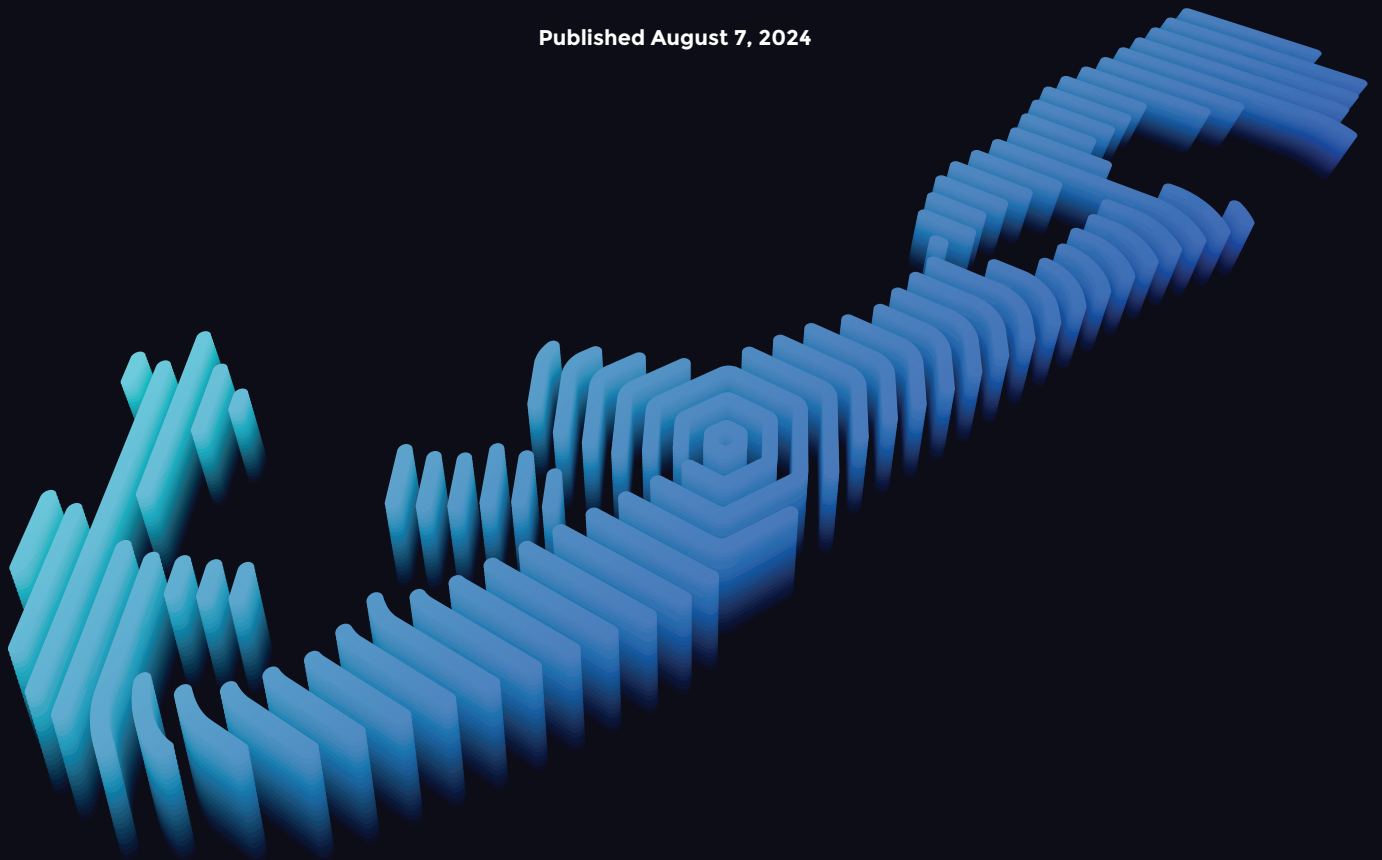




PUBLIC CONSULTATION

Introduction of
**Corporate Income Tax
Administrative Provisions**

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**Government of Bermuda
Ministry of Finance**

First Public Consultation

Corporate Income Tax Administrative Provisions

Table of Contents

1.Introduction	3
2.Consultation – Administration	5

1. Introduction

The Corporate Income Tax Act 2023 (the “Principal Act”) was enacted in December 2023 and provides that Bermuda Constituent Entity Groups (“BCE Groups”), comprised of one or more Bermuda Constituent Entities (“BCEs”) of an In Scope MNE Group, are subject to Bermuda corporate income tax (“CIT”) with respect to fiscal years beginning on or after January 1, 2025. In addition to the various technical provisions relevant to the determination of the CIT liability of a BCE Group, the Principal Act introduced the concept of a Bermuda CIT return to be filed by a Filing BCE on behalf of a BCE Group.

