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Bermuda Corporate Income Tax: Considerations for Captive Insurers

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Key takeaways

- The operating provisions of the corporate income tax regime for Bermuda legislation will be effective for fiscal years beginning on or after 1 January 2025. This will apply to "Bermuda Constituent Entities" of an "In Scope MNE Group", each as defined in the legislation.
- Many captive insurers will not be big enough to fall into scope of the new tax regime. In addition, it is expected that no additional tax liability will need to be paid by US-owned captives in Bermuda that make the 953(d) election – meaning they are subject to US federal income tax.
- Larger captive insurers that falls "in scope" will need to assess tax liability under the new corporate income tax regime and consider any applicable exemptions and tax elections, we set out some of they key considerations in our advisory below.

The Corporate Income Tax Act 2023, was enacted on 1 January 2024 and on 1 January 2025, the operating provisions of this legislation will be effective for fiscal years beginning on or after 1 January 2025.

The Corporate Income Tax Act 2023 ("**CITA**"), was enacted on 1 January 2024 and on 1 January 2025, the operating provisions of this legislation will be effective for fiscal years beginning on or after 1 January 2025. The CITA, together with the Corporate Income Tax Agency Act 2024 and the Ministry of Finance's FAQs ("**FAQs**"), form the regulatory framework for Bermuda's Corporate Income Tax ("**CIT**") regime.

The regime was set up in response to the Global Anti-Base Erosion Model Rules (Pillar 2) (the "**GloBE Rules**") published by the Organisation for Economic Cooperation and Development, to demonstrate Bermuda's commitment to global compliance and transparency.

The introduction of the CITA is yet another significant milestone for the Island in the development and implementation of an appropriate CIT regime to meet the ever-changing global tax environment.

In our linked advisory we set out the key overarching facts about the CIT regime in general, this can be accessed here. In this article, ahead of the Bermuda Captive Conference, we focus on what this means for Bermuda's captive industry.

Many captives will not be big enough to fall into scope of the new tax regime. In addition, it is expected that no additional tax liability will need to be paid by US-owned captives in Bermuda that make the 953(d) election – meaning they are subject to US federal income tax. However, for larger captives that fall within scope of the CITA, the considerations in this article will be relevant. It should be noted that such captives would be paying these taxes in any event, but the implication of the CITA is that it will be collected in Bermuda.

Scope of the CIT

The CIT tax regime will apply to "Bermuda Constituent Entities", defined as:

(a) a Bermuda Tax Resident Entity - an entity that is incorporated, formed, or organised in Bermuda, unless the entity is tax resident in another jurisdiction under the laws of that jurisdiction based on its location of management and control; or

(b) a Bermuda Permanent Establishment - a fixed place of business in Bermuda through which the business of an entity not otherwise incorporated or formed in Bermuda is wholly or partly carried on as determined in accordance with Article 5 of the OECD Model Tax Convention, that is a constituent entity of an '"In Scope MNE Group".

An In Scope MNE Group is defined as a multinational group ("**MNE**") with an annual revenue of €750M or more in the consolidated financial statements of the ultimate parent entity for at least two of the four fiscal years immediately preceding such fiscal year.

CIT will be chargeable at a statutory rate of 15% of net taxable income minus any qualified refundable tax credits that may be applicable. Each Bermuda Constituent Entity of a Bermuda Constituent Entity Group shall be jointly and severally liable for the tax chargeable to the Bermuda Constituent Entity Group.

What does this mean for captive insurers?

Generally, unless tax resident in another jurisdiction, the requirements under the Insurance Act 1978 (as amended) and the Economic Substance Act 2018, in addition to their respective related rules and regulations, mean that Bermuda Captive insurers are likely to be managed and controlled from Bermuda – thereby meeting the definition of a Bermuda Tax Resident Entity.

A Bermuda captive insurer that falls "in scope" will need to assess its tax liability under the CITA and consider any applicable exemptions and tax elections. Some key considerations for captive insurers include:

- There is an "***opening tax loss carry forward***" election that, broadly. allows entities to carry forward losses incurred over a prior 5 year period, as an offset to future profits. There is an 80% limit on the use of tax loss carry forward deductions in section 6(1)(a). This limit may not apply where an insurance company incurs a shock loss (an event with a probability of 0.5% or less).

Insurance Company Adjustments

- Insurance companies are entitled to exclude from the computation of taxable income or loss amounts charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders.

- Insurance companies are to include in the computation of taxable income or loss any returns to policyholders that are not reflected in financial accounting net income or loss to the extent the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

Creditable Foreign Taxes

- Creditable foreign taxes shall be determined in accordance with the relevant laws and regulations of the taxing foreign jurisdiction provided that, with the exception of Bermuda source income, such determination shall be made prior to consideration of any tax credits that would otherwise be permissible in such foreign jurisdiction with respect to corporate income taxes chargeable pursuant to CITA.
- **"Bermuda source income"** is defined to include underwriting income from issuing or reinsuring any insurance or annuity contract in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of Bermuda. As such it appears that such income will be determined on the basis of allowance of tax credits in the foreign jurisdiction.

Tax assurances

- Under current Bermuda law, captives, being exempted companies for the purposes of the Companies Act 1981 (as amended), are entitled to a tax assurance certificate in Bermuda under the Exempted Undertakings Tax Protection Act 1966 (as amended) (EUTP Act).
- The EUTP Act specifies that, in the event Bermuda enacts legislation imposing tax computed on profits, income, any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, then the imposition of the tax will not be applicable until 31 March 2035.
- As a result of changes made to the EUTP Act by the CIT Act, this assurance has been made subject to the application of any taxes pursuant to the CITA.

Further Information

Our diversified team of CIT and insurance experts enables us to provide comprehensive legal, corporate, and fiduciary services for your Captive.

This includes advising on:
a) Setting up and establishing a captive
b) Licensing obligations and applications to the Bermuda Monetary Authority
c) How the CIT rules apply
d) The insurance and CIT regulatory frameworks

Our affiliate, Walkers Professional Services, employs a team of highly skilled corporate service professionals in Bermuda who provide efficient and personalized services to Captive insurers including incorporation, corporate administration, independent directorship and corporate governance services.

Please contact any of the below individuals for advice.