CORPORATE INCOME TAX AGENCY
BERMUDA

Corporate Income Tax – Guidance Notes (General)

Version 2.0

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Purpose	**This guidance provides general guidance on the interpretation and application of the Corporate Income Tax Act 2023, including elections, tax attributes, and other matters relevant to Bermuda Constituent Entities and In Scope MNE Groups.**

Document Version Control

Document History (most recent first)		
Date	**Version**	**Summary of changes**
8 October 2026	1.0	Reissue of Government of Bermuda Corporate Income Tax FAQs version 6.0, with minor changes to guidance on elections, permit companies, economic transition adjustment calculations for insurance contract liabilities; removal of previous guidance now addressed in legislation; addition of new guidance on discontinuances and mergers/amalgamations out of the jurisdiction
05 Nov 2026		with changes to Guidance note on s.2, Elections

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1. INTRODUCTION

The Corporate Income Tax Agency ("**CITA**" or the "**Agency**") is responsible for administering Bermuda's corporate income tax regime and is issuing these guidance notes pursuant to section 4 of the Corporate Income Tax Agency Act 2024.

These are the "general" guidance notes to the Corporate Income Tax Act 2023 (the "**Act"**) and are intended to cover a range of topics under the Act, grouped according to section number. These guidance notes are without prejudice to other guidance notes that the Agency may issue from time to time on specific topics.

These general guidance notes are a reissue of the 18 November 2024 "Frequently Asked Questions for Guidance" previously published by the Government of Bermuda except for: (i) the removal of guidance that is no longer relevant either because the Act is now fully in force (and has been amended to address some of the original FAQs), or because the form of tax return has been prescribed by the Agency; (ii) changes to guidance on elections, permit companies and economic transition adjustment calculations for insurance contract liabilities to which minor updates or corrections have been made since the version released in the FAQs to take account of amendments to the Act and/or updates in Agency practice subsequent to the date of the FAQs; and (iii) the addition of new guidance on discontinuances, mergers and amalgamations out of the jurisdiction.

These guidance notes should be read in conjunction with the Act (and any related regulations made thereunder). These guidance notes are not intended to substitute for or amend the Act.

Terms used in these guidance notes that are identical to the defined terms used in the Act shall have the same meanings as in the Act, unless otherwise noted.

These guidance notes are not intended to be a substitute for legal advice and may not apply to the individual circumstances of a particular taxpayer. Taxpayers are encouraged to seek professional advice if they are uncertain of any part of the Act or any of its related regulations.

Although many provisions of the Act are similar to those in the Global Anti-Base Erosion Model Rules and their related Commentary and Administrative Guidance, collectively the "GloBE Rules", those rules are not incorporated by reference into the Act or any related regulations or guidance unless expressly stated to be so.

These guidance notes may be updated from time to time. The latest version of these guidance notes will always be found on the Agency's website: www.cita.bm.

2. GENERAL MATTERS - ELECTIONS

There are three broad classifications of elections available pursuant to the Act, as follows:

1. Annual elections
2. Five-year elections
3. Other elections

Elections are made in the tax return. In general, any election, other than a five-year election, may be changed by filing an amended tax return. Five-year elections are subject to more restrictive treatment as set out below.

Annual elections

Annual elections are generally the most flexible form of election available under the Act and may be revoked and/or subsequently re-elected with respect to any fiscal year by the electing entity. Annual elections apply for the fiscal year in which the election is made and all subsequent fiscal years, unless and until the election is modified or revoked (i.e. elections are perpetual until modified or revoked, there is no need to re-elect each fiscal year).

The annual elections available pursuant to the Act are:

Section 2(1)	Branch exemption election
Section 2(1)	Short-term portfolio shareholding election
Section 2(1)	Unclaimed accrual election
Section 5(2)	Election to reduce the intragroup offset of taxable losses against taxable income for the fiscal year
Section 7(1)	De minimis exemption
Section 8(3)	Modification of Bermuda Constituent Entity Group Composition
Section 11(8)	Treatment of MNE Group as an In Scope MNE Group
Section 15(1)	Fiscal transparency election
Section 15(5)	Treatment of segregated accounts as separate Bermuda Constituent Entities
Section 15(6)	Treatment of a company and its segregated accounts as one Bermuda Constituent Entity
Section 15A(4)	Election to apply section 15A(2) to a part-year BCE on a pro rata basis
Section 21(6)	Election to reduce the financial accounting net income or loss of a Bermuda Constituent Entity treated as a CFC for U.S. tax purposes

Section 30(1)	Stock-based compensation Section
34(1), (2) and (4)	Matching election
Section 35(1)	Realisation principle election
Section 37(4)	Election to apply consolidated accounting treatment
Section 41(5)	Taxable distribution method election

Five-year elections

Five-year elections have limitations on when they can be revoked and, if revoked, when they can be re-elected. Once made, a five-year election may not be revoked for the election year or the four succeeding fiscal years. Thereafter, it may be revoked but will by default continue to apply unless a taxpayer makes a revocation. To the extent a five-year election has been revoked, it may not be re-elected for the four fiscal years succeeding the revocation year. The foregoing is subject to the Agency's powers under s.49A of the Act to permit a revocation during the initial five-year period or to permit a new five-year election in the period following revocation.

The five-year elections available pursuant to the Act are:

Section 2(1)	Foreign exchange hedging election
Section 9(3)	Treatment of <80% owned entity as a Bermuda Constituent Entity
Section 10(3)	Treatment of excluded entity as a Bermuda Constituent Entity
Section 21(1)(b)	Election to determine financial accounting net income or loss in accordance with an approved financial accounting standard
Section 40(1)	Fair value basis of taxation with respect to ownership interest in an investment entity

To the extent that a Bermuda Constituent Entity makes a five-year election with respect to a pre-commencement period, section 49(6) of the Act will apply such that the five-year election may be revoked prior to the later of 31 December 2024 or the first day of the fiscal year for which the In Scope MNE Group meets the requires of section 11(1) (subject to section 13). If made prior to such date, a new election may be made during the succeeding four-year period without seeking the Agency's permission.

Other elections

There are a number of elections available under the Act which are not designated as annual or five-year elections given the specific circumstances to which these "other" elections apply, including:

- Elections that only apply to a specific point in time (e.g. section 33(8))
- Elections that only apply to a specific transaction (e.g. section 45(1))
- Elections that apply once to a specific fiscal year (e.g. section 6(1)(b)) or a specific amount (e.g. section 6(6))

The "other" elections available pursuant to the Act are:

Section 6(1)(b)	Reduction in tax loss carryforward deduction
Section 6(6)	Permanent reduction in tax loss carryforward
Section 6(8)	Election to treat a tax loss carryfoward amount as a shock loss tax carryforward
Section 29(1) and (3)	Adjustments to taxable income or loss attributable to the implementation of IFRS 17 or LDTI
Section 33(8)	Election to forego the economic transition adjustment
Section 45(1)	Election to recognise gain or loss, use fair value of assets
Section 46(2)	Election to treat transfer of controlling interest in a Bermuda Constituent Entity as a transfer of assets and liabilities

3. GENERAL MATTERS – PERMANENT ESTABLISHMENTS BRANCH EXEMPTION ELECTION

Treatment of tax loss carryforward

A tax loss carryforward of a Bermuda Constituent Entity that is the main entity of a non-Bermuda permanent establishment and which is attributable to fiscal years for which the Bermuda Constituent Entity had not made a branch exemption election will be retained by the Bermuda Constituent Entity.

