2023/12/12

OBJECTS AND REASONS

This Bill would amend the *Income Tax Act*, Cap. 73 to make provision for the reform of corporation tax in Barbados and other related matters.

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Arrangement of Sections

1. Short title

2. Amendment of section 10 of Cap. 73

3. Amendment of section 43 of Cap. 73

4. Insertion of new section 46G into Cap. 73

5. Insertion of new section 64B.1 into Cap. 73

6. Insertion of new sections 65H and 65I into Cap. 73

7. Amendment of section 67 of Cap. 73

8. Insertion of new Part IVA into Cap. 73

9. Amendment of section 85 of Cap. 73

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BARBADOS

A Bill entitled

An Act to amend the *Income Tax Act*, Cap. 73 to make provision for the reform of corporation tax in Barbados and other related matters.

ENACTED by the Parliament of Barbados as follows:

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Short title

1. This Act may be cited as the *Income Tax (Amendment) (No. 3) Act, 2023*.

Amendment of section 10 of Cap. 73

2. ***Section 10(1) of the Income Tax Act, Cap. 73, in this Act referred to as the principal Act, is amended by inserting immediately after paragraph (s) the following:***

> *"(t)* amounts paid to a tertiary institution approved by the Minister by order for the purpose of enabling the institution to undertake research and development activities or engage in the teaching of the research and development activities as defined in section 65I.".

Amendment of section 43 of Cap. 73

3. ***Section 43 of the principal Act is amended by inserting immediately after subsection 7 the following:***

"(8) With effect from income year 2024, commencing 1st January, 2024, the tax payable by a company upon its taxable income shall be 9 per cent.

(9) Notwithstanding subsection (8), with effect from income year 2024, commencing 1st January, 2024

(a) the tax payable by a company,

(i) the gross income of which is $2 000 000 or less; and

(ii) which is registered as an approved small business under the *Small Business Development Act*, Cap. 318C,

shall be 5.5 per cent upon its taxable income;

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(b) the tax payable by a company, which is part of a MNE group, the ultimate parent entity or intermediate parent entity of which is located in a jurisdiction that has not implemented an Income Inclusion Rule or an Under Taxed Profits Rule or, which is not subject to an Under Taxed Profits Rule, shall be as follows:

(i) 5.5 per cent on all taxable income up to $1 000 000;

(ii) 3 per cent on all taxable income exceeding $1 000 000 but not exceeding $20 000 000;

(iii) 2.5 per cent on all taxable income exceeding $20 000 000 but not exceeding $30 000 000;

(iv) 1 per cent on all taxable income exceeding $30 000 000;

(c) the tax payable by a company on income earned from international shipping shall be as follows:

(i) 5.5 per cent on all taxable income up to $1 000 000;

(ii) 3 per cent on all taxable income exceeding $1 000 000 but not exceeding $20 000 000;

(iii) 2.5 per cent on all taxable income exceeding $20 000 000 but not exceeding $30 000 000;

(iv) 1 per cent on all taxable income exceeding $30 000 000.

(10) For the avoidance of doubt, the tax payable pursuant to subsections (8) and (9) shall only be applicable to the portion of the taxable income which is earned after 1st January, 2024.".

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Insertion of new section 46G into Cap. 73

4. ***The principal Act is amended by inserting immediately after section 46F, the following:***

"Amendment of Division S

46G.(1) The Minister may by order amend the rate of tax as specified in Division S.

(2) An order referred to in subsection (1) is subject to negative resolution.".

Insertion of new section 64B.1 into Cap. 73

5. ***The principal Act is amended by inserting immediately after section 64B the following:***

"Prepayment of corporation tax

64B.1.(1) For income year 2024, commencing 1st January, 2024, a company to whom this subsection applies shall pay to the Commissioner, on or before the 15th January, 2024, and thereafter no later than the 15th day of each calendar month a prepayment of corporation tax an amount equal to one-twelfth of the tax payable on its taxable income calculated in accordance with subsection (4).

(2) Subsection (1) shall only apply to any company which is part of a MNE group, the ultimate parent entity or intermediate parent entity of which is located in a jurisdiction that has implemented an Income Inclusion Rule.

