



Government of the  
**Commonwealth of The Bahamas**

# Introduction of a Domestic Minimum Top-Up Tax in the Bahamas

Consultation Paper on Draft Legislation

Ministry of Finance  
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Contents

- Proposed Domestic Minimum Top-Up Tax Legislation For The Bahamas..... 3
  - 1. Background..... 3
  - 2. General design principles of the DMTT Legislation ..... 4
  - 3. Discussion of Proposed DMTT Legislation..... 5
  - 4. Incentives ..... 7
  - 5. Transitional Provisions ..... 8
  - 6. Industry specific queries ..... 8
  - 7. Other general queries..... 8
  - 8. Consultation Process and Next Steps ..... 9

## Ministerial Foreword

I am pleased to announce the launch of the public consultation on proposed legislation to implement a Domestic Minimum Top-Up Tax (DMTT) in The Bahamas that would apply to large multinational enterprises (MNEs). This represents a first step in addressing the impacts that global tax reform efforts are having on our country, and follows on the commitment made in my Budget Communication this spring to release draft legislation for public consultation.

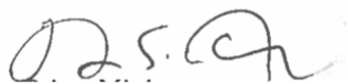
Last year, we published the Green Paper on Corporate Income Tax Strategies for The Bahamas and began a process of consultation on options for corporate tax reform in The Bahamas. In the paper, we highlighted the factors motivating the need for domestic reform, not the least of which were the tax initiatives that have been taking place internationally. In particular, Pillar Two of the two-pillar solution to base erosion and profit shifting (BEPS) agreed to by over 130 countries (including The Bahamas) that are part of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) calls for all in-scope MNEs to pay tax at a minimum effective rate of 15% on profits in each jurisdiction in which they operate. Widespread international implementation of Pillar Two means that in-scope MNEs operating in The Bahamas will likely be required to pay to another jurisdiction tax on profits attributable to The Bahamas. Quite simply, if The Bahamas does not collect the tax, another country could do so.

The Green Paper highlighted several options for corporate income tax reform that would bring The Bahamas into alignment with Pillar Two. Each of those options assumed the introduction of an income tax at an effective rate of 15% on businesses that are in-scope of Pillar Two (i.e., MNEs with at least €750 million in annual turnover). For smaller businesses, the options ranged from continuing the existing business licence tax (BLT) system to replacing it with an income tax similar to the one proposed for in-scope MNEs. I have previously stated that any move to apply such a tax to a broader range of businesses than in-scope MNEs would only occur if it is a more equitable approach for Bahamian businesses.

We recognized in the Green Paper that developing and implementing an income tax system from the ground up is an enormous undertaking. More time is needed to evaluate the merits of establishing such a system and weigh policy options. In the meantime, it is in the best interest of Bahamians that we ensure tax payable by in-scope MNEs is paid to The Bahamas rather than to a foreign treasury. Consequently, we are proposing to implement a DMTT that will begin to accrue starting this year.

In this consultation paper, we provide further information regarding the proposed DMTT legislation. The paper discusses how the legislation is intended to work in conjunction with the GloBE Rules published by the Inclusive Framework. Questions have been inserted throughout the paper where feedback from stakeholders is sought but we would welcome any and all comments by September 16, 2024 so that we have sufficient time to consider them and finalize a Bill for introduction this fall.

Allow me to take this opportunity to thank all those who have contributed to the work that has led to the preparation of these legislative proposals. My sincere appreciation is extended to the Government's team comprised of technical experts from the Ministry of Finance, the Department of Inland Revenue, and the Office of the Attorney General—and led by external tax consultant, Mr. Robert Wong. Input received from the accountancy industry and firms in the Bahamas was also extremely beneficial to us in developing this document, and for this we are extremely thankful.



Hon. Philip E. Davis

Prime Minister and Minister of Finance

# Proposed Domestic Minimum Top-Up Tax Legislation for The Bahamas

## 1. BACKGROUND

Pillar Two is comprised of two key components, (i) the Global Anti-Base Erosion (“GloBE”) Rules framework, which functions as a global minimum tax, and (ii) the Subject-To-Tax Rule (“STTR”), a treaty-based rule allowing 9% withholding on certain cross-border payments.

GloBE has been designed with two mechanisms for allocating any top-up tax within the multinational group so that it meets the jurisdictional 15% minimum effective rate. The primary allocation rule is called the Income Inclusion Rule (“IIR”), while the secondary rule (the ‘backstop rule’) is generally referred to as the Under Taxed Profits Rule (“UTPR”).