Where a Bermuda Constituent Entity is the main entity of a non-Bermuda permanent establishment, the Bermuda Constituent Entity has a tax loss carryforward attributable to fiscal years for which the Bermuda Constituent Entity has not made a branch exemption election, and the Bermuda Constituent Entity subsequently makes a branch exemption election, then, regardless of whether the tax loss carryforward was incurred by the Bermuda main entity or the non-Bermuda permanent establishment, the tax loss carryforward remains with the Bermuda Constituent Entity.

Example

Bermuda Constituent Entity ("BCE1") is the main entity of a non-Bermuda permanent establishment ("PE1").

BCE1 has a tax loss carryforward of $100 which arose during the 2025 fiscal year, of which $60 is attributable to the main entity and $40 is attributable to PE1. BCE1 did not make a branch exemption election with respect to PE1 for the 2025 fiscal year.

BCE1 makes a branch exemption election with respect to PE1 for the 2026 fiscal year.

Once BCE1 makes the branch exemption election with respect to PE1, the $100 tax loss carryforward will remain fully allocated to BCE1 and no portion of the tax loss carryforward will be allocated to PE1.

Treatment on revocation

Where a Bermuda Constituent Entity is the main entity of a non-Bermuda permanent establishment, the non-Bermuda permanent establishment incurs a taxable loss in a fiscal year for which the Bermuda Constituent Entity has made a branch exemption election, such election is subsequently revoked, the taxable loss which was incurred by the non-Bermuda permanent establishment during the fiscal year for which the Bermuda Constituent Entity had made a branch exemption election shall not be included in the tax loss carryforward of the Bermuda Constituent Entity.

Example

Bermuda Constituent Entity ("BCE2") is the main entity of a non-Bermuda permanent establishment ("PE2").

PE2 incurs a taxable loss of $100 during the 2025 fiscal year. BCE2 had previously made a branch exemption election with respect to PE2 which was in effect for the 2025 fiscal year.

BCE2 revokes the branch exemption election with respect to PE2 for the 2026 fiscal year.

The $100 taxable loss incurred by PE2 in 2025 shall not be included in the determination of the tax loss carryforward of BCE2 following the revocation of the branch exemption election.

4. GENERAL MATTERS – TAX ATTRIBUTES IN CONNECTION WITH A RESTRUCTURING

Allocation of tax loss carryforward

The allocation of a tax loss carryforward in the context of the transactions described in Part 8 of the Act will vary depending upon the transaction in question, as follows:

Transfer of assets and liabilities (section 42)

Any tax loss carryforward incurred by the disposing Bermuda Constituent Entity up to the time of a transfer described in section 42, inclusive of any gain or loss resulting from the transfer, shall remain with the disposing Bermuda Constituent Entity.

Qualifying reorganisation (section 43); and
Non-qualifying gain or loss (section 44)

In the case of a qualifying reorganisation described in sections 43 or 44:

(a) which is a demerger (or similar) transaction, the acquiring Bermuda Constituent Entity shall succeed to a rateable portion of the tax loss carryforward of the disposing Bermuda Constituent Entity, and the tax loss carryforward of the disposing Bermuda Constituent Entity shall be reduced accordingly. The rateable portion will be determined by multiplying the tax loss carryforward of the disposing Bermuda Constituent Entity, as determined in accordance with section 6(2) at the beginning of the fiscal year of the transfer, by a fraction:

(ii) the numerator of which is the net carrying value of assets and liabilities transferred to the acquiring Bermuda Constituent Entity, as adjusted for any taxable adjustments previously made by the disposing Bermuda Constituent Entity pursuant to Part 6, and

(iii) the denominator of which is the net carrying value of all assets and liabilities of the disposing Bermuda Constituent Entity immediately prior to the transfer, as adjusted for any taxable adjustments previously made by the disposing Bermuda Constituent Entity pursuant to Part 6,

provided that the numerator shall not be less than zero;

(b) with respect to which the disposing Bermuda Constituent Entity continues to exist following the transaction (e.g. a merger where the disposing Bermuda Constituent Entity is the surviving entity, amalgamation, consolidation, contribution, or similar transaction), the disposing Bermuda Constituent Entity shall retain its tax loss carryforward; or

(c) with respect to which the disposing Bermuda Constituent Entity ceases to exist as a result of the transaction (e.g. merger where the acquiring Bermuda Constituent Entity is the surviving entity, liquidation, or similar transaction), the acquiring Bermuda Constituent Entity shall succeed to the tax loss carryforward of the disposing Bermuda Constituent Entity, as determined in accordance with section 6(2) with respect to the fiscal year of the transfer.

The above tax loss carryforward allocation provisions shall apply to a qualifying reorganisation described in section 43 or 44 regardless of whether an election has been made pursuant to section 45.

Bermuda Constituent Entities joining and leaving an MNE Group (section 46(1))

Any tax loss carryforward incurred by the target Bermuda Constituent Entity up to the time of the transfer shall remain with the transferred Bermuda Constituent Entity.

Transfer of a controlling interest, combined with an election to treat as a transfer of assets and liabilities (section 46(2))

Any tax loss carryforward incurred by the electing Bermuda Constituent Entity up to the time of the deemed transfer, inclusive of any gain or loss recognised pursuant to section 46(2)(a) with respect to the deemed transfer, shall remain with the electing Bermuda Constituent Entity.

5. GENERAL MATTERS – PERMIT COMPANIES

Permit companies are non-Bermuda entities that, under the Companies Act 1981, have received a permit to carry on a trade or business in Bermuda. Because permit companies are by definition, not “incorporated, formed or organised in Bermuda” they do not meet the definition of a Bermuda Tax Resident Entity under the Act. In certain cases, however, a permit company may still register as a Bermuda Constituent Entity on the basis that the permit company has established a Bermuda Permanent Establishment. Whether or not a permit company has established a Bermuda Permanent Establishment will be a factual question and depend upon, for example, whether or not business of the permit company is effectively carried on or conducted from premises, or by people, physically located in Bermuda.

6. GENERAL MATTERS – DISCONTINUANCES AND MERGERS/AMALGAMATIONS OUT

The consent of the Agency is not generally required when a Bermuda Constituent Entity discontinues or merges/amalgamates out of the jurisdiction (such an entity is referred to in this guidance note as a "departing entity"). However, such a departing entity remains subject to tax up until the date of departure and a proportionate share of its taxable income should be included in the tax return of its former Bermuda Constituent Entity Group for the fiscal year in which it leaves the jurisdiction in accordance with section 15A of the Act.

Where there are other Bermuda Constituent Entities in the Bermuda Constituent Entity Group of the departing entity, then:

- If the departing entity is registered as the Filing Bermuda Constituent Entity, this designation should be transferred to another member of the Bermuda Constituent Entity Group prior to departure;
- All remaining members of the In Scope MNE Group remain liable for any unpaid tax of the departing entity pursuant to section 4 of the Act;
- The proportionate share of the taxable income for the departing entity should be included its former Bermuda Constituent Entity Group's tax return for the relevant fiscal year; and
- After the appropriate return has been filed and any relevant tax paid, the departing entity may apply to be deregistered on the Agency's tax administration platform.

The same procedure applies if the departing entity is the sole member of its Bermuda Constituent Entity Group, save for the fact that such entity will continue to be shown as the Filing Bermuda Constituent Entity until it is deregistered.

Notwithstanding that a departing entity has left the jurisdiction, it is required to file on departure with the Registrar of Companies sworn statutory declarations to the effect that no creditors will be prejudiced. This includes the Crown as a preferential creditor for unpaid tax. Therefore, to ensure the accuracy of these declarations, departing entities should ensure that appropriate arrangements are in place to attend to any filings or tax payments after the entity's departure.

7. GENERAL MATTERS – DEFINITION OF AN IN SCOPE MNE GROUP

The method of consolidation used in preparing financial statements for a group may impact whether or not such group is treated as an In Scope MNE Group under the Act.