(3) With effect from income year 2025 and every subsequent income year, every company shall pay to the Commissioner no later than the 15th day of each calendar month as a prepayment of corporation tax an amount equal to one-twelfth of the tax

Note: UK legislation will commence from Jan 1, 2024 – including the adoption of the IIR.

We are confirming that Canada will do the same (will know on Dec 13, 2024).

If Canada does not adopt then we will need to use the €750,000,000 threshold in order to capture the prepayments from Jan 1, 2024.

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payable on its taxable income calculated in accordance with subsection (4).

(4) For the purposes of subsections (1) and (3) the taxable income of any company for an income year shall be taken to be the taxable income for the income year before the preceding income year as disclosed in its return filed in accordance with section 52.

(5) The prepayments shall be calculated based on the taxable income multiplied by the applicable corporation tax rate as specified in section 43, net of tax credits other than the tax credits referred to in sections 65H and 65I, divided by 12.

(6) The balance of tax payable under subsections (1) and (3), if any, shall be payable, on or before the date that the company is due to file a return as required under section 52.

(7) Where a company referred to in subsections (1) and (3)

(a) was not liable to tax in the year preceding the income year;

(b) is of opinion that the taxable income in respect of the current income year may be less than the taxable income for the income year before the preceding income year;

that company shall, not later than 15th July apply in writing to the Commissioner for a determination or reduction, as the case may be, of the amount payable under subsections (1) or (3).

(8) On an application made under subsection (7), the Commissioner may,

(a) in the case of an application under paragraph *(a)* of subsection (7), determine; or

(b) in the case of an application under paragraph *(b)* of subsection (7), if he is satisfied that the taxable income in

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respect of the current income year is likely to be less than that of the preceding income year, reduce;

the amount payable under subsections (1) or (3).

(9) This section shall not apply to a company referred to in section 43(9)*(a)*, but such company shall pay the corporation tax payable under section 43(9)*(a)* in accordance with section 64B.".

Insertion of new sections 65H and 65I into Cap. 73

6. ***The principal Act is amended by inserting immediately after section 65G the following:***

"Jobs credit

65H.(1) With effect from income year 2024, a jobs credit may be claimed by an eligible company, at the credit amount specified in subsection (2), that incurs eligible payroll expenditures after 1st January, 2024, where that company engages the number of employees specified in subsection (2).

(2) Pursuant to subsection (1) the number of employees and the jobs credit amount is set out as follows:

(a) for up to 50 employees, a credit equal to 25 per cent of eligible payroll expenditure;

(b) 51 to 100 employees, a credit equal to 50 per cent of eligible payroll expenditure;

(c) 101 to 150 employees, a credit equal to 75 per cent of eligible payroll expenditure;

(d) more than 151 employees, a credit equal to 100 per cent of eligible payroll expenditure;

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(3) An eligible company shall not be permitted to include in a claim for a jobs credit expenditure that was not incurred in the income year to which the eligible payroll expenditure relates.

(4) An eligible company shall not receive a jobs credit

(a) unless that company has paid

(i) national insurance contributions payable for periods before 1st January, 2024;

(ii) amounts deducted or withheld from emoluments to employees in respect of their income; or

(b) where the eligible payroll expenditure can reasonably be considered by the Commissioner to be excessive and unreasonable in relation to the company's business.

(5) Pursuant to subsection 5*(b)*, eligible payroll expenditure shall not be deemed excessive and unreasonable if it is an ordinary and necessary business expense incurred primarily for producing assessable income.

(6) Where a jobs credit becomes payable to a company, the Commissioner may

(a) in the first instance, provide a refundable offset of the amount to be paid by the Commissioner against

(i) the proportion of national insurance contributions payable by the employer;

(ii) corporation tax payable; and

(iii) value added tax payable,

and the surplus, if any, shall be refunded to the company as cash or cash equivalent;

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(b) in the second instance, satisfy the jobs credit in the form of bonds, debenture or other government debt instruments and the surplus, if any, shall be refunded to the company as cash or cash equivalent; and

(c) if *(a)* or *(b)* is not appropriate, refund to the company the jobs credit as cash or cash equivalent,

within 4 years from the date in which the company satisfies the condition for receiving the credit.

