STATES OF JERSEY

Jersey

DRAFT MULTINATIONAL CORPORATE INCOME TAX (JERSEY) LAW 202- (P.54/2024): AMENDMENT

Lodged au Greffe on 8th October 2024
by the Minister for Treasury and Resources
Earliest date for debate: 22nd October 2024

STATES GREFFE

DRAFT MULTINATIONAL CORPORATE INCOME TAX (JERSEY) LAW 202- (P.54/2024): AMENDMENT

1 PAGE 24, ARTICLE 5 –

(1) In paragraph (4), for “the group’s MCIT net GloBE income” substitute “the amount determined under Article 12(1)(d)”.

(2) In paragraph (5)(a) for “MCIT net GloBE income” substitute “amount determined under Article 12(1)(d)”.

(3) For paragraph (6) substitute –

“(6) For the purposes of paragraphs (4) and (5)(a), Articles 12 and 13 apply in relation to an in-scope MNE group (and, for those purposes, the reference in Article 12(1) to the “chargeable MNE group” is to be treated as a reference to the “in-scope MNE group”).”.

2 PAGE 27, ARTICLE 12 –

(1) For paragraph (2) substitute –

“(2) The group’s MCIT net GloBE income for the fiscal year –

(a) is the amount determined under paragraph (1)(d), reduced in accordance with Article 20 (relief for losses); or

(b) if the amount determined under paragraph (1)(d) is a negative amount (a loss), is nil.”.

(2) Delete paragraph (3).

3 PAGE 29, DIVISION 5 –

For the heading to Division 5 and Article 20 substitute –

“DIVISION 5 – RELIEF FOR LOSSES

20 Relief for losses

(1) This Article applies for the purposes of determining a chargeable MNE group’s MCIT net GloBE income for a fiscal year under Article 12(2)(a).

(2) If the chargeable MNE group has an available loss amount for the fiscal year, the amount determined under Article 12(1)(d) is reduced by the group’s available loss amount for the fiscal year (but is not reduced below zero).

(3) A chargeable MNE group’s available loss amount for a fiscal year is the total of –

(a) the amount of each of the group’s ITL losses (if any) acquired in that fiscal year (see Article 21); and

(b) the amount of the group’s combined carried forward loss (if any) for that fiscal year (see Article 22).

21 ITL losses

(1) A chargeable MNE group acquires an ITL loss in a fiscal year (the "reference year") if –

(a) a Jersey constituent entity of the group was, at any time in an earlier year of assessment, an ITL chargeable entity;

(b) the entity sustained a loss in the earlier year of assessment;

(c) if the entity were an ITL chargeable entity in a year of assessment after the year of assessment in which the loss is sustained, it would be entitled to claim relief for that loss under the ITL 1961 (disregarding Articles 107(1A) and 107A(1A));

(d) relief in respect of the loss, or in respect of part of it, has not been given under the ITL 1961; and

(e) the reference year is the first fiscal year, after the loss is sustained, in which the entity is a Jersey constituent entity of a chargeable MNE group.

(2) The amount of the ITL loss acquired is the amount of the loss, or the part of the loss, referred to in paragraph (1)(d) that has not been –

(a) relieved under the ITL 1961; or

(b) taken into account, in accordance with Rule 9.1 as applied by Article 13, in determining an amount for the purposes of Article 12(1) (for any fiscal year).

(3) In this Article –

(a) "earlier year of assessment", in relation to the reference year, means a year of assessment that ends before the beginning of the reference year;

(b) "ITL chargeable entity", in relation to a time in a year of assessment, means an entity that is not, at that time, a "relevant MNE group entity" for the purposes of the ITL 1961 (see Article 120AB of that Law);

(c) "year of assessment" has the same meaning as in the ITL 1961.

22 Combined carried forward losses

(1) A chargeable MNE group has a combined carried forward loss for a fiscal year if –

(a) either or both of the following apply –

(i) for 1 or more earlier fiscal years, the amount determined under Article 12(1)(d) was a negative amount (a loss),

(ii) the group acquired an ITL loss in 1 or more earlier fiscal years; and

(b) the accrued losses amount exceeds the relieved losses amount.

