



Allocation of Taxes Between Constituent Entities

Corporate Income Tax Guidance

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GUIDANCE NOTE

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Title	Allocation of Taxes Between Constituent Entities
Sub Title	-
Purpose	This guidance provides details of the computation of the amounts of adjusted creditable foreign taxes to be allocated to or from a Bermuda Constituent Entity.

Acronyms	Description
CITA	Corporate Income Tax Agency
Agency	Corporate Income Tax Agency
CIT Act	Corporate Income Tax Act 2023
FANIL	Financial Accounting Net Income or Loss

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PART 1

PRELIMINARY

Introduction

- 1 The Corporate Income Tax Amendment (No. 2) Act 2025 repealed and replaced section 18 of the “Corporate Income Tax Act 2023 (“CIT Act”). As a result of this change, section 18 includes additional circumstances in which adjusted creditable foreign taxes will be allocated to or from a Bermuda Constituent Entity.

Pursuant to regulation 10(4) of the Corporate Income Tax (Administrative) Amendment Regulations 2025, the Corporate Income Tax Agency (“CITA” or “the Agency”) is prescribing this guidance regarding the method for determining the amount of adjusted creditable foreign taxes to be allocated to or from a Bermuda Constituent Entity Group.

Definitions

- 2 Unless otherwise indicated, the definitions in the CIT Act shall apply for the purposes of this guidance. In addition, unless the context otherwise requires-

“adjusted current creditable foreign taxes” means, with respect to a constituent entity for a fiscal year, the adjusted creditable foreign taxes of the constituent entity as determined in accordance with section 17 of the CIT Act but excluding the deferred tax adjustment determined in accordance with section 17(2);

“adjusted deferred creditable foreign taxes” means, with respect to a constituent entity for a fiscal year, the deferred tax adjustment of the constituent entity as determined in accordance with section 17(2) of the CIT Act, provided that-

- (a) to the extent that section 17(2) is being applied with respect to a foreign constituent entity, the amount described in section 17(2)(c)(i) shall be determined in the same manner as if the foreign constituent entity was a Bermuda Constituent Entity subject to the CIT Act, but without regard to sections 29, 33, 34, or 35 of the CIT Act; and
- (b) notwithstanding section 17(2)(c)(v), the deferred tax adjustment shall include deferred taxes attributable to a substitute loss carryforward;

“adjusted taxable income or loss” means, with respect to a Bermuda Constituent Entity, the net taxable income or loss of the Bermuda Constituent Entity provided that such net taxable income or loss shall be determined without regard to sections 29, 33, 34, or 35 of the CIT Act;

“applicable rate” means, with respect to a blended CFC tax regime, the threshold tax rate established pursuant to the blended CFC tax regime for the purposes of identifying low-taxed income;

“applicable local tax rate” means, with respect to an income inclusion of a foreign parent entity, the statutory rate of tax (prior to consideration of any foreign tax credits) applicable to the income inclusion pursuant to the foreign parent entity’s local tax regime;

“Bermuda Parent Entity” means a parent constituent entity which is a Bermuda Constituent Entity;

“Bermuda Subsidiary Entity” means a subsidiary constituent entity which is a Bermuda Constituent Entity;

“blended CFC tax regime” means a controlled foreign company tax regime that aggregates income, losses, and creditable taxes of all CFCs for the purposes of calculating the direct or indirect owner’s tax liability under the regime and that has an applicable rate of less than 15%;

“blended CFC taxes” means taxes incurred by a foreign parent entity pursuant to the application of a blended CFC tax regime;

“CFC” means a constituent entity with respect to which a constituent entity-owner is subject to a controlled foreign company tax regime;

“CFC income inclusion” means, with respect to a constituent entity-owner of a CFC for a fiscal year, the aggregate net income of the CFC which is included in the taxable income of the constituent entity-owner for the fiscal year pursuant to the application of a controlled foreign company tax regime (other than a blended CFC tax regime), provided that if the constituent entity-owner included an aggregate net loss in its taxable income pursuant to the application of the controlled foreign company tax regime to the CFC for the fiscal year, the CFC income inclusion with respect to such CFC for the fiscal year shall be nil;

“CIT Act” means the Corporate Income Tax Act 2023;

“constituent entity distribution” means a distribution from a constituent entity to a direct constituent entity-owner which, pursuant to the financial accounting standard used in the preparation of the consolidated financial statements, is regarded as having been made in respect of the constituent entity-owner’s ownership interest in the distributing constituent entity;

“constituent entity deemed distribution” means a distribution amount which is deemed to have been received by a direct constituent entity-owner with respect to its ownership interest in a constituent entity and which is included in the taxable income of the constituent entity-owner pursuant to the application of the constituent entity-owner’s local tax regime, provided that for this purpose-

(a) a deemed distribution shall only be treated as a constituent entity deemed distribution to the extent that the constituent entity-owner’s ownership interest in the constituent entity is treated as an equity interest pursuant to-

- (i) the constituent entity-owner’s local tax regime; and
- (ii) the financial accounting standard used in the preparation of the consolidated financial statements; and

(b) a CFC income inclusion shall not be treated as a constituent entity deemed distribution;

“creditable foreign taxes” shall have the meaning given in section 2(1) of the CIT Act and, for the purposes of applying this definition to a foreign constituent entity, foreign taxes shall include local taxes incurred by such foreign constituent entity;

“cross-crediting provisions” means, with respect to a foreign constituent entity’s local tax regime, provisions that allow adjusted current creditable foreign taxes incurred by the foreign constituent entity (other than local taxes of the foreign constituent entity) with respect to a source of income arising in a jurisdiction to give rise to a foreign tax credit which can be used against another source of income arising in another jurisdiction, where neither of such jurisdictions are the taxable location of the foreign

constituent entity;

“current local taxes” means, with respect to a foreign constituent entity, the adjusted current creditable foreign taxes incurred by the foreign constituent entity in its taxable location pursuant to the application of its local tax regime;

“deferred local taxes” means, with respect to a foreign constituent entity, the adjusted deferred creditable foreign taxes incurred by the foreign constituent entity with respect to its local tax regime;

“distribution income inclusion” means, with respect to a constituent entity-owner, the sum of-

- (a) the constituent entity distributions; and
- (b) the constituent entity deemed distributions,

included in the taxable income of the constituent entity-owner;

“distributing constituent entity” means a constituent entity to the extent that-

- (a) the constituent entity makes a constituent entity distribution; or
- (b) a constituent entity-owner of the constituent entity is required to include a constituent entity deemed distribution in the determination of its taxable income with respect to the constituent entity;

“dividend withholding taxes” means adjusted current creditable foreign taxes which are withheld at source from constituent entity distributions pursuant to the combined set of laws, regulations, or related provisions which are relevant to the determination of the income tax withholding obligations of the distributing constituent entity;

“domestic source taxable income” shall mean the amount determined in accordance with paragraph 14;

“foreign constituent entity” means a constituent entity which is not a Bermuda Constituent Entity;

“foreign parent entity” means a parent constituent entity which is a foreign

constituent entity;

“foreign source taxable income” shall mean the amount determined in accordance with paragraph 13;

“foreign subsidiary entity” means a subsidiary constituent entity which is a foreign constituent entity;

