

Bermuda's Corporate Income Tax

Briefing Summary: The Corporate Income Tax Act 2023 (the “**Act**”) imposes corporate income tax on certain Bermuda-based entities. Although the Act has passed into law, most of its provisions do not come into force until January 1, 2025. Bermuda entities in-scope of the legislation will be subject to its operating provisions for fiscal years beginning on or after January 1, 2025.

Service Area: Corporate, Taxation and Economic Substance Requirements

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The Act was largely motivated by and, in many respects, mirrors the OECD's Global Anti-Base Erosion Model Rules (Pillar Two) (the “**GloBE Rules**”).¹ The GloBE Rules endeavour to set a global minimum taxation rate and to obligate the participation of jurisdictions through the inclusion of a “top-up tax” framework to ensure profits are taxed where economic activities occur.

That said, the Act is not Bermuda's domestic enactment of the GloBE Rules. Instead, the Act represents a new domestic corporate income tax regime implemented, according to the Government, to protect Bermuda from being a non-adhering jurisdiction under the GloBE Rules and its entities being penalized through the GloBE Rules' top-up tax framework.

The Act, therefore, refers to and replicates various concepts and provisions from the GloBE Rules.

This article provides a short and high-level explanation of how the tax works based on the main provisions.

What entities are in scope?

The Act applies to any entity incorporated or formed in Bermuda, or that has a permanent place of business in Bermuda, if that entity is a member of an “In Scope MNE Group” (section 11).

An “In Scope MNE Group” is defined as a group of entities related through ownership and control that has an annual revenue of 750 million euros or more in a fiscal year, pursuant to the consolidated financial statements of the ultimate parent entity, in at least two of the four fiscal years immediately preceding the fiscal year beginning on or after January 1, 2025, and such group includes at least one entity located in a jurisdiction that is not the parent entity's jurisdiction (section 11(1). Definition of “MNE Group” in section 2(1). Section 53(b)).

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Corporate income tax will, on January 1, 2025, be chargeable to the “Bermuda Constituent Entity Group” within the In Scope MNE Group (sections 4, 8, 9, 11).

A Bermuda Constituent Entity Group is made up of the “Bermuda Tax Resident Entities” and “Bermuda Permanent Establishments” within the In Scope MNE Group.

A Bermuda Tax Resident Entity is an entity that is incorporated, formed, or organized in Bermuda and that is not a tax resident in another jurisdiction (section 2(1)).

Imposition of the tax

Corporate income tax rate: The corporate income tax rate is 15% of the net taxable income of the Bermuda Constituent Entity Group, less any applicable tax credits (section 4(2)).

Who pays: Each Bermuda Constituent Entity within a group is jointly and severally liable for the tax (section 4(3)).

What is net taxable income?

Netting of income and losses: The net taxable income is calculated by adding the taxable income and subtracting the taxable losses of all Bermuda Constituent Entities in a Bermuda Constituent Entity Group (section 5(a)).

Tax loss carry forward: Entities can carry forward tax losses to offset future income, but the deduction cannot exceed 80% of the net taxable income for a fiscal year (section 5(b) and section 6).

Adjustments to taxable income?

Adjustments to taxable income are addressed at part 6 of the statute and include the following main adjustments:

Alignment of principles: Adjustments to the financial accounting net income or loss amount are made in order to align the financial accounting principles with the tax principles (section 27).

Prior period errors and changes in accounting principles: As the title suggests – adjustments related to the correction of errors and changes in accounting principles to ensure that the correct tax position is reflected (section 28).

Adjustment due to IFRS 17 and long durations targeted improvements: Mainly relevant for insurance entities, which need to make certain adjustments to account for the transition from IFRS 4 to IFRS 17 (section 29).

Stock-based compensation: A Bermuda Constituent Entity may elect to deduct for tax purposes the value of stock-based compensation that it paid based on the market value of the stock when the options are exercised (section 30).

Insurance company adjustments: Owing to the unique nature of their income and expenses, insurance companies need to (i) exclude any amount charged to policyholders for taxes paid by the company in respect of returns to policyholders; (ii) include any returns to policy holders that are not reflected in their financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss (section 31).

Tier one capital adjustments: Adjustments related to Additional Tier One Capital instruments which are instruments issued in connection to prudential regulatory requirements intended to aid loss absorbency in the event of a financial crisis (Section 32).

Economic transition adjustments: Adjustments intended to ease the transition from the old tax regime (i.e., before the Act) to the new tax regime (i.e., the Act). This adjustment essentially adjusts the value of certain assets and liabilities to their fair value as of 30 September 2023 (section 33).

Matching adjustments: Particularly relevant for long term contracts, adjustments to align the timing of income recognition with the corresponding expense that gave rise to that income (section 34).

Realisation principle election: Adjustment to allow the use of the realisation method for assets and liabilities that are accounted for in the financial accounts using fair value method or impairment method. A gain or loss associated with an asset or liability would arise when the asset is disposed of rather than as its value changes according to market value or impairment (section 35).

International shipping income inclusion: Certain income from international shipping and qualified ancillary activities (mainly income from the transportation of passengers or cargo international traffic) shall be excluded (section 36).

Transfer pricing requirements: adjustments necessary to ensure that transactions between related parties are conducted on an arm's length basis and reflect fair market value (section 37).

Tax credits

A Bermuda Constituent Entity Group can claim foreign tax credits to account for any taxes paid in other jurisdictions. The rules relating to the calculation and application of any foreign tax credits are set out in Part 4 of the Act, but crucially any foreign tax credit cannot exceed the amount of tax due in Bermuda, and cannot be less than zero (section 16).

De minimis exemption

A Bermuda Constituent Entity Group apply a de minimis exemption, where the average revenue is less than 10 million euros and the net taxable income or loss is less than 1 million euros (section 7). According to the GloBE rules guidance (which as noted above informs the Act), "the policy intent is to avoid the complexities of a full effective tax rate computation in cases where the amount of any top up would not seem to justify the associated compliance and administrative costs."

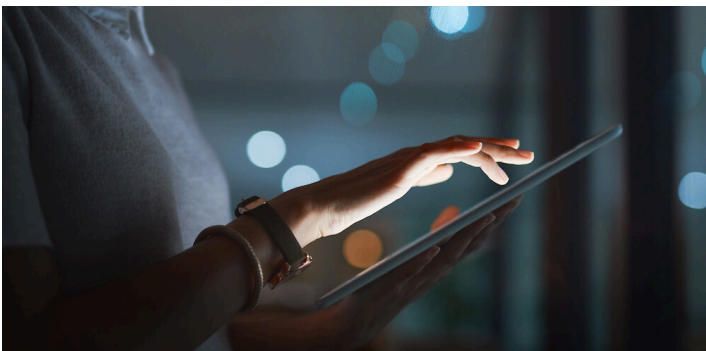
Conclusion

The above provides a high-level overview of the Bermuda Corporate Income Tax Act 2023 which is a novel piece of legislation in Bermuda. That said, whilst it may be a truism, the devil is in the details. Please speak to a member of our team should you require any advice regarding a particular corporate or group structure.

1. OECD/G20 Base Erosion and Profit Shifting Project, "Tax Challenges Arising from Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)"

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