There are several components to the definition of an In Scope MNE Group:

1. The group must meet the revenue threshold set out in section 11 of the Act

2. The group must also be an MNE Group, which is a group comprising of an ultimate parent entity and one or more entities (which includes permanent establishments) located in another jurisdiction

3. An ultimate parent entity is an entity that owns, directly or indirectly, a controlling interest in any other entity

4. For the purposes of the Act, a controlling interest is defined as an ownership interest such that the interest holder is:

   (a) required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis in accordance with an acceptable financial accounting standard; or

   (b) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis if the interest holder had prepared consolidated financial statements,

   (provided that a main entity is deemed to have the controlling interests of its permanent establishments).

Where consolidated financial statements are prepared on a basis that does not consolidate line by line (e.g. in the case of investment entities under IFRS 10), there will be no controlling interests. Where there are no controlling interests, there is no ultimate parent entity, and therefore no MNE Group for the purposes of the Act. This in turn means the Bermuda entities that are not consolidated on a line-by-line basis will not be considered in scope for the purposes of the Act.

8. GENERAL MATTERS – INSURANCE INVESTMENT ENTITY

The definition of insurance investment entities in the Act is intended to follow the interpretation in the Commentary to the GloBE Rules. An insurance investment entity may be wholly-owned by a single entity, or by a number of entities which are all part of an MNE Group. The definition is also intended to cover insurance investment entities which are established in relation to liabilities under one or more insurance or annuity contracts.

9. SECTION 6 – TAX LOSS CARRYFORWARD DEDUCTION

A tax loss carryforward of a Bermuda Constituent Entity may not be carried back to offset net taxable income earned by the Bermuda Constituent Entity Group in a prior fiscal year. A tax loss carryforward may only be carried forward to offset net taxable income earned in subsequent fiscal years.

Tax loss carryforwards do not expire and may be carried forward until such time as they are included in a tax loss carryforward deduction.

Opening tax loss carryforward

To the extent that an election is not made under section 33(8) to disapply the economic transition adjustment, no amount of opening tax loss carryforward can be taken into account with respect to any period prior to 1 October 2023. A Bermuda Constituent Entity which does not make the election under section 33(8) will be required to close its books as at 30 September 2023 for the purposes of determining the opening tax loss carryforward. No proration of the year end results is therefore permitted in determining the amount of opening tax loss carryforward arising after 30 September 2023.

The 80% limitation on the use of tax loss carryforwards in section 6(1)(a) does not apply to the computation of the opening tax loss carryforward, and the election to deduct a lesser amount of tax loss carryforwards under section 6(1)(b) may not be made as part of the computation of the opening tax loss carryforward.

An election under section 8(3) to create separate Bermuda Constituent Entity Groups cannot be made for the purposes of computing the opening tax loss carryforward. All Bermuda Constituent Entities that are members of an In Scope MNE Group are treated as being part of a single Bermuda Constituent Entity Group for the purpose of determining the opening tax loss carryforward. The Filing Bermuda Constituent Entity must allocate the opening tax loss carryforward, if any, to the Bermuda Constituent Entity members of a Bermuda Constituent Entity Group for the purposes of tracking each Bermuda Constituent Entity members' share.

Subject to the above, the opening loss carryforward is determined by:

(a) First, calculating the taxable income or loss of each Bermuda Constituent Entity member of the In Scope MNE Group for the opening tax loss carryforward period (as described in section 6(4)(a)). For this purpose, the taxable income or loss of each Bermuda Constituent Entity shall be determined in the same manner as if each Bermuda Constituent Entity had been subject to the income tax chargeable pursuant to the Act during the opening tax loss carryforward period, except as otherwise noted in section 6(5).

(b) Second, by calculating the net taxable income or loss of all the Bermuda Constituent Entities of the In Scope MNE Group for each fiscal year (or portion thereof) in the opening tax loss carryforward period.

(c) Third, by adjusting any net taxable losses arising during a fiscal year (or portion thereof) in the opening tax loss carryforward period with respect to any subsequent utilisation of such net taxable losses during the remainder of the opening tax loss carryforward period.

Example

An In Scope MNE Group is comprised of three Bermuda Constituent Entities (BCE1, BCE2, and BCE3). These entities have a calendar year end and are within the scope of the Bermuda corporate income tax regime beginning 1 January 2025.

BCE1 and BCE2 have elected pursuant to section 33(8) not to apply the economic transition adjustment provisions and, as such, the opening tax loss carryforward period for the entities begins 1 January 2020.

Step #1: Calculate taxable income or loss of each Bermuda Constituent Entity

BCE1 is the main entity of a permanent establishment located in a foreign jurisdiction through which the business of BCE1 is partly conducted, and for which a branch exemption election has been made for the opening tax loss carryforward period in accordance with section 49. Accordingly, a portion of the financial accounting net income or loss of BCE1 is allocated to the permanent establishment during the opening tax loss carryforward period in accordance with section 22.

The financial accounting net income or loss of BCE1 remaining after the allocation to the permanent establishment includes, in certain years, deductions for net taxes expense.

The components of the taxable income or loss of BCE1 during the opening tax loss carryforward period, including financial accounting net income or loss (net of the allocation to the foreign permanent establishment) and the adjustment for net taxes expense, are summarised as follows:

	Financial accounting net income or loss (s.21)	Allocation to permanent establishment (s.22)	Subtotal	Removal of net taxes expense (s.27(1)(a))	Taxable income or loss (s.20)
2020	$1,000	$(100)	$900	$200	$1,100
2021	$500	$(200)	$300	-	$300
2022	$1,400	$(200)	$1,200	-	$1,200
2023	$1,000	$(100)	$900	$100	$1,000
2024	$1,000	$(100)	$900	-	$900
Total	**$4,900**	**$(700)**	**$4,200**	**$300**	**$4,500**

BCE2 made an election pursuant to section 34 to adjust taxable income or loss to exclude unrealised gains or losses on its funds withheld asset for the opening tax loss carryforward period. The components of the taxable income or loss of BCE2 during the opening tax loss carryforward period, including financial accounting net income or loss and the matching adjustments calculated in accordance with section 34, are summarised as follows:

	Financial accounting net income or loss (s.21)	Matching adjustment (s.34)	Taxable income or loss (s.20)
2020	$(500)	$900	$400
2021	$(1,000)	$300	$(700)
2022	$(800)	$(300)	$(1,100)
2023	$(800)	$(500)	$(1,300)
2024	$200	$400	$600
Total	**$(2.900)**	**$800**	**$(2,100)**

The economic transition adjustment provisions apply to BC3 and, as such, the opening tax loss carryforward period for BC3 begins 1 October 2023. The components of the taxable income or loss of BCE3 during the opening tax loss carryforward period, including financial accounting net income or loss and the economic transition adjustments calculated in accordance with section 33(2), are summarised as follows:

	Financial accounting net income or loss (s.21)	Economic Transition adjustment (s.33(2))	Taxable income or loss (s.20)
2023 (short period)	$500	$(400)	$100
2024	$(900)	$(300)	$(1,200)
Total	**$(400)**	**$(700)**	**$(1,100)**

Step #2: Calculate net taxable income or loss of the In Scope MNE Group

The net taxable income or loss of the Bermuda Constituent Entities of the In Scope MNE Group for each year during the opening tax loss carryforward period are summarised as follows:

	Taxable income or loss (BCE1)	Taxable income or loss (BCE2)	Taxable income or loss (BCE3)	Net taxable income or loss
2020	$1,100	$400	-	$1,500
2021	$300	$(700)	-	$(400)
2022	$1,200	$(1,100)	-	$100
2023	$1,000	$(1,300)	$100	$(200)
2024	$900	$600	$(1,200)	$300
Total	**$4,500**	**$(2,100)**	**$(1,100)**	**$1,300**

