

## Bahrain Tax Alert

# Domestic Minimum Top-Up Tax (DMTT) Executive Regulations released

19 December 2024

On 15 December 2024, the Bahrain National Bureau for Revenue (NBR) published the Executive Regulations to the Bahrain DMTT Law ('DMTT Regulations'). The DMTT Regulations provide much anticipated clarity on the implementation and enforcement of the Bahrain DMTT Law.

As expected, the DMTT Regulations are largely in line with the OECD Pillar Two Global Anti-Base Erosion Model Rules (GloBE rules) and provides references to the administrative guidance and commentary issued by the OECD. The NBR has also published a guide on the scope of the DMTT law and registration requirements as well as a DMTT Registration Manual.

We have outlined below certain key features of the DMTT Regulations.

Key aspect	Details
<b>Definitions</b>	For the words and phrases already defined in the DMTT Law, the DMTT Regulations refer to the definitions provided in the DMTT Law. However, various additional words and phrases have been defined such as Transition Year, Reporting Fiscal Year, Portfolio Shareholding, Generally Accepted Accounting Principles, Arm's Length Principle. Specific definitions have also been provided for OECD's Administrative Guidance, Transfer Pricing Guidelines and Commentary.
<b>Excluded entities</b>	The scope of each category of excluded entities has been clarified in detail. For an entity to qualify as an excluded entity, the prescribed tests and conditions should be met.
<b>Consolidated revenue test</b>	Further details have been provided for the consolidated revenue test in line with the GloBE rules. Revenue is to be determined based on consolidated financial statements and includes: <ul style="list-style-type: none"><li>• Inflow of economic benefits arising from the MNE Group's ordinary activities.</li><li>• Realised and unrealised net gains from investments</li><li>• Income or gains separately presented as extraordinary or non-recurring items</li></ul> Special rules have been prescribed for applying the consolidated revenue test in case of mergers and demergers. No specific clarification has been provided in the DMTT Regulations for applying the consolidated revenue test for financial institutions. In a webinar held in November, the NBR clarified that for banks, gross interest income before netting of any interest expense will be considered for the revenue test.
<b>Permanent establishments (PE)</b>	In addition to the definition of PE provided in the DMTT Law, additional circumstances have been listed which create a PE in Bahrain. This includes the presence of 'nexus', which will be clarified subsequently by a Ministerial Decision. Factors to assess the existence of a PE which are in line with the Model Tax Convention have also been provided. Special rules have been provided for allocation of income or loss, covered taxes, eligible payroll costs and eligible tangible assets to a Bahrain PE.
<b>Constituent Entities (CEs) located in multiple jurisdictions</b>	Special rules have been provided to determine the place of residence of a CE where such CE is located in multiple jurisdictions depending on whether there is a tax treaty in force between such jurisdictions. Following an order of priority, the rules consider jurisdiction with highest amount of covered taxes and Substance Based Income Exclusion.
<b>Material Competitive Distortions</b>	Since the DMTT Law allows the use of different accounting standards, the DMTT Regulations provide rules for scenarios where material variations occur when applying generally accepted accounting principles vis-à-vis IFRS. Subsequent Ministerial Decision will specify provisions for elimination of Material Competitive Distortions.

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<b>Adjustments to CE Financial Accounting Net Income or Loss (FANIL)</b>	The DMTT Regulations list out the specific adjustments for computation of adjusted CE income or loss (GloBE income). The scope and applicability of various adjustments has also been described in detail. Key adjustments include excluded dividends, excluded equity gains or losses, included revaluation gains or losses, fines and penalties, transfer pricing adjustments.
<b>Transfer pricing</b>	<p>Following transfer pricing methods have been prescribed and application of each rule should be based on facts and circumstances of the transaction/ arrangement:</p> <ul style="list-style-type: none"> <li>• Comparable uncontrolled price method</li> <li>• Resale price method</li> <li>• Cost plus method</li> <li>• Transactional net margin method</li> <li>• Profit split method</li> </ul> <p>CEs undertaking controlled transactions are required to prepare local file and master file which should contain prescribed information.</p>
<b>Covered taxes</b>	Specific rules are provided for determining CEs adjusted covered taxes. These include specific exclusions, treatment of tax credits, allocation of covered taxes to PEs and key adjustment items such as exclusion of covered taxes incurred in respect of passive income.
<b>Joint venture (JV)</b>	Specific exclusions provided for entities that will not be considered as JVs. Special rules prescribed for separate computations to be carried out for JVs and JV subsidiaries as if they were CEs of a separate MNE Group and the JV was the UPE of that group.
<b>Substance Based Income Exclusion (SBIE)</b>	<p>SBIE percentages prescribed for eligible payroll cost carve out and eligible tangible asset carve out respectively for fiscal years commencing in 2023 until fiscal years commencing in 2033 and onwards.</p> <p>Eligible payroll costs to include costs incurred towards independent contractors working under the direction and control of the MNE Group. Special mechanism prescribed for determining eligible payroll costs for employees who spend less than 50% of their working time in Bahrain.</p> <p>Eligible tangible assets to include lessee's right of use of tangible assets located in Bahrain and license or concession from the Bahrain government to use immovable property or to exploit natural resources. Investment property as well as tangible assets used to earn excluded international shipping income to be excluded.</p> <p>Special rules prescribed for allocation of eligible payroll costs and eligible tangible assets to a PE for computing its SBIE.</p>
<b>De Minimis Exclusion</b>	Where a CE commences operations during any of the fiscal years and operates for less than 12 months during such year, the CE revenue and income / loss will be annualized proportionately. Specific rules have been provided on the applicability of the exclusion in case of prior period adjustments.
<b>Safe harbors</b>	<p>Transitional Country-by-Country (CbC) reporting safe harbor available where a qualified CbC report is prepared and filed using qualified financial statements. Any net unrealised fair value loss exceeding EUR 50 million for a particular jurisdiction shall be excluded from Profit or Loss Before Income Tax for applying this safe harbor.</p> <p>A Ministerial Decision will prescribe the rules, conditions and controls to apply the simplified computation safe harbor.</p>

