

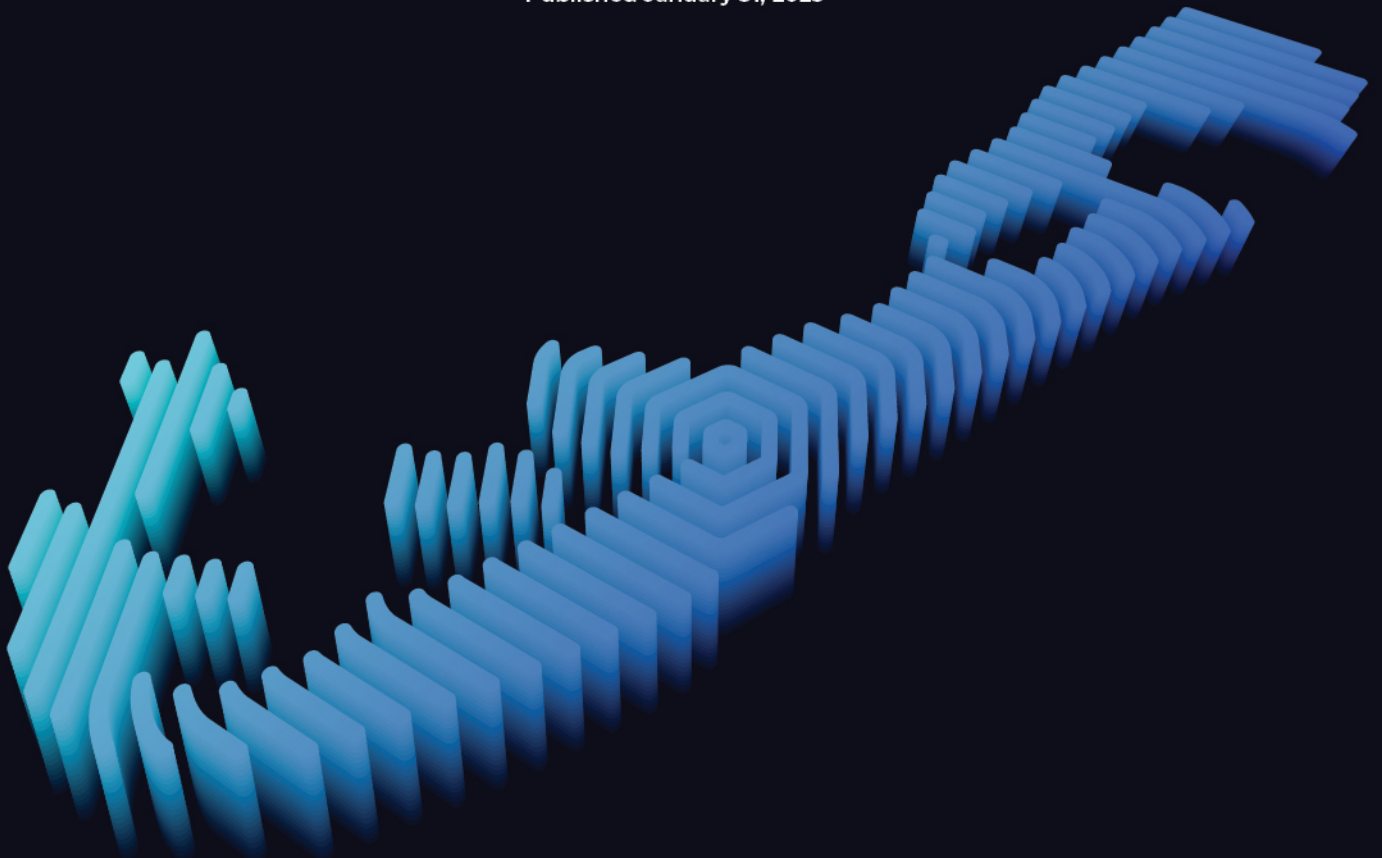


GOVERNMENT OF BERMUDA
Ministry of Finance

SECOND PUBLIC CONSULTATION

Corporate Income Tax Administration

Published January 31, 2025





**Government of Bermuda
Ministry of Finance**

Second Public Consultation

Corporate Income Tax Administration

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1. Introduction

Following the First Public Consultation with respect to the administration of the Corporate Income Tax conducted in August 2024, the Government of Bermuda has reviewed the responses, comments and submissions made as part of that process. That review has enabled this Second Public Consultation to be undertaken.

The Government is highly appreciative of the level and content of responses to the first Public Consultation. Many of the observations have been considered and incorporated, where appropriate, into the draft legislation and others continue to be reviewed for consideration.

This Second Public Consultation focuses on certain of the enforcement provisions relating to the administration of the Corporate Income Tax Act 2023, as amended, (the “Principal Act”), which are required under Bermuda law to be enacted by Parliament in statutory form rather than by regulation. A further Public Consultation will discuss the remaining administrative provisions, these additional administrative provisions to be issued in the form of regulations. It is expected that the Third Public Consultation will commence around the middle of February.