Step #3: Adjust net taxable losses to reflect utilisation during the opening tax loss carryforward period

The determination of the opening tax loss carryforward ($200) of the Bermuda Constituent Entities of the In Scope MNE Group as of 31 December 2024 is summarised as follows:

	Prior year tax loss carryforward	Net taxable loss incurred in current year s.6(4)(a)	Tax loss utilisation (s.6(4)(b))	Subsequent year tax loss carryforward
2020	-	-	-	-
2021	-	$(400)	-	$(400)
2022	$(400)	-	$100	$(300)
2023	$(300)	$(200)	-	$(500)
2024	$(500)	-	$300	$(200)
2020	-	-	-	-

Application of tax loss carryforward deduction to current year

To the extent that:

(a) a Bermuda Constituent Entity Group earns net taxable income for a fiscal year, prior to consideration of the tax loss carryforward deduction, and

(b) one or more Bermuda Constituent Entity members of the Bermuda Constituent Entity Group have unutilised tax loss carryforwards from prior fiscal years,

the Filing Bermuda Constituent Entity may elect to use a tax loss carryforward deduction. The amount of the tax loss carryforward deduction may not exceed the lesser of 80% of the amount described in (a) or the amount described in (b) above. The Filing Bermuda Constituent Entity may elect to reduce the amount of the tax loss carryforward deduction for any fiscal year.

The Filing Bermuda Constituent Entity shall designate in its tax return specific tax loss carryforward amounts that have been included in the loss carryforward deduction for the fiscal year.

Example

Bermuda Constituent Entity Group ("BCEG") is comprised of three Bermuda Constituent Entities (BCE1, BCE2, and BCE3, of which BCE1 has been designated as the Filing Bermuda Constituent Entity). BCEG has a calendar year end and has been subject to the Bermuda corporate income tax regime since 1 January 2025. At the end of the 2025 fiscal year, the tax loss carryforwards of BCE1, BCE2, and BCE3 were summarised as follows:

	Opening tax loss carryforward s.6(2)(a)(i)	Taxable loss incurred in 2025 s.6(2)(a)(ii)	Subtotal 6(2)(a)	Prior Year tax loss utilisation s.6(2)(c)	Total tax loss carryforward
BCE1	$1,000	$500	$1,500	-	$1,500
BCE2	-	$500	$500	-	$500
BCE3	-	-	-	-	-
Total	**$1,000**	**$1,000**	**$2,000**	-	**$2,000**

BCEG earns $1,000 of net taxable income during the 2026 fiscal year, prior to consideration of the tax loss carryforward deduction. BCE1, as the Filing Bermuda Constituent Entity, may designate any portion of the tax loss carryforwards of BCE1 or BCE2 (whether attributable to opening tax loss carryforwards or losses incurred during the period subsequent to 1 January 2025) for inclusion in the tax loss carryforward deduction, provided that the tax loss carryforward deduction may not exceed $800, or 80% of the net taxable income earned by BCEG during 2026 prior to consideration of the tax loss carryforward deduction. BCE1 may also elect to reduce the $800 tax loss carryforward deduction, in whole or in part, for the 2026 fiscal year.

On this basis, BCE1 elects to reduce the tax loss carryforward deduction amount for the 2026 fiscal year from $800 to $600, and to designate $400 and $200 of the tax loss carryforwards of BCE1 and BCE2, respectively, for inclusion in the tax loss carryforward deduction.

Following consideration of the 2026 fiscal year tax loss carryforward deduction, the tax loss carryforwards of BCE1, BCE2, and BCE3 are summarised as follows:

	Opening tax loss carryforward s.6(2)(a)(i)	Taxable loss incurred in 2025 s.6(2)(a)(ii)	Subtotal 6(2)(a)	Prior Year tax loss utilisation s.6(2)(c)	Total tax loss carryforward
BCE1	$1,000	$500	$1,500	$400	$1,100
BCE2	-	$500	$500	$200	$300
BCE3	-	-	-	-	-
Total	**$1,000**	**$1,000**	**$2,000**	**$600**	**$1,400**

10. SECTION 10 – DEFINITION OF EXCLUDED ENTITY

For the purposes of determining whether or not an entity owned by a non-profit organisation (NPO) is an excluded entity, consistent with the administrative guidance on the Model Rules published by the OECD, the Agency will apply a “bright-line” test to simplify the application of section 10(2)(a)(ii).

For the purpose of determining whether activities are ancillary to those carried out by an NPO for the purposes of section 10(2)(a)(ii), the activities of an entity where 100% of the value is owned directly or indirectly by the NPO or by NPOs will be deemed to be ancillary if the aggregate revenue of all entities of the In Scope MNE Group (excluding revenue derived by the NPO or by an entity that is an excluded entity under sections 10(2)(a)(i) or 10(2)(b), or that would be an excluded entity under section 10(2)(a)(ii) but for the application of this bright-line test), is less than EUR 750 million or 25% of the revenue of the In Scope MNE Group (if lower) for the fiscal period. The application of this bright-line test does not have regard to, and is not affected by, the actual activities carried out by the wholly owned subsidiary entity.

Where any entity is not 100% owned (directly or indirectly) by NPOs, it will not be eligible to apply this bright-line test.

If the aggregate revenue of all entities of the In Scope MNE Group (excluding revenue derived by the NPO or by an entity that is an excluded entity under sections 10(2)(a)(i) or 10(2)(b), or that would be an excluded entity under section 10(2)(a)(ii) but for the application of this bright-line test) equals or exceeds 25% of the In Scope MNE Group’s revenue or EUR 750 million, all Bermuda Constituent Entities that are subsidiaries of an NPO will not be eligible for the bright-line test and thus will not be considered excluded entities unless they are otherwise able to independently satisfy the requirements of subsections 10(2)(a)(i), 10(2)(a)(ii) or 10(2)(b).

11. SECTION 13 – MNE GROUPS WITH A LIMITED INTERNATIONAL FOOTPRINT

Section 13 excludes an MNE Group from being an In Scope MNE Group, and therefore takes it out of the scope of the Act, if the group meets the jurisdictional footprint and the tangible asset value requirements and if no MNE Group constituent entity is required to apply an IIR to any Bermuda entity that is a constituent entity of that MNE Group.

The exclusion is available for five fiscal years, beginning on the later of the first day of the first fiscal year beginning on or after 1 January 2025, or the first day of first fiscal year that the group first meets the threshold requirements to be in scope under section 11. If the conditions above are not met for a fiscal year included in the five-year period, the group would become an In Scope MNE Group in that period. If the group then meets the requirements in a subsequent fiscal year within the five-year period, it would not be an In Scope MNE Group for that fiscal year and would be outside the scope of the Act. No extension of the five-year period during which the exclusion is available can arise if the group becomes an In Scope MNE Group for a fiscal year which is part of the five-year period.

If an MNE Group was an In Scope MNE Group for at least one fiscal year beginning on or after 1 January 2025 and subsequently falls out of scope, either (as noted above) because it does not meet the revenue threshold or because it meets the criteria for section 13, the group may elect to remain in scope for any remaining years, on an annual basis, for which the section 13 exclusion would otherwise apply.

12. SECTION 15 – FISCAL TRANSPARENCY

The Agency will treat the rules on fiscal transparency and related elections as applying to companies incorporated or formed under Private Acts notwithstanding the references in section 15 to the Companies Act 1981 and the Limited Liability Companies Act 2016.

