Tax Insights
from Insurance

Bermuda enacts a corporate income tax, requiring businesses to begin preparing for compliance

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In brief

What happened?

With the assent of the governor on December 27, the Bermuda Corporate Income Tax Act of 2023 became law. Consistent with the three prior public consultations, a 15% corporate income tax (CIT) will be applicable to Bermuda businesses that are part of multinational enterprise (MNE) groups with annual revenue of €750M or more. The tax is effective beginning in 2025.

In addition, the Bermuda Ministry of Finance released a form for making elections pursuant to the CIT, as well as accompanying instructions. A list of frequently asked questions (FAQs) also was released, with an updated version including additional guidance.

Why is it relevant?

Until recently, Bermuda had not imposed taxes on profits, income, dividends, or capital gains. Going forward, MNE groups will need to understand the scope of the new CIT, including details surrounding the computation of taxable income and the tax itself.

Action to consider

Now that the Bermuda CIT has been enacted, in-scope Bermuda Constituent Entities (BCEs) must prepare for compliance, and a significant part of doing so will include determining which elections to make and analyzing potential tax accounting implications.

In detail

Elections in general

Although elections do not need to be made prior to the filling of the Bermuda CIT return, taxpayers may make them early. Elections made prior to the filing of the Bermuda CIT return may be modified or reversed. In general, five-year elections must be made for five years and are not revocable during the election period, barring an exception, like the “pre-commencement” period, which is described in more detail below.

Elections may be made for the pre-commencement period (i.e., the period beginning the later of October 1, 2023, or five years prior to the first day of the first fiscal year in which the group meets the thresholds for application of the Bermuda CIT, and ending the later of December 31, 2024, or the first day of the first fiscal year in which the group meets the thresholds for application of the Bermuda CIT). Such elections would apply for the entire pre-commencement period, with a few exceptions. Elections made during the pre-commencement period would not limit a taxpayer’s ability to make or change elections for the post-commencement period. Some of the available elections are discussed below.

Specific elections

Five-year international presence: The five-year limited international presence exemption applies for a single five-year period, beginning the first year the group otherwise would be in scope. The exemption applies for any of the five years during which the conditions of the limited international presence exemption are met. However, once a group is in scope, the group may elect to remain in scope, even for years in which the exclusion otherwise would apply.

Entity classification: Controlled Bermuda investment entities and insurance investment entities that are not tax-transparent, or subject to a one-year tax transparency or five-year tax distribution election under the Global Anti-Base Erosion (GloBE) rules, form their own separate Bermuda Constituent Entity Group (BCG). An election is available for alternative groupings. The entity classification rules and the related election may allow MNE groups to obtain flow-through tax treatment for controlled investment entities and insurance investment entities held by BCEs where a tax-transparency or tax-distribution method election otherwise is not available under the GloBE rules.

Economic transition adjustment (ETA): The FAQ provides guidance and examples regarding the application of the tax-loss carryforward and ETA, as well as proper adjustments for prior-period errors and changes in accounting principles. The 10-year spread deduction for IFRS (International Financial Reporting Standards) 17 and LDTI (Long-Duration Targeted Improvements) transition losses remaining at the commencement date cannot be made for adoptions of those new accounting standards prior to October 1, 2023, unless a BCE has elected out of the ETA.

The ETA is the default position and applies to all assets and liabilities of a BCE, other than goodwill, as of September 30, 2023. Examples of identifiable intangible assets that may be amortized over 10 years, beginning January 1, 2025, include brand and trade names, software, customer relationships, and the value of in-force insurance business. The FAQ provides several alternative ways to determine the run-off of fair value adjustments related to insurance contract liabilities, including a 15-year straight-line safe harbor method. Fair value determinations require documentation that may be requested.

For those BCEs that elect not to apply the ETA provisions, the opening tax-loss carryforward period begins on January 1, 2020. If the ETA is applicable, the opening loss carryforward must be determined for periods beginning October 1, 2023. Although, in general, transfer pricing adjustments are required for transactions between related parties, consistent with arm's-length principles, BCEs do not need to perform transfer pricing adjustments for purposes of calculating the opening tax-loss carryforward. For BCEs that are part of an MNE group with a limited international footprint, the ETA is included in the determination of taxable income for those fiscal years that it is subject to the CIT. For example, if a calendar-year BCE becomes subject to the CIT beginning in 2030, the ETA (i.e., one-tenth of the overall intangible adjustment) would apply from 2030 to 2034. The opening loss carryforward also must be determined by taking into account the ETA for 2025 and subsequent years, without the 80% taxable income limitation.

