

September 5<sup>th</sup>, 2023

The Honourable Chrystia Freeland P.C., M.P.  
Deputy Prime Minister and Minister of Finance  
Department of Finance Canada  
90 Elgin Street  
Ottawa, Ontario K1A 0G5

***RE: Global Minimum Tax Act Consultation***

Electricity Canada is pleased to provide the enclosed submission in response to the Global Minimum Tax Act (“**GMTA**”) draft legislation released for comment on August 4<sup>th</sup>, 2023.

Electricity Canada, formerly known as the Canadian Electricity Association, was founded in 1891 and represents Canadian electricity utilities and companies generating, transmitting, and distributing electricity to industrial, commercial, and residential customers across Canada. Electricity Canada members make substantial ongoing infrastructure investments to ensure safe and reliable generation and delivery of electricity to customers. As Canada transitions to a green economy, Canadian families and businesses are looking to Electricity Canada and its members for electricity and energy solutions that are clean, reliable, and affordable.

The electricity industry is a cornerstone of Canada’s economy, contributing \$33.5 billion to the gross domestic product, employing over 90,000 people in Canada, and servicing all Canadians. Since 2013, the electricity industry has been spending over \$13 billion per year and over \$17.7 billion in 2020 on capital assets for repair, replacement, and growth. The Canadian electricity industry’s greenhouse gas emissions have been reduced by 60% since 2000 and the energy industry will invest upwards of \$1.4 trillion to meet the Government’s emissions reduction targets.

Electricity Canada supports the Organization for Economic Co-operation and Development (“**OECD**”) Pillar Two Global Anti-Base Erosion (“**GloBE**”) Rules and their objectives of promoting tax fairness and ensuring a level playing field for businesses worldwide. The Canadian GMTA represents a pivotal step in fostering a fair and equitable global tax framework. However, we wish to raise two critical concerns regarding the current draft GMTA legislation released by the Canadian government that have the potential to inadvertently impact Canadian utilities. Our letter is centered on two key recommendations in response to these concerns that we strongly encourage Finance to consider in order to avert unintended adverse consequences arising from the legislation as currently drafted.





## Clarification and Guidance for Regulated Accounting

Utility rates charged to customers (ratepayers) must generally be approved by provincial regulators and are designed to enable the utility company to recover its annual operating, maintenance and administration costs, depreciation, interest, taxes, and an approved return on equity under a prescribed capitalization model. Some regulatory jurisdictions require recovery of current taxes from customers through rates while deferred taxes are offset to a regulatory asset/liability on the balance sheet. This represents the portion of income tax expense to be recovered from ratepayers in future periods, when the related deferred tax liability reverses to give rise to current tax expense, thus reducing the burden on electricity bills in a given year.

Because of this regulatory accounting for income taxes, Canadian utilities' full income tax expense (current and deferred) is often not reflected on their income statements. Consequently, regulated utilities' deferred tax expenses would not be factored into the effective tax rate calculation as it pertains to how GloBE income is assessed. Exclusion of these material temporary timing differences from the calculation of the effective tax rate could result in an effective tax rate less than the minimum 15%, even though regulated utility operating companies are subject to statutory income tax rates well in excess of this.

Our primary concern pertains to the mechanics of the jurisdictional effective tax rate calculation, which uses taxes reflected in the financial records to determine the application of the top-up tax. Our concern is that our members may unintentionally be subjected to top-up tax as some provincial regulators require utilities' deferred taxes to be offset to the balance sheet rather than recorded as deferred tax expense on the income statement.

Specific clarification is needed to prevent the unintended top-up tax, as neither the GloBE model rules nor the GloBE commentary and administrative guidance ("**GloBE documents**") released by the OECD specifically address the accounting and GloBE specifics of multinational entities subject to regulatory accounting policies. However, the GloBE model rules and GloBE documents make it clear that temporary timing differences should not result in tax distortions stemming from a global minimum tax. Rules related to deferred tax adjustment amounts are included in the calculation of the effective tax rate to give effect to this intention.

**Our primary recommendation is for Finance to confirm (and include specific examples via explanatory notes to the final legislation or otherwise) that adjustments for regulatory accounting in the calculation of Total Deferred Tax Adjustment Amount ("TDТАА") qualify as an exclusion under section 25(2)(a)(i).**

The specific examples should clarify that a deferred tax liability offset to the balance sheet as a regulatory asset will be considered a deferred tax expense that is "accrued in the financial accounts" for purposes of GloBE computations.



