



Changes to Annual Declarations for all Entities

Companies, Permit Companies, LLCs, Exempted Partnerships, Exempted Limited Partnerships, and Overseas Partnerships are required to provide information which is relevant to the administration of the Corporate Income Tax Act, 2023 ("CIT Act").

In order to facilitate the collection of this information the annual declaration forms have been amended.

Following are specific instructions and guidance relevant to the completion of the questions in the annual declaration related to the CIT Act. Except as noted below, all terms shall have the meaning prescribed in the CIT Act and all section references are to the CIT Act.

Q1: Is the entity a Bermuda Constituent Entity during the relevant fiscal year?

This is a threshold scoping question intended to identify entities which will be subject to the CIT Act.

- An entity which does not meet the requirements to be treated as a Bermuda Constituent Entity would not be subject to Bermuda corporate income tax and would select a response of "No" to Q1, following which the entity will be directed to provide the information requested in Q2 below.
- An entity which meets the requirements to be treated as a Bermuda Constituent Entity would be subject to Bermuda corporate income tax and would select a response of "Yes" to Q1, following which the entity will be directed to provide the information requested in Q3 below.

Specific technical provisions in the CIT Act which may be required to determine whether an entity meets the requirements to be treated as a Bermuda Constituent Entity are summarized in further detail below.

Relevant Fiscal Year

For purposes of responding to Q1 and Q2, the "relevant fiscal year" shall be the entity's fiscal year which begins in the calendar year in which the annual declaration is due. The term "fiscal year" refers to the accounting period with respect to which the ultimate parent entity of the MNE Group prepares its consolidated financial statements.

Example 1

Entity A has a fiscal year which begins January 1 and ends December 31 and is filing an annual declaration which is due by January 31, 2025.

Entity A will respond to Q1 based on whether it will be a Bermuda Constituent Entity during its fiscal year beginning January 1, 2025 (i.e.

the fiscal year which begins in the calendar year (2025) in which this annual declaration is due).

Example 2

Entity B has a fiscal year which begins April 1 and ends March 31 and is filing an annual declaration which is due by January 31, 2025.

Entity B will respond to Q1 based on whether it will be a Bermuda Constituent Entity during its fiscal year beginning April 1, 2025 (i.e. the fiscal year which begins in the calendar year (2025) in which this annual declaration is due).

Q2: Select a reason why the entity will not meet the requirements to be treated as a Bermuda Constituent Entity during the fiscal year.

Q2 is required to be completed by entities which have selected a response of “No” to Q1. An entity completes Q2 by selecting one of the options a. through g. summarized below.

An entity may be described by more than one of the listed options. In this circumstance, any one of the options which are applicable to the entity may be selected.

a. Entity is not a constituent entity of an MNE group which had annual revenue of more than EUR 750 million during the fiscal year

As a general matter, an entity will not be treated as a Bermuda Constituent Entity unless both of the following requirements are met for a fiscal year:

- The entity is a constituent entity of a multinational group of entities (“MNE group”).
- The MNE group reported annual revenue of at least EUR 750 million in its consolidated financial statements for at least two of the four immediately preceding fiscal years.

In many cases, this general principal may be the simplest manner for identifying an entity that does not meet the requirements to be treated as a Bermuda Constituent Entity (e.g. where the entity is not a constituent entity of an MNE group, or the MNE group of which the entity is a constituent entity has not met the revenue threshold).

b. Entity is incorporated, formed, or organized in Bermuda but is not a Bermuda Tax Resident Entity and does not have a Bermuda Permanent Establishment

An entity that is incorporated, formed or organised in Bermuda and which:

- does not meet the requirements to be treated as a Bermuda Tax Resident Entity (i.e. due to the fact the entity is tax resident in another jurisdiction under the laws of that jurisdiction based on its location of management and control), and
- does not have a Bermuda Permanent Establishment,

will not be treated as a Bermuda Constituent Entity.

c. Entity is incorporated, formed, or organized in a foreign jurisdiction and does not have a Bermuda Permanent Establishment

A non-Bermuda entity (e.g. Permit Company, Overseas Partnership) will only answer “Yes” to Q1 to the extent it is the main entity of a Bermuda Permanent Establishment.

d. Entity qualifies for the limited international footprint provisions of the CIT Act

An MNE Group which is comprised of constituent entities located in six or fewer jurisdictions and which meets certain other criteria described in section 13 may be regarded as out of scope of the CIT Act for certain periods.

e. Entity is an excluded entity as defined in the CIT Act

Section 10 describes various “excluded entity” types. An entity which meets the requirements to be treated as an excluded entity and has not elected to be treated as a non-excluded entity under section 10(3) shall not be treated as a Bermuda Constituent Entity.

