

Form CT-ELP
Corporate Income Tax Elections
Filing Instructions

Background

The Corporate Income Tax Act 2023 (“Act”) includes a number of tax elections which may be made by or on behalf of a Bermuda Constituent Entity, including elections which are made by a Filing Bermuda Constituent Entity which affect the Bermuda Constituent Entity. Subject to the provisions of the Act (including any relevant restrictions on the making of elections), and as further described in the Frequently Asked Questions for Guidance located at www.gov.bm/CIT (“Guidance”):

- (i) Elections may be made with respect to the “post-commencement” period, defined (for purposes of Form CT-ELP) as fiscal years beginning on or after the first day of the first year in which the Bermuda Constituent Entity is a member of an In Scope MNE Group meeting the requirements of section 11(1), subject to section 13.
- (ii) Certain elections may be made with respect to the “pre-commencement” period, defined (for purposes of Form CT-ELP) as the period described in section 49(1) or, with respect to an election made pursuant to section 34, referring to elections made with retrospective effect (as described in section 34(4)).

Generally, elections related to the post-commencement period will be made in the Bermuda corporate income tax return filed for the relevant election year, and elections related to the pre-commencement period will be made in the Bermuda corporate income tax return filed for the first fiscal year in which the Bermuda Constituent Entity is a member of an In Scope MNE Group meeting the requirements of section 11(1), subject to section 13.

While there is no requirement under the Act to make elections in advance of filing a Bermuda corporate income tax return, it has been requested that procedures be available which would allow tax elections to be made by or on behalf of a Bermuda Constituent Entity in advance of filing a Bermuda corporate income tax return.

In response, Form CT-ELP has been developed to allow (but not require) elections to be made by or on behalf of a Bermuda Constituent Entity in advance of filing a Bermuda corporate income tax return.

General administrative matters

As summarized above, Form CT-ELP is not a required filing, but may be filed to the extent that the filer would prefer to make elections in advance of filing a Bermuda corporate income tax return.

To the extent that Form CT-ELP is not filed by or on behalf of a Bermuda Constituent Entity, elections may still be made in accordance with the standard election procedures (i.e. with the Bermuda corporate income tax return). Elections which have been made by or on behalf of a Bermuda Constituent Entity on Form CT-ELP may be modified and/or reversed in the Bermuda corporate income tax return which is ultimately filed for the relevant fiscal year, or by the filing of an amended Form CT-ELP.

Given that Form CT-ELP is not a required filing, there is no set due date for filing the form.

Form CT-ELP should be filed with respect to a single Bermuda Constituent Entity. To the extent that there are multiple Bermuda Constituent Entities for which elections are intended to be made, a separate Form CT-ELP should be filed for each Bermuda Constituent Entity.

Neither Form CT-ELP nor these instructions should be interpreted as modifying in any way the provisions of the Act or the Guidance, including any requirements or restrictions related to elections. It is the responsibility of the filer of Form CT-ELP to review the Act and the Guidance in light of the specific facts and circumstances of the Bermuda Constituent Entity and/or the Bermuda Constituent Entity Group.

Filing procedure

As an interim measure, Form CT-ELP (along with any accompanying statements or schedules) should be filed via e-mail submission to CITelelections@gov.bm. Once the "Submit" button at the bottom of page 6 has been clicked, you will be asked to select your default email application which will then direct you to a pre-populated email. Please note that any additional pages as might be required to provide any other details relevant to the elections detailed in Form CT-ELP should either be appended as separate pages to Form CT-ELP or separately attached to the e-mail prior to submission.

In the event that a Bermuda Constituent Entity wishes to amend a previously filed Form CT-ELP, a new copy of Form CT-ELP should be filed along with an accompanying statement specifying the nature of the amendments to the original filing.

Form CT-ELP should be signed by an officer, director, employee, or other person who is authorized to sign on behalf of the Bermuda Constituent Entity (Part B) or the Filing Bermuda Constituent Entity (Part C).

Overview of form structure

Form CT-ELP is divided into three parts:

- Part A requests basic identifying information related to the Bermuda Constituent Entity filing the form.
- Part B contains all elections which, pursuant to the Act, may be made by the Bermuda Constituent Entity and requests confirmation as to whether such elections are being made and, if so, whether such elections are being made for the pre-commencement or post-commencement period.
- Part C contains all elections which, pursuant to the Act, may be made by the Filing Bermuda Constituent Entity of the Bermuda Constituent Entity Group (of which the Bermuda Constituent Entity identified in Part A is a member), and requests confirmation as to which elections are being made. Part C shall be completed by:
 - An authorized representative of the Bermuda Constituent Entity identified in Part A, but only if such entity is the Filing Bermuda Constituent Entity of the Bermuda Constituent Entity Group

- An authorized representative of the Filing Bermuda Constituent Entity.

To the extent applicable, Parts B and C generally provide the following checkbox options with respect to each election:

- *Yes (Pre-Commencement)*: This option should be selected if the specific election shall be made by or on behalf of the Bermuda Constituent Entity for the pre-commencement period (as defined in the *Background* section above).
- *Yes (Post-Commencement)*: This option should be selected if the specific election shall be made by or on behalf of the Bermuda Constituent Entity for the post-commencement period (as defined in the *Background* section above).
- *No*: This option should be selected if the specific election shall not be made by or on behalf of the Bermuda Constituent Entity for the pre-commencement and/or post-commencement periods.

To the extent that one of the above checkbox options is not presented in Form CT-ELP with respect to a specific election, this means that the option is not available and/or not relevant for such election.

If none of the above checkbox options is selected in Form CT-ELP with respect to a specific election, it shall be assumed that the election is not being made by or on behalf of the Bermuda Constituent Entity for the pre-commencement or post-commencement periods. The filer may leave all checkbox options blank for a specific election in lieu of selecting the “No” checkbox option for the election.

With respect to elections made with respect to the post-commencement period, it is presumed (unless otherwise indicated) that the election is intended to be effective beginning with the first fiscal year in which the Bermuda Constituent Entity is a member of an In Scope MNE Group meeting the requirements of section 11(1), subject to section 13. In the event that a different effective date is intended to apply to the election, this effective date information should be indicated in a separate page appended to Form CT-ELP.

Specific preparation points

Part A, item 2: To the extent that the Bermuda Constituent Entity filing Form CT-ELP has been assigned a Bermuda registration number, the number should be entered in item 2. If a Bermuda registration number has not been assigned, item 2 should be left blank.

Part B, item 1: In the event that the Bermuda Constituent Entity filing Form CT-ELP is the main entity of multiple permanent establishments for which different branch exemption elections are being made (e.g. branch exemption election only made for some entities or different combinations of pre-commencement and post-commencement elections for each permanent establishment):

- (i) The “Yes (Pre-Commencement)” and/or “Yes (Post-Commencement)” checkboxes should be checked if at least one of the permanent establishments is subject to a pre-commencement and/or post-commencement branch exemption elections, and

- (ii) The branch exemption election details for the various permanent establishments should be summarized in a separate page to be appended to Form CT-ELP.