

Regulatory developments in Bermuda

Briefing Summary: This article covers the corporate income tax position for multinational groups, and potential for a "legitimate interest" access test for beneficial ownership registers. These changes may be of interest to private wealth practitioners and prompt careful structuring and restructuring of trust structures or variation of trust instruments to mitigate against unintended or undesirable outcomes. Bermuda also has several initiatives under development to further attract family offices and enhance its private wealth offering. Watch this space!

Service Area: Trusts and Private Wealth

Location: Bermuda

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Global minimum corporate tax (GMCT)

On 18 December 2023, the Bermuda legislature enacted the Corporate Income Tax Act 2023 and issued guidance regarding its application. The substance of the Act commences operation on 1 January 2025 and generally imposes a 15% corporate income tax (**CIT**) on certain Bermuda resident "entities" that are part of multinational enterprises with annual group revenue of €750 million or more. "Qualified refundable tax credits" are available, providing the possibility that entities liable to CIT may ultimately pay a lower effective tax rate than the 15% tax rate.

Trust structures are not specifically targeted or mentioned in the Act although a Bermuda trust and underlying company may theoretically each be an "entity" (as defined in the Act) and fall within scope. However, it appears that trusts structures might be regarded as out of scope because, among other things, many trust structures will not meet the revenue threshold and applicable accounting standards do not require trusts (i.e. by their trustees) and their underlying passive investment holding entities to prepare "consolidated financial statements". However, an entity that is an ultimate "parent entity" (i.e. a trust and/or trust's underlying Bermuda company) of a multijurisdictional structure with an underlying business with group revenues at or exceeding €750 million will need to carefully consider whether the Act applies.

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Beneficial ownership registers

Under Bermuda's existing beneficial ownership legislation, beneficial ownership information filed with its regulator is not publicly available. Where, for example, a trust forms part of a Bermuda company's structure, generally little to no beneficial ownership information is filed by the company in respect of the trust and its settlor, protector or beneficiary, particularly in the case of a properly administered irrevocable discretionary trust and underlying company.

Following the ECJ judgment^[1] and the European Commission's response to it (as reflected in the Sixth Anti-Money Laundering Directive (**AMLD6**))^[2], British Overseas Territories (including Bermuda) and Crown Dependencies have been reconsidering their commitments to the UK Government to introduce central registers of public beneficial ownership of companies and certain other entities. Some have modified their commitment so to only permit public access to those who can demonstrate a "legitimate interest" in the information, in the manner contemplated by the ECJ judgment. On this approach, journalists and civil society organisations engaged in the prevention of money laundering and terrorist financing may be able to access information from jurisdictions' central beneficial ownership registers. Bermuda has not formally modified its commitment but appears likely to. The precise criteria of such a legitimate interest test and how it may be administered has not been formulated. The UK Parliament has indicated that it accepts implementation of a legitimate interest test as an "*interim step*" for introduction later in 2024 or early 2025 but remains committed to the information becoming publicly available generally in future^[3].

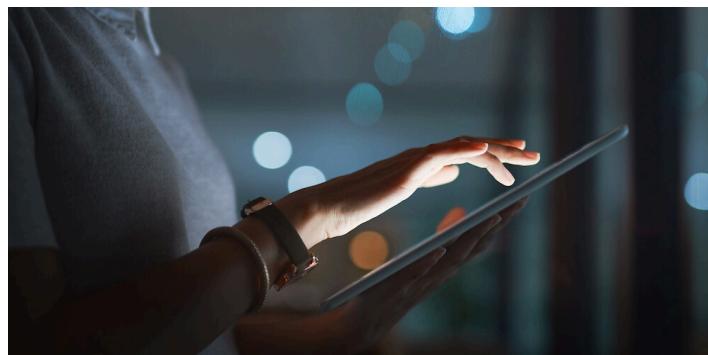
[1] WM and Sovim SA v Luxembourg beneficial Ownership Registers, European Court of Justice 22 November 2022.

[2] Issued on 3 December 2023. The British Overseas Territories and Crown Dependencies are not EU Member States now bound by AMLD6.

[3] See Statement made by David Rutley, Parliamentary Under Secretary of State for Americas, Caribbean and the Overseas Territories, 18 December 2023.

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