(2) The amount of a chargeable MNE group's combined carried forward loss for a fiscal year is the difference between the accrued losses amount and the relieved losses amount.

(3) For the purposes of this Article –

(a) the "accrued losses amount" for a fiscal year is –

(i) the total amount of losses referred to in paragraph (1)(a)(i) and (ii) relating to earlier fiscal years, less

(ii) any amount in respect of those losses that has been taken into account, in accordance with Rule 9.1 as applied by Article 13, in determining an amount for the purposes of Article 12(1) (for any fiscal year);

(b) the "relieved losses amount" is the total amount in respect of which relief has been given under this Article (by way of reductions under Article 20) for earlier fiscal years.",

and renumber the subsequent Articles and cross-references accordingly.

4 PAGE 40, SCHEDULE 2 –

(1) In paragraph 1, in the inserted Article 120AD, for paragraphs (1)(b) and (c) substitute –

"(b) in a subsequent year of assessment (the "transition year of assessment"), the MNE group ceases to be a chargeable MNE group (and, as a result, the person ceases to be a relevant MNE group entity); and

(c) for the fiscal year ending in the transition year of assessment –

(i) the MNE group has an available loss amount,

(ii) the available loss amount exceeds the amount determined under Article 12(1)(d) of the MCIT Law.".

(2) In paragraph 1, in the inserted Article 120AD, after paragraph (1) insert –

"(2) In this Article, "MNE group loss" means the amount of the excess referred to in paragraph (1)(c)(ii).",

and renumber the subsequent paragraphs accordingly.

MINISTER FOR TREASURY AND RESOURCES

REPORT

This amendment to the Draft Multinational Corporate Income Tax (Jersey) Law 202- (P.54/2024) ensures that clarity is provided regarding the availability of loss relief in Articles 20-22. It also provides other minor amendments to better conform to the OECD Pillar Two GloBE Model Rules and accompanying guidance, as recently revised.

Upon review of the lodged MCIT Law and in further engagement with stakeholders, a few minor issues have been raised as needing clarification, mostly in order to provide more legal certainty than exists in the draft Law.

1) Modification to Article 5 "Chargeable MNE Group"

Proposal:

To refer to the amounts in Article 12(1)(d) rather than "MCIT net GloBE income".

Reason for change:

This change is to clarify the amount to be referred to in ascertaining the threshold amounts contained in Conditions A and B. Because MCIT net GloBE income includes loss relief, we need to ensure that the thresholds refer only to the Model Rule computation.

2) Modification to Article 12 "MCIT net GloBE income"

Proposal:

To condense Article 12 from 3 paragraphs down to 2 paragraphs.

Reason for change:

This change simplifies the previous drafting by consolidating the tests into a streamlined structure.

3) Modification to Division 5 and Article 20 "Carry forward of losses"

Proposal:

To change the wording of Article 20 and break it up into 3 separate Articles.

Reason for change:

The change encompasses applying a different title to Division 5 to reflect that the focus of the relevant articles is providing loss relief (which is broader than just carry forward of losses).

This change is necessary to provide legal certainty regarding the importation of losses incurred by an entity in the Income Tax Law regime (ITL) which will be available for utilisation in the MCIT regime. As well, the change provides clarity on the availability of MCIT-generated losses to be utilised in future fiscal years.

The loss relief provisions are now spread over 3 Articles in order to break up the text into more discernible segments, as stakeholders have suggested simplification is needed.

4) Modification to Schedule 2, ITL Article 120AD

Proposal:

To update the text of ITL Article 120AD.

Reason for change:

This change clarifies the extent to which a previous ITL loss can be relied on if an entity subject to MCIT moves back into the ITL regime.

Financial and staffing implications

There are no corresponding financial or staffing implications arising from these amendments.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.