13. SECTION 28 – PRIOR PERIOD ERRORS AND CHANGES IN ACCOUNTING PRINCIPLES

Changes in opening equity

Only the portion of the change in opening equity that would have affected taxable income or loss in previous fiscal years adjusts financial net income or loss pursuant to section 28(1).

For example, an opening equity adjustment might comprise an item that would have been partially accounted for through net income in previous fiscal years (e.g., includable in taxable income or loss) and partially accounted for through other comprehensive income ("OCI") (i.e. not includible in taxable income or loss). The net income component would be included as an adjustment to financial accounting net income or loss under section 28 and the OCI component would not be.

Impact on opening tax loss carryforward

To the extent an election pursuant to section 33(8) to disapply the economic transition adjustment is not made, prior period errors and changes in accounting principles impacting opening equity in periods occurring prior to 1 October 2023 are not taken into account for the purpose of determining the opening tax loss carryforward.

Subject to the limitation noted above with regards to the economic transition adjustment, prior period errors and changes in accounting principles impacting opening equity in the five fiscal years preceding the period when the taxpayer is first subject to the Act, must be taken into account in accordance with section 28(2)(b) for purposes of determining the opening tax loss carryforward. section 28(2)(b) requires the change to be taken into account in full in the fiscal year for which the change in opening equity is recognised in the Bermuda Constituent Entity's financial statements used to determine financial accounting net income or loss. To the extent the prior period error or change in accounting principle is attributable to periods prior to the five fiscal years preceding the period when the taxpayer is first subject to the Act, the adjustment pursuant to section 28(2)(b) should be reduced to the extent the adjustment relates to such periods prior to the five fiscal years preceding the period when the taxpayer is first subject to the Act.

For example, assume Company (A), a calendar year taxpayer that becomes subject to the Act in 2025, reflected a change in accounting principle in its opening equity on 1 January 2023. The change increased opening equity by $100 and the entire amount of the change would have affected taxable income or loss in previous fiscal years. The change in accounting principle applied equally to the fiscal years 2018 through 2022 (i.e., for each of the fiscal years 2018 through 2022, net income would have been increased by $20 if the change in accounting principle were applied in each of those fiscal years). Also, assume Company (A) elected to disapply the economic transition adjustment.

Pursuant to section 28(2)(b), Company (A) must increase its 2023 net taxable income (or reduce its net taxable loss) for purposes of determining its opening tax loss carryforward by $60 ($20 related to each of the fiscal years 2020, 2021 and 2022, the $20 related to the 2018 and 2019 fiscal years are excluded from the opening tax loss carryforward computation).

If Company (A) had not elected to disapply the economic transition adjustment, none of the adjustments noted in the above example would be made for the change in accounting principle occurring on 1 January 2023 for purposes of the Act.

Adjustments related to IFRS 17 and LDTI

It is recognised that adjustments to opening equity related to IFRS 17 and LDTI can be quite complex and the determination as to which prior periods such adjustments relate can be a difficult and costly exercise. As a result, it would be appropriate to provide a safe harbour methodology to determine which prior periods the IFRS 17 and LDTI relate for purposes of calculating the opening tax loss carryforward.

Until further guidance is issued, in lieu of using an actual methodology to prorate the IFRS 17 or LDTI adjustment to prior years, taxpayers that are required to adjust opening equity for the implementation of IFRS 17 or LDTI may use the weighted average life of the underlying contracts from inception to the implementation date for the contracts covered by the implementation of IFRS 17 and LDTI for purposes of prorating the opening equity adjustment to prior periods.

14. SECTION 29 - ADJUSTMENTS DUE TO IFRS 17 AND LDTI

For adjustments in opening equity related to the implementation of IFRS 17 and LDTI, where section 29 is applied, then an election under section 29(1) takes precedence over the general rules in section 28. An election under section 29(1) cannot be made for implementations prior to 1 October 2023 unless the Bermuda Constituent Entity has made the election pursuant to section 33(8) to disapply the economic transition adjustment. Where elected, the amount of the IFRS 17 or LDTI adjustment to opening retained earnings remaining as of the commencement date is deducted rateably over the following ten fiscal years. Unlike section 28, there is no requirement to adjust that amount by reference to prior fiscal years. For the avoidance of doubt, if not electing under section 29(1) then section 28 will apply to an opening equity adjustment related to an implementation of IFRS 17 or LDTI.

15. SECTION 33 – ECONOMIC TRANSITION ADJUSTMENTS

Pursuant to section 33(8), a Bermuda Constituent Entity may elect to disregard the economic transition adjustment provisions. However, this election applies to all assets and liabilities of the Bermuda Constituent Entity and may not be limited to specific assets and liabilities. In the absence of such an election, the Bermuda Constituent Entity is required to apply the economic transition adjustment provisions to all of its assets and liabilities, including identifiable intangible assets but with the exception of goodwill.

"Fair Value"

The term "fair value" is defined in both IFRS and US GAAP as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. For the purposes of section 33, at the discretion of the taxpayer, it should be assumed that existing business relationships (both affiliated and unaffiliated) will continue, i.e. a business as usual concept.

It is anticipated that, at a minimum, each Bermuda Constituent Entity should be prepared to provide, upon request, appropriate supporting documentation for the fair value determinations.

Identified Intangible Assets

Examples of identifiable intangible assets include, but are not limited to:

- Brand, trade name, trademark registrations
- Trademark registrations and applications
- Common law trademark rights
- Copyrights
- Works of authorship
- Domain names
- Social media accounts
- Design rights
- Labelling and product identification
- Trade dress rights
- Trade secrets
- Formulas, know-how
- Manufacturing processes
- Licenses
- Software
- Patents
- Copyrights

- Distribution or marketing rights
- Customer or supplier relationships between separate legal entities whether intra-group or with third parties
- Renewal rights
- Value of in-force business for insurance companies

Determination of ETA with respect to assets (other than identifiable intangible assets) and liabilities for a specific fiscal year

The economic transition adjustment related to assets (other than identifiable intangible assets) and liabilities shall be equal to the difference between:

(i) the financial accounting net income or loss of the Bermuda Constituent Entity described in section 20(a) for the fiscal year, or portion thereof, determined based on the financial statement carrying values of its assets and liabilities, and

(ii) the financial accounting net income or loss of the Bermuda Constituent Entity that would have been determined for such period had the financial statement carrying values of its assets and liabilities been replaced with the fair value of such assets and liabilities as of 30 September, 2023.

Example

Bermuda Constituent Entity ("BCE1") has a 31 December year-end and is subject to the Bermuda corporate income tax regime from 1 January 2025.

BCE1 did not make an election pursuant to section 33(8) to disregard the ETA provisions.

The financial accounting net income or loss of BCE1 is its net income or loss as determined for purposes of preparing the profit and loss statement in the consolidated financial statements of its ultimate parent entity. The assets and liabilities of BCE1 recognised in the consolidated financial statements of its ultimate parent entity are not subject to any of the adjustments summarised in section 21(2)(a) through (d) (e.g. consolidating elimination adjustments, purchase accounting adjustments).

The assets (other than identifiable intangible assets) and liabilities of BCE1 as of 30 September 2023, including the financial statement carrying value and fair value as of such date, are summarised as follows:

	Financial statement carrying value s.33(2)(a)	Fair value s.33(2)(b)	Difference
Cash	$1,000	$1,000	-
Accounts receivable	$1,000	$900	$(100)
AFS bond #1	$5,000	$5,100	$100
AFS bond #2	$5,000	$4,900	$(100)
Fixed assets	$900	$990	$90
Accounts payable	$(900)	$(900)	-
Policy #1 liabilities	$(6,000)	$(5,900)	$100
Policy #2 liabilities	$(4,000)	$(3,800)	$200
Net assets	**$2,000**	**$2,290**	**$290**

AFS bond #1 and AFS bond #2 are treated as available-for-sale securities for financial accounting purposes and are recorded at fair value in the balance sheet of BCE1 as of 30 September 2023 with the relevant unrealised gain or loss recognised in other comprehensive income or loss. However, for purposes of determining the economic transition adjustment the financial statement carrying value summarised in the table above has been adjusted in accordance with section 33(2)(a) to reverse any basis adjustments attributable to unrealised gain or loss recognised in other comprehensive income or loss with respect to these assets.