We note that we are only seeking assurance and clarification on this item, and not any change to the legislation, as both Article 4.4 of the GloBE model rules and section 25 of the GMTA refer to “financial accounts”, rather than specifically to the income statement or balance sheet, as a source in determining whether deferred taxes are recorded in the GloBE computations. Paragraph 70 of the GloBE commentary on Article 4.4.1 explains the nature of deferred tax expenses (benefits) with reference to the financial accounts as follows:

*“The starting point for the Total Deferred Tax Adjustment Amount is the amount of deferred tax expense accrued in the financial accounts of a Constituent Entity if the applicable tax rate is below the Minimum Rate or, in any other case, such deferred tax expense recast at the Minimum Rate. Deferred tax expense for the Fiscal Year is comprised of the net movement in deferred tax assets and liabilities between the beginning and end of the Fiscal Year. When established, deferred tax assets are recorded as negative tax expense (i.e., income tax benefit) whereas deferred tax liabilities are recorded as tax expense.” [Emphasis added].*

Where “regulatory” deferred tax expenses (benefits) represent “the net movement in deferred tax assets and liabilities between the beginning and end of the Fiscal Year” to account for temporary book-to-tax differences that are meant to be reversed in future fiscal periods, they should fit within the wording of Article 4.4. of the GloBE model rules and section 25 of GMTA. In this way, they will be consistent with the GloBE policy, regardless of whether the deferred tax expenses are recognized as a “regulatory asset or liability” on the balance sheet for regulatory accounting purposes. In other words, all deferred tax assets or liabilities should be treated equally and consistently from a GloBE perspective and, accordingly, accounted for in the TDTAA computations, whether they are recorded on the balance sheet or on the income statement. This ensures that the effective tax rate for each year more closely approximates the actual tax rate applicable to regulated utilities in Canada.

We firmly believe that it is not the legislative intent to subject regulated utilities to top-up taxes due to the use of regulated accounting practices, rather than their statutory tax requirements. This recommendation is fully in line with the intent of the draft GMTA and the OECD’s GloBE Model Rules, serving only to ensure that regulated utilities remain on equal footing with other industry groups by specifically addressing circumstances where accounting frameworks may create inequity. A difference in accounting policies should not result in regulated utilities being unfairly subject to a top-up tax, particularly when such a top-up can result in increased utility rates, impacting affordability for Canadian customers.





## Consideration for new clean energy Investment Tax Credits

Secondly, we note that the current GMTA draft may inadvertently decrease the effectiveness of the new clean energy Investment Tax Credits (“ITCs”), namely:

- The Clean Electricity Investment Tax Credit,
- The Clean Technology Manufacturing Investment Tax Credit,
- The Clean Hydrogen Investment Tax Credit,
- The Clean Technology Investment Tax Credit, and
- The Carbon Capture, Utilization, and Storage Investment Tax Credit

As the GMTA is currently drafted, the new Investment Tax Credits will increase the GloBE income calculation, thereby decreasing proponents’ effective tax rates. This could push some proponents of the ITCs below the 15% effective tax rate threshold, potentially subjecting them to top-up taxes when utilizing these clean energy ITCs. Such an outcome runs counter to the government’s objective of encouraging and facilitating investments in crucial technologies needed to achieve net-zero emissions by 2050.

We understand that Finance may be restricted in adjustment of the GMTA rules to account for the ITCs given the need to follow the OECD’s GloBE model rules. **Therefore, we recommend that Finance specifically consider the impacts of the GMTA and other new tax legislation on the overall benefit of the new tax credits and adjust the design of the ITCs accordingly.** Finance may consider increasing the overall benefit of the ITCs to counteract the impacts of the GMTA, or consider ensuring that any clawback of ITC benefits through the GMTA is funneled back into government funding for clean energy.

## Coming into effect date

Finally, we kindly request a deferral of the coming into effect date, currently set for fiscal years beginning on or after December 31, 2023. This deferral is being sought for compliance and administrative reasons, as the new reporting requirements represent a heavy lift and will necessitate additional time for our members to adapt.

We also believe it is critical that our recommended clarifications to the GMTA regarding regulatory accounting are included in explanatory notes before the GMTA comes into effect to avoid potential impacts to utility rates for Canadian customers.

Electricity Canada firmly believes that our recommendations will help ensure that the GMTA achieves its intended goals without imposing undue burden on Canadian regulated utilities and ratepayers.



We thank you for this opportunity to comment and for your consideration of our submission. We would be pleased to discuss any aspect of this submission at your convenience. Should you have any questions or require additional information about our submission, please contact Michael Powell, Vice President of Government Relations ([powell@electricity.ca](mailto:powell@electricity.ca)).

Sincerely,

Francis Bradley  
President & CEO  
Electricity Canada

Copy: Chris Forbes, Deputy Minister of Finance  
Miodrag Jovanovic, Assistant Deputy Minister of Finance, Tax Policy Branch  
Peter Repetto, Department of Finance