The Corporate Income Tax Agency Act 2024 (the “Agency Act”) was passed in July 2024 to establish the Bermuda Corporate Income Tax Agency (the “Agency”). The Agency is a body corporate which will be responsible for the administration of the Principal Act.

In support of the ongoing administration of the Principal Act, it is contemplated that BCE Groups will be subject to prescribed compliance obligations including specific procedural requirements related to registration, tax return filing, and payment of taxes.

This consultation paper is intended to provide Bermuda stakeholders with a preliminary, high-level summary of the proposed taxpayer compliance framework (the “Administrative Provisions”) and to obtain public feedback on the proposals. The Government looks forward to receiving feedback from all stakeholders with respect to these proposals, including comments and suggestions for improvement.

The Principal Act and the Agency Act, together with any other provisions developed to address the administration and management of the Principal Act, are collectively referred in this document for the sake of convenience as the “CIT Laws”. Unless otherwise stated, it is intended that terms used in the Administrative Provisions which are defined in the CIT Laws shall have the same meaning.

This First Public Consultation period will run from August 8, 2024 to September 5, 2024. Submissions received after this date may not be considered. It is proposed that there will be a second Public Consultation later in the year enclosing draft legislation incorporating the results of this Public Consultation for further comment.

Consultation Paper Responses and Comments should be submitted by email to: FINANCE@gov.bm. Respondents should include “*Corporate Income Tax Administration*” in the subject line.

Media Enquiries should be addressed to: hsadams@gov.bm.

2. Consultation – Administration

Overview

The guiding principle behind the structure of the Administrative Provisions is to seek to achieve an appropriate balance between the need to ensure that the mechanisms for the collection and determination of tax liabilities are effective on the one hand and to minimize administration and taxpayer compliance costs on the other.

The following is an overview of the proposed Administrative Provisions. Further details regarding specific elements of the Administrative Provisions, including requests for comment, are provided in subsequent sections.

Bermuda Tax Portal:

An online portal will be developed to serve as the primary instrument for ongoing interactions between Bermuda entities and the Agency, including:

- Entity registration
- Filing of the CIT return
- Processing of instalment payments
- Ongoing communications related to assessment, compliance, and/or enforcement activities undertaken by the Agency
- Transmission of other ad hoc queries or communications to/from the Agency
- Access to technical guidance and other compliance aids

Registration:

Entities will be required to register via the portal in accordance with prescribed procedures and timeframes and will be assigned a taxpayer identification number (“TIN”).

CIT return filing:

A Filing BCE will be required to file a CIT return for the BCE Group which adheres to any prescribed information reporting and/or documentary requirements. Failure to file a CIT return in accordance with prescribed procedures and timeframes will generally result in the assessment of civil penalties (in addition to any sanctions for specific offences summarized in the Agency Act).

Instalment payments:

A Filing BCE will be required to remit instalment payments, reflecting a portion of the estimated CIT liability of the BCE Group for the fiscal year, prior to the due date for filing its CIT return for such year. Failure to remit instalment payments in accordance with prescribed procedures and timeframes will generally result in the assessment of an interest charge. Further details with respect to instalment payments are addressed in Part 5 below.

Other filing requirements:

Company and partnership laws require Bermuda entities to file annual declarations. A Bermuda entity filing the annual declaration required under the Companies Act (or corresponding legislation addressing limited liability companies, partnerships or other types of entities) will be required to provide certain information relevant to the determination of its status for CIT purposes (i.e., whether the entity is in scope of the CIT and, if not, the reason).

Part 2 – Registration and Responsibility under the law

BCEs will be required to register via the portal. In addition to basic entity-specific information, it is currently contemplated that each BCE will provide further information relevant to its broader group (e.g. identification of its Ultimate Parent Entity and Filing BCE). Upon registration, each BCE will receive a TIN.

It is anticipated that existing BCEs will be required to register with the Agency on or about March 31, 2025. New BCEs will be required to register with the Agency within 60 to 90 days of the date of formation, incorporation, organization, acquisition, or other event causing the entity to meet the requirements to be treated as a BCE.