The fixed assets have a remaining useful life of 2.25 years as of 30 September 2023 and are depreciated on a straight-line basis for financial statement purposes (i.e. depreciation expense of $100 per quarter recognised in the determination of BCE1's financial accounting net income or loss for the 2.25-year period).

2023

For purposes of determining its financial accounting net income or loss for the period from 1 October through 31 December 2023:

- BCE1 sold AFS bond #1 for $5,100 and recognised realised gain of $100 (the offsetting change in unrealised gain or loss recognised in the statement of other comprehensive income does not factor into the determination of financial accounting net income or loss);
- BCE1 recognised depreciation expense of $100 with respect to its fixed assets.

The economic transition adjustment for this period is determined by replacing the carrying values of the assets used in the determination of financial accounting net income or loss with the 30 September 2023 fair values. On this basis:

- The amount of gain to be recognised in the calculation of BCE1's taxable income or loss with respect to the sale of AFS bond #1 would be $Nil (i.e. sales proceeds of $5,100 less the 30 September, 2023 fair value of $5,100).
- The amount of depreciation expense to be recognised in the calculation of BCE1's taxable income or loss with respect to fixed assets would be $110 (i.e. 30 September 2023 fair value of $990 divided by 2.25 years results in annual depreciation expense of $440, of which $110 would be allocated to this three-month period).

	Effect on financial accounting net income or loss	Effect on taxable income or loss	Current period economic transition adjustment
Sale of AFS bond #1	$100	Nil	$(100)
Depreciation of fixed assets	$(100)	$(110)	$(10)
Total	**Nil**	**$(110)**	**$(110)**

For purposes of calculating its opening tax loss carryforward, if any, the net taxable income or loss of BCE1 must be determined in the same manner as would have been required if it had been subject to the Bermuda corporate income tax regime during the period described in section 6(4)(a). Accordingly, the economic transition adjustment summarised above will be includible in the determination of the opening tax loss carryforward of BCE1, if any, with respect to the 2023 period.

2024

For purposes of determining its financial accounting net income or loss for the period from January 1 through 31 December 2024:

- BCE1 received $950 in complete settlement of the accounts receivable asset and recognised a loss of $50
- BCE1 recognised depreciation expense of $400 with respect to its fixed assets.
- BCE1 paid $6,000 to settle all liabilities with respect to policy #1.

The economic transition adjustment for this period shall be determined by replacing the carrying values of the assets and liabilities used in the determination of financial accounting net income or loss with the 30 September 2023 fair values, with the following result:

	Effect on financial accounting net income or loss	Effect on taxable income or loss	Current period economic transition adjustment
Settlement of accounts receivable	$(50)	$50	$100
Depreciation of fixed assets	$(400)	$(440)	$(40)
Settlement of policy #1	Nil	$(100)	$(100)
Total	**$(450)**	**$(490)**	**$(40)**

The economic transition adjustment summarised above will be includible in the determination of the opening tax loss carryforward, if any, of BCE1 for the 2024 period in accordance with section 6(4)(a).

2025

For purposes of determining its financial accounting net income or loss for the period from 1 January through 31 December 2025:

- BCE1 sold AFS bond #2 for $4,800 and recognised a realised loss of $200.
- BCE1 recognised depreciation expense of $400 with respect to its fixed assets
- BCE1 paid $4,100 to settle all liabilities with respect to policy #2 and recognised a loss of $100

The economic transition adjustment for this period shall be determined by replacing the carrying values of the assets and liabilities used in the determination of financial accounting net income or loss with the 30 September 2023 fair values, with the following result:

	Effect on financial accounting net income or loss	Effect on taxable income or loss	Current period economic transition adjustment
Sale of AFS bond #2	$(200)	$(100)	$100
Depreciation of fixed assets	$(400)	$(440)	$(40)
Settlement of policy #2	$(100)	$(300)	$(200)
Total	**$(700)**	**$(840)**	**$(140)**

The economic transition adjustment summarised above will be includible in the determination of the taxable income or loss of BCE1 for the 2025 fiscal year.

ETA for MNE Groups with a limited international footprint

The economic transition adjustment shall be included in the determination of the taxable income or loss of the Bermuda Constituent Entity for those fiscal years of the Bermuda Constituent Entity during which the provisions of section 13 no longer apply to the MNE Group.

Example

Bermuda Constituent Entity ("BCE2") is a member of MNE Group ("MNE2"). MNE2 is comprised of constituent entities located in three jurisdictions and meets the requirements of section 13, such that MNE2 is not treated as an In Scope MNE Group for fiscal years beginning prior to 1 January 2030 and is not subject to Bermuda corporate income tax prior to such date. MNE2 has a 31 December year-end.

The assets and liabilities of BCE2 as of 30 September 2023, including the financial statement carrying value and fair value as of such date, are summarised as follows:

	Financial statement carrying value s.33(2)(a)	Fair value s.33(2)(b)	Difference
Cash	$1,000	$1,000	-
Accounts receivable	$1,000	$1,000	-
Investments	$5,000	$4,800	$(200)
Customer relationships	-	$1,000	$1,000
Accounts payable	$(900)	$(900)	-
Policy liability	$(4,000)	$(3,900)	$100
Net assets	**$2,100**	**$3,000**	**$900**

2024

During 2024, BCE2 paid $4,200 to settle its policy liabilities and recognised a loss of $200 in the determination of its financial accounting net income or loss.

Despite the existence of a difference between the financial statement carrying value and the 30 September, 2023 fair value of the policy liability, no economic transition adjustment will be recognised with respect to the settlement of these liabilities given that MNE2 will not be treated as an In Scope MNE Group until 1 January 2030 and the determination period for the opening tax loss carryforward will not begin until 1 January, 2025 pursuant to section 6(4)(a).

2025

During 2025, BCE2 sold its investments for $5,100 and recognised a realised gain of $100 in the determination of its financial accounting net income or loss.

The economic transition adjustment for 2025 shall be determined by replacing the carrying values of the investments used in the determination of financial accounting net income or loss with the 30 September 2023 fair values. In addition, one-tenth of the overall adjustment related to its identifiable intangible assets (i.e. customer relationships) will be included in the determination of the economic transition adjustment for 2025.

	Effect on financial accounting net income or loss	Effect on taxable income or loss	Current period economic transition adjustment
Sale of investment	$100	$300	$200
Amortisation expense (intangible)	-	$(100)	$(100)
Total	**$100**	**$200**	**$100**

For purposes of calculating its opening tax loss carryforward, if any, the net taxable income or loss of BCE2 must be determined in the same manner as would have been required if it had been subject to the Bermuda corporate income tax regime during the period described in section 6(4)(a). Accordingly, the economic transition adjustment summarised above will be includible in the determination of the opening tax loss carryforward of BCE2, if any, with respect to the 2025 fiscal year.

2026 – 2029

One-tenth of the overall adjustment related to the identifiable intangible assets of BCE2 will be included in the determination of the economic transition adjustment for 2026 through 2029. As summarised above, these economic transition adjustment amounts will be includible in the determination of the opening tax loss carryforward of BCE2, if any, with respect to each year during this period.