The IIR applies in a top-down manner. In the first instance, it requires that the total top-up tax due by the group across all jurisdictions is payable by the Ultimate Parent Entity (“UPE”) to the tax authority in that UPE jurisdiction. Any top-up tax remaining after the application of the IIR is exhausted or where an IIR is not implemented, is collected by means of the backstop UTPR. The UTPR is levied across the group, based on the proportion of tangible assets and employees in each jurisdiction that has implemented a UTPR.

The GloBE Rules also envisage that the 15% jurisdictional minimum effective rate can be achieved in a different way, through a minimum domestic tax levied by a jurisdiction on profits earned by Constituent Entities resident in that jurisdiction. This is achieved through what is known as the Qualified Domestic Minimum Top-up Tax (“QDMTT”). This should negate the requirement for a top-up in the jurisdiction of the IIR or the UTPR.

As mentioned in the Green Paper, Pillar Two is a ‘common approach’, meaning that jurisdictions like The Bahamas which have made a political commitment to the OECD’s two-pillar initiative do not necessarily have to implement the rules directly but must accept the outcomes created by GloBE arising from other jurisdictions which implement it. The common approach provides for flexibility in how and when The Bahamas implements these rules. As expressed over the last 12 or so months, The Bahamas maintains its commitment to be aligned with this international tax standard.

During the various discussions undertaken with the private sector, it has been made clear to the Government that multinational groups would rather pay tax on their Bahamian profits in The Bahamas than elsewhere (through an IIR or UTPR).

In light of the above, the Government has undertaken an analysis of various different factors in arriving at its guiding principles for the Pillar Two legislation in The Bahamas, including the individual economic circumstances of the country, the different markets/investors with business relationships in The Bahamas, potential different outcomes for MNE Groups arising from the implementation options available to jurisdictions, the evolving OECD Administrative Guidance, commencement dates, etc.

As previously mentioned in this document, the Government is seeking to implement a QDMTT. The Bahamas will not be implementing an IIR or UTPR at this time.

## 2. GENERAL DESIGN PRINCIPLES OF THE DMTT LEGISLATION

The proposed legislation to implement the DMTT adopts the GloBE Rules<sup>1</sup> by making them part of the legislation. An alternative approach could have been to prepare freestanding legislation that recreates the measures contained in the GloBE Rules and, indeed, some countries have taken this approach. However, freestanding legislation typically consists of an extensive reproduction of the text of the GloBE Rules. There did not appear to be any obvious benefit to this approach in the Bahamian context while having clear disadvantages. In particular, freestanding legislation would likely increase the complexity on in-scope MNEs and their advisors as they would need to become familiar with a lengthier statute, in contrast to legislation that adopts the GloBE Rules, with which they would already be familiar. In addition, there is the possibility that freestanding legislation could lead to an outcome that is inconsistent with the GloBE Rules. It is unlikely that legislation directly applying the GloBE Rules would have such an outcome.

Question 1: Does the implementation of the GloBE Rules by way of a DMTT create any negative consequences or disproportionate compliance burdens for your Group? Please provide details.

In adopting the DMTT it is intended that such a legislation will be considered “qualified”, thereby achieving what is known as the QDMTT. As such, general design principles were taken into consideration in drafting this legislation:

1. Achieving functional equivalence with the GloBE Rules;
2. Consistency where provisions need to be identical to the GloBE Rules;
3. Design options providing for outcomes that are consistent with the GloBE Rules.

In addition to the above, it is envisaged that the DMTT legislation will be viewed as a QDMTT Safe Harbour. Where the QDMTT Safe Harbour applies, GloBE jurisdictions are expected to provide for the exemption mechanism (instead of the generally applicable credit method). The Safe Harbour eligibility assessment is a step beyond the review of whether a DMTT is considered a QDMTT and requires that additional conditions are met, all of which The Bahamas believes are doable.

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<sup>1</sup> 1. 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. 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. 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/beeps/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf>

Question 2: Are there any circumstances in which you think it would be preferable for The Bahamian QDMTT not to qualify as a QDMTT Safe Harbour?

### 3. DISCUSSION OF PROPOSED DMTT LEGISLATION

Section 1 of the proposed DMTT legislation contains the short title of the proposed new Act and deems it to have come into force on January 1, 2024. Section 1 also provides that the proposed legislation will be applicable to the Fiscal Years of an MNE Group that commence in the year 2024 only where the Group or a Constituent Entity's income is subject to an IRR or to a UTPR in another jurisdiction in that year. For all other in-scope MNE Groups, the legislation will be applicable to Fiscal Years that commence in 2025. We would note that The Bahamas is currently dialoguing with the OECD and other international partners on the scoping of this provision and whether it will be included as (i) a mandatory application for the Fiscal Year commencing in 2024 where a Constituent Entity's income is subject to an IRR or to a UTPR in another jurisdiction, as it is currently worded; or (ii) an option to defer application of the legislation until 2025.

