

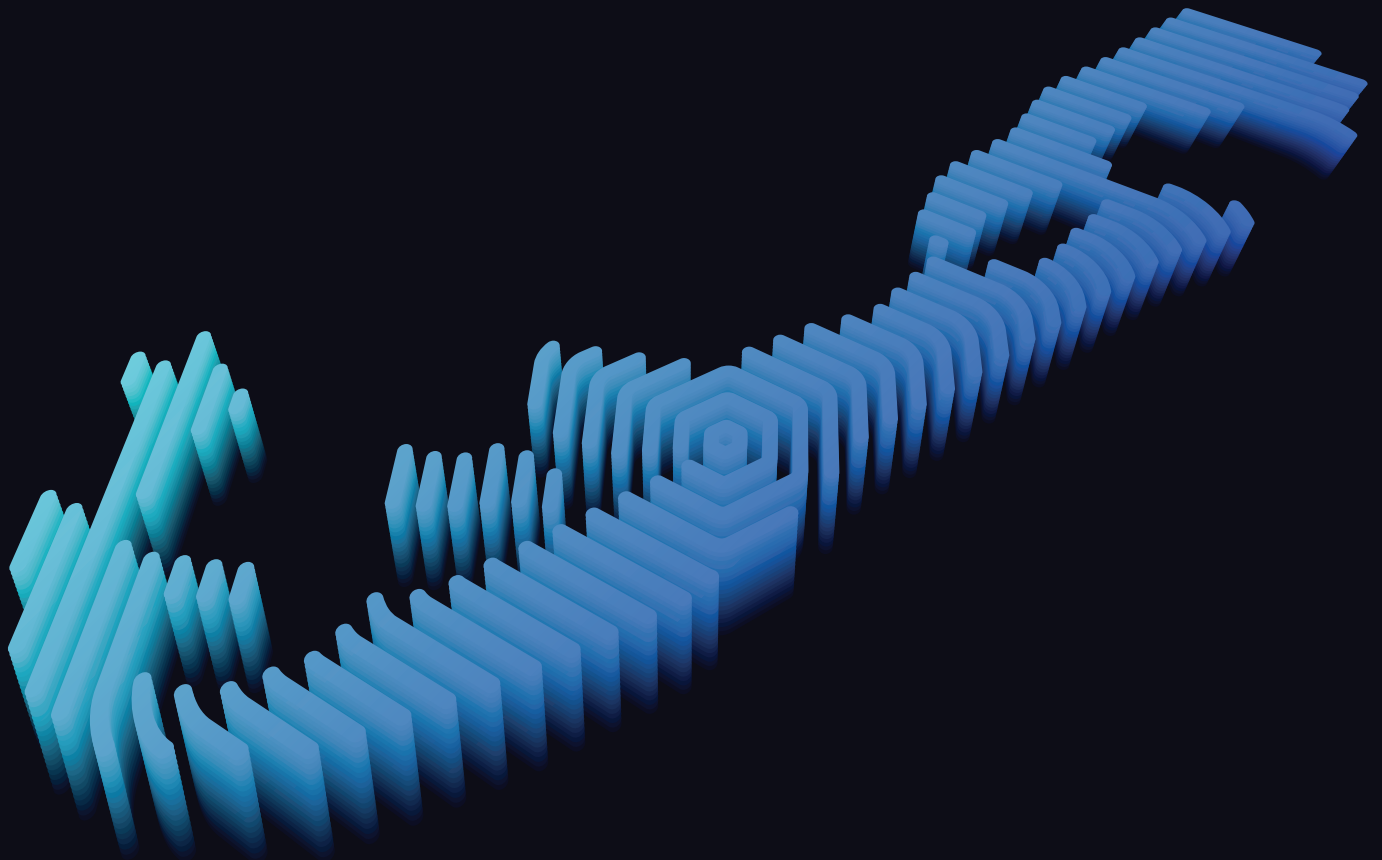


GOVERNMENT OF BERMUDA
Ministry of Finance

PUBLIC CONSULTATION

Introduction of **Corporate Income Tax in Bermuda**

Published August 8, 2023





**Government of Bermuda
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Introduction of Corporate Income Tax in Bermuda

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1. Introduction

In the February 2023 Budget Statement, the Government of Bermuda stated that the Ministry of Finance formed an International Tax Working Group, consisting of specialists in international tax matters and representatives of various bodies.