IFRS 17 and LDTI implementations: An election is available, in place of the general guidance for changes in accounting principles and prior-period corrections, to allow a deduction ratably over 10 years for the adoption effect on opening retained earnings in connection with these two accounting standards, both of which relate to long-duration insurance contracts. The election cannot be made for prior implementations if a BCE does not elect out of the ETA. The deduction applies to the amount of the opening retained earnings adjustment that has not reversed as of the commencement date. It also can apply in other circumstances, such as when a financial accounting standard adopts changes to conform with IFRS 17 or LDTI.

Matching adjustments: An annual election is available in connection with reinsurance contracts to exclude unrealized gains and losses related to assets withheld by cedants under funds withheld or modified coinsurance arrangements. The election is available to both ceding and assuming companies. It can be made prospectively from January 1, 2025, or with retrospective effect. If a BCE elects out of the ETA, the election can be made retroactively back to the inception of the reinsurance contract, otherwise it applies retroactively from October 1, 2023. If revoked, any unrealized gains or losses previously excluded from taxable income or loss (including any opening tax-loss carryforward) are included in the year the election is revoked.

Realisation principle: An annual election is available in connection with assets and liabilities subject to fair value or impairment accounting to defer gains and losses until realized. Once made, the election establishes the tax carrying value at fair value as of the beginning of the election year for existing assets and liabilities, with the future unrealized gains and losses deferred until realized or settled. It also includes a rule to include in taxable income or loss any difference between the fair value and the tax carrying value at the beginning of the year the election is revoked.

Foreign tax credits: Foreign tax credits generally are available for current and deferred income taxes, and taxes in lieu of income taxes (e.g., certain insurance premium taxes and the US federal insurance excise tax), accrued on the BCE's financial statements. The creditable deferred income taxes are capped at 15%. Foreign tax credits are applied before qualified refundable tax credits. To the extent a Bermuda insurance company has elected to be taxed as a domestic insurance company, US taxes accrued on its financial statements generally would be considered creditable foreign taxes. In contrast, a significant change from the draft legislation to the final legislation provides that taxes paid by the US shareholder of a BCE that is treated as a controlled foreign corporation would not be considered creditable foreign taxes. However, an election is available to reduce the entity's financial accounting income for the 2025 and 2026 years to the extent of the US shareholder's direct or indirect proportionate ownership interest in the BCE.

Observation: While providing flexibility and allowing future deductions for preceding losses and economic adjustments, the various tax elections create a level of complexity that affected groups will need to assess in conjunction with the application of global minimum taxes, as countries enact Pillar Two legislation. The interaction of the foreign tax credit with other provisions, including US taxes of companies with Section 953(d) elections, also will need to be considered in determining the tax effect of the new CIT.

Observation: The Government of Bermuda intends to introduce qualifying refundable tax credits, so MNE groups should monitor developments in this area for information on the types of credits and their potential applicability.

Tax accounting

ASC 740, Accounting for Income Taxes, requires the effects of changes in tax laws or rates to be recognized in the period in which the law is enacted, regardless of the effective date. In the period of enactment, analysis of the impacts resulting from the introduction of the CIT regime will need to be determined for the appropriate financial statement effects, with the total effect recorded as a component of the income tax provision related to continuing operations. The financial reporting implications of the CIT regime may result in the recognition of deferred tax assets or liabilities.

It is important to note that because certain income may be taxed both in Bermuda and other jurisdictions, there may be an interplay between certain temporary differences established in Bermuda and foreign tax credits generated on the same item in other jurisdictions. This interplay will require the principles of the income tax accounting model for “dual resident” taxpayers (what many people know as “branch accounting”) to be considered. This interplay should be evaluated in tandem with a company’s valuation allowance assessment. It also is important to note that because of the features of Bermuda’s CIT, companies will need to make an accounting policy election with regard to how they approach any valuation allowance (similar to the accounting policy election US companies had to make with regard to realization of net operating losses when GILTI was enacted). Additionally, a company’s intent with respect to certain available elections (including entity classification elections) may further impact deferred tax outcomes in the period of enactment.

See also

For prior coverage of the CIT, please refer to our other Tax Insights: “Proposed Bermuda corporate income tax is closely modeled after the GloBE rules, with key differences” (October 13, 2023) and “Bermuda provides clarifying details regarding its proposed corporate income tax” (November 21, 2023).

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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