(7) Where the Commissioner seeks to satisfy the jobs credit in the form of bonds pursuant to subsection (7)*(b)*, he shall first seek to obtain the consent of the company to do so and where the company

(a) gives its consent to the receipt of the jobs credit in the form of bonds, the bonds shall be issued in the form and on such terms and conditions as the Minister determines; or

(b) does not give its consent, the Commissioner shall pay the jobs credit as cash

within 4 years from the date in which the company satisfies the condition for receiving the credit.

(8) The jobs credit rate, in relation to the bonds issued pursuant to subsection (8) and as determined by reference to subsection (2),

(a) is the rate which the Minister estimates will permit the issuance of the bonds with a specified maturity or redemption date without discount; and

(b) shall be determined as of the first day on which the bond is issued.

(9) For the purposes of this section,

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"cash equivalent" includes cheques and anything else treated as a cash equivalent under the financial accounting standard used in the consolidated financial statements;

"eligible company" means a company that

(a) carries on business, in an income year, in the following sectors:

(i) financial technology, provided that it is the principal business of the company;

(ii) wholesale distribution and trading without physical inventory or storage, not including for retail sale;

(b) employs the number of employees referred to in subsection (2); and

(c) is subject to tax under this Act;

"eligible payroll expenditure" means the expenditure for salary, wages, overtime remuneration, bonus, commission, retirement plan benefits and retiring allowances, medical insurance, benefit of a rent free residence or any sum paid in lieu thereof, directors' fees payable to eligible employees;

"employee" means an individual who has entered into or, works under, or where the employment has ceased worked under a contract of employment and that individual must be working or worked fulltime for a minimum period of 12 months;

"jobs credit" means a credit claimed on the eligible payroll expenditure by an eligible company in an income year.

Research and development credit

65I.(1) With effect from income year 2024, a company may claim a research and development credit of 50 per cent of eligible expenditure incurred after 1st January, 2024 in relation to qualifying research and development activities.

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(2) A company shall not be permitted to include in a claim for a research and development credit on eligible expenditure on qualified research and development activities not incurred in the income year to which the expenditure relates.

(3) A company may qualify for a research and development credit where the company is

(a) subject to corporation tax; and

(b) carrying out qualifying research and development activities.

(4) Qualified research and development activities for the purposes of this section shall be systematic, investigative or experimental activities which

(a) are carried on wholly or mainly in Barbados;

(b) involve innovation and technical risk; and *(c)* are carried on for the purpose of

(i) acquiring new knowledge with a view to that knowledge having a specific commercial application;

(ii) developing enhancing, protecting, maintaining, and exploiting intellectual property assets;

(iii) creating new or improved materials, products, devices, processes or services.

(5) Qualified research and development activities for the purposes of this section shall not include any of the activities specified in section 12D and Part I of the *Second Schedule*.

(6) Where a credit becomes payable to the company, the Commissioner may

(a) in the first instance, provide a refundable offset of the amount to be paid by the Commissioner against

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(i) the proportion of national insurance contributions payable on behalf employed persons;

(ii) corporation tax payable; and

(iii) value added tax payable, and the surplus, if any, shall be refunded to the company as cash or cash equivalent;

(b) where there is no refundable offset as referred to in *(a),* refund to the company the research and development credit as cash or cash equivalent,

within 4 years from the date in which the company satisfies the condition for receiving the credit.

(7) A company shall not receive a research and development credit where the eligible expenditure can reasonably be considered by the Commissioner to be excessive and unreasonable in relation to the company's business.

(8) Pursuant to subsection (7), an eligible expenditure shall not be deemed excessive and unreasonable if it is an ordinary and necessary business expense incurred primarily for producing accessible income.