The Working Group considered the Organization for Economic Co-Operation and Development (OECD) and the Group of Twenty industrialized countries (G20) international tax agreement on Pillar Two of the Base Erosion and Profit Shifting (BEPS) project. The Working Group examined the implications of the BEPS Pillar Two Model Rules on Bermuda and provided input to the Government on these matters taking into account the diversity and complexity of Bermuda's international business sector. The Government wishes to publicly thank the members for their work.

This consultation paper has been formulated to get public feedback on current considerations for appropriate action by the Government of Bermuda in response to the OECD Pillar Two initiative, based on all of the advice received to date. The Government looks forward to receiving feedback from all stakeholders on the following important consultation paper.

2. Background

In October 2021, over 135 Inclusive Framework members agreed on a two-pillar solution to reform international tax rules to ensure that large, multinational groups ("MNE Groups") pay a minimum level of income tax. The OECD Global Anti-Base Erosion ("GloBE") Rules are a key component of the two-pillar solution and are intended to ensure that income earned by an MNE Group is subject to an effective tax rate of at least 15% in every jurisdiction in which the MNE Group operates.

The GloBE Rules apply to MNE Groups with annual revenue of €750M or more and operate to impose a Top-Up Tax on profits arising in a jurisdiction whenever the effective tax rate, determined on a jurisdictional basis, is below the 15% minimum rate. The jurisdictional effective

tax rate is determined as follows (with the terms “Covered Taxes” and “GloBE Income” specifically defined in the GloBE Rules):

$$\text{Covered Taxes} \div \text{GloBE Income} = \text{Effective Tax Rate}$$

Top-Up Taxes are collected pursuant to specific charging provisions summarized in the GloBE Rules, as follows:

- Income Inclusion Rule (“IIR”) – In circumstances where Top-Up Taxes are imposed on an MNE Group, and the MNE Group has an ultimate and/or intermediate parent entity located in a jurisdiction that has implemented the IIR provisions, Top-Up Taxes (to the extent not previously collected by application of the QDMTT provisions) are generally collected in the IIR jurisdiction.
- Under-Taxed Profits Rule (“UTPR”) – In circumstances where Top-Up Taxes are imposed on an MNE Group, and the MNE Group operates in one or more jurisdictions that have implemented the UTPR provisions, Top-Up Taxes (to the extent not previously collected by application of the QDMTT and/or IIR provisions) are generally collected in the UTPR jurisdictions.
- Qualified Domestic Minimum Top-Up tax (“QDMTT”) – Top-Up Taxes are collected by the jurisdiction in which the low-taxed profit arises.

A number of jurisdictions have announced their intention to implement the IIR, UTPR, and/or QDMTT provisions. At present, it is not anticipated that any countries will implement these provisions prior to 2024.

3. Implications for Bermuda

At present, the Government of Bermuda’s annual operating budget is funded by payroll taxes, duties, and various other taxes and fees. While the current system has historically proven to be a relatively effective and predictable means of funding general Government expenditure, none of

the existing Bermuda taxes meets the requirements to be treated as Covered Taxes for purposes of calculating a jurisdictional effective tax rate for purposes of the GloBE Rules. Accordingly, an MNE Group with a presence in Bermuda could effectively be exposed to double taxation in the jurisdiction:

- First, in the form of its contribution towards the approximately \$1.2B of annual taxes and duties currently collected in Bermuda, all of which contribute to a high cost of living and doing business and none of which serves to reduce the MNE Group's Top-Up Tax payable to other jurisdictions under the GloBE framework.
- Second, in the form of Top-Up Taxes payable to other jurisdictions on profits earned by the MNE Group in Bermuda.

