Barbados amends legislation to comply with BEPS Action 5
PM’s announced legislative changes re: BEPS Action 5

Background

Barbados is one of 102 countries that have signed on to the Organization of Economic Cooperation and Development’s (OECD) Inclusive Framework on Base Erosion and Profit shifting (BEPS). As such, it has committed to implementing Action 5, one of the four minimum standards of the OECD’s Action plan to curtail BEPS worldwide.

As a member of the inclusive framework, Barbados was subject to a review process. In October 2017, following that process, the OECD’s Forum on Harmful Tax Practices (FHTP) determined that a number of incentive regimes used by the island to position itself as an international and financial services centre were “potentially harmful”. In effect, we were found to be non-compliant with Action 5.

To avoid being classified as “harmful”, the island was required to abolish or amend several pieces of legislation. In response, the Government has proposed a number of legislative amendments. These were announced in Parliament earlier today by Prime Minister, the Rt. Hon Mia Mottley.

We are pleased to share these with you.

Amendments

Corporation tax rates

For fiscal years beginning 1 January 2019, all corporate entities - except those that are grandfathered - will be taxed on a sliding scale as follows:

<table>
<thead>
<tr>
<th>Taxable Income (BBD)</th>
<th>Rate %</th>
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<tr>
<td>Up to $1 million</td>
<td>5.50%</td>
</tr>
<tr>
<td>&gt; $1 million to &lt;= $20 million</td>
<td>3.00%</td>
</tr>
<tr>
<td>&gt; $20 million to &lt;= $30 million</td>
<td>2.50%</td>
</tr>
<tr>
<td>&gt; $30 million</td>
<td>1.00%</td>
</tr>
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Tax Losses
For fiscal years beginning 1 January 2019, tax losses may only be offset against 50% of assessable income.

Foreign Currency Earnings Credit
For fiscal years beginning on 1 January 2019, the tax credit for foreign currency available under section 12H of the Income Tax Act in respect of qualifying construction projects and professional services will be abolished, and the corporation tax rates above will apply.

Foreign Tax Credit
Barbados entities can continue to claim a credit in respect of foreign taxes suffered on income which is subject to tax in Barbados. However, this credit must not reduce the tax payable by an entity to less than 1% of its assessable income.

International Business Companies and Societies with Restricted Liability
As of 31 December 2018 the International Business Companies Act will be abolished. With effect from that same date, the Societies with Restricted Liabilities Act will be amended to remove references to International Societies with Restricted Liability.

As of 1 January 2019 all IBCs and ISRLs that are not grandfathered will automatically by operation of law become Regular Barbados Companies and Societies.

All Intellectual Property (IP) IBCs and ISRLs licensed as at 30 June 2018, in relation to IP assets held as at 17 October 2017, will qualify for grandfathering to 30 June 2021. All grandfathered entities will be required to renew their international business licences.

All non-IP IBCs and ISRLs licensed before 17 October 2017 will qualify for grandfathering to 30 June 2021. Entities which obtained new licenses after that date will be transitioned into the new regime and will be subject to corporation tax according to the sliding scale outlined above.

Insurance sector
The Exempt Insurance Act will be repealed and the Insurance Act will be amended to remove the provisions for the entities known as Qualified Insurance Companies. Consequently, all insurance entities will now fall under the Insurance Act.

Corporate entities carrying on business in the international insurance sector will be grandfathered under the same rules for non-IP entities above until 30 June 2021. The Insurance Act will be amended to provide for three classes of licences:

- Class 1 will include insurance companies insuring related party risks. These will pay a licence fee and be taxed at 0%.
- Class 2 will include all other insurance companies which insure and/or reinsure risk of third parties. These will be taxed at a rate of 2.0% on taxable income.
- Class 3 will include brokers, managers, etc. These will also be taxed at 2.0% on taxable income.

Allowances
The only allowances provided under the Income Tax Act that will be permitted with effect from the fiscal year beginning 1 January 2019 will be:

- Annual capital allowances
- Renewable energy allowances
- Research and development allowances

Foreign Currency Permit
As of 1 January 2019 all those entities which earn 100% of their income in foreign currency will be entitled to receive a Foreign Currency Permit granted by the Ministry of International Business. This will afford them some of the same benefits currently enjoyed by IBCs and ISRLs. Further guidance on the operation of this Permit will be forthcoming.
International Financial Services Act (IFSA)

The IFSA will be repealed and the Financial Institutions Act (FIA) will be amended to provide for those institutions - to be licensed - conducting business that generates solely foreign exchange (Foreign Currency Earnings Banks). The companies formerly regulated under the International Financial Services Act will now come under the Financial Institutions Act.

There will now be four classes of licences under the Financial Institutions Act:

- Class 1 - Commercial Banks
- Class 2 - Trust Companies, Finance Companies, Merchant Banks and money or value transmission service providers
- Class 3 - Financial Holding Companies
- Class 4 - Foreign Currency Earning Banks

Shipping Act

The Shipping Act will be amended to remove two sections that constituted ring-fencing, but the Ministry of International business is currently working on new replacement legislation.

The International Trust Act

The International Trust Act will be renamed the Trusts (Miscellaneous Provisions) Act and all elements of ring-fencing will be removed. The Government will also make improvements to the country's trust regime, and these will be made known shortly.

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