“hybrid income inclusion” means, with respect to a constituent entity-owner of a hybrid entity for the fiscal year, the aggregate net income of the hybrid entity which is included in the taxable income of the constituent entity-owner for the fiscal year as determined in accordance with the constituent entity-owner’s local tax regime, provided that if the constituent entity-owner included an aggregate net loss in its taxable income with respect to the hybrid entity for the fiscal year, the hybrid income inclusion with respect to such hybrid entity for the fiscal year shall be nil;

“income inclusion” means-

- (a) a PE income inclusion;
- (b) a distribution income inclusion;
- (c) a CFC income inclusion;
- (d) a hybrid income inclusion; or
- (e) a reverse hybrid income inclusion;

“local tax regime” means, with respect to a constituent entity (other than a Bermuda Constituent Entity), the combined set of laws, regulations, or related provisions which are relevant to the determination of the tax liability of the constituent entity in its taxable location;

“local taxes” means the sum of current local taxes and deferred local taxes;

“parent constituent entity” means a constituent entity which is-

- (a) the main entity of a permanent establishment;

(b) a constituent entity-owner of another constituent entity with respect to which the constituent entity-owner has-

- (i) a CFC income inclusion;
- (ii) a distribution income inclusion;
- (iii) a hybrid income inclusion; or
- (iv) a reverse hybrid income inclusion,

which is attributable to the other constituent entity for the fiscal year;
or

(c) described in more than one of paragraphs (a) or (b)(i) to (iv);

“passive FANIL” means, with respect to a Bermuda Subsidiary Entity, the portion of the financial accounting net income or loss of the Bermuda Subsidiary Entity which is comprised of passive income;

“passive income” shall have the meaning given in section 2(1) of the CIT Act, and shall also include-

- (a) dividend equivalents; and
- (b) interest equivalents;

“PE income inclusion” means, with respect to a constituent entity which is the main entity of a permanent establishment for the fiscal year, the aggregate net income of the permanent establishment which is included in the taxable income of the constituent entity for the fiscal year as determined in accordance with the constituent entity’s local tax regime, provided that if the constituent entity included an aggregate net loss in its taxable income with respect to the permanent establishment for the fiscal year, the PE income inclusion with respect to such permanent establishment for the fiscal year shall be nil;

“pre-credit current local taxes” means, with respect to a foreign parent entity, the amount of current local taxes of the foreign parent entity prior to consideration of any foreign tax credits allowed pursuant to the foreign parent entity’s local tax regime;

“qualified refundable tax credits” shall have the meaning given in section 2(1) of the CIT Act, and shall also include-

- (a) marketable transferable tax credits (as such term is defined under the GloBE Rules); and
- (b) qualified flow-through tax benefits, but only to the extent that the equity inclusion election has been made (as such terms are defined under the GloBE Rules);

“reference entity” means, with respect to an ownership interest in a flow-through entity-

- (a) the constituent entity-owner of the ownership interest which is the closest entity in the chain of ownership (excluding, for this purpose, any flow-through entities included in the chain of ownership) to the flow-through entity; or
- (b) to the extent that all entities in the chain of ownership of the ownership interest are flow-through entities, the ultimate parent entity;

“reverse hybrid entity” shall have the meaning given in section 2(1) of the CIT Act, and shall include a flow-through entity to the extent that the reference entity’s local tax regime treats the flow-through entity and each entity in the chain of ownership through which the reference entity holds its ownership interest in the flow-through entity as not fiscally transparent;

“reverse hybrid income inclusion” means, with respect to a constituent entity-owner which is-

- (a) an indirect constituent entity-owner of a reverse hybrid entity to the extent that the reverse hybrid entity is treated as fiscally transparent pursuant to the constituent entity-owner’s local tax regime, such that the constituent entity-owner is subject to tax on the income of the reverse hybrid entity, but only to the extent that-
 - (i) the constituent entity-owner holds its ownership interest in the reverse hybrid entity through a chain of ownership; and

- (ii) the constituent entity-owner is further up the chain of ownership than the reference entity; or
- (b) a direct constituent entity-owner of a reverse hybrid entity which is subject to tax on the income of the reverse hybrid entity pursuant to the reverse hybrid entity's local tax regime,

the aggregate net income of the reverse hybrid entity which is included in the taxable income of the constituent entity-owner for the fiscal year as determined in accordance with the relevant local tax regime, provided that if the constituent entity-owner included an aggregate net loss in its taxable income with respect to the reverse hybrid entity for the fiscal year, the reverse hybrid income inclusion with respect to such reverse hybrid entity for the fiscal year shall be nil;

“subsidiary constituent entity” means, with respect to a parent constituent entity for a fiscal year, a constituent entity to the extent that such constituent entity has a different taxable location from the parent constituent entity and is-

- (a) a permanent establishment with respect to which the parent constituent entity is the main entity;
- (b) an entity with respect to which the parent constituent entity is a constituent entity-owner and has-
 - (i) a CFC income inclusion;
 - (ii) a distribution income inclusion;
 - (iii) a hybrid income inclusion; or
 - (iv) a reverse hybrid income inclusion,

which is attributable to the constituent entity for the fiscal year; or

- (c) described in more than one of paragraphs (b)(i) to (iv);

“substitute loss carryforward” shall have the meaning given in paragraph

21(3);

“tax transparent entity” shall have the meaning given in section 2(1) of the CIT Act, and shall include a flow-through entity to the extent that the reference entity’s local tax regime treats the flow-through entity and each entity in the chain of ownership through which the reference entity holds its ownership interest in the flow-through entity as fiscally transparent;

“taxable location” means, for the purposes of Parts 2 through 6, with respect to-

(a) a Bermuda Constituent Entity, the jurisdiction of Bermuda;

(b) an entity (other than a Bermuda Tax Resident Entity)-

(i) which is tax resident in a jurisdiction based on its place of management, place of creation or similar criteria, such jurisdiction; or

(ii) which is not described in subparagraph (i), the jurisdiction in which it was created; or

(c) a permanent establishment (other than a Bermuda Permanent Establishment), the location determined in accordance with section 14 of the CIT Act with respect to such permanent establishment;

PART 2

ALLOCATION OF ADJUSTED CREDITABLE FOREIGN TAXES TO A BERMUDA CONSTITUENT ENTITY

Allocation of adjusted creditable foreign taxes to a Bermuda Constituent Entity

3 (1) The amount of adjusted creditable foreign taxes required to be allocated to a Bermuda Constituent Entity from another constituent entity for a fiscal year shall be equal to the sum of-

(a) the local taxes allocated to the Bermuda Constituent Entity from a foreign parent entity for the fiscal year, as determined in accordance with paragraph 4;

- (b) dividend withholding taxes withheld from constituent entity distributions paid by the Bermuda Constituent Entity to a foreign parent entity for the fiscal year;
- (c) the adjusted creditable foreign taxes allocated to the Bermuda Constituent Entity from a permanent establishment for the fiscal year, as determined in accordance with paragraph 22; and
- (d) the adjusted creditable foreign taxes allocated to the Bermuda Constituent Entity from a tax transparent entity for the fiscal year, as determined in accordance with paragraph 23.