4. Tax Policy Considerations

In response to the expansive changes in the global tax landscape, the Government of Bermuda is considering the implementation of a new corporate income tax regime. The key attributes of the proposed tax regime are summarized as follows:

- The Bermuda corporate income tax should qualify as a Covered Tax for purposes of the GloBE Rules, such that the Bermuda corporate income tax would mitigate the amount of Top-Up Tax payable to other jurisdictions with respect to profits earned in Bermuda.
- The Bermuda corporate income tax should leverage certain key scoping and definitional elements of the GloBE Rules, both to expedite the development of the Bermuda corporate income tax rules and support consistent, predictable global tax outcomes on profits earned in Bermuda.
- The Bermuda corporate income tax should include design features intended to support key policy initiatives of the Government of Bermuda (e.g. maintaining the competitiveness and reputation for quality of Bermuda, reduction in cost of living and doing business, job creation, increasing the residential population, and other initiatives intended to stimulate the broader Bermuda economy).

- The Bermuda corporate income tax legislation should be effective for tax years beginning on or after January 1, 2025.

In arriving at the corporate income tax proposal, the Government considered a number of alternative tax policy actions, including:

(i) Retention of status quo

- a. One potential alternative would be for Bermuda to retain its existing tax system and forego any jurisdictional response to the GloBE Rules, with no intention of mitigating Top-Up Taxes that would be levied by other jurisdictions on profits earned in Bermuda.
- b. Given that the “status quo” approach does nothing to assuage concerns regarding the potential for double taxation in Bermuda and would be anticipated to erode Bermuda’s competitive position, the Government viewed this as an unattractive alternative.

(ii) Implement a QDMTT

- a. Another potential alternative would be for Bermuda to implement a QDMTT, such that any Top-Up Taxes determined under the GloBE Rules on profits earned in Bermuda would be collected in Bermuda (rather than by another jurisdiction).
- b. While there are certain merits to this alternative, the QDMTT provisions provide less flexibility and do not provide an effective platform for the introduction of certain policy-driven design features which are common in many other countries.
- c. For the reasons summarized above, the Government ruled out the introduction of a QDMTT in the near term. It remains possible that a QDMTT may be advisable for Bermuda in the future once the Bermuda corporate income tax has been fully established and is functioning as intended.

5. Bermuda Corporate Income Tax Proposal

The following are the key high-level features of the Bermuda corporate income tax currently being considered by the Government:

Scope

Key foundational definitions in Chapter 1 of the GloBE Rules (e.g., Entity, Group and MNE Group, Constituent Entity, Ultimate Parent Entity, etc.) would be included in the Bermuda corporate income tax rules.

Consistent with the GloBE Rules, the Bermuda corporate income tax will only apply to MNE Groups with revenues of €750M or more.

For MNE Groups with revenues of €750M or more, the Bermuda corporate income tax will apply to each Tax Resident Entity and Bermuda permanent establishment (“PE”) that is a Constituent Entity of such MNE Group.

For the purposes of the Bermuda corporate income tax, Tax Resident Entity and Bermuda PE will be defined as follows:

- Tax Resident Entity - An Entity created or organized in Bermuda, unless the Entity provides sufficient evidence that it is tax resident in another jurisdiction based on the location of its central management and control.
- Bermuda PE - A PE, as such term is defined in Article 5 of the OECD Model Tax Convention, located in Bermuda.

The following Tax Resident Entities and Bermuda PEs would be exempt from the Bermuda corporate income tax:

- (i) Excluded Entities as defined in Article 1.5 of the GloBE Rules (e.g., governmental entities, not-for-profits, pension funds, investment funds).

- (ii) Entities and PEs that are Constituent Entities of an MNE Group that is in the initial phase of its international activity, as defined in Article 9.3 of the GloBE Rules.
- (iii) Entities and PEs that are Constituent Entities of an MNE Group that are less than 80% owned, directly or indirectly, by the Ultimate Parent Entity (by value).