f. Entity is less than 80% owned by the ultimate parent entity and has not made an election pursuant to section 9(3) of the CIT Act

An entity that is less than 80% owned (by value), directly or indirectly, by the ultimate parent entity of its In Scope MNE Group shall not be treated as a Bermuda Constituent Entity unless it elects to be treated as a Bermuda Constituent Entity pursuant to section 9(3).

g. Entity is an incorporated segregated account which has made an election pursuant to section 15(6)(b) of the CIT Act

An incorporated segregated account is generally treated as a separate entity for purposes of the CIT Act. However, an incorporated segregated account may elect pursuant to section 15(6)(b) to not be treated as a separate entity from its incorporated segregated account company. To the extent such an election is made, the incorporated segregated account would not be treated as a separate Bermuda Constituent Entity.

Q3: Information with respect to the entity’s Representative BCE.

An entity that responded “Yes” to Q1 will need to provide additional information with respect to a representative Bermuda Constituent Entity (“Representative BCE”). This information is requested as a means of identifying all Bermuda Constituent Entities which are members of the same MNE Group.

Key requirements relevant to the designation of the Representative BCE are summarized as follows:

- (i) The Representative BCE must be a Bermuda Constituent Entity.
- (ii) The Representative BCE must have a company or partnership number issued by the Registrar
- (iii) All Bermuda Constituent Entities of an In Scope MNE Group must select the same Representative BCE (and the same point(s) of contact for such Representative BCE).

- (iv) The Representative BCE does not need to be the ultimate parent entity or the Filing Bermuda Constituent Entity (as such term is defined in the CIT Act), nor is it required to be authorized to act on behalf of any Bermuda Constituent Entities.
- (v) Subject to the requirements above, the entity filing the annual declaration may designate itself as the Representative BCE.

Definitions

Key definitions relevant to the completion of Q1 – Q3 are summarized as follows:

Bermuda Constituent Entity

A Bermuda Constituent Entity is:

- a Bermuda Tax Resident Entity, or
- a Bermuda Permanent Establishment

that is a constituent entity of an In Scope MNE Group.

Bermuda Tax Resident Entity

An entity that is incorporated, formed or organised in Bermuda unless the entity is tax resident in another jurisdiction under the laws of that jurisdiction based on its location of management and control.

Bermuda Permanent Establishment

A fixed place of business in Bermuda through which the business of an entity not otherwise incorporated or formed in Bermuda is wholly or partly carried on as determined in accordance with Article 5 of the OECD Model Tax Convention.

Constituent entity

An entity that is a member of a group or any permanent establishment of a main entity that is a member of a group, provided that a permanent establishment shall be treated as separate from the main entity and any other permanent establishment of that main entity, and a constituent entity does not include an entity that is an excluded entity.

Entity

Any legal person (other than a natural person) including, without limitation, any corporation, company (whether limited by shares or guarantee), limited liability company or partnership (whether general or limited) having separate legal personality; or an arrangement that prepares separate financial accounts, regardless of whether or not such arrangement has separate legal personality.

<i>Fiscal year</i>	<p>The accounting period with respect to which the ultimate parent entity of the MNE Group prepares its consolidated financial statements.</p> <p>In the case of consolidated financial statements described in paragraph (d) of the consolidated financial statements definition (see section 2(1) of the CIT Act), the fiscal year shall be the calendar year.</p>
<i>Group</i>	<p>(a) A collection of entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of those entities:</p> <ul style="list-style-type: none"> (i) are included in the consolidated financial statements of the ultimate parent entity; or (ii) are excluded from the consolidated financial statements of the ultimate parent entity solely on size or materiality grounds, or on the grounds that the entity is held for sale; or <p>(b) an entity that is located in one jurisdiction and has one or more permanent establishments located in other jurisdictions, provided the entity is not part of another group as described in paragraph (a).</p>
<i>MNE Group</i>	<p>A group that includes at least one entity or permanent establishment that is not located in the jurisdiction of the ultimate parent entity.</p>
<i>In Scope MNE Group</i>	<p>An MNE Group with annual revenue of EUR 750 million or more in the consolidated financial statements of the ultimate parent entity for at least two of the four fiscal years immediately preceding the fiscal year.</p>
<i>Ultimate parent entity</i>	<p>(a) An entity that owns, directly or indirectly, a controlling interest in any entity and is not owned, with a controlling interest, directly or indirectly by another entity; or</p> <p>(b) the main entity of a group.</p>