Allocation of local taxes to a Bermuda Constituent Entity

4 (1) The local taxes of a foreign parent entity shall be allocated to a Bermuda Subsidiary Entity for the fiscal year to the extent that the local taxes of the foreign parent entity arise from-

- (a) a CFC income inclusion;
- (b) a PE income inclusion;
- (c) a distribution income inclusion;
- (d) a hybrid income inclusion; or
- (e) a reverse-hybrid income inclusion,

of the foreign parent entity which is attributable to the Bermuda Subsidiary Entity.

(2) For the purposes of paragraph (1), the amount of local taxes of a foreign parent entity which shall be allocated to a Bermuda Subsidiary Entity for the fiscal year shall be equal to-

- (a) the sum of-
 - (i) the aggregate amount of current local taxes which arise with respect to each income inclusion attributable to the Bermuda Subsidiary Entity, as determined in accordance with paragraph 6; and

- (ii) the aggregate amount of deferred local taxes which arise with respect to each income inclusion attributable to the Bermuda Subsidiary Entity, as determined in accordance with paragraph 17; reduced by
 - (b) any adjustment required to be made in accordance with paragraph 5.

Passive income limitation

5 (1) To the extent that the income inclusions described in paragraphs 4(1)(a), (d), and (e) are comprised of passive income, the amount of local taxes of the foreign parent entity which arise with respect to such income inclusions shall be adjusted by the excess, if any, of-

- (a) the amount determined pursuant to paragraph 4(2)(a) with respect to the portion of the income inclusions which are comprised of passive income; over

- (b) the passive income limitation determined in accordance with paragraph (2).

(2) The passive income limitation shall be equal to the product of-

- (a) the aggregate amount of the income inclusions described in paragraphs 4(1)(a), (d), and (e) to the extent such income inclusions are comprised of passive income; and

- (b) the excess, if any, of-

- (i) 15%; over

- (ii) the percentage determined by dividing-

- (A) the aggregate of the pre-allocation taxes determined pursuant to paragraph (3) with respect to each Bermuda Constituent Entity which is a member of the same Bermuda Constituent Entity Group as the Bermuda Subsidiary Entity for the fiscal year; by

(B) the total adjusted taxable income or loss for the fiscal year, as determined pursuant to paragraph (4).

(3) The pre-allocation taxes of a Bermuda Constituent Entity for the fiscal year shall be equal to the sum of the following tax amounts-

- (a) the adjusted creditable foreign taxes incurred directly by the Bermuda Constituent Entity for the fiscal year;
- (b) adjusted creditable foreign taxes allocated to the Bermuda Constituent Entity pursuant to-
 - (i) paragraph 3(1)(a), provided that any adjusted creditable foreign taxes allocated to the passive income of the Bermuda Constituent Entity with respect to income inclusions described in-
 - (A) paragraph 4(1)(a);
 - (B) paragraph 4(1)(d); and
 - (C) paragraph 4(1)(e),
 - for the fiscal year shall be disregarded for this purpose;
- (ii) paragraph 3(1)(b);
- (iii) paragraph 3(1)(c);
- (iv) paragraph 3(1)(d);

(c) corporate income taxes chargeable to the Bermuda Constituent Entity pursuant to the CIT Act for the fiscal year, provided that the determination of such corporate income taxes shall-

- (i) not include corporate income taxes chargeable with respect to passive income which is-

(A) included in the determination of an income inclusion described in-

- (I) paragraph 4(1)(a);
- (II) paragraph 4(1)(d); or
- (III) paragraph 4(1)(e),

for the fiscal year; and

(B) considered to be from domestic sources for the purposes of determining the extent to which a foreign tax credit is allowed to the foreign parent entity pursuant to the foreign parent entity's local tax regime with respect to the income inclusions described in paragraph (A); and

- (ii) take into account the adjusted creditable foreign taxes described in paragraphs (a) and (b); and
- (d) deferred income tax expense or benefit recognised by the Bermuda Constituent Entity with respect to the adjustments to taxable or income loss described in sections 6, 29, 30, 33, 34, or 35 of the CIT Act.

(4) The total adjusted taxable income or loss for the fiscal year shall be equal to the aggregate of the adjusted taxable income or loss determined with respect to each Bermuda Constituent Entity which is a member of the same Bermuda Constituent Entity Group as the Bermuda Subsidiary Entity for the fiscal year.

(5) At the annual election of the Filing Bermuda Constituent Entity, the amount described in paragraph (2) shall be deemed to be zero for the fiscal year.

PART 3

ALLOCATION OF CURRENT LOCAL TAXES TO A BERMUDA CONSTITUENT ENTITY

Amount of current local taxes arising from income inclusions

6 (1) The amount of current local taxes of a foreign parent entity which arise with respect to an income inclusion attributable to a Bermuda Subsidiary Entity of the foreign parent entity for a fiscal year shall be determined in accordance with-

- (a) the simplified allocation method described in paragraph 7, to the extent that-
 - (i) the income inclusion is subject to tax, pursuant to the foreign parent entity's local tax regime, separately from other income or loss of the foreign parent entity; and
 - (ii) the foreign parent entity's local tax regime does not apply cross-crediting provisions to the income inclusion;
- (b) the combined allocation method described in paragraph 8, to the extent that-
 - (i) the income inclusion is subject to tax, pursuant to the foreign parent entity's local tax regime, on a combined basis with other income or loss of the foreign parent entity; and
 - (ii) the foreign parent entity's local tax regime does not apply cross-crediting provisions to the income inclusion;
- (c) the cross-credit allocation method described in paragraph 9, to the extent that the foreign parent entity's local tax regime applies cross-crediting provisions to the income inclusion; or
- (d) another method elected by the Filing Bermuda Constituent Entity, provided that-
 - (i) the manner in which the income inclusion is subject to tax

pursuant to the foreign parent entity's local tax regime is not described in any of paragraphs (a), (b), or (c);

- (ii) the elected method is reasonably consistent with the manner in which the income inclusion is subject to tax for the purposes of the local tax regime;
- (iii) the election shall be a five-year election; and
- (iv) the Agency may prescribe additional information required to be disclosed (as well as the form and manner of any such disclosure) with respect to the method applied.

Simplified allocation method

7 (1) For the purposes of paragraph 6(1)(a), the amount of current local taxes which arise from an income inclusion attributable to a Bermuda Subsidiary Entity shall be equal to the excess, if any, of-

- (a) the product of-
 - (i) the income inclusion; and
 - (ii) the tax rate applicable to the income inclusion for the purposes of determining the pre-credit current local taxes attributable to the income inclusion; over
- (b) the foreign tax credit, if any, allowed pursuant to the foreign parent entity's local tax regime as an offset to the foreign parent entity's current local taxes, but only to the extent that such foreign tax credit has been determined with respect to-
 - (i) corporate income taxes chargeable to the Bermuda Constituent Entity pursuant to the CIT Act for the fiscal year, but only to the extent that such corporate income taxes were chargeable with respect to Bermuda source income; and
 - (ii) adjusted current creditable foreign taxes incurred directly by the Bermuda Subsidiary Entity.

Combined allocation method

8 (1) For the purposes of paragraph 6(1)(b), the amount of current local taxes which arise from an income inclusion attributable to a Bermuda Subsidiary Entity shall be equal to the excess, if any, of-

- (a) the amount of the pre-credit current local taxes of the foreign parent entity which arise from the income inclusion attributable to the Bermuda Subsidiary Entity, as determined in accordance with paragraph (2); over
- (b) the amount of the foreign tax credits allowed pursuant to the foreign parent entity's local tax regime, if any, as an offset to the amount described in paragraph (a), as determined in accordance with paragraph (5).