Taxable Income

The Bermuda taxable income (loss) would be determined as follows:

The net income (loss) of each Tax Resident Entity or Bermuda PE should be determined from a financial statement prepared under an acceptable accounting standard consistent with that of its Ultimate Parent Entity, excluding any consolidation adjustments eliminating intra-group transactions. In addition, further analysis should be completed to determine whether other accounting standards (e.g., local adopted accounting bases or Bermuda statutory) meet the requirements of those that are acceptable as a starting point in the determination of taxable income.

- +/- Adjustments to financial statement net income (loss) should generally be consistent with the adjustments summarized in Chapter 3 of the GloBE Rules, including Articles 3.2 and 3.3 (International Shipping Income Exclusion).
- Deductions should be allowed for net operating losses (“NOL”) carried forward.
- +/- Other adjustments which are determined to be appropriate in accordance with prudent and equitable tax policy (e.g., including adjustments intended to facilitate an orderly and fair transition into the new system; industry-specific adjustments and adjustments intended to address inappropriate tax outcomes resulting from the application of specific financial accounting standards to certain transactions or industries).

For purposes of determining taxable income (loss) it is currently anticipated that:

- Cross-border transactions between members of the MNE Group will generally be at arm's length.
- Taxable income (loss) of a Tax Resident Entity will generally be determined based on its worldwide income (loss). However, taxable income (loss) of a non-Bermuda PE may be excluded from the calculation of taxable income (loss) of a Tax Resident Entity.
- The principles of Article 7 of the OECD Model Tax Convention shall be applied in determining the taxable income (loss) of a Bermuda PE.
- Taxable income (loss) of a flow-through entity will be allocated in a manner consistent with Article 3.5 of the GloBE Rules.

Tax Calculation and Rate

The Bermuda corporate income tax would be equal to Bermuda taxable income (loss) (as defined above) multiplied by the corporate income tax rate, with the product reduced by applicable foreign tax credits and qualified refundable tax credits ("QRTCs").

The Bermuda corporate income tax rate would be established at a level which:

- is unlikely to result in an overall effective tax rate on profits earned in Bermuda in excess of 15%, and
- mitigates the potential for Top-Up Tax payable to other jurisdictions on profits earned in Bermuda.

The Government of Bermuda will conduct further analysis to determine the appropriate corporate income tax rate, but currently believes a rate within a range of 9 to 15% may be appropriate to address the policy considerations previously noted.

The Bermuda corporate income tax would be reduced by foreign taxes to mitigate the potential for double taxation of profits earned in Bermuda (e.g., to the extent that profits earned in Bermuda are subject to both foreign taxes and Bermuda corporate income taxes).

- The types of non-Bermuda taxes that would be creditable foreign taxes include income taxes (federal, state, and local), withholding taxes, U.S. federal excise tax on insurance and reinsurance premiums, and other taxes collected in lieu of an income tax.
- A foreign tax credit may be permitted for foreign income taxes imposed on a direct or indirect parent of a Tax Resident Entity under another jurisdiction's controlled foreign corporation ("CFC") regime, equal to the CFC taxes paid or accrued by the direct or indirect parent on Bermuda profits.
- The allowable credit would be expected to equal the amount of the current and deferred taxes of each Tax Resident Entity or Bermuda PE included in the preparation of the consolidated financial statements of the Ultimate Parent Entity consistent with the requirements above.

It is expected that the Bermuda corporate income tax regime would provide for QRTCs as defined in the GloBE Rules. The QRTCs should be developed to support key policy initiatives of the Government of Bermuda. For example, QRTCs should be designed to encourage local substance (e.g., local recruitment and training incentives, capital investments in Bermuda infrastructure and improvements, and innovation (e.g., R&D)).

Administrative Considerations

The Bermuda corporate income tax will adopt rules to ensure proper administration. The Government is considering rules such as the following:

- All Tax Resident Entities and Bermuda PEs which are subject to the Bermuda corporate income tax should be required to submit tax reporting on an annual Bermuda corporate income tax return.
- The Bermuda corporate income tax return filing should generally be prepared on a consolidated basis (i.e., including all Tax Resident Entities and Bermuda PEs in the MNE Group which are subject to the Bermuda corporate income tax). However, a Tax Resident

Entity or Bermuda PE should be allowed to elect to file a separate Bermuda corporate income tax return.