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<b>Exclusion for initial international activity</b>	<p>To assess applicability of the exclusion, the following applies:</p> <ul style="list-style-type: none"> <li>Sum of the Net Book Value (NBV) of tangible assets in a jurisdiction is the sum of the NBVs of tangible assets of all CEs resident in that jurisdiction.</li> <li>Tangible assets held by JVs and JV subsidiaries, or excluded entities are not considered.</li> </ul>
<b>Filing CE</b>	<p>Rules prescribed for the appointment of the Filing CE. All CEs to submit a written consent under which CEs appoint the Filing CE and its consent to be appointed as such. Specific rules prescribed for change in Filing CE in various scenarios.</p>
<b>Registration and deregistration</b>	<p>Filing CE of MNE Groups that meet the revenue test for 2 of the 4 fiscal years immediately preceding 1 January 2025 must apply for registration by 30 January 2025. In other cases, registration application should be made within 120 days from the first day of the Transition Year. Specific information to be provided includes details of the Ultimate Parent Entity (UPE), structure of the MNE Group, financial information substantiating that revenue test has been met, written consent from CEs nominating the Filing CE. Further details have been provided in the DMTT Registration Manual.</p> <p>Mandatory deregistration in specified circumstances including not meeting revenue test for 5 consecutive fiscal years, liquidation/dissolution of all Bahrain CEs.</p>
<b>International Shipping Income Exclusion</b>	<p>Whilst this income exclusion has not been mentioned in the DMTT Law, the DMTT Regulations provide for the International Shipping Income Exclusion in line with the GloBE rules. Key phrases such as International Shipping Activities and Qualified Ancillary International Shipping Activity have been defined for the purpose of applying this exclusion.</p>
<b>Elections</b>	<p>Special provisions for five year and single year elections. Five-year elections include election to not being treated as an excluded entity, election for the realisation method for gains or losses, consolidation adjustment election, election to recognize dividends from portfolio shareholdings. Single year elections include election to not apply SBIE, election for De Minimis Exclusion, election to adjust gains on disposal of immovable property in Bahrain.</p>
<b>Tax returns</b>	<p>A tax return should be filed within 15 months from the last day of the reporting fiscal year. Prescribed information to be disclosed in the return. Provision for a transitional simplified tax return filing for fiscal years commencing on or before 31 December 2028. Conditions and procedure for amendment of tax returns provided.</p>
<b>Advance tax payments</b>	<p>Provisions for advance tax payments have been clarified further. Advance tax payments to be made for quarterly advance tax periods. First advance tax payment period during the Transition Year to be two quarters. Advance tax payments to be made within 60 days after the end of each advance payment period.</p> <p>Two methods prescribed for advance tax payment computation - Prior Year Method or Current Year Method. Method to be elected by the Filing CE for each fiscal year.</p>
<b>Currency</b>	<p>Tax computations to be made in BHD. Where CEs located in Bahrain do not use BHD as the presentation currency, the Filing CE to make an election for either using the presentation currency or BHD.</p> <p>For reporting and payment purposes, tax amount computed in a currency other than BHD to be converted using rates provided by the Central Bank of Bahrain or a reliable source notified by the NBR. For applying the thresholds expressed in EUR, the relevant amounts should be converted using the average exchange rate of December preceding the fiscal year.</p>

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<b>Record retention</b>	<p>Illustrative list of types of records, accounting books, financial statements required to be maintained has been provided.</p> <p>Record retention period of 5 years from the end of the fiscal year to which the records relate to. Record retention period of 10 years from the end of the fiscal year to which the records relate to for records relating to real estate and capital assets.</p> <p>Records can be maintained in electronic format subject to meeting prescribed conditions.</p>
<b>General anti-abuse rules (GAAR)</b>	<p>Detailed provisions prescribed for the application of the GAAR. Specific conditions and factors prescribed for determining whether a transaction or arrangement is entered into for a genuine commercial purpose. Various factors to be considered by the NBR for making this determination also listed.</p> <p>The DMTT Regulations also provide a list of criteria/circumstances where it will be deemed that the transaction or arrangement does not reflect economic reality as well as clarify what would constitute to be a tax advantage.</p>
<b>Notable omissions</b>	<p>No mention of a transitional penalty relief regime prescribed under the GloBE rules which recognizes that tax administrations should not apply severe penalties or sanctions during the Transition Year in connection with filing tax returns where an MNE Group has taken reasonable measures to ensure the correct application of the GloBE Rules.</p>

The rules prescribed under the DMTT Law and Regulations are complex and will have a direct impact on MNE Groups operating in Bahrain. With around 10 days to implementation date, it is advisable for MNE Groups to assess the impact on their Bahrain operations for a smooth transition.

For a detailed discussion, [contact us](#).



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