(2) The amount of the pre-credit current local taxes of the foreign parent entity which arise from an income inclusion attributable to a Bermuda Subsidiary Entity shall be determined-

- (a) in accordance with paragraph (3), to the extent that the income inclusion attributable to the Bermuda Subsidiary Entity is the only income inclusion of the foreign parent entity for the fiscal year; or
- (b) in accordance with paragraph (4), to the extent that the income inclusion attributable to the Bermuda Subsidiary Entity is not the only income inclusion of the foreign parent entity for the fiscal year.

(3) For the purposes of paragraph (2)(a)-

- (a) to the extent that the total taxable income of the foreign parent entity, as determined in accordance with the foreign parent entity's local tax regime and including the income inclusion attributable to the Bermuda Subsidiary Entity-
 - (i) is greater than the amount of the income inclusion attributable to the Bermuda Subsidiary Entity, the pre-credit current local taxes of the foreign parent entity which arise from the income inclusion shall be equal to the product of-

(A) the total pre-credit current local taxes of the foreign parent entity; and

(B) the result obtained by dividing-

(I) the income inclusion attributable to the Bermuda Subsidiary Entity; and

(II) the total taxable income of the foreign parent entity; or

(ii) is equal to or less than the amount of the income inclusion attributable to the Bermuda Subsidiary Entity, all of the total pre-credit current local taxes of the foreign parent entity shall be regarded as arising from the income inclusion;

(b) to the extent that the total taxable income of the foreign parent entity is comprised of taxable income categories which are subject to different taxes or tax rates pursuant to the foreign parent entity's local tax regime-

(i) paragraph (a) shall be applied separately to each such taxable income category; and

(ii) for the purposes of applying paragraph (a) to a separate taxable income category-

(A) the total taxable income of the foreign parent entity shall only include the portion of the total taxable income which is allocated to such separate taxable income category; and

(B) the total pre-credit current local taxes of the foreign parent entity shall only include the portion of the total pre-credit current local taxes which is attributable to such separate taxable income category.

(4) For the purposes of paragraph (2)(b)-

(a) the pre-credit current local taxes of the foreign parent entity which arise from an income inclusion attributable to a Bermuda Subsidiary Entity shall be equal to the product of-

- (i) the result obtained by dividing-
 - (A) the income inclusion attributable to the Bermuda Subsidiary Entity; and
 - (B) the aggregate of all income inclusions for each subsidiary constituent entity which have been included in the taxable income of the foreign parent entity for the fiscal year; and
- (ii) the pre-credit current local taxes of the foreign parent entity which arise from the aggregate income inclusions, as determined in accordance with paragraph (b);

(b) to the extent that the total taxable income of the foreign parent entity, as determined in accordance with the foreign parent entity's local tax regime and including the aggregate income inclusions described in paragraph (a)(i)(B)-

- (i) is greater than the aggregate income inclusions described in paragraph (a)(i)(B) for the fiscal year, the pre-credit current local taxes of the foreign parent entity which arise from the aggregate income inclusions shall be equal to the product of-
 - (A) the total pre-credit current local taxes of the foreign parent entity; and
 - (B) the result obtained by dividing-
 - (I) the aggregate income inclusions described in paragraph (a)(i)(B); and
 - (II) the total taxable income of the foreign parent entity; or
- (ii) is equal to or less than the amount of the aggregate income inclusions described in paragraph (a)(i)(B), all of the total pre-credit current local taxes of the foreign parent entity shall be regarded as arising from the aggregate income inclusions;

(c) to the extent that the total taxable income of the foreign parent entity is comprised of taxable income categories which are subject to

different taxes or tax rates pursuant to the foreign parent entity's local tax regime-

- (i) paragraphs (a) and (b) shall be applied separately to each such taxable income category; and
- (ii) for the purposes of applying paragraphs (a) and (b) to a separate taxable income category-
 - (A) the total taxable income of the foreign parent entity shall only include the portion of the total taxable income which is allocated to such separate taxable income category;
 - (B) the total pre-credit current local taxes of the foreign parent entity shall only include the portion of the total pre-credit current local taxes which is attributable to such separate taxable income category; and
 - (C) the aggregate income inclusions shall only include the income inclusions which are allocated to such separate taxable income category.

(5) The amount of the foreign tax credits which are allowed as an offset to the amount described in paragraph (1)(a) shall-

- (a) be determined in accordance with the foreign parent entity's local tax regime, including any relevant credit limitations; and
- (b) notwithstanding paragraph (a), not include foreign tax credits allowed pursuant to the foreign parent entity's local tax regime which are determined by reference to corporate income taxes chargeable pursuant to the CIT Act, except to the extent that such corporate income taxes were chargeable with respect to Bermuda source income.

PART 4

CROSS-CREDIT ALLOCATION METHOD FOR CURRENT LOCAL TAXES

Cross-credit allocation method

9 (1) For the purposes of paragraph 6(1)(c), the amount of current local taxes which arise from an income inclusion attributable to a Bermuda Subsidiary Entity for a fiscal year shall be equal to the product of-

- (a) the allocable current local taxes of the foreign parent entity for the fiscal year, as determined in accordance with paragraph 12; and
- (b) the result obtained by dividing-
 - (i) the cross-crediting allocation key for the income inclusion attributable to the Bermuda Subsidiary Entity for the fiscal year, as determined in accordance with paragraph 11(1); by
 - (ii) the total cross-crediting allocation key of the foreign parent entity for the fiscal year, as determined in accordance with paragraph 10(1).

Total cross-crediting allocation key

10 (1) The total cross-crediting allocation key of the foreign parent entity for a fiscal year shall be equal to the sum of-

- (a) the cross-crediting allocation key for each income inclusion attributable to a subsidiary constituent entity of the foreign parent entity for the fiscal year, as determined in accordance with paragraph 11(1); and
- (b) the cross-crediting allocation key for the foreign source taxable income earned directly by the foreign parent entity for the fiscal year, as determined in accordance with paragraph 11(2).

Cross-crediting allocation keys

11 (1) The cross-crediting allocation key for an income inclusion attributable to a subsidiary constituent entity (including, without limitation, a Bermuda Subsidiary Entity) for a fiscal year shall be equal to the excess, if any, of-

(a) the product of-

- (i) the amount of such income inclusion taken into account for the purposes of paragraph 13(1)(a); and
- (ii) the tax rate applicable to the income inclusion for the purposes of determining the pre-credit current local taxes attributable to the income inclusion; over

(b) the sum of the foreign tax credits which are allowed as an offset to the amount described in paragraph (a), provided that for this purpose such foreign tax credits shall-

- (i) be determined in accordance with the foreign parent entity's local tax regime, including any relevant credit limitations; and
- (ii) notwithstanding paragraph (a), not include foreign tax credits allowed pursuant to the foreign parent entity's local tax regime which are determined by reference to corporate income taxes chargeable pursuant to the CIT Act, except to the extent that such corporate income taxes were chargeable with respect to Bermuda source income.