- The Bermuda corporate income tax return should be due 12 months after the end of the relevant financial period for which the return is being filed.
- A Bermuda flow-through entity should not be required to file a Bermuda corporate income tax return unless the flow-through Entity is the Ultimate Parent Entity of an MNE Group, in which case a tax return filing will be required (such filing should consider adjustments to Bermuda taxable income consistent with those summarized in Article 7.1 of the GloBE Rules).
- A non-Bermuda flow-through entity operating in Bermuda through a PE should be required to file a Bermuda corporate income tax return, but only in respect of its Bermuda PE.
- While the liability for Bermuda corporate income tax would be joint and several amongst all Tax Resident Entities and Bermuda PEs in the MNE Group which are subject to the Bermuda corporate income tax, any such Tax Resident Entity or Bermuda PE may pay the Bermuda corporate income tax.
- Estimated corporate income tax payments on a regular basis (e.g., quarterly) through the tax year should be considered.

Tax Assurance Certificates

Upon introduction of the GloBE Rules in other jurisdictions, it is probable that the current Tax Assurance Certificates held by Tax Resident Entities or Bermuda PEs which are subject to the Bermuda corporate income tax will cease to be economically beneficial, since any tax otherwise forgone will most likely become due in other jurisdictions (pursuant to the application of the GloBE Rules) with no effective reduction to the overall tax liability of these entities and PEs.

The Bermuda Government, as part of its implementation of a Bermuda corporate income tax, is considering if amendments are necessary to the existing Tax Assurance Certificate regime to

ensure that tax may be collected in Bermuda from Tax Resident Entities or Bermuda PEs which are subject to the proposed Bermuda corporate income tax regime.

The Tax Assurance Certificates should continue to be valid for those entities which are not subject to the Bermuda corporate income tax.

6. Consultation

This First Public Consultation is intended to be the first of a series, with two of those consultations to take place in 2023. For this First Public Consultation we are inviting replies from interested parties to any or all the below high-level questions with a view to gaining an understanding of the initial responses to the proposals.

Respondents are also invited to respond on issues not covered in this paper but which may otherwise be important to them, noting that a more detailed Second Public Consultation will be held later in the year to cover the specific aspects of the proposals such as how taxable income and creditable taxes are computed, to address detailed questions as to scope, and to address transitional matters.

The consultation period will run from 8th August 2023 to **8th September 2023**. Submissions received after this date may not be considered.

Consultation Paper Responses should be submitted by email to: cjanderson@gov.bm. Respondents should include “*Introduction of Corporate Income Tax in Bermuda*” in the subject box.

Media Enquiries should be addressed to: hsadams@gov.bm.

7. Consultation Questions

1. Are there any aspects of the proposed scope of the Bermuda corporate income tax and the determination of which entities are within the scope that present concerns or require further clarification?
2. Are there any proposed aspects of the definition of tax residency which require further clarification or present concerns?
3. Do you have any comments on the proposed effective date of January 2025?
4. Do you have any general comments or suggestions regarding the computation of Bermuda taxable income? Are there any specific comments regarding the accounting standards to be used as the starting point for the calculation of Bermuda taxable income or other adjustments in the calculation of Bermuda taxable income?
5. Do respondents have recommendations as to the appropriate rate of corporate income tax?
6. Do you have any comments or suggestions regarding possible QRTCs to be incorporated into the Bermuda corporate income tax regime?
7. Do you have any views regarding the administrative aspects of reporting and payment obligations under the Bermuda corporate income tax regime?
8. Are there simplification options which should be considered for the Bermuda corporate income tax regime?
9. Are there aspects of the current tax regime in Bermuda that should be changed to ensure Bermuda's competitiveness?
10. Are there any other considerations of significance that should be considered in the development and implementation of a Bermuda corporate income tax?