Question 3: To the extent that the final piece of legislation includes an optional opt out, will your MNE Group elect to defer application of the DMTT to 2025? What are the factors or considerations that would guide your decision?

Section 2 defines certain terms that are used in the proposed legislation. It also provides that any term that is defined (usually in Chapter 10) in the GloBE Rules has the same meaning when used in the proposed legislation. For example, Constituent Entity, MNE Group and Fiscal Year are defined terms found in the GloBE Rules that are also used in the proposed legislation.

Subsection 2(3) sets out a test for whether an Entity is resident in The Bahamas based on commonly used factors such as the place of effective management or place of creation of the Entity. Residency is relevant to determining whether an Entity is located in, and therefore subject to tax by, The Bahamas.

Question 4: If you have views on the definition of tax residency included within the draft legislation, please provide details.

Question 5: It is intended that the definition of a Bahamian permanent establishment is to be construed per the GloBE Rules, which ultimately circles back to Article 5 of the OECD Model Tax Convention. Please advise (with details) if you believe the current construction of the provisions in relation to a permanent establishment are of concern to your MNE Group?

Section 3 describes the main purpose of the proposed legislation and provides guidance on how it and the GloBE Rules should be interpreted and applied in the event of ambiguity or uncertainty. Subsection 3(3) lists a number of parts of the GloBE Rules that do not apply generally because they relate to Pillar Two elements — such as the IIR and the UTPR — that we are not proposing to implement in The Bahamas at this time, or because they are otherwise not suited for a DMTT.

Question 6: If The Bahamas were to implement an IIR or UTPR in the future, what would be the impact on your MNE Group?

Furthermore, subsection 3(4) seeks to clarify that if the GloBE 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.

Question 7: Do you have any concerns with the practical application of subsection (4)? If so, please provide details.

Question 8: Are there aspects of Section 3 of the proposed DMTT Legislation that present any concerns for your Group? If so, please provide details.

Section 4 is the charging provision for the DMTT. It imposes tax on each Constituent Entity located in The Bahamas of an in-scope MNE Group. If there is more than one such Constituent Entity, they are jointly and severally liable for the total amount of DMTT payable by them.

Question 9: Are there any aspects of the proposed DMTT legislation, when determining which entities are in-scope, that present concerns or require further clarification? Please provide details.

Question 10: The Bahamas is currently considering whether additional policy decisions should be made on specifically exempting certain types of entities, such as, investment entities, insurance investment entities or securitization vehicles. Does your entity have any preferences in this regard? If so, please provide details supporting your preference.

The amount of DMTT payable is calculated in accordance with Chapter 5 of the GloBE Rules. In simplified terms, given that a Constituent Entity does not pay any tax to The Bahamas that would qualify as a Covered Tax, resulting in an Effective Tax Rate of 0%, the Top-up Tax Percentage determined under Article 5.2.1 would be 15%. The amount of DMTT payable is calculated by applying this 15% rate to the income of the Constituent Entity (or if there is more than one located in The Bahamas, their combined incomes) after subtracting out any amounts of Substance-based Income Exclusion (SBIE). SBIE is calculated as a scheduled percentage of payroll costs and tangible asset values of the Constituent Entity in The Bahamas.

Question 11: Does your MNE Group anticipate any difficulties in determining its tax liability that are unique or specific to The Bahamas? If yes, please explain.

Section 5 imposes obligations on a Constituent Entity to provide information to the Financial Secretary. Annual returns must be filed no later than 15 months after the end of a Fiscal Year. The Financial Secretary may make tax rules regarding the form and content of the returns but it is anticipated that it will be substantially similar to the standard GloBE Information Return. Section 5 also requires a Constituent Entity to notify the Financial Secretary at the beginning of each Fiscal Year whether the MNE Group is expected to be in-scope of the GloBE Rules for that Year. Lastly, where an election is available to a Constituent Entity under the GloBE Rules, it must be made in accordance with those Rules as well as any additional requirements that may be prescribed.

Question 12: Would an earlier deadline for filing annual returns (i.e. less than 15 months after the end of a Fiscal Year) be a viable option for your MNE Group? If so, please state your preferred deadline.

Question 13: If there is more than one Constituent Entity located in The Bahamas for your MNE Group, would they rather file single or separate returns?