(2) The cross-crediting allocation key for the foreign source taxable income earned directly by the foreign parent entity for a fiscal year shall be equal to the excess, if any, of-

(a) the product of-

- (i) the amount determined in accordance with paragraph 13(1)(b); and
- (ii) the tax rate applicable to the foreign source taxable income for the purposes of determining the pre-credit current local taxes attributable to the foreign source taxable income; over

(b) the adjusted current creditable foreign taxes incurred directly by the foreign parent entity including, without limitation, withholding taxes, for which the foreign parent entity is allowed a foreign tax credit

against the pre-credit current local taxes incurred with respect to the foreign source taxable income for the fiscal year, as determined pursuant to the foreign parent entity's local tax regime.

(3) For the purposes of paragraphs (1) and (2)-

- (a) to the extent that the foreign parent entity's local tax regime applies a progressive tax rate regime to the taxable income of the foreign parent entity which results in-
 - (i) the determination of a single tax rate to be applied to the total taxable income of the foreign parent entity, then the single tax rate which was used to determine the current local taxes of the foreign parent entity for the fiscal year shall be used for the purposes of paragraphs (1)(a)(ii) and (2)(a)(ii); or
 - (ii) the application of different tax rate bands to specific taxable income thresholds then, for the purposes of determining the tax rate applicable to an income inclusion pursuant to paragraph (1)(a)(ii) or the foreign source taxable income earned directly by the foreign parent entity pursuant to paragraph (2)(a)(ii), each taxable income threshold shall be replaced by an amount equal to the product of-
 - (A) the taxable income threshold prescribed by the local tax regime; and
 - (B) the result obtained by dividing-
 - (I) the amount described in paragraph (1)(a)(i) or (2)(a)(i), as the case may be; and
 - (II) the total taxable income of the foreign parent entity for the fiscal year;
- (b) to the extent that an amount described in paragraph (1)(a)(i) or (2)(a)(i) is comprised of different taxable income categories which are subject to different tax rates, then the amount to be determined for the purposes of paragraphs (1)(a) and (2)(a), as the case may be, shall be equal to the sum of-

- (i) each taxable income category comprising the amount described in paragraph (1)(a)(i) or (2)(a)(i), as the case may be; multiplied by
- (ii) the tax rate applicable to each such taxable income category pursuant to the foreign parent entity's local tax regime.

Allocable current local taxes

12 (1) The allocable current local taxes of a foreign parent entity for a fiscal year shall be equal to the excess, if any, of-

- (a) the current local taxes of the foreign parent entity; over
- (b) the sum of-
 - (i) the amount of the current local taxes of the foreign parent entity which are attributable to domestic source taxable income for the fiscal year, as determined in accordance with paragraph (2); and
 - (ii) blended CFC taxes incurred by the foreign parent entity for the fiscal year,

provided that the allocable current local taxes of a foreign parent entity for a fiscal year shall not be less than zero.

(2) The amount of the current local taxes of a foreign parent entity which are attributable to domestic source taxable income for a fiscal year shall be equal to the sum of-

- (a) the hypothetical amount of current local taxes which would have been incurred by the foreign parent entity pursuant to its local tax regime if the taxable income of the foreign parent entity was comprised entirely of its domestic source taxable income for the fiscal year;
- (b) the amount, if any, of the increase in adjusted creditable foreign taxes recognised by the foreign parent entity for the fiscal year in accordance with section 17(1)(a)(ii) of the CIT Act with respect to qualified refundable tax credits granted pursuant to the foreign parent entity's local tax regime;

(3) For the purposes of paragraph (2)(a)-

- (a) the domestic source taxable income shall be determined in accordance with paragraph 14;
- (b) the hypothetical amount of current local taxes may not be less than zero;
- (c) to the extent that the foreign parent entity's local tax regime applies a progressive tax rate regime to the taxable income of the foreign parent entity which results in-
 - (i) the determination of a single tax rate to be applied to the total taxable income of the foreign parent entity, then the single tax rate which was used to determine the current local taxes of the foreign parent entity described in paragraph (1)(a) for the fiscal year shall be used for the purposes of determining the hypothetical amount of current local taxes; or
 - (ii) the application of different tax rate bands to specific taxable income thresholds then, for the purposes of determining the hypothetical amount of current local taxes, each taxable income threshold shall be replaced by an amount equal to the product of-
 - (A) the taxable income threshold prescribed by the local tax regime; and
 - (B) the result obtained by dividing-
 - (I) the domestic source taxable income of the foreign parent entity for the fiscal year; and
 - (II) the total taxable income of the foreign parent entity for the fiscal year;
- (d) any other tax attributes arising from foreign sources shall be disregarded for the purposes of determining the hypothetical amount of current local taxes.

Foreign source taxable income

13 (1) The foreign source taxable income of a foreign parent entity for a fiscal year shall be equal to the sum of-

- (a) the aggregate of all income inclusions for each subsidiary constituent entity which have been included in the taxable income of the foreign parent entity for the fiscal year, subject to any adjustments required pursuant to paragraph (2); and
- (b) the foreign source taxable income earned directly by the foreign parent entity for the fiscal year, as determined in accordance with paragraph (3).

(2) For the purposes of determining the amount of an income inclusion to be taken into account in determining the foreign source taxable income of a foreign parent entity pursuant to paragraph (1)(a) for a fiscal year-

- (a) to the extent that the foreign parent entity's local tax regime determines the income inclusion attributable to a subsidiary constituent entity on a net basis, taking into account both the income and expenses of the subsidiary constituent entity-
 - (i) such net amount shall be taken into account for the purposes of paragraph (1)(a); and
 - (ii) to the extent that the foreign parent entity's local tax regime requires an allocation of foreign parent entity expenses to foreign source income (including the income inclusion), and such allocation-
 - (A) is only for the purposes of applying the local tax regime's foreign tax credit limitation; and
 - (B) does not affect the determination of the taxable income of the foreign parent entity,

such expenses shall not be taken into account for the purposes of paragraph (1)(a);

(b) to the extent that the foreign parent entity's local tax regime does not determine the income inclusion of a subsidiary constituent entity on a net basis, but-

(i) separately takes into account the-

(A) income; and

(B) expenses

of the subsidiary constituent entity; and

(ii) allocates expenses to the income described in paragraph (i)(A) for the purposes of applying the local tax regime's foreign tax credit limitation,

then the income described in paragraph (i)(A) shall be taken into account for the purposes of paragraph (1)(a) and the expenses described in paragraph (ii) shall only be taken into account for the purposes of paragraph (1)(a) to the extent that such amounts are expensed by the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements;

(c) to the extent that the foreign parent entity's local tax regime provides that the foreign parent entity's taxable income shall be increased by the amount of taxes incurred by the subsidiary constituent entity with respect to which the income inclusion relates (including, without limitation, a gross-up adjustment required to be made to taxable income in connection with the application of indirect tax credit rules to the income inclusion), the amount of any such increase shall be taken into account for the purposes of paragraph (1)(a);

(d) to the extent that the foreign parent entity's local tax regime provides that the foreign parent entity's taxable income shall be decreased by

the amount of a deduction or exclusion which is calculated directly by reference to the income inclusion (including, without limitation, a deduction based on a prescribed proportion of a distribution income inclusion), the amount of any such decrease shall be taken into account for the purposes of paragraph (1)(a);

