

Shipping and Bermuda's Corporate Income Tax Act

Briefing Summary: The Corporate Income Tax Act 2023 (the “**Tax Act**”) imposes corporate income tax on certain Bermuda-based entities. A short and high-level explanation of how the Tax Act works is available [here](#). There are specific provisions relating to shipping companies established in Bermuda. Here is an overview of how those specific provisions apply to shipping companies.

Service Area: Corporate

Sector: Aviation and Maritime

Location: Bermuda

Created Date: 28 June 2024

The initial taxing determination

You have determined that you have a shipping entity within a “Bermuda Constituent Entity Group”, which itself is within an “In Scope MNE Group” for the purposes of the Tax Act. Furthermore, you have already made various adjustments to the taxable income in accordance with Part 6 of the Tax Act. You now need to make certain shipping specific adjustments to the taxable income before you calculate the net taxable income and, ultimately, the tax liability.

The Tax Act allows “International Shipping Income” and “Qualified Ancillary International Shipping Income” to be deducted from the computation of an entity’s taxable income and loss, subject to the proviso set out below.

First some definitions

“International Shipping Income” includes the income generated from:

- the transportation of passengers or cargo by ships operated in international traffic, whether owned, leased, or otherwise at the disposal of the Bermuda Constituent Entity;
- the transportation of passengers or cargo by ships operated in international traffic under slot-chartering arrangements;
- leasing a ship to be used for the transportation of passengers or cargo in international traffic, on charter fully equipped, crewed and supplied;
- leasing a ship on a bare boat charter basis, for the use of transportation of passengers or cargo in international traffic, to another constituent entity;

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- the participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ships in international traffic; and
- the sale of a ship used for the transportation of passengers or cargo in international traffic provided that the ship has been held for use by the Bermuda Constituent Entity for a minimum of one year.

The clue is in the name but take note of the international nature of the definition. The Tax Act excludes any income from the transportation of passengers or cargo by ships via inland waterways within the same jurisdiction.

“Qualified Ancillary International Shipping Income” includes income generated from activities which support international shipping including:

- leasing a ship on a bare boat charter basis to another shipping enterprise that is not a constituent entity, provided that the charter does not exceed three years;
- sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage;
- leasing and short-term storage of containers or detention charges for the late return of containers;
- provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel; and
- investment income where the investment that generates the income is made as an integral part of the carrying on the business of operating the ships in international traffic.

Note that the aggregate amount of Qualified Ancillary International Shipping Income that can be deducted from the computation of an entity’s taxable income and loss is capped at 50% of that of the International Shipping Income. Any amount above 50% of the International Shipping Income will be included in the computation of an entity’s taxable income and loss.

The proviso to the taxable income deduction

Having identified and aggregated the “International Shipping Income” and the “Qualified Ancillary International Shipping Income” are there any other requirements to be mindful of in order for the taxable income deduction to apply? The short answer is yes: the Tax Act applies a Bermuda substance-based criterion in order for the International Shipping Income and Qualified Ancillary International Shipping Income to be deducted from the computation of an entity’s taxable income and loss, with that criterion being that the entity must demonstrate that the “strategic and commercial management” of all ships concerned is effectively carried on from or within Bermuda.

The FAQs that accompany the Tax Act provide context as to what is meant by “strategic management” and “commercial management”. The FAQs are expressly based upon the GloBE rules that underpin the text of the Tax Act.

Importantly, the FAQs that accompany the Tax Act note that in order to qualify for the taxable income deduction an entity need only demonstrate that one of “strategic management” or “commercial management” is occurring in Bermuda. Nevertheless, that entity will need to assert and demonstrate the basis upon which the taxable income deduction is claimed.

What is strategic management in Bermuda?

This is summarised as the oversight and control of the entity’s shipping business. It includes the following activities:

- making decisions on significant capital expenditure and asset disposal (purchase and sale of vessels);
- awarding major contracts, agreements on strategic alliances and vessel pooling; and
- the direction of foreign establishments.

The relevant factors to demonstrating strategic management include:

- location of decision-makers, including senior management staff;
- location of board meeting and operational board meetings;
- the residence of directors and key employees; and
- presence of physical office in Bermuda where strategic decisions are made.

Flagging a vessel in Bermuda assists in demonstrating strategic management. However, the FAQs make it clear that this would need to be accompanied by other substantive activities in Bermuda, such as also holding board meetings in Bermuda. In other words, simply flagging a vessel in Bermuda is unlikely to satisfy the substance requirement.

Alternatively, what is commercial management in Bermuda?

This is summarised as the more day to day, or ordinary course activities such as:

- route planning;
- taking bookings for cargo or passengers;
- arranging insurance and/or financing; and
- personnel management, provision, and training.

The relevant factors to demonstrating commercial management include:

- the number of employees engaged in these activities within Bermuda;
- the physical presence in Bermuda; and
- residence of key management staff and directors.

In summary

There could be no more convenient and beautiful destination than Bermuda for shipping boards to hold their board meetings. Shipping entities should assess their ability to consolidate and manage their global shipping tax obligations by establishing their shipping entities in Bermuda, flagging their vessels in Bermuda and holding a suitable number of board meetings in Bermuda.

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