2030 – 2034

One-tenth of the overall adjustment related to the identifiable intangible assets of BCE2 will be included in the determination of the economic transition adjustment for 2030 through 2034 and will, in turn, be included in the determination of taxable income or loss with respect to each year during this period.

Policy liabilities of an insurance entity

In acknowledgment of the challenges entailed with tracking the settlement of specific insurance contract liabilities over the entire run-off of reserves associated with such contract liabilities, the Agency will permit the following alternatives for the purposes of determining an economic transition adjustment attributable to insurance contract liabilities for fiscal periods subsequent to 30 September 2023:

(a) Actual method – Economic transition adjustment is determined on the basis of the actual run-off experience of the Bermuda Constituent Entity . The approach to determine the actual run-off experience will depend on the type of policy liability (e.g., liabilities for unpaid claims versus liabilities for future benefits under life and annuity contracts). For example, as each insurance contract is settled for property and casualty business, the financial accounting net income or loss of the Bermuda Constituent Entity is adjusted by replacing the financial statement carrying value of the insurance contract liability with the fair value of the liability as of 30 September 2023. For long-duration policy liabilities, the economic transition adjustment shall be amortised consistent with the same assumptions used in estimating the fair value of the liability with adjustment for deviations from expected experience due to actual experience recognised in the period of the deviation.

Example A:

Bermuda Constituent Entity holds a loss reserve balance for unpaid claims related to insurance contract A (one of many insurance contracts entered into by the Bermuda Constituent Entity which are subject to the economic transition adjustment) with a 30 September 2023 financial statement carrying value and fair value of $100 and $90, respectively. The liability related to insurance contract A is settled in 2026, resulting in an economic transition adjustment of $10 in such fiscal year with respect to this contract.

Example B:

Bermuda Constituent Entity holds a policy liability for future benefits related to a block of life insurance contracts with a 30 September 2023 financial statement carrying value and fair value of $100 and $80, respectively. Of the $20 economic transition adjustment, a balance of $18 remains at the beginning of 2025 based on actual experience from 1 October 2023 through 31 December 2024. The expected experience for the provision of insurance related to the block of life insurance contracts in 2025 would result in $3 of the economic transition adjustment amortising in 2025. However, actual experience differs from expected and more of the business runs off, resulting in an additional $1 of the economic transition adjustment amortising in 2025 for total amortisation of $4 in 2025.

The remaining $14 balance of the economic transition adjustment would run off based on actual experience in future fiscal years.

(b) FV run-off pattern – Economic transition adjustment is computed using a set run-off pattern based on the estimated run-off pattern utilised for purposes of the 30 September 2023 fair value determination.

Example:

Bermuda Constituent Entity has insurance contract liabilities with a 30 September 2023 financial statement carrying value and fair value of $1M and $0.85M, respectively.

Bermuda Constituent Entity estimates the following run-off pattern for the purposes of determining the 30 September 2023 fair value of its insurance contract liabilities:

1 Oct – 31 Dec 2023	*5%*
2024	*15%*
2025 – 2028	*20% per year*

Under this method, Bermuda Constituent Entity will determine its economic transition adjustment for each fiscal period by multiplying the aggregate economic transition adjustment amount attributable to insurance contract liabilities ($150,000) by the run-off pattern established for such period (e.g. $7,500 for the 2023 fiscal period, $22,500 for the 2024 fiscal period, etc.)

(c) Safe harbour – Economic transition adjustment for a fiscal period is determined by amortising the aggregate economic transition adjustment amount attributable to insurance contract liabilities on a 15-year straight line basis, beginning 1 October 2023

Example:

Bermuda Constituent Entity has insurance contract liabilities with a 30 September 2023 financial statement carrying value and fair value of $1M and $0.85M, respectively. Under this method, Bermuda Constituent Entity will determine an economic transition adjustment of $2,500 for the 2023 fiscal period (i.e. $150,000 aggregate adjustment divided by 15 years, further reduced to reflect the 3-month short period), $10,000 for each of the 2024 – 2037 fiscal years, and $7,500 for the 2038 fiscal year.

The Bermuda Constituent Entity will select one of the above methods for each insurance contract for purposes of determining its economic transition adjustment in the Bermuda corporate income tax return filed for the first fiscal year in which the Bermuda Constituent Entity is a member of an In Scope MNE Group meeting the requirements of section 11(1), subject to section 13. Once selected, this method or methods must be utilised:

(i) for the identified insurance contract liability, and

(ii) for all fiscal periods of the Bermuda Constituent Entity subsequent to 30 September 2023 (including periods included in the determination of the opening tax loss carryforward).

Nothing in this Guidance (in this section or elsewhere) where a reference is made to “insurance” is intended to exclude business regulated as insurance business but accounted for as investment business.

16. SECTION 36 – INTERNATIONAL SHIPPING INCOME EXCLUSION

Section 36 of the CIT Act provides for an exclusion of a constituent entity's income derived from international shipping. This exclusion is an adjustment to a constituent entity's financial accounting net income or loss. These exclusions are calculated on a net basis. The adjustment will be a negative amount in a situation where the international shipping income or qualified ancillary international shipping income is positive. The adjustment will be a positive amount in the situation where the international shipping income or qualified ancillary international shipping income is negative. To the extent that this adjustment excludes an amount of income, any creditable foreign taxes associated with that income must also be excluded.

The Section 36 exclusion is derived from similar provisions in the OECD Model Rules, and the commentary below is intended to reflect this derivation. To the extent the OECD releases updated guidance on the exclusion under the Model Rules, it is anticipated that the Bermuda guidance will also be updated so as to maintain alignment.

Definition of International Shipping Income

International shipping income is the net income obtained by Bermuda Constituent Entities from the activities specified in paragraphs (a) to (f) of section 36(2), except to the extent that the net income is obtained from the transportation of passengers or cargo by ships via inland waterways within the same jurisdiction specified in section 36(2) (regardless of whether such jurisdiction is the same jurisdiction as the one in which the constituent entity is located).

The exclusion for international shipping income applies whether a ship is owned, leased or otherwise at the disposal of the constituent entity. For example, the exclusion would include income from the transportation by a ship in international traffic where the Bermuda Constituent Entity is the lessee of a ship under a bare boat-chartering-in arrangement.

The exclusion does not apply to the profits from towing or dredging activities but it would apply to the profits from transportation of passengers or cargo in international traffic by offshore service vessels. Furthermore, the exclusion also covers:

(a) Net income derived by a constituent entity from the transportation of passengers or cargo otherwise than by ships that it operates when the enterprise has some of its passengers or cargo transported under slot-chartering arrangements;

(b) Net income obtained by a constituent entity from leasing out a ship on charter fully equipped, crewed and supplied, for example a time or voyage charter under which a vessel and crew are hired for a voyage from a load port to a discharge port, provided that the lessor can demonstrate that the ship is expected to be used in the transportation of passengers or cargo in international traffic; and

(c) Net income obtained from the leasing of a ship to another shipping enterprise that is a constituent entity on charter without crew or master, provided the lessee is also a constituent entity of the same MNE Group and has international shipping income.

Deduction and Allocation of Costs

Costs directly incurred by a Bermuda Constituent Entity from the operation of an international shipping business should be allocated on a facts and circumstances basis to compute the net income of a constituent entity from its international shipping activities.

Such directly attributable costs include items such as but not limited to:

- The costs of operating the vessel:
  - Employee costs (e.g. ship crew and management)
  - Bunker (fuel) expense
  - Maintenance and upgrades/dry-docking
  - Terminal, stevedoring and port expenses
- The costs relate to the use of the vessel:
  - Depreciation expenses for ships and other maritime equipment and infrastructure
  - Ship charter expenses
  - Leasing of shipping containers, cargo handling

Indirect costs should be allocated between a Bermuda Constituent Entity's international shipping income and other income on a formulaic basis in proportion to its revenues from international shipping over its total revenues.