Further consideration is required as to whether certain non-BCEs may be required to register, including:

- Entities which would be treated as BCEs if not for section 13 of the Principal Act
- Excluded entities described in section 10 of the Principal Act
- Less than 80% owned entities described in section 9 of the Principal Act

For the purposes of effective administration, the registration will be cross-referenced to a new notification provided upon completion of the annual declaration required under the Companies Act (or corresponding legislation addressing limited liability companies and partnerships). These laws will be amended to include notification of whether the entity filing the return is a member of an In Scope MNE Group and if not, why not. This will be part of the same online process as currently applies.

Question 1: Are there any aspects of the proposed registration and responsibility for entities that present concerns or require further clarification?

Part 3 – Returns

A Filing BCE will be required to file a CIT return for its BCE Group for each fiscal year on or before the specified return date for the fiscal year in the prescribed form.

The return required shall include all such matters, information, accounts, statements, reports and further particulars as may be required by the prescribed form.

CIT returns will be due on or before the 15th day of the 10th month following the end of the relevant fiscal year. This requirement to deliver a return is annual so long as the MNE Group is in scope. Failure to deliver a return may result in civil penalties being assessed as discussed below.

Amendments to a previously filed return will be permissible under circumstances to be set out later.

It is expected that supporting records will need to be retained for seven years following the filing of returns. Failure to retain records may result in penalties.

Consideration is being given to the requirement to make a reduced “nil” return for entities not in scope, such as those within section 13 of the Principal Act.

The return must be signed by a responsible person within the company or group. The responsible person is required to be an officer of the company or any other person who is authorized to sign on behalf of the company. The return will contain a declaration to the effect that the information provided in the return is correct and complete to the best of the signatory’s knowledge and belief.

Question 2: Are there any aspects of the proposals in relation to returns that present concerns or require further clarification?

Part 4 – Enquiries

The Agency will have the power to raise an enquiry into a return within three years of the later of the above filing date or the date on which the CIT return was filed, with potential to extend based on mutual agreement between the Filing BCE and the Agency.

The provisions of Part III of the Agency Act address the matters of determinations by the Agency, settlements and compromises.

Question 3: Are there any aspects of the proposal for enquiries that present concerns or require further clarification?

Part 5 – Collection

Payment of the total tax liability indicated on the return, to the extent the liability is less than the instalment payments already made with respect to the relevant year, is due upon the due date for filing the return noted in Part 3. Filing BCEs are responsible for ensuring the total tax liability is remitted no later than when the final liability to tax is due.

Filing BCEs are also responsible for ensuring timely instalments are made. The first instalment is to be paid by the 15th day of the 8th month after the beginning of the fiscal year in the amount of 50% of the expected tax liability for the year or a safe harbour backstop. The safe harbour backstop will be an amount computed on the basis of a projected annualised approach based on earnings to date.

The second instalment is to be paid by the 15th day of the 12th month after the beginning of the fiscal year to bring combined total instalments to 90% of the expected tax liability for the year or the safe harbour backstop. Further guidance will be provided as to the further

information which may need to be provided to support the calculation of the estimates.

Upon filing of the return, a “true-up” payment must be made no later than the due date of the return, irrespective of when the return is filed.

Payment can be made by the Filing BCE on behalf of underlying group entities.

Question 4: Are there any aspects of the proposal for the timing of payments and repayments that present concerns or require further clarification?

Part 6 – Penalties and interest

Overpaid tax which is refunded will accrue interest at an appropriate published reference rate from 90 days after the return is filed. Companies can elect to apply the overpayment to future amounts due.

Underpayment of tax will accrue interest at the appropriate published reference rate plus 150 basis points calculated from the date of respective first, second, and true-up instalments.

Further guidance will be provided with respect to the interaction of the interest provisions to instalments and applied overpayments

Civil penalties will be prescribed for late returns, either in the form of fixed penalties over time, tax-geared penalties, or a combination of the two.

In addition to those provisions of the Agency Act addressing the provision of information to the Agency, consideration is being given to the need for non-civil penalties to supplement the civil penalties in appropriate circumstances.

Question 5: Are there any aspects of the proposed penalty and interest regimes that present concerns or require further clarification?

Question 6: Are there any other aspects of the proposals that present concerns or require further clarification?

