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Industry Information

Bermuda – An Ideal Location for International Business

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This briefing explains Bermuda's adoption of rigorous international tax and regulatory standards, which, in conjunction with local laws, make Bermuda an ideal location for investment funds and other investment and finance vehicles. Bermuda is a leading global finance centre with top-tier financial services professionals. International companies select Bermuda as their jurisdiction of choice for its political and financial stability that facilitates investment in a tax-neutral environment whilst maintaining best-in-class regulatory standards.

Tax-efficient Jurisdiction

Bermuda has always been a safe and secure jurisdiction from a political, economic and financial perspective, driving investor confidence and facilitating Bermuda as a domicile of choice for international business. Bermuda is a British Overseas Dependent Territory and the Government of Bermuda operates a stable Westminster parliamentary democracy, which has been established for over 400 years. Bermuda is Britain's oldest overseas territory and Bermuda's legal system is based on English common law, the doctrines of equity and Bermuda statute law dating from 1612.

Under current Bermuda law, there is no income, corporate, profits or withholding tax, capital gains tax or capital transfer tax payable. Bermuda exempted undertakings can apply to the Minister of Finance under the Exempted Undertaking Tax Protection Act 1966 (as amended) for an assurance that in an event Bermuda enacts legislation imposing tax computed on profits, income, any capital asset gain or appreciation, or any tax in the nature of an estate duty or inheritance, then the imposition of any such tax shall not be applied to the Bermuda exempted undertaking or to any of its operations of its share, debentures or other obligation under 31 March 2035.

A Bermuda exempted undertaking must pay annual government fees and where the Bermuda exempted undertaking hires employees in Bermuda, there will be a requirement to pay payroll tax and other sundry taxes to the Government of Bermuda.

Although Bermuda can be described as a low-tax jurisdiction for companies, Bermuda has taken many steps to ensure that the relevant tax laws and policies adhere to international tax and regulatory standards.

Adoption of Economic Substance

As a member of the Organisation for Economic Co-operation and Development (the "OECD") Inclusive Framework on Base Erosion and Profit Shifting and in response to the requirements of the European Unions' Economic and Financial Affairs Council, Bermuda enacted the Economic



Substance Act 2018 (the “ES Act”) the Economic Substance Regulations 2018, (the “ES Regulations” and together with the ES Act, the “ES Laws”) that came into force on 31 December 2018. The Ministry of Finance has issued General Guidance Notes and Sector Specific Guidance Notes to assist entities in interpreting the ES Laws, with the most recent version issued on 1 January 2022.

The ES Laws apply to all Bermuda registered entities, including: a company to which the Companies Act 1981 applies; a limited liability company formed under the Limited Liability Company Act 2016; a partnership to which the Partnership Act 1903 applies; a limited partnership, an exempted partnership, exempted limited partnership or an overseas partnership, in each case where such entity is engaged in one or more ‘relevant activity’.

The ES Laws require companies that derive gross revenue from certain specific ‘relevant activities’ to demonstrate that they have sufficient substance in Bermuda, unless the entity is a ‘non-resident’ entity being an entity is resident for tax purposes in a jurisdiction outside of Bermuda that is not on Annex I of the EU list of non-cooperative jurisdictions for tax purposes. ‘Non-resident’ entities must provide to the Bermuda Registrar of Companies (the “Registrar”) evidence of their tax residence in the relevant jurisdiction and must report their status as a ‘non-resident entity’ on an annual basis, in relation to each relevant financial period.

The relevant activities for the purposes of the ES Laws are carrying on the business of: banking; insurance; shipping; fund management; financing and leasing; headquarters; distribution and service centre; IP business and holding entity business.

Entities that are conducting a ‘relevant activity’ must demonstrate their substance by showing that: the entity is managed and directed in Bermuda; the core income generating activities are undertaken in Bermuda with respect to each relevant activity; the entity maintains adequate physical presence in Bermuda; that there are adequate full time employees in Bermuda with suitable qualifications; and that there is adequate operating expenditure incurred in Bermuda in relation to the relevant activity. Each entity that is conducting a relevant activity must file an economic substance declaration with the Registrar no later than six months from the last day of the financial year-end of the entity.

Entities that are conducting the relevant activity of ‘holding entity’ are subject to ‘minimum economic substance requirements’.

Adoption Of BEPS Minimum Standards

Bermuda became the 33rd signatory to of the Multilateral Competent Authority Agreement (“MCAA”) for the automatic exchange of country-by-country reports, which is based on Article 6 of the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the “Convention”) and puts in place the automatic exchange framework for exchanging country-by-country reports as contemplated by BEPS Action 13. From 1 January 2016, tax administrators where a company operates, will aggregate information annually, relating to the global allocation of income and taxes paid, together with other indicators of the location of economic activity within a multinational enterprise group.

