used or occupied by the person, or where books of account are kept, in order to —
 - (i) examine the records or books of account, or any other documents in the possession or control of the person that may concern the tax affairs of the person or any other person;
 - (ii) inspect any raw materials, trading stock, or other assets; or
 - (iii) inspect the processes used by him, including the methods adopted in recording supplies.
- (2) A person carrying on a business or an employee or agent of the person must, where a notice requiring access to premises in accordance with subsection (1)(d) is received, give the Secretary or authorized person —
 - (a) any reasonable assistance in connection with the examination or inspection that the Secretary or authorized person may require; and
 - (b) answers, orally or in writing that the Secretary or authorized person may require, to any questions relating to the examination or inspection.

- (3) A notice in accordance with subsection (1)(c) is adequate and sufficient where the record or computer to be produced is described in the notice with reasonable certainty.
- (4) The Secretary or authorized person may, where during an examination or inspection it appears that there has not been a correct disclosure of liability to tax filed in a tax return or otherwise —
 - (a) take possession of books of account, or other documents or computer records, for further examination; and
 - (b) after the examination referred to in paragraph (a), retain or make copies of, or take extracts from, the books, documents, or computer records for any of the purposes of this Act.
- (5) Without prejudice to the generality of the Secretary's powers under subsection (1), the Secretary may by notice in writing as prescribed require a bank or other financial institution —
 - (a) to furnish the Secretary with —
 - (i) details of any banking account or other assets that may be held by or on behalf of a person or their associate; or
 - (ii) a copy of bank statements or statement of assets of any banking account or other asset referred to in subparagraph (i);
 - (b) to permit the Secretary or authorized person to inspect the records of the bank or institution in relation to the banking account of a person or their associate; and
 - (c) to attend, by an officer or authorized person of the bank or institution, before the Secretary to give evidence in respect of bank accounts or other assets that may be held by the bank or institution on behalf of a person or their associate.
- (6) Subsection (5) has effect despite any other law to the contrary relating to privilege, public interest, bank confidentiality, or bank secrecy.
- (7) If a person is to be prosecuted for an offence under this or any other Act, no power under this section may be exercised to further obtain information or gather evidence that may be used in the prosecution.
- (8) No person is permitted to use information furnished, or records or documents produced, under this section for a purpose other than that for which they were furnished or produced.
- (9) No person is permitted to —
 - (a) contravene or fail to comply with a provision of this section; or
 - (b) prevent, impede or interfere in any way with the Secretary or authorized person in the lawful exercise of a power under this section.

14. Assessments.

- (1) The Secretary may at any time assess the amount of tax a person is liable to pay under this Act for a taxation year of the person where —
 - (a) the person fails to file a return within the time period required under this Act;
 - (b) the Secretary is not satisfied that a return filed by the person is accurate or reasonable; or
 - (c) the Secretary has reason to believe that the person has not properly determined their liability for tax in accordance with this Act.
- (2) An assessment under subsection (1)(a) or (b), where the default was not due to the neglect, carelessness, fraud or wilful default of the person filing or submitting the return or declaration, must be made before the latest of —
 - (a) the end of the five-year period after the relevant taxation year;
 - (b) where an audit is undertaken by the Secretary within the period referred to in paragraph (a), the end of the 5-year period after the completion of the audit; or
 - (c) if the amount of the tax liability of a person is under dispute, the end of two years after the dispute is finally resolved.
- (3) An admission by a person of a misstatement in a return filed by the person is deemed to establish that the default was due to neglect, carelessness, fraud, wilful default, or wilful misstatement, in which case the time limitation for an assessment in subsection (2) does not apply.
- (4) The Secretary may at any time assess a person's liability under this Act where —
 - (a) where an amount is paid to, or applied to a liability of, a person as a credit or refund under this Act and the person is not entitled to the credit or refund, or the amount paid or applied exceeds the credit or refund to which the person is entitled; or
 - (b) the person is liable for a penalty or fine under this Act.
- (5) An assessment under this section must be communicated in writing to the person assessed and must specify —
 - (a) the amount payable by the person assessed; and
 - (b) the time, place, and manner of objecting to the assessment.
- (6) An assessment made under subsection (1) shall be based on the information available to the Secretary and the Secretary's reasonable estimate of the taxes properly due and payable by the person.

