



BERMUDA

CORPORATE INCOME TAX ACT 2023 AMENDMENT REGULATIONS 2024

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The Minister of Finance, in exercise of the power conferred by section 3(2) of the Corporate Income Tax Act 2023, makes the following Regulations:

Citation

1 These Regulations, which amend the Corporate Income Tax Act 2023 (the "principal Act"), may be cited as the Corporate Income Tax Act 2023 Amendment Regulations 2024.

Amends section 2

2 Section 2 of the principal Act is amended—

(a) by deleting the definition of "asymmetric foreign currency gains or losses" and substituting the following—

" "asymmetric foreign currency gains or losses" means foreign currency gains or losses of an entity whose accounting and tax functional currencies are different and that are—

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- (a) included in the computation of a Bermuda Constituent Entity's—
 - (i) financial accounting net income or loss and attributable to fluctuations in the exchange rate between its accounting functional currency and its tax functional currency;
 - (ii) taxable income or loss and attributable to fluctuations in the exchange rate between its accounting functional currency and its tax functional currency;
 - (iii) financial accounting net income or loss and attributable to fluctuations in the exchange rate between a third foreign currency and its accounting functional currency; and
- (b) attributable to fluctuations in the exchange rate between a third foreign currency and its tax functional currency, whether or not such foreign currency gain or loss is included in taxable income, provided for the purposes of this definition, the tax functional currency is the functional currency used to determine the Bermuda Constituent Entity's taxable income, the accounting functional currency is the functional currency used to determine the Bermuda Constituent Entity's financial accounting net income or loss and a third foreign currency is a currency that is not the Bermuda Constituent Entity's tax functional currency or accounting functional currency;";
- (b) in the definition of "Bermuda Permanent Establishment", by deleting the words "not otherwise incorporated or formed in Bermuda" and substituting "which is not a Bermuda Tax Resident Entity".

[Regulation 2 shall be deemed to have come into operation 1 January 2024]

Amends section 6

3 Section 6 of the Principal Act is amended—

- (a) in subsection (2), by repealing paragraph (a) and substituting the following—
 - "(a) first, by computing the sum of the—
 - (i) opening tax loss carryforward allocated to the Bermuda Constituent Entity in accordance with subsection (3)(a); and
 - (ii) net taxable loss allocated to the Bermuda Constituent Entity in accordance with subsection (3)(b) for each fiscal year which begins after the end of the period described in subsection (4)(a);";
- (b) by repealing subsections (3) and substituting the following—
 - "(3) For the purposes of subsection (2)(a)—

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- (a) the opening tax loss carryforward, as determined in accordance with subsection (4), shall be allocated amongst the Bermuda Constituent Entities of the In Scope MNE Group in the manner determined by the ultimate parent entity of the In Scope MNE Group; provided that the portion of the opening tax loss carryforward allocated to a specific Bermuda Constituent Entity shall not exceed the aggregate taxable losses incurred by the Bermuda Constituent Entity during the period described in subsection (4)(a); and
- (b) the net taxable loss, if any, arising in each fiscal year which begins after the end of the period described in subsection (4)(a) shall be allocated amongst the Bermuda Constituent Entities of the Bermuda Constituent Entity Group in the manner determined by the Filing Bermuda Constituent Entity; provided that the portion of the net taxable loss allocated to a specific Bermuda Constituent Entity shall not exceed the taxable loss incurred by the Bermuda Constituent Entity during such fiscal year.”;
- (c) in subsection (5)—
 - (i) in paragraph (a), by deleting the word “and” at the end of the paragraph;
 - (ii) in paragraph (b), by deleting the period and substituting “; and”;
 - (iii) by inserting after paragraph (b) the following new paragraph—

“(c) to the extent the net taxable loss and net taxable income amounts described in subsections (4)(a) and (b) are attributable to a Bermuda Constituent Entity during fiscal years, or portions thereof, in which the Bermuda Constituent Entity would not have been a Bermuda Tax Resident Entity or Bermuda Permanent Establishment had the provisions of this Act been in effect, such net taxable loss and net taxable income amounts shall be deemed to be nil.”;
- (d) by repealing subsections (7) and substituting the following—

“(7) Net taxable loss means the nil or negative amount, if any, computed by adding the taxable income and subtracting the taxable losses of—
 - (a) in the case of a net taxable loss described in subsection (4), all Bermuda Constituent Entities in an In Scope MNE Group for a fiscal year; and
 - (b) in the case of a net taxable loss described in subsection (3)(b), all Bermuda Constituent Entities in a Bermuda Constituent Entity Group for a fiscal year.”.

