

Canadian government moves ahead with Global Minimum Tax Act

MAY 2, 2024 6 MIN READ



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On April 30, 2024, the government of Canada tabled a Notice of Ways and Means Motion (NWMM) in Parliament that includes the *Global Minimum Tax Act* (GMTA) and certain other previously announced tax measures (including two [green energy tax credits](#)). The NWMM was introduced as Bill C-69 on May 2, 2024.

The GMTA introduces a 15% global minimum tax (GMT) on the income of certain large multinational enterprises (MNEs). The GMTA is intended to follow the Global Anti-Base Erosion (GloBE) model rules released by the Organisation for Economic Co-operation and Development (OECD) in December 2021 (for more details, please see [Osler's prior Update](#)). The initial draft of the GMTA, published in August 2023, contained proposals for two key GMT measures, namely, a top-up tax under the income inclusion rule (IIR) and a domestic minimum top-up tax that are intended to be a qualified IIR and a qualified domestic minimum top-up tax (QDMTT), respectively, as defined in the GloBE model rules (for more details, please see [Osler's prior Update](#)). Osler made a [submission](#) on the proposed implementation and technical considerations related to the initial draft GMTA. The NWMM contains important updates to these measures, including certain items raised in Osler's submission:

- References to “transitional qualified status” have been added to provisions addressing the qualified IIR, QDMTT and qualified UTPR.
- The draft GMTA referred to “passive income” in the relevant top-up tax computations, but did not define the term. The revisions include a definition of “passive income” that is consistent with Article 10.1.1 of the GloBE model rules. This term is relevant for determining how much covered taxes are allocated to constituent entities (such as controlled foreign affiliates) from their direct or indirect shareholders in certain situations.
- The circumstances where the anti-avoidance rule in subsection 18(18) of the GMTA (formerly 18(16)) applies have been narrowed to better align with the GloBE policy considerations and to prevent unintended outcomes. Under subsection 18(18), intra-group financing expenses of a low tax entity may be excluded from the calculation of GloBE income or loss if they are reasonably expected not to be included in the taxable income of a high-tax counterparty over the duration of the arrangement. The revisions in paragraph

18(18)(b) clarify that the amount of the benefit must be calculated by reference to the amount of the payment received. The prior draft was less clear with respect to the requisite link between losses or other tax attributes in a high-tax counterparty and the relevant intra-group financing.

- Upon its release in August 2023, the Department of Finance acknowledged that the draft GMTA had not yet incorporated certain aspects of the second administrative guidance that was published by the OECD in July 2023. Following the release of the draft GMTA, the OECD published a third set of administrative guidance in [December 2023](#). More recently, the OECD consolidated its various administrative guidance packages up to December 2023, along with the original GloBE commentary and GloBE examples, in two documents — ([Consolidated GloBE Commentary](#) and [GloBE examples \[PDF\]](#)). The revised GMTA incorporates important aspects of the second and third administrative guidance that are now included in the consolidated GloBE commentary. Important consequential revisions to the GMTA include:
 - From the second administrative guidance:
 - rules and definitions regarding the treatment of transferable tax credits (marketable and non-marketable) and other tax credits
 - an alternative timing rule under the proportional amortization method of accounting to determine whether and to what extent relevant benefits reduce an investment or adjusted covered taxes
 - with respect to flow-through entities, an anti-avoidance rule that an interest will not be considered a qualified ownership interest unless, among other things, the investor has a bona fide economic interest in the entity and is not protected from loss of its investment
 - From the third administrative guidance:
 - purchase price accounting adjustments
 - hybrid arbitrage arrangement rules for purposes of the transitional country-by-country reporting (CbCR) safe harbour
 - simplified calculation safe harbour for non-material constituent entities
 - transitional filing deadlines for MNEs with short reporting years, such that the first GloBE information return filing deadline cannot be earlier than June 30, 2026
- In terms of enforcement, the revised GMTA provides the possibility of imprisonment ranging from a term not exceeding 12 months to five years, as well as a fine, for certain offences under the GMTA. The prior draft only included monetary fines. Offences under the GMTA include failure to comply, making a false or deceptive statement, and failure to pay tax. However, a due diligence defence is available for the offences relating to failure to comply where the relevant person exercised all due diligence to prevent the commission of the offence.

Consistent with the prior draft of the GMTA, the NWMM provides that the IIR and QDMTT apply to fiscal years of qualifying MNE groups that begin on or after December 31, 2023. The NWMM also provides that the general anti-avoidance rule (GAAR) in section 245 of the *Income Tax Act* (ITA) will apply “for purposes of the GMTA”. This language is arguably broader than the language in the August 2023 draft, which referred to “the determination of any amount under the GMTA”. The effective date is modified for any GAAR-related penalty.

Specifically, penalties tied to the GAAR will only apply to transactions that occur on or after the first day on which both the GMTA and the [Fall Economic Statement Implementation Act, 2003 \(Bill C-59\)](#), which implements the GAAR amendments, have received royal assent.

The NWMM contains consequential amendments to other legislation, including the ITA. However, these changes are primarily administrative and do not contain amendments that would harmonize the ITA with the GMTA. Osler's submission during the consultation period addressed proposed implementation and technical considerations related to the GMTA, including corresponding amendments that should be made to the ITA. In particular, in our view, certain amendments to the foreign accrual property income (FAPI) and surplus regimes in the ITA and Regulations should be made in response to the GMTA, as well as rules to ensure that intra-group compensation payments will not be treated as shareholder benefits.

Draft legislation relating to the third GMT measure, the undertaxed profits rule (UTPR), has not been released. No update on the timing of its release was included in Budget 2024 — although we expect that Canada will follow the timing proposed by various other countries (i.e., to generally apply starting in 2025).

No explanatory notes or other Canadian-specific administrative guidance have been released.

Further reading

For further details on the OECD's Pillar Two initiative and Canada's approach to its implementation, please see the Osler updates on:

- [October 14, 2020](#) (blueprint reports on international tax Reform – Pillar One and Pillar Two)
- [December 14, 2020](#) (Osler submission on the OECD Pillar One and Pillar Two blueprints)
- [October 12, 2021](#) (statement on the Two Pillar Solution)
- [December 23, 2021](#) (GloBE model rules)
- [December 22, 2022](#) (transitional and permanent safe harbours, temporary penalty relief, GloBE information returns and certainty for the GloBE matters)
- [February 7, 2023](#) (first administrative guidance on Pillar Two)
- [March 28, 2023](#) (Budget 2023 update on Pillar One and Pillar Two)
- [August 10, 2023](#) (first draft of the *Global Minimum Tax Act* (Canada))
- [October 2, 2023](#) (Osler submission on the *Global Minimum Tax Act* (Canada))
- [December 21, 2023](#) (third administrative guidance on Pillar Two)
- [April 16, 2024](#) (Budget 2024 update on Pillar One and Pillar Two)