(9) Where the Commissioner determines that

(a) the dominant purpose of a company making a claim under subsection (1) is to

(i) enable it to get the refundable offset referred to in subsection (6)*(a)*; or

(ii) get a refund pursuant to subsection (6)*(b)*; or

(b) a company has at any time entered into an arrangement or engaged in a transaction

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(i) which lacks any substantial business purpose, other than increasing the credit to which it or any other company may claim under subsection (1); or

(ii) to artificially increase the credit that may be claimed by it or any other qualified company under subsection (1),

any tax benefit obtained from subsection (6) can be disallowed.

(10) The expenditure, in this section, shall not be taken into account for the purposes of determining any other credit under section 65H.

(11) For the purposes of this section,

"cash equivalent" includes cheques and anything else treated as a cash equivalent under the financial accounting standard used in the consolidated financial statements; "eligible expenditure" means

(a) a sum paid to another person, not being a person connected with the company, in order that such person may carry out research and development activities related to the company's trade;

(b) non-capital expenditure incurred by a company which is

(i) an amount equal to 50 per cent of the aggregate of the amounts of such part of the emoluments paid by the company to employees of the company engaged in the carrying out of research and development activities related to the company's trade as is laid out for the purposes of those activities; and

(ii) expenditure incurred by the company on materials or goods used solely by the company in the carrying out of research and development activities related to the company's trade,

but where expenditure referred to in paragraphs *(b)* (i) and (ii) is incurred by a company which is a member of a group on behalf of another company which is a member of the group, the other

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company shall be treated for the purposes of the corporation tax as having incurred the expenditure and the first mentioned company shall be treated for those purposes as not having incurred the expenditure;

"employee" means an individual who has entered into or, works under, or where the employment has ceased worked under a contract of employment and that individual must be working or worked fulltime for a minimum period of 12 months; "research and development activities" means

(a) an activity undertaken in the field of medical sciences, namely

(i) basic medicine, including anatomy, cytology, physiology, genetics, pharmacy, pharmacology, toxicology, immunology and immunohaematology, clinical chemistry, clinical microbiology and pathology;

(ii) clinical medicine, including anaesthesiology, paediatrics, obstetrics and gynaecology, internal medicine, surgery, dentistry, neurology, psychiatry, radiology, therapeutics, otorhinolaryngology and ophthalmology, or

(iii) health sciences, including public health services, social medicine, hygiene, nursing and epidemiology;

(b) an activity undertaken in the field of engineering and technology, namely

(i) civil engineering, including architecture engineering, building science and engineering, construction engineering, municipal and structural engineering and other allied subjects;

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(ii) electrical engineering, electronics, including communication engineering and systems, computer engineering (hardware) and other allied subjects;

(iii) other engineering sciences such as chemical, aeronautical and space, mechanical, metallurgical and materials engineering, and their specialised subdivisions, forest products, applied sciences such as geodesy and industrial chemistry, the science and technology of food production, specialised technologies of interdisciplinary fields, for example, systems analysis, metallurgy, mining, textile technology and other allied subjects;

(c) an activity undertaken in the field of natural sciences, namely

(i) mathematics and computer sciences, including mathematics and other allied fields, computer sciences and other allied subjects and software development;

(ii) physical sciences, including astronomy and space sciences, physics, and other allied subjects;

(iii) chemical sciences, including chemistry and other allied subjects;

(iv) earth and related environmental sciences, including geology, geophysics, mineralogy, physical geography and other geosciences, meteorology and other atmospheric sciences, including climatic research, oceanography, vulcanology, palaeoecology, and other allied sciences; or

(v) biological sciences, including biology, botany, bacteriology, microbiology, zoology, entomology, genetics, biochemistry, biophysics and other

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allied sciences, excluding clinical and veterinary sciences;

(d) an activity undertaken in the field of financial technology namely

(i) code for new financial technologies and financial software applications or platforms;

(ii) functional enhancements and new capabilities for existing applications, designed to create a competitive advantage;

(iii) flexible, high-quality, and scalable rule engines to manage and automate complex business structures and data models;

(iv) specialized technologies which seek to enhance the safety, security, and efficiency of the financial service industry, such as artificial intelligence, voice recognition applications, or liveliness recognition software;

(v) cybersecurity enhancements for existing financial technology applications.".