- (7) The Secretary may, for the purpose of making an assessment or for the exercise of any other power or duty under this Act, audit the accounts of a business.
- (8) The Secretary may, within three years after sending a notice of assessment —
 - (a) amend an assessment, as the Secretary considers necessary; and
 - (b) send a written notice as prescribed of the amended assessment on the person assessed.
- (9) For the purposes of this Act —
 - (a) an assessment includes an amended assessment; and
 - (b) tax charged under this Act includes an amount of tax assessed as due and payable by the Secretary in an assessment under this section.
- (10) The original notice or a copy certified by the Secretary of a notice of assessment is receivable in any proceedings as conclusive evidence that —
 - (a) the assessment is a true assessment duly made; and
 - (b) except in appeal proceedings before the Tax Appeal Commission, the amount and all particulars in the notice are correct.
- (11) A notice of assessment or other document purported to be made, issued, or executed under this Act shall not be quashed, or deemed to be void or voidable, for want of form or by reason of mistake, defect or omission where —
 - (a) the assessment or other document is in substance and effect in conformity with this Act; and
 - (b) the person assessed or intended to be assessed, or affected by the document, is identified in the assessment or document.
- (12) An assessment may provide for a date on which the assessed amount is due and payable by the person assessed.

15. Penalties and interest.

- (1) The Minister may prescribe penalties that may be payable for —
 - (a) failing to file a return by the due date as required under this Act;
 - (b) failing to pay tax or other amounts as required under this Act; or
 - (c) any other non-compliance with this Act.
- (2) The Minister may prescribe rates of interest to be paid on amounts payable by or to a person under this Act.

16. Application of section 50 of the Business Licence Act, 2023.

For the purpose of collecting an amount owed by a person (the “tax debtor”) under this Act, section 50 of the Business Licence Act, 2023 (*No. 13 of 2023*), may be applied *mutatis mutandis* by the Secretary in respect of another person who holds property for or on the account of the tax debtor.

OBJECTIONS AND APPEALS**17. Notice of objection.**

- (1) A person aggrieved by an assessment under section 14 may file with the Secretary an objection to the assessment within thirty calendar days after the date of the notice of assessment.
- (2) The Secretary may accept an objection filed after the time specified in subsection (1) where the Secretary is satisfied that there has been no unreasonable delay on the part of a person in lodging the objection.
- (3) An objection to an assessment must —
 - (a) be made by notice in writing in the form and manner prescribed by the Secretary;
 - (b) specify in detail the grounds on which the objection is made; and
 - (c) be accompanied by payment of the total amount of tax assessed, or security for the amount in a form acceptable to the Secretary, at the time the objection is filed.
- (4) An objection to an assessment that is based solely on an error of calculation in a tax return filed with the Secretary does not suspend the objector's obligation to pay the amount assessed.
- (5) The onus of proving that an assessment is erroneous is on the person making the objection.
- (6) On the receipt of an objection under this section, the Secretary may —
 - (a) require the objector to deliver (if he has not already done so) within thirty days or such longer period as the Secretary may permit, a return for the tax periods which in the opinion of the Secretary are affected by the notice of objection;
 - (b) issue a notice under section 13 to the objector requesting any —
 - (i) particulars, books, documents and other records as the Secretary may deem necessary with respect to the taxable activity of the person; or
 - (ii) person who he thinks is able to give evidence respecting the assessment to attend before him to be examined on oath or otherwise.

- (7) Where the objector refuses or neglects to comply with subsection (6), within the period provided for under that subsection, the objection ceases to have effect and the assessment as made is final and conclusive for all purposes of this Act.
- (8) The Secretary must, within ninety calendar days after an objection is filed, consider the objection and after such consideration send a notice in writing as prescribed on the objector specifying the Secretary's decision to —
 - (a) allow the objection, in whole or in part; or
 - (b) disallow the objection.
- (9) A person who fails to file an objection to an assessment under this section has no further right of objection or appeal under this Act.
- (10) A notice under subsection (8) of the Secretary's decision, is conclusive evidence that the decision has been made and, subject to any further rights of appeal that the objector may have, that the decision is correct.