Adoption of International Tax Information Reporting and Transparency Rules

The Government of Bermuda signed a Model 2 Intergovernmental Agreement with the United States, implementing the US Foreign Account Tax Compliance Act on 19 December 2013. Bermuda was also one of the first countries that committed to adoption of the Common Reporting Standard (the “CRS”) in October 2014 and signed the MCAA to start exchanging information using the CRS framework in 2017.

Under FATCA and the CRS foreign financial institutions in Bermuda, including an investment entity, a depository institution, custodial institution or specified insurance company, are subject to due diligence and reporting requirements in relation to certain account holders and investors who are, or are entities that are controlled by one or more natural persons who are, residents or citizens of the United States or residents in jurisdictions that have adopted CRS, unless a relevant exemption applies. As a Model 2 reporting jurisdiction, reporting financial institutions in Bermuda must report directly to the Inland Revenue Service via the Bermuda Tax Information Reporting Portal.

Tax Information Exchange Agreements (“TIEAs”), DTAs and the Convention

Bermuda has signed more than 40 TIEAs. TIEAs allow for the exchange of information (on request) in connection with tax investigations and so differ from the CRS where such information exchange is automatic.



DTAs are agreements for the prevention of double taxation between two jurisdictions. Since Bermuda does not charge direct taxes, there are no DTAs between Bermuda and other nations. There is however a tax treaty between Bermuda and the United States which exempts insurance premium payments from United States franchise taxes.

On 20 January 2022, the Government of Bermuda advised that the list of Bermuda TIEAs for the purposes of exchange of information relationships had been overtaken by the Convention, which serves as the multilateral TIEA and therefore countries are no longer negotiating bilateral TIEAs.

The Convention is a comprehensive multilateral instrument that facilitates international co-operation on tax matters, ranging from exchange of information (both automatic and on request) to recovery of foreign tax claims. Currently over 140 jurisdictions participate in the Convention.

Adoption of the Highest Level of International Regulatory Standards

The Government of Bermuda, the Minister of Finance, the Registrar of Companies and the Bermuda Monetary Authority, are committed to ensuring that Bermuda's regulatory regime adheres to the highest international standards. There is no banking secrecy and Bermuda is a world leader in the regulation of its fiduciary services providers.

International Monetary Fund

The International Monetary Fund (the "IMF") conducted an Assessment of Financial Sector Supervision and Regulation, based on information provided to the IMF during May and June 2007 and stress-testing based on end-2006 company data and consultations with the authorities between September 2007 and May 2008. The IMF reported in September 2008 that Bermuda has a high standard of regulation and supervision of the financial sector. The IMF found that the banking and insurance regulatory and supervisory regime demonstrated a high level of compliance with the Basel Core Principles for Effective Banking Supervision and with the Core Principles for the International Association of Insurance Supervision.

Combatting Financial Crime

Bermuda is a global leader in the fight against money laundering, the financing of terrorism and proliferation. The Caribbean Financial Action Task Force plenary held in Antigua and Barbuda in November 2019 adopted the Mutual Evaluation Report of Bermuda, which found Bermuda 'compliant' or 'largely compliant' with 39 or the 40 Financial Action Task Force Recommendations, which is the highest rating of more than 75 mutual evaluation reports published to date. CFATF also assessed the overall effectiveness of Bermuda's anti-money laundering and anti-terrorist financing regime to rank in the top six of all mutual evaluation reports published, noting that Bermuda is only the second jurisdiction thus far to be assessed as having a high level of effectiveness in relation to its risk assessment and domestic coordination mechanisms.

As a result of the 2020 Mutual Evaluation Report, Bermuda took decisive action to close all identified gaps and to strengthen other aspects of the anti-money laundering and anti-terrorist financing regime in Bermuda. As a result, in March 2021 Bermuda completed its Terrorist Financing National Risk Assessment (the "2021 Risk Assessment"), which was a comprehensive update to the 2016 Terrorist Financing Risk Assessment. The 2021 Risk Assessment concluded that Bermuda's risk for terrorist financing was low, which was an improvement on the 2016 rating, which was medium-low.

The National Anti-Money Laundering Committee, along with the Bermuda Monetary Authority (the "BMA") and other local agencies, such as, but not limited to, the Attorney-General's Chambers, the Ministry of Finance, the Bermuda Police Service, the Financial Sanctions Implementation Unit, the Registrar as well as the Financial Intelligence Agency, are consistently and continually ensuring that Bermuda's legal and regulatory framework meet international standards, as they relate to anti-money laundering and anti-terrorist financing requirements.