Amendment of section 67 of Cap. 73

7. ***Section 67 of the principal Act is amended in***

(a) ***in subsection (2) by inserting immediately after the words "64B" the words*** "64B.1";

(b) ***in subsection (3) by inserting immediately after the words "64B" the words*** "64B.1"; and

(c) ***in subsection (3A) by inserting immediately after the words "64B" the words*** "64B.1".

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Insertion of new Part IVA into Cap. 73

8. ***The principal Act is amended by inserting immediately after Part IV the following:***

"PART IVA

ADMINISTRATIVE DIRECTIONS AND GUIDELINES

Administrative Directions and Guidelines

83B. The Commissioner may issue administrative directions and guidelines, generally, to provide information and guidance in relation to

(a) compliance with this Act or any statutory instruments made thereunder; or

(b) double taxation agreements, multilateral instruments on taxation, bilateral agreement or any international agreement related to taxation.".

Amendment of section 85 of Cap. 73

9. ***Section 85 of the principal Act is amended by inserting, in the appropriate alphabetical order, the following:***

" "constituent entity" means

(a) any entity that is part of an MNE group; and

(b) any permanent establishment of an entity that is part of an MNE group referred to in paragraph *(a)*;

"entity" means a company, a partnership, a trust or any other arrangement, association, organization or body for which

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separate financial accounts are prepared, but shall not include central, or their administration or agencies that carry out government functions;

"consolidated financial statements" means financial statements, prepared by an entity in accordance with an acceptable financial accounting standards, in which the assets, liabilities, income, expenses and cash flows of the members of a group are presented as those of a single economic entity;

"global minimum tax" means minimum rate of tax on corporate income internationally agreed upon and accepted by individual jurisdictions; "group" means

(a) a collection of entities which are related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds or on the grounds that it is held for sale; or

(b) an entity that has one or more permanent establishments, provided that it is not part of another group as defined in paragraph *(a)*;

"Income Inclusion Rule" or "IIR" means a set of rules that are implemented in the domestic law of a jurisdiction, provided that

such a jurisdiction does not provide any benefits that are related to those rules, and that

(a) requires the parent entity of an MNE group or of a large-scale domestic group to compute and pay its allocable share of topup tax in respect of the low-taxed constituent entities of that group; and

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(b) is administered in a manner that is consistent with the OECD Model Rules;

"intermediate parent entity" means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE group or large-scale domestic group and that does not qualify as an ultimate parent entity, a partially-owned parent entity, a permanent establishment or an investment entity;

"international shipping" means the operation of a ship owned or leased by an entity that is engaged primarily in transporting passengers or goods in international traffic;

"MNE" means Multinational Enterprise;

"MNE group" means any group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity;

"OECD" means Organisation for Economic Cooperation and Development;

"OECD Model Rules" means The Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two);

"parent entity" means an ultimate parent entity which is not an excluded entity, an intermediate parent entity or a partially-owned parent entity;

"permanent establishment" means

(a) a company with a fixed place of business through which the business is wholly or partly carried on, including

(i) office;

(ii) factory;

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(iii) workshop

(iv) warehouse;

(v) quarry or place of extraction of natural resources; or

(b) where the company does not have a fixed place of business, the principal place in which the company's business is conducted;

"Qualified Domestic Minimum Top-up Tax" or "QDMTT" means a minimum top-up tax or a top-up tax implemented in the domestic law of a jurisdiction by way of a set of rules, provided that such a jurisdiction does not provide any benefits related to those rules and those rules are implemented and administered in a manner that is consistent with the OECD Model Rules;

" Under Profits Tax Rule" or "UPTR" means a set of rules implemented in the domestic law of a jurisdiction, provided that such a jurisdiction does not provide any benefits that are related to those rules, and that

(a) allows that jurisdiction to compute and collect its allocable share of top-up tax of an MNE group that was not charged under a QDMTT or IIR in respect of a low-taxed constituent entity of that MNE group;

(b) administered in a manner that is consistent with the OECD Model Rules;

"ultimate parent entity" means;

(a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it; or

(b) the entity of a group as defined in paragraph *(b)* of the definition of "group".".

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