18. Appeal to Tax Appeal Commission.

- (1) An appeal lies to the Tax Appeal Commission for —
 - (a) a person aggrieved with an advance tax ruling under section 12;
 - (b) a person aggrieved with a decision of the Secretary under section 17; or
 - (c) an objector under section 17, where ninety calendar days have passed since the objection was filed and the Secretary has not notified the objector of his decision in accordance with section 17(8).
- (2) An appeal under subsection (1) must —
 - (a) be made by notice in writing in the form and manner prescribed by the Secretary;
 - (b) specify in detail the grounds on which the appeal is made; and
 - (c) where the ruling includes an assessment of tax, be accompanied by payment of the total amount of tax assessed, or security for such amount in a form acceptable to the Secretary, at the time the appeal is made.
- (3) The Tax Appeal Commission may —
 - (a) in case of an assessment under appeal, confirm, vary, or set aside the Secretary's assessment; or
 - (b) in any other case, set aside the Secretary's decision or ruling and remit the matter back to the Secretary for reconsideration in accordance with the directions of the Commission.

- (4) The Tax Appeal Commission must, within thirty calendar days after an appeal has been filed, hear and decide the appeal and send a notice of decision in writing.

INFORMATION AND RECORDS

19. Maintenance of records.

- (1) Every person who is liable for tax under this Act, and any other person that the Secretary may require, must maintain within The Bahamas all records that are relevant to the computation of the tax liability of a person until the later of —
- (a) the end of five years after the end of the latest taxation year for which the records are relevant; or
 - (b) if the amount of the tax liability of a person is under dispute, the end of two years after the dispute is finally resolved.
- (2) A person may apply in writing to the Secretary for permission to dispose of records required to be maintained under this section prior to the expiration of the period referred to in subsection (1) and the Secretary may, if satisfied that the records are not likely to be required for any tax purposes, grant such permission in writing.

20. Confidentiality.

- (1) Subject to this section, no person, except in the course of the exercise of the person's powers or the performance of the person's duties under this Act, or by order of a court of competent jurisdiction, is permitted to —
- (a) disclose to any person any matter in respect of any other person that may come to the person's knowledge in the exercise of those powers or the performance of those duties;
 - (b) allow any person to have access to any records in the possession or custody of the Department of Inland Revenue.
- (2) The Secretary may disclose, or authorize disclosure of, documents or information under this Act —
- (a) to any person, where the disclosure is necessary for the purposes of —
 - (i) the administration and enforcement of this Act; or
 - (ii) assisting a Government entity in the administration and enforcement of any other fiscal laws;
 - (b) to a person authorized by any law in force in The Bahamas to receive such information;

- (c) to the competent authority of the government of another country with which The Bahamas has entered into an agreement for the avoidance of double taxation or the exchange of information, to the extent permitted under that agreement or by any law; or
 - (d) where the documents or information do not identify a specific person, to a person in the service of the Government in a revenue or statistical department in respect of which the disclosure is necessary for the performance of the person's official duties.
- (3) The Secretary may disclose, or authorize disclosure of, documents or information concerning the affairs of a person to the person or to another specified person if the person consents in writing.
- (4) The Department of Inland Revenue may, if the Secretary determines it to be necessary or convenient for the exercise of the Secretary's powers under subsection (2) —
 - (a) enter into a memorandum of understanding with any Government entity, or the competent authority of the government of another country, setting out the terms and conditions to which any disclosure by the Secretary of documents or information is subject; and
 - (b) disclose documents or information obtained by the Secretary in the exercise and performance of the Secretary's duties and powers under this Act only in accordance with the memorandum of understanding referred to in paragraph (a).
- (5) A person receiving documents or information under subsection (2) must keep such documents or information secret and confidential, except to the minimum extent necessary to achieve the purpose for which the disclosure is made.