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Amends section 34(4)

4 Section 34(4) of the principal Act is amended by deleting the chapeau and substituting the following—

“(4) Subject to section 26, the election under subsection (1) may be made for any or all reinsurance agreements either prospectively from the beginning of any fiscal year commencing on or after 1 January 2025, or with retrospective effect if made for the first fiscal year which begins on or after 1 January 2025 in which the Bermuda Constituent Entity is a member of an In Scope MNE Group which meets the requirements of section 11(1), subject to section 13, provided—”.

Amends section 41

5 Section 41 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “the taxable distribution method” and substitute “the provisions of subsection (2)”;
- (b) in subsection (2), by deleting the words “Under the taxable distribution method” and substituting “To the extent that an election is made pursuant to subsection (1)”;
- (c) by repealing subsection (2)(a) and substituting the following—

“(a) distributions from the investment entity or the insurance investment entity are included in the net taxable income of the electing Bermuda Constituent Entity that received the distribution; and”;

- (d) by repealing subsection (3)(a) and renumbering subsection (3)(b) as subsection (3);
- (e) by inserting after subsection (3) the following new subsection (4)—

“(4) To the extent that—

- (a) a Bermuda Constituent Entity is an investment entity or an insurance investment entity; and
- (b) an election has been made pursuant to Article 7.6 of the GloBE Rules with respect to an ownership interest in a Bermuda Constituent Entity for the fiscal year,

the financial accounting net income or loss of the Bermuda Constituent Entity shall be excluded from the determination of the amount described in section 21 with respect to the Bermuda Constituent Entity for such fiscal year.”;

- (f) in the current subsection (4)—

- (i) by renumbering the subsection as subsection (5); and

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(ii) deleting the words “a five-year election” and substituting “an annual election”.

Amends section 46(2)(a)

6 Section 46(2)(a) of the principal Act is amended by deleting the words “controlling income” and substituting “controlling interest”.

[Regulation 6 is corrected as per corrigendum published as GN1167/2024 in the Official Gazette on 24 December 2024 to delete “controlling income” and substitute “controlling interest”]

Amends section 49

7 Section 49 of the principal Act is amended—

(a) in subsection (1), by deleting the words “Subject to” and substituting “Subject to subsection (1A) and”;

(b) by inserting after subsection (1) the following new subsection—

“(1A) Notwithstanding any other provision of this section, an election under section 35 may be made (and if made shall be deemed made) in respect of the fiscal year immediately preceding the first fiscal year for which an In Scope MNE Group of which the Bermuda Constituent Entity is a member meets the requirements of section 11(1), subject to section 13, (and subject to sections 11(1) and 13 being in force in accordance with section 53(b)) notwithstanding that this Act (or any part thereof) may not be in force at the time such election is made, and any such election shall be valid and have effect as if this Act were in force during the period described in this subsection.”;

(c) in subsection (3), by inserting the words “or subsection (1A)” after the four occurrences of the words “subsection (1)”;

(d) by inserting the following new subsection (5)—

“(5) At the election of the Filing Bermuda Constituent Entity, the definition of asymmetric foreign currency gains or losses in subsection 2(1) may be replaced by the definition which applied prior to the amendments made to this Act in December 2024 for periods preceding the first fiscal year of a Bermuda Constituent Entity beginning on or after 1 January 2025. ”.

[Regulation 7 shall be deemed to have come into operation 1 January 2024]

Commencement

8 These Regulations—

(a) with respect to regulations 2 and 7, shall be deemed to have come into operation on 1 January 2024; and

(b) with respect to the rest of the regulations, shall come into operation on 1 January 2025.

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Made this 20th day of December 2024

Minister of Finance

[Operative Date: 01 January 2025]