Beneficial Ownership Information

Bermuda has been collecting beneficial ownership information for more than 70 years and as such, Bermuda has continued to enhance its beneficial ownership regime by ensuring it meets the compliance requirements of the Financial Action Task Force recommendations and the OECD standards. The legislative framework in Bermuda, as it relates to beneficial ownership requires legal entities to keep a beneficial



ownership register of individuals or relevant legal entities that own or have control over such Bermuda registered entities. The obligation to keep a beneficial ownership register is in addition to the obligations to keep other information, such as a register of members, or equivalent.

All legal entities registered in Bermuda have a statutory and regulatory obligation with respect to beneficial ownership information. These include the requirement to keep a beneficial ownership register, take reasonable steps to identify the individual beneficial owner (if any) of a legal entity, contact persons whom the legal entity believes to be registrable persons, enter the minimum required information on the legal entity's beneficial ownership register, and to file the minimum required information with respect to each beneficial owner with the BMA. The BMA maintains the non-public and confidential central register. Legal entities must also ensure that all beneficial ownership information is kept up to date.

Membership of International Organisations

To ensure that the supervisory and regulatory regimes of the BMA meet international standards and international best practice, the BMA is a member of a number of international organisations. These include:

- >> the Global Financial Innovation Network;
- >> the Group of International Insurance Centre Supervisors;
- >> the Group of International Financial Centre Supervisors;
- >> the International Organisation of Securities Commission;
- >> the European Insurance and Occupational Pensions Authority;
- >> the National Association of Insurance Commissioners;
- >> the International Association of Insurance Supervisors;
- >> the UK Prudential Regulatory Authority;
- >> the UK Financial Conduct Authority; and
- >> the Us Commodity Futures Trading Commission.

Additionally, the BMA has entered into 25 Memoranda of Understanding with various jurisdictions around the world, including, but not limited to:

- >> Isle of Man Supervision Commission;
- >> Cayman Islands Monetary Authority;
- >> New York State Insurance Department;
- >> The Office of the Superintendent of Financial Institutions of Canada;
- >> Swiss Financial Market Supervisory Authority; and
- >> the Malta Financial Services Authority.

The BMA has also signed over 25 AIFMD cooperation agreements with EU Member States as a response to the European Union's Alternative Investment Fund Managers Directive, which initiate the BMA to implement an opt-in Alternative Investment Fund Manager regime in Bermuda. The objective was to create a regime which could be assessed by the European Securities and Markets Authority to pose no significant obstacles to the extension of third-country AIFMD passport rights to Bermuda AIFMs.

Bermuda has also been designated as an 'equivalent' jurisdiction with each of the National Association of Insurance Commissioners and with the EU Solvency II regime.

Bermuda is also a member of the Financial Action Task Force and the Caribbean Financial Action Task Force.



Data Privacy

The Personal Information Protection Act 2016 (“PIPA”) was introduced to regulate the use of personal information in a manner that both protects its privacy and recognizes the need for organisations to use personal information for legitimate purposes. PIPA received royal assent in July 2016 and thereafter in December 2016, limited provisions of PIPA relating to the appointment of the Privacy Commissioner and the creation of an independent office of the Privacy Commissioner came into force. Bermuda’s first Privacy Commissioner was appointed in January 2020 and there have been subsequent supporting hires, which would indicate that therefore it can be expected the remaining provisions of PIPA will take effect by the end of 2022, or at a later date to be confirmed by the Privacy Commissioner. As such, currently, the substantive provisions of PIPA are not effective.

PIPA applies to any organisation in Bermuda that ‘uses’ personal information where that personal information is used wholly or partly by automated means and to the use other than by automated means of personal information which form, or are intended to form, part of a structured filing system. There is no scope to contract out of PIPA and PIPA provides for the grandfathering of personal information held prior to PIPA coming into effect. PIPA places certain obligations that must be met by organizations that use personal information to ensure they are compliance, which, amongst others includes: (i) adopting policies and procedures to give effect to the organisations obligations and to the rights of individuals; (ii) every organisation must appoint a privacy officer who will have the primary responsibility for communicating with the Privacy Commissioner; (iii) provide individuals with a clear and easily accessible privacy statement about its practices and policies with respect to personal information; and (iv) an organisation may only use personal information with consent of the individual where the organisation can reasonably demonstrate that the individual knowingly consented, subject to certain broad expectations under PIPA. PIPA imposes many of the same obligations and is founded on many of the same principles as the General Data Protection Rules, however there are some discreet differences.

The Officer of the Privacy Commissioner for Bermuda recognises the Asia Pacific Economic Cooperation Cross Border Privacy Rules Systems as a certification mechanism for transfers of personal information to an overseas third party. Additionally, the Office of the Privacy Commissioner for Bermuda joined the ID2020 Alliance and Bermuda’s Privacy Commissioner serves on the Ethics and Risk Advisory Committee.

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