21. Communication of documents.

- (1) Where this Act requires a document to be sent to or filed with the Secretary, the document may be —
 - (a) sent or filed electronically in a manner prescribed by the Secretary;
 - (b) personally served on the Secretary or on any person duly authorized by the Secretary to accept service; or
 - (c) directed to the Secretary in a prescribed manner.
- (2) Where this Act requires a document to be sent to any person other than the Secretary, the document may be sent —
 - (a) electronically in a manner prescribed by the Secretary;
 - (b) by delivering it to the person;

- (c) by leaving it at the usual or last known place of abode of the person;
- (d) by sending it by post addressed to the person —
 - (i) to the usual or last known place of abode, office or place or business of the person;
 - (ii) to any post office box rented in the name of the person or employer of the person or known to the Secretary to be used as an address for correspondence by the person;
 - (iii) in care of the Post Office (for general delivery) if the person is known to the Secretary to have a place of abode in New Providence; or
 - (iv) if person is known to the Secretary to have a place of abode on a Family Island, at a district post or sub-post office in that Family Island; or
- (e) in the case of a body corporate —
 - (i) by delivering it to an officer, employee, agent or other representative of the body corporate at its registered office or other place of business; or
 - (ii) by sending it by post addressed to the secretary of that body corporate at any post office box rented in the name of that body corporate or known to the Secretary to be used as an address for correspondence by that body corporate.

REGULATIONS

22. Regulations.

- (1) The Minister may from time to time make regulations for carrying out all or any of the purposes of this Act in accordance with the powers and duties conferred or imposed on the Minister by this Act.
- (2) Without prejudice to the generality of subsection (1), the Minister may in particular make regulations prescribing —
 - (a) definitions and criteria for determining the meaning of key words and phrases used and not defined in this Act;
 - (b) the nature of anything required under this Act, or that the Minister considers necessary or desirable, to be prescribed in order to facilitate and illustrate the application and meaning of provisions or terms used in this Act;
 - (c) the form and content of orders, notices, returns, applications and other documents to be used under this Act as well as the method of their submission, including by electronic means;

- (d) the fees payable in respect of services performed by the Department of Inland Revenue under this Act;
- (e) administrative procedures, standards, and protocols for the assessment, payment and collection of tax under this Act;
- (f) penalties to be paid in respect of a contravention of this Act; and
- (g) offences, and limitation periods for such offences, in relation to —
 - (i) a contravention of or non-compliance with a provision of this Act, including the fines not exceeding five hundred thousand dollars to be imposed for such offences; or
 - (ii) a contravention of or non-compliance with a provision of a regulation or the tax rules made under this Act, including fines not exceeding three hundred thousand dollars to be imposed for such offences.

CONSEQUENTIAL AMENDMENTS

23. Consequential amendment to the Business Licence Act, 2023.

Section 38 of the Business Licence Act, 2023 (*No. 13 of 2023*), is amended —

- (a) by the deletion of the full-stop at the end of paragraph (i) and the substitution of a semicolon; and
- (b) by the insertion, immediately after paragraph (i), of the new paragraph (j) as follows —
 - “(j) where tax is payable under the Domestic Minimum Top-up Tax Act, 2024, in respect of the business.”.

24. Consequential amendment to the Tax Appeal Commission Act, 2020.

Section 5 of the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*), is amended —

- (a) by the deletion of the full-stop at the end of paragraph (e) and the substitution of a semicolon; and
- (b) by the insertion, immediately after paragraph (e), of the new paragraph (f) as follows —
 - “(f) in relation to the Domestic Minimum Top-up Tax Act, 2024 —
 - (i) an advance tax ruling provided by the Financial Secretary under section 12; or
 - (ii) in the case of an objection filed with the Financial Secretary in accordance with section 17, a decision, or the lack of one, by the Financial Secretary to allow or

disallow the objection in accordance with subsection 17(8).”.

SCHEDULE

(section 2(1))

DOCUMENTS RELATED TO GLOBE MODEL RULES

The documents attached to this Schedule, are part of this Act and apply in the manner set out in this Act.