- (e) to the extent that the income inclusion attributable to a subsidiary constituent entity is considered to be from domestic sources for the purposes of determining the extent to which a foreign tax credit is allowed pursuant to the foreign parent entity's local tax regime, and the amount of the income inclusion-
 - (i) is included in the net income or loss of the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements, then the income inclusion shall be taken into account for the purposes of paragraph (1)(a); or
 - (ii) is not included in the net income or loss of the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements, then the income inclusion shall not be taken into account for the purposes of paragraph (1)(a);
- (f) to the extent that a payment made from a foreign parent entity to a subsidiary constituent entity is disregarded pursuant to the foreign parent entity's local tax regime, and the amount of the payment-
 - (i) is included in the net income or loss of the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements, then the amount of the payment shall be taken into account for the purposes of paragraph (1)(a); or
 - (ii) is not included in the net income or loss of the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the

preparation of the consolidated financial statements, then the amount of the payment shall not be taken into account for the purposes of paragraph (1)(a);

(g) to the extent that a payment made from a subsidiary constituent entity to a foreign parent entity is disregarded pursuant to the foreign parent entity's local tax regime, and the amount of the payment-

- (i) is deducted by the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements, then the amount of the payment shall be taken into account as a deduction for the purposes of paragraph (1)(a); or
- (ii) is not deducted by the subsidiary constituent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements, then the amount of the payment shall not be taken into account for the purposes of paragraph (1)(a).

(3) The foreign source taxable income earned directly by the foreign parent entity shall be equal to the sum of each income and expense amount which-

- (a) pursuant to the foreign parent entity's local tax regime, is-
 - (i) included in the determination of the foreign parent entity's taxable income; and
 - (ii) considered to be from a foreign source for the purposes of determining the extent to which a foreign tax credit is allowed to the foreign parent entity for the fiscal year; and
- (b) is not taken into account for the purposes of paragraph (1)(a).

Domestic source taxable income

14 (1) The domestic source taxable income of a foreign parent entity for a fiscal year shall be equal to the sum of-

- (a) the result obtained by subtracting-

(i) the foreign source taxable income of the foreign parent entity, as determined pursuant to paragraph 13(1) for the fiscal year, provided that for this purpose paragraph 13(2)(a)(ii) shall not apply; from

(ii) the total taxable income of the foreign parent entity, as determined pursuant to the foreign parent entity's local tax regime for the fiscal year; and

(b) the adjustments, if any, required pursuant to paragraph (2).

(2) For the purposes of paragraph (1)(b), the domestic source taxable income of a foreign parent entity for a fiscal year shall be-

(a) increased by an amount equal to the product of-

(i) the sum of the amounts taken into account as an increase for the purposes of paragraph 13(1)(a) for the fiscal year with respect to-

(A) the amount of an income inclusion described in paragraph 13(2)(e); and

(B) the amount of a disregarded payment from the foreign parent entity to a subsidiary constituent entity, as determined in accordance with paragraph 13(2)(f); and

(ii) the result obtained by dividing-

(A) the foreign source taxable income earned directly by the foreign parent entity for the fiscal year, as determined in accordance with paragraph 13(3); by

(B) the sum of-

(I) the amount described in paragraph (a)(ii)(A);

(II) the amount determined in accordance with paragraph (1)(a); and

(III) the reversal of the amounts taken into account as an increase for the purposes of paragraph 13(1)(a) which, for this purpose, shall be equal to the inverse of the amount determined in accordance with paragraph (a)(i) for the fiscal year;

(b) reduced by an amount equal to the product of-

(i) the sum of the amounts taken into account as a reduction for the purposes of paragraph 13(1)(a) for the fiscal year with respect to-

(A) the amount of expenses, if any, as determined in accordance with paragraph 13(2)(b); and

(B) the amount of a disregarded payment from a subsidiary constituent entity to the foreign parent entity, as determined in accordance with paragraph 13(2)(f); and

(ii) the result obtained by dividing-

(A) the foreign source taxable income earned directly by the foreign parent entity for the fiscal year, as determined in accordance with paragraph 13(3); by

(B) the sum of-

(I) the amount described in paragraph (b)(ii)(A);

(II) the amount determined in accordance with paragraph (1)(a); and

(III) the reversal of the amounts taken into account as a reduction for the purposes of paragraph 13(1)(a) which, for this purpose, shall be equal to the inverse of the amount determined in accordance with paragraph (b)(i) for the fiscal year.

Application of the cross-credit allocation method to multiple taxable income categories

15 (1) To the extent that the foreign parent entity's local tax regime provides for the separate application of cross-crediting provisions to specific taxable income categories, this Part shall be applied separately to each such taxable income category for the fiscal year in accordance with paragraph (2).

(2) For the purposes of applying this Part to a specific taxable income category-

- (a) paragraph 9 shall be applied separately to each portion of the income inclusion attributable to a Bermuda Subsidiary Entity which has been allocated to the taxable income category, and for the purposes of-
 - (i) paragraph 9(1)(a), the amount of allocable current local taxes of the foreign parent entity which is attributable to the taxable income category shall be determined in accordance with paragraph (b);
 - (ii) paragraph 9(1)(b)(i), the cross-crediting allocation key for the portion of the income inclusion which is attributable to the taxable income category shall be determined in accordance with paragraph (c)(i);
 - (iii) paragraph 9(1)(b)(ii), the total cross-crediting allocation key of the foreign parent entity which is attributable to the taxable income category shall be determined in accordance with paragraph (c);
- (b) the allocable current local taxes of the foreign parent entity for the fiscal year, as determined in accordance with paragraph 12, shall be allocated to each taxable income category, provided that for this purpose-
 - (i) the method by which the allocable current local taxes are allocated to each taxable income category shall be consistent with the method by which the current local taxes of the foreign parent entity are determined with respect to each taxable income category pursuant to the local tax regime including, without limitation, the method by which specific tax attributes (such as losses or tax credits) are allocated to each taxable income

category;

- (ii) the amount of the allocable current local taxes allocated to a taxable income category shall not be less than zero; and
- (iii) the aggregate of the allocations determined for each taxable income category pursuant to this paragraph shall be equal to the allocable current local taxes of the foreign parent entity for the fiscal year, as determined in accordance with paragraph 12;

(c) the total cross-crediting allocation key of the foreign parent entity which is attributable to the taxable income category shall be equal to the sum of-

- (i) the result obtained by applying paragraph 11(1) separately to the portion of each income inclusion attributable to a subsidiary constituent entity of the foreign parent entity which is further attributable to the taxable income category; and
- (ii) the result obtained by applying paragraph 11(2) separately to the portion of the foreign source taxable income which is attributable to the taxable income category;

(d) the foreign source taxable income, as determined in accordance with paragraph 13, and the domestic source taxable income, as determined in accordance with paragraph 14, of the foreign parent entity for the fiscal year shall be allocated to each taxable income category; and

(e) to the extent that an income inclusion of a subsidiary constituent entity is included in the determination of the foreign source taxable income of the foreign parent entity pursuant to paragraph 13(2)(e)(i), and the foreign parent entity's local tax regime-

- (i) allows a foreign tax credit with respect to the income inclusion, then the income inclusion shall be allocated to the same taxable income inclusion to which the adjusted creditable foreign taxes incurred by the subsidiary constituent entity are (or would be) allocated pursuant to the local tax regime; or
- (ii) does not allow a foreign tax credit with respect to the income

inclusion, then the income inclusion shall be allocated to the same taxable income inclusion to which the adjusted creditable foreign taxes incurred by the subsidiary constituent entity would be allocated if the income inclusion had been foreign source income of the same type pursuant to the local tax regime.