Where the GloBE Rules permit an election, a QDMTT generally must also provide for the election and require the MNE Group to make the same election under the QDMTT as is made under the GloBE Rules. If the MNE Group is not permitted or required to make the same elections for purposes of both the GloBE Rules and the QDMTT, the outcomes of the relevant computations will not be consistent and the QDMTT may not be functionally equivalent. It is not currently envisaged that any jurisdiction or entity level elections will be “switched off”. Administrative reporting requirements will be brought into force to bring into effect certain elections, where required.

Question 14: Do you have a preference for how and where election filings should be made (e.g., separate to the GIR/QDMTT return, within the same return, etc.)? If so, please advise (with details).

Under section 6, DMTT is payable to the Financial Secretary no later than 15 months after the end of a Fiscal Year. Payments of DMTT must be in Bahamian currency.

Question 15: Tax systems routinely require periodic in-year payments that are credited against their tax liability for the year. Would a requirement for instalment payments based on estimated DMTT represent an undue burden for you or your MNE Group?

Sections 7 to 22 address a range of tax administration matters that are typical in tax statutes like the Value Added Tax Act, 2014 and Business Licence Act, 2023 (e.g. powers delegated to officials to conduct audits and investigations to verify compliance by taxpayers and appeal processes).

Section 23 amends consequentially the Business Licence Act, 2023 to exempt an entity that is liable for DMTT from business licence tax under that Act.

Section 24 amends consequentially the Tax Appeal Commission Act, 2020 to authorize the Tax Appeal Commission to hear appeals in relation to the DMTT.

#### 4. INCENTIVES

Initial conversations between Government and the private sector have made it clear that there is a desire for the Government to introduce some form of incentives to reduce the cost of doing business in The Bahamas. While the Government generally supports the policy principle of introducing incentives which foster economic growth and activity in the country, these need to be assessed more broadly in the context of all entities operating in The Bahamas and the Government requires additional time to undertake the requisite economic and cash flow analysis. The Government proposes to introduce further details of an incentives program, including Qualified Refundable Tax Credits later in 2024.

Question 16: Are there any comments in relation to types of incentives you would like the Government to consider, including what types of underlying items should be included in same? If so, please provide detailed comments.



## 5. TRANSITIONAL PROVISIONS

The GloBE Rules provide a number of transitional provisions that will assist MNE Groups to transition as smoothly as possible into the new international framework. The Bahamas Government wants to ensure that the full suite of transitional provisions are therefore available to MNE Groups.

Question 17: With regard to the GloBE transitional provisions, are there any specific arrangements which you feel may be required for The Bahamas that the draft legislation does not deal with (e.g., arrangements relating to loss carry forward and recognition of deferred tax assets)? If so, please provide details.

Question 18: Are there any other matters in respect of transitional provisions which you would like The Bahamas Government to take into consideration? If so, please provide details of the provisions you would like to be considered.

## 6. INDUSTRY SPECIFIC QUERIES

The Bahamas recognizes the importance of adopting the full suite of industry specific benefits included within the GloBE Rules, such as, the international shipping exemption. The Bahamas also recognizes that there are specific industry related matters of importance for MNE Groups operating in The Bahamas.

Question 19: Are there any industry specific feedback that may be relevant in the context of this piece of legislation? If so, please provide details.

Question 20: Certain MNE Groups will be simultaneously impacted by Pillar Two and the Economic Substance rules in The Bahamas. For those groups that are impacted by both frameworks simultaneously, would it be helpful to incorporate the Economic Substance reporting within the Pillar Two reporting?

## 7. OTHER GENERAL QUERIES

The Government also invites your feedback on several other general areas that could contribute to the design of the DMTT.

Question 20: Are there any other policy or design features that you would consider relevant to incorporate in the DMTT legislation? In providing any recommendations, please explain what these are in detail and why they are relevant.

Question 21: Do you believe there are administrative adjustments which could be made to simplify the legislation as it relates to compliance burden for in-scope groups? If so, please advise.

Question 22: Clearly, the importance of the US market to The Bahamas has been identified by different stakeholders. As a precursor to Pillar Two, the US introduced its Global Intangible Low-Taxed Income (“GILTI”) regime. The GILTI regime operates in a different way to Pillar Two creating misalignments and this has led to the OECD developing a temporary blended CFC allocation key. Are you impacted by the GILTI/Pillar Two misalignment and have concerns/recommendations and, if so,

so you have any recommendations on how this could be approached by The Bahamas? Please provide details.

#### 8. CONSULTATION PROCESS AND NEXT STEPS

The Government is inviting comments to this consultation by September 16, 2024, to enable finalization of the draft legislation for submission to Parliament by October 9, 2024.

All responses to the series of questions contained in the document and other commentary should be forwarded, by email, to the attention of the Financial Secretary at: [DMTT@bahamas.gov.bs](mailto:DMTT@bahamas.gov.bs)