1. The document with the citation OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris)

<https://www.oecd-ilibrary.org/docserver/782bac33-en.pdf?expires=1715875058&id=id&accname=guest&checksum=4F6C3E99D61FA2495424C0B50301559A>

2. The document with the citation OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris;

<https://www.oecd.org/tax/tax-challenges-arising-from-the-digitalisation-of-the-economy-consolidated-commentary-to-the-global-anti-base-erosion-model-b849f926-en.htm>

3. The document with the citation OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two), June 2024, OECD/G20 Inclusive Framework on BEPS, OECD, Paris

<https://www.oecd.org/tax/beps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf>

OBJECTS AND REASONS

The Domestic Minimum Top-Up Tax Bill, 2024, seeks to impose a Domestic Minimum Top-Up Tax (“DMTT”) on the profits of each entity operating in The Bahamas that is part of a multinational enterprise group with at least seven hundred and fifty million euros in annual global revenues.

Clause 1 of the Bill sets out the short title and commencement.

Clause 2 of the Bill defines terms and meanings of expressions used in its provisions.

Clause 3 of the Bill incorporates and applies the relevant parts of the GloBE Model Rules that are to be the basis for the determination of the DMTT payable.

Clause 4 of the Bill contains the charging provision for the DMTT.

Clause 5 of the Bill sets out the reporting requirements to which a Constituent Entity is subject.

Clause 6 of the Bill sets out when and to whom DMTT is to be paid.

Clause 7 of the Bill assigns administrative responsibility of thereof to the Financial Secretary.

Clause 8 of the Bill allows the powers and functions of the Financial Secretary to be delegated to other public officers.

Clause 9 of the Bill authorizes the Financial Secretary to prescribe forms and procedures that are necessary for the administration thereof.

Clause 10 of the Bill authorizes the Minister of Finance to provide the Financial Secretary with general policy direction as it relates to the administration thereof.

Clause 11 of the Bill authorizes the Financial Secretary to make tax rules that have the force of law or to provide other guidance.

Clause 12 of the Bill authorizes the Financial Secretary to issue advance rulings that set out his position on how the proposed Act applies in a given situation.

Clause 13 of the Bill empowers the Financial Secretary or another authorized official to investigate or otherwise seek information from any person for the purposes of the administration or enforcement of this Bill, after it has been assented to by the Governor-General in accordance with *Article 63* of The Constitution of The Bahamas and enacted as an act of Parliament.

Clause 14 of the Bill authorizes the Financial Secretary to issue assessments of a person’s tax liability under the proposed Act as well as any penalty or fine that may be payable.

Clause 15 of the Bill provides that the Minister of Finance may prescribe, by regulation, penalties for non-compliance as well as rates of interest payable on outstanding amounts.

Clause 16 of the Bill incorporates by reference a power contained in the Business Licence Act, 2023 (*No. 13 of 2023*), that allows the Financial Secretary to compel a third party who holds property for or on the account of a person who owes an amount under the proposed Act to transfer the property to the Financial Secretary instead.

Clause 17 of the Bill sets out the process for a person to object to an assessment issued by the Financial Secretary.

Clause 18 of the Bill sets out a process of appeal to the Tax Appeal Commission.

Clause 19 of the Bill requires a person to maintain relevant records for a specified period.

Clause 20 of the Bill requires a person to not disclose information that they obtain in the course of the performance of their duties under the proposed Act except as authorized by law.

Clause 21 of the Bill sets out the manner in which documents must be communicated under this Bill, after it has been assented to by the Governor-General in accordance with *Article 63* of The Constitution of The Bahamas and enacted as an act of Parliament.

Clause 22 of the Bill delegates to the Minister of Finance the power to make regulations in relation to the enumerated matters.

Clause 23 of the Bill amends the Business Licence Act, 2023 (*No. 13 of 2023*), consequentially in order to exempt from business licence tax entities that are subject to DMTT in order to avoid double taxation.

Clause 24 of the Bill amends the Tax Appeal Commission Act, 2020 (*No. 3 of 2020*), consequentially in order to enable to the Commission to hear appeals arising thereunder.