(3) An income inclusion attributable to a Bermuda Subsidiary Entity may be allocated to multiple taxable income categories for a fiscal year and, in such case, the amount of current local taxes which arise from the income inclusion shall be the sum of the amount determined pursuant to this paragraph for each such taxable income category.

Application of the cross-credit allocation method to multiple taxes

16 (1) To the extent that the foreign parent entity is subject to multiple taxes pursuant to its local tax regime, and such taxes have-

- (a) different tax bases, this Part shall be applied separately for the purposes of allocating each such tax; or
- (b) identical tax bases, the taxes shall be aggregated for the purposes of applying this Part.

PART 5

ALLOCATION OF DEFERRED LOCAL TAXES TO A BERMUDA CONSTITUENT ENTITY

Amount of deferred local taxes arising from income inclusions

17 (1) The amount of deferred local taxes of a foreign parent entity which arise from an income inclusion attributable to a Bermuda Subsidiary Entity of the foreign parent entity for a fiscal year shall be equal to the sum of-

- (a) the adjusted deferred local taxes for the passive deferred local tax category; and
- (b) the adjusted deferred local taxes for the non-passive deferred local tax category,

in each case as determined in accordance with paragraph 18.

Adjusted deferred local taxes attributable to a Bermuda Subsidiary Entity

18 (1) The adjusted deferred local taxes attributable to a Bermuda Subsidiary Entity of a foreign parent entity for a deferred local tax category described in paragraphs 19(2)(a) or (b) shall be equal to the excess, if any, of-

- (a) the adjusted pre-credit deferred local taxes for the relevant deferred local tax category, as determined in accordance with paragraph (2)(a); over
- (b) the expected credit deferred local taxes for the relevant deferred local tax category, as determined in accordance with paragraph (2)(b).

(2) For the purposes of paragraph (1)-

- (a) the adjusted pre-credit deferred local taxes shall be equal to the aggregate of each adjusted pre-credit deferred local tax amount for the relevant deferred local tax category, as determined in accordance with paragraph (3); and
- (b) the expected credit deferred local taxes shall be equal to the aggregate of each adjusted expected credit deferred local tax amount for the relevant deferred local tax category, as described in paragraph (4)(b).

(3) The pre-credit deferred local tax amounts determined in accordance with paragraph (4)(a) for the relevant deferred local tax category shall be adjusted by multiplying each such pre-credit deferred local tax amount by the result obtained by dividing-

- (a) the lesser of-
 - (i) the applicable local tax rate used to determine the pre-credit deferred local taxes for the relevant deferred local tax category; and
 - (ii) 15%; by
- (b) the applicable local tax rate used to determine the pre-credit deferred local taxes for the relevant deferred local tax category.

(4) Each deferred local tax amount attributable to a Bermuda Subsidiary Entity for the relevant deferred local tax category shall be further categorised as either a pre-credit deferred local tax amount or an expected credit deferred local tax amount, and for this purpose-

- (a) a deferred local tax amount shall be a pre-credit deferred local tax amount to the extent it has been determined without regard to any foreign tax credits expected to be allowed to the foreign parent entity pursuant to the foreign parent entity's local tax regime; and
- (b) an expected credit deferred local tax amount shall be determined in accordance with paragraph (6).

(5) To the extent that a deferred local tax amount has been recorded net of an expected credit deferred local tax in the financial accounts of the foreign parent entity including, without limitation, where the deferred local tax amount was determined by multiplying-

- (a) a temporary difference; by
- (b) a tax rate determined by reducing the applicable local tax rate to take into account foreign tax credits expected to be allowed to the foreign parent entity pursuant to the foreign parent entity's local tax regime,

then the deferred local tax amount shall be disaggregated into a pre-credit deferred local tax amount and an expected credit deferred local tax amount for the purposes of paragraph (4).

(6) For the purposes of paragraph (4), a deferred local tax amount shall be categorised as an expected credit deferred local tax amount to the extent that-

- (a) the deferred local tax amount is attributable to foreign tax credits expected to be allowed against the current local taxes which are expected to be incurred by the foreign parent entity as a result of the reversal of the temporary differences included in the determination of a pre-credit deferred local tax amount described in paragraph (4)(a) for the fiscal year;
- (b) the foreign tax credits described in paragraph (a) have been

determined by reference to-

- (i) taxes incurred (or expected to be incurred) by the Bermuda Subsidiary Entity for the fiscal years described in paragraph (7)(b), including-
 - (A) corporate income taxes chargeable to the Bermuda Subsidiary Entity pursuant to the CIT Act, but only to the extent that such corporate income taxes are chargeable with respect to Bermuda source income of the Bermuda Subsidiary Entity; and
 - (B) adjusted creditable foreign taxes incurred by the Bermuda Subsidiary Entity; and
- (ii) other adjusted creditable foreign taxes expected to be taken into account due to the application of cross-crediting provisions to the foreign parent entity pursuant to its local tax regime.

(7) For the purposes of paragraph (6)(b)(i)-

- (a) the foreign tax credit limitations, if any, included in the foreign parent entity's local tax regime shall not be taken into account; and
- (b) taxes shall be taken into account to the extent incurred (or expected to be incurred) by the Bermuda Subsidiary Entity for-
 - (i) the fiscal year in which the temporary difference reversal described in paragraph (6)(a) is expected to occur; and
 - (ii) a different fiscal year, to the extent such taxes give rise to foreign tax credits which can be carried forward or back to offset the current local taxes described in paragraph (6)(a).

(8) For the purposes of paragraph (6)(b)(ii), the foreign tax credit limitations, if any, included in the foreign parent entity's local tax regime shall be taken into account.

Categorisation of deferred local taxes attributable to a Bermuda Subsidiary Entity

19 (1) A deferred local tax amount of a foreign parent entity for a fiscal year shall be attributable to a Bermuda Subsidiary Entity of the foreign parent entity to the extent that the deferred local tax amount has been determined with respect to a temporary difference which, for the fiscal year in which the temporary difference will reverse, would be expected to be included in the determination of an income inclusion attributable to the Bermuda Subsidiary Entity.

(2) Each deferred local tax amount of a foreign parent entity which is attributable to a Bermuda Subsidiary Entity, as determined in accordance with paragraph (1), shall be categorised as-

- (a) a passive deferred local tax amount, to the extent that the deferred local tax amount has been determined with respect to a temporary difference which, for the fiscal year in which the temporary difference will reverse, would be expected to result in an adjustment to the amount of passive FANIL of the Bermuda Subsidiary Entity required to be included in the determination of an income inclusion attributable to the Bermuda Subsidiary Entity; or
- (b) a non-passive deferred local tax amount, to the extent that the amount determined pursuant to paragraph (1) exceeds the sum of
 - (i) the excluded deferred local tax amount determined pursuant to paragraph (a); and
 - (ii) the passive deferred local tax amount determined pursuant to paragraph (b).