Qualified ancillary international shipping income

The exclusion in section 36 also applies to net income from certain ancillary activities as enumerated in subsection (4), provided these ancillary activities are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic.

Paragraph (a) of subsection (4) covers leasing arrangements on a bare boat charter basis where a Bermuda Constituent Entity leases out a ship as an ancillary activity to another shipping enterprise that is not a Bermuda Constituent Entity on charter without crew or master (i.e. where the Bermuda Constituent Entity is the lessor and the vessel is operated by another party, the charterer). For this purpose, a shipping enterprise is an enterprise that operates ships. The three year time-limit condition would not be met when the contractual arrangement provides that the bare boat is available to the lessee for a time

period that exceeds three years. For that purpose, other bare boat charters of the same ship, concluded with respect to prior or subsequent periods, would need to be taken into account. If a contractual arrangement is agreed for a shorter period than three years, the facts and circumstances would be analysed to determine whether the total period of the charter has exceeded three years. For instance, the renewal of a two-year bare boat charter for another period of two years would be considered as exceeding three years.

Therefore, income earned after the date of the renewal would not qualify for the exclusion. Whether the income earned before the date of the renewal would qualify for the exclusion would depend on the facts and circumstances.

Paragraph (b) of subsection (4) covers the income obtained by a constituent entity from the sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage. For this purpose, a shipping enterprise is an enterprise that operates ships.

Paragraph (c) of subsection (4) covers the income obtained by a constituent entity from the leasing and short-term storage of containers, for example where the enterprise charges a customer for keeping a loaded container in a warehouse pending delivery, or from detention charges for the late return of containers. For instance, a period of 5 days or less could be presumed to be short-term for this purpose. Facts and circumstances would, however, need to be taken into account to determine whether the storage was short-term.

Paragraph (d) of subsection (4) covers the income obtained by a constituent entity from the provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel. As mentioned above, a shipping enterprise is an enterprise that operates ships.

Paragraph (e) of subsection (4) covers investment income where the investment that generates the income is an integral part of carrying on the business of operating the ships in international traffic. This would apply to interest income generated, for example, from cash deposits or other short-term working capital necessary for the carrying on of that business.

This would also apply to interest income on bonds posted as security where this is required by law in order to carry on the business; in such cases, the investment is needed to allow the operation of the ships at that location. Enterprises engaged in the operation of ships in international traffic may also be required to acquire and use emissions permits and credits. Income derived by such enterprises with respect to such permits and credits where such income is an integral part of carrying on the business of operating ships in international traffic would also be treated as qualified ancillary income, for example, where permits are acquired for the purpose of operating ships or where permits acquired for that purpose are subsequently traded when it is determined that they will not be needed.

Paragraph (e) does not apply, however, to interest income derived in the course of the handling of cash-flow or other treasury activities for other Constituent Entities regardless of whether such constituent entities are located within or outside that jurisdiction (centralisation of treasury and investment activities). Nor would it apply to interest income generated by the short-term investment of the profits generated by a shipping operation where the funds invested are not required for that operation.

The requirement for strategic or commercial management in Bermuda

Section 36(7) imposes a substance criterion in order to qualify for the exclusion. The aim of this provision is to ensure that the strategic or commercial management of all ships deployed in earning international shipping income is effectively carried on from or withinthe jurisdiction in which a constituent entity is located (i.e. Bermuda for Bermuda tax resident entities and Bermuda permanent establishments.)

Whether the strategic or commercial management is effectively carried on from within Bermuda will be determined on the basis of all relevant facts and circumstances, taking into account all relevant factors depending on the item of income. In assessing this, regard will also be had to the extent to which strategic or commercial management of ships occur outside of Bermuda. The mere fact that a vessel is flagged in a particular jurisdiction is not determinative whether or not strategic or commercial management is effectively carried on from within Bermuda. However, as discussed below the flagging of a vessel may be taken into account.

To qualify for the exclusion a Bermuda Constituent Entity need only demonstrate one of strategic management or commercial management in Bermuda. However, each Bermuda Constituent Entity claiming the exclusion will need to be able to clearly assert on which basis the exclusion is claimed i.e. on the basis of strategic or commercial management.

Strategic management is generally taken to mean oversight and control of a Bermuda Constituent Entity's shipping business. Strategic management includes, but is not limited to, making decisions on significant capital expenditure and asset disposal (e.g. purchase and sale of ships), award of major contracts, agreements on strategic alliances and vessel pooling, and the direction of foreign establishments. Relevant factors that demonstrate strategic management include the location of decision-makers, including senior management staff, location of company board meetings, location of operational board meetings (or other meetings of senior management staff and/or decision-makers) and residence of directors and key employees.

These factors are non-exhaustive and, depending on the nature of the shipping business, other factors may be relevant (i.e. physical office premises in Bermuda where strategic decisions are taken) in assessing if strategic management of a shipping business is effectively carried on in Bermuda. To the extent an MNE Group is claiming the shipping income exclusion and has other income for which the shipping income exclusion is not relevant, there is no requirement for the Bermuda Constituent Entities of the MNE Group to demonstrate strategic management in Bermuda in respect of the non-excluded income (or the activities that generate the non-excluded income).

In contrast to strategic management, commercial management includes route planning, taking bookings for cargo or passengers, insurance, financing, personnel management, provision and training. Relevant factors that demonstrate commercial management include the number of employees engaged in these activities in the jurisdiction, the nature and extent of the accommodation occupied in the jurisdiction, and the country of residence of key management staff, including company directors.

There may in practice be some degree of overlap between strategic and commercial management. To the extent the forms of management can be distinguished, commercial management would typically consist of more day-to-day or ordinary course activities.

Depending on the requirements of a particular jurisdiction, a flag link may entail specific duties on a constituent entity to ensure that flagged vessels apply by jurisdictional requirements as they pertain to international shipping conventions. Where these responsibilities are managed by a constituent entity, this may result in that constituent entity having a sufficient level of strategic management that is effectively carried on from or within the jurisdiction where it is located, although as noted above this assessment will be made by reference to all facts and circumstances.

It is therefore unlikely that merely by flagging a vessel in a jurisdiction that a constituent entity will demonstrate strategic management in the flag jurisdiction if, for example, a majority of its board meetings relevant to its shipping business are carried out in other jurisdictions. However, to the extent a Bermuda constituent entity claiming the shipping income exclusion also has Bermuda flagged vessels, such fact pattern will generally be considered conducive to demonstrating strategic management in Bermuda.

17. SECTION 37 – TRANSFER PRICING ADJUSTMENTS

Pursuant to section 6(5), the net taxable loss and net taxable income amounts which factor into the computation of the opening tax loss carryforward shall be determined in the same manner as would have been required if each Bermuda Constituent Entity that is a member of the In Scope MNE Group had been subject to the Bermuda corporate income tax provisions during the opening tax loss carryforward determination period.

However, given that it would generally be anticipated that transactions between a Bermuda Constituent Entity and another constituent entity located in a foreign transaction would have been subject to some form of transfer pricing analysis (e.g. pursuant to the transfer pricing provisions applicable on the foreign jurisdiction), the potential administrative burden associated with the analysis of historical intercompany transactions would appear to be disproportionate to the anticipated impact on the Bermuda corporate income tax result. As such, a Bermuda Constituent Entity shall not be required to make any adjustments pursuant to sections 37(1) to (3) for the purposes of determining the opening tax loss carryforward.

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