Election to forego the allocation of deferred local taxes to a Bermuda Subsidiary Entity

20 (1) A Filing Bermuda Constituent Entity may elect that the provisions of this Part shall not apply with respect to the deferred local taxes of foreign parent entities in a specific taxable location, provided that for this purpose-

- (a) the election shall apply to all deferred local taxes for all foreign parent entities in the specific taxable location; and
- (b) the election may not be made with respect to a Bermuda Constituent

Entity Group unless the election is made with respect to all Bermuda Constituent Entity Groups within the same In Scope MNE Group.

(2) An election under paragraph (1) is a five-year election.

Deferred taxes attributable to a substitute loss carryforward

21 (1) For the purposes of this Part, the deferred local taxes of a foreign parent entity for a fiscal year shall include deferred local taxes attributable to a substitute loss carryforward.

(2) The deferred local taxes which shall be taken into account for the purposes of paragraph (1) shall be limited with respect to-

- (a) a substitute loss carryforward for the fiscal year in which it arises to an amount equal to the lesser of-
 - (i) the amount of the foreign tax credit carryforward described in paragraphs (3)(b)(ii) for the fiscal year;
 - (ii) the amount of the foreign parent entity's domestic source loss for the fiscal year multiplied by the applicable local tax rate;
 - (iii) the amount included in the determination of the creditable foreign taxes of the foreign parent entity with respect to the foreign tax credit carryforward described in paragraph (i) for the fiscal year; and
- (b) a substitute loss carryforward for the fiscal year in which it reverses, but only to the extent that the foreign tax credit carryforward which gave rise to the substitute loss carryforward was applied to offset current local taxes incurred by the foreign parent entity with respect to income included in the net income or loss of the foreign parent entity in its separate financial accounts prepared in accordance with the financial accounting standard used in the preparation of the consolidated financial statements.

(3) A foreign tax credit carryforward of a foreign parent entity which arises for a fiscal year shall be treated as a substitute loss carryforward to the extent that-

(a) the foreign parent entity's local tax regime provides that-

- (i) the taxes described in paragraph 18(6)(b)(i) or (ii) may be included in the determination of foreign tax credits available to be offset against current local taxes incurred by the foreign parent entity with respect to a-

 - (A) CFC income inclusion;
 - (B) PE income inclusion;
 - (C) hybrid income inclusion; or
 - (D) reverse hybrid income inclusion;

attributable to a Bermuda Subsidiary Entity of the foreign parent entity for the fiscal year;

- (ii) the portion of the foreign tax credits described in paragraph (i) which exceeds the current local taxes incurred by the foreign parent entity with respect to foreign source income for the fiscal year may be carried forward to offset current local taxes incurred by the foreign parent entity for a subsequent fiscal year;
- (iii) a domestic source loss incurred by the foreign parent entity may be carried forward to offset income earned by the foreign parent entity in a subsequent fiscal year, subject to paragraph (iv);
- (iv) the domestic source loss incurred by the foreign parent entity for the fiscal year (or carried forward from a prior fiscal year to the fiscal year), if any, must be applied against the foreign source income of the foreign parent entity for the fiscal year prior to determining the amount of current local taxes of the foreign parent entity available to be offset by foreign tax credits, thereby-

 - (A) decreasing the amount of foreign tax credits, as described in paragraph (i), which can be offset against current local taxes for the fiscal year;
 - (B) increasing the amount of foreign tax credit carryforwards described in paragraph (ii); and

(C) decreasing the amount of the domestic source loss carryforward described in paragraph (iii),

relative to each of the amounts which would have been determined had the domestic source loss not been applied against the foreign source income of the foreign parent entity for the fiscal year; and

(v) to the extent that a domestic loss has been applied as described in paragraph (iv) for the fiscal year, foreign tax credit carryforwards described in paragraph (ii) may be applied to offset current local taxes incurred by the foreign parent entity with respect to domestic source income in a subsequent fiscal year; and

(b) the foreign parent entity-

(i) incurs a domestic source loss for the fiscal year that is applied to foreign source income, as described in paragraph (a)(iii); and

(ii) recognises a foreign tax credit carryforward described in paragraph (a)(ii) due to the application of the domestic source loss, as described in paragraph (a)(iii)(B).

(4) For the purposes of this paragraph -

(a) foreign source income of the foreign parent entity for a fiscal year shall be equal to the sum of-

(i) the amount described in paragraph 13(1)(a) for the foreign parent entity for the fiscal year; and

(ii) the amount described in paragraph 13(3) for the foreign parent entity for the fiscal year; and

(b) domestic source income or loss of the foreign parent entity for a fiscal year shall be equal to the difference between-

- (i) the taxable income or loss of the foreign parent for the fiscal year, as determined pursuant to the foreign parent entity's local tax regime; and
- (ii) the amount determined in accordance with paragraph (i) for the fiscal year.

PART 6

ALLOCATION OF OTHER ADJUSTED CREDITABLE FOREIGN TAXES TO A BERMUDA CONSTITUENT ENTITY

Allocation of adjusted creditable foreign taxes from a tax transparent entity to a Bermuda Constituent Entity

22 (1) To the extent that a Bermuda Constituent Entity-

- (a) holds an ownership interest in a tax transparent entity;
- (b) is the reference entity with respect to the ownership interest; and
- (c) is allocated financial accounting net income or loss from the tax transparent entity pursuant to section 23(4) of the CIT Act for a fiscal year,

the adjusted creditable foreign taxes of the tax transparent entity for the fiscal year shall be allocated to the Bermuda Constituent Entity in accordance with Bermuda Constituent Entity's ownership interest.

(2) For the purposes of paragraph (1), the adjusted creditable foreign taxes of the tax transparent entity for the fiscal year shall include-

- (a) local taxes incurred by the tax transparent entity for the fiscal year including, without limitation, adjusted creditable foreign taxes imposed on the tax transparent entity at a sub-national or local level;
- (b) other adjusted creditable foreign taxes incurred by the tax transparent entity for the fiscal year including, without limitation, withholding taxes; and

(c) local taxes of a foreign parent entity which arise from a CFC income inclusion attributable to the tax transparent entity and which are allocable to the tax transparent entity pursuant to paragraph (4) for the fiscal year.

(3) For the purposes of paragraph (2), the adjusted creditable foreign taxes of the tax transparent entity for the fiscal year shall not include adjusted creditable foreign taxes which are attributable to financial accounting net income or loss allocated pursuant to section 23(3) of the CIT Act to a permanent establishment for which the tax transparent entity is the main entity.

(4) For the purposes of paragraph (2)(c), the local taxes of the foreign parent entity which arise from the CFC income shall-

- (a) be allocated to the tax transparent entity in the same manner as if the tax transparent entity was a Bermuda Constituent Entity subject to paragraph 4 with respect to the CFC income inclusion for the fiscal year; and
- (b) only be allocated to the tax transparent entity to the extent that the foreign parent entity holds its ownership interest in the tax transparent entity indirectly through the Bermuda Constituent Entity with respect to which this paragraph is being applied.

Allocation of adjusted creditable foreign taxes from a permanent establishment to a Bermuda Constituent Entity

23 (1) To the extent that a Bermuda Constituent Entity-

- (a) is not a flow-through entity; and
- (b) is the main entity of a permanent establishment-
 - (i) through which the business of the Bermuda Constituent Entity is wholly or partly carried out; and
 - (ii) for which a branch exemption election has not been made,

any adjusted creditable foreign taxes of the permanent establishment shall be allocated to the Bermuda Constituent Entity.

Corporate Income Tax Agency

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