The Principal Act, together with the Corporate Income Tax Agency Act 2024 (the “Agency Act”) and other provisions 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”.

This Second Public Consultation is in four parts. Following the Introduction, Part 2 addresses certain matters and comments arising from the earlier Consultation, with specific references to certain areas of focus. Part 3 contains the illustrative draft legislation for the statutory proposals. Part 4 contains a preliminary Table of Contents for the proposed administrative regulations. Further amendments to the draft legislation may

be made prior to the submission of the draft to Parliament for consideration, including those to address feedback provided in response to this Consultation.

This Second Public Consultation period will run from January 31, 2025 to February 21, 2025. Submissions received after this date may not be considered. Consultation Paper Responses and Comments should be submitted by email to: FINANCE@gov.bm. Respondents should include "*Corporate Income Tax Administration*" in the subject box.

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

2. Consultation

The Agency's operations with respect to the collection and administration of the corporate income tax are governed by provisions in the CIT Laws. In this section the proposed statutory provisions for enforcement are set out together with requests for comments and suggestions.

General

The guiding principle behind the structure of the administration is still to strike an appropriate balance between ease of administration and taxpayer compliance costs on the one hand and the need to ensure that the mechanisms for the collection and determination of tax liabilities are robust and effective on the other. The burden of administration must also be fairly borne by the Agency and taxpayers.

Further, the provisions should have enforcement mechanisms that are clearly understood and apply fairly without putting undue burden on taxpayers or the Agency, but which are sufficiently effective to preserve the integrity of the corporate income tax regime.

As noted, this Second Public Consultation focuses primarily on the proposed Corporate Income Tax (Penalties) Act (the "Proposed Act"). Although certain details relating to the wider administration of the Principal Act are referenced in this document, details of the proposed regulations will be released separately.

Part 1 – Introductory

The structure of the Proposed Act is in the form of amendments to the Principal Act through the introduction of new Parts 8A and 8B to address civil and criminal penalty provisions respectively.

Part 8A – Civil Penalties

Generally

New Part 8A focuses on penalties related to the failure to comply with compliance deadlines for registration and filing, together with certain penalties for the failure to pay tax when due and the failure to state the tax accurately on the tax return.

It should be noted that these penalties are separate and distinct from any interest charges relating to the underpayment of tax which will arise under the proposed administrative regulations. This ensures that the majority of situations where the correct amount of tax is paid on time in accordance with the CIT Laws are addressed in the simplest fashion through interest charges which are expected to be computed automatically based on the timing of receipts and related actions. The penalty provisions in the Proposed Act overlay those interest charges in situations where further enforcement is appropriate.

Power to impose civil penalties

This section grants the authority to the Agency to impose penalties and ensures that a penalty imposed on any Bermuda Constituent Entity (“BCE”) results in joint and several liability for such penalty on each other BCE that is a member of the same In Scope MNE Group.

To ensure transparency of this provision, the section provides details of the factors which the Agency will consider in determining whether or not to impose a penalty and, if so, in what amount. There are also provisions to clarify that penalties assessed are in addition to, not in substitution of, the unpaid tax and interest, where relevant.

Failure to register

Many respondents to the First Public Consultation on the administrative aspects of the Tax Laws expressed a strong desire for simplicity in both legislative and operational terms. This was addressed in part through the Corporate Entities (Miscellaneous) Amendment Act 2024 which amended certain of the registration and declaration requirements from the Registrar of Companies to capture information necessary for the Agency without requiring a separate registration process.

The administrative regulations will have a safe harbour to provide protection for those who have complied with the registration requirements through the annual declaration process.

However, there may still be instances where BCEs who are part of an In Scope MNE Group may not have been identified through the revised registration questions included in the various annual declarations required by the above-mentioned Act. In such cases, a penalty may arise where a BCE has failed to register without reasonable excuse. This provision is not expected to have broad application but is designed to ensure compliance from entities which would not have made the declaration or which made the declaration prior to the amendment to the rules at the end of 2024.

Failure to file return

The purpose of the provision is to encourage timely filing through the introduction of a penalty of either \$3,000 per month past the due date, or 5% of the tax due of the BCE Group, whichever is greater. In relation to the second test, there is a cap of five months' worth of the amount computed, but there is no limit to the fixed monthly amount.

Tax due for purposes of this penalty equals the tax as determined pursuant to Section 4 of the Principal Act, less payments on account towards that tax, plus any interest owed thereon.

Failure to accurately state tax on a return

This accuracy-related penalty addresses understatements of tax on returns where the understatement arises from negligence, careless, reckless or intentional disregard of the

Principal Act provisions, or where it is substantial. The penalty is up to 20% of the understated amount. The provision explains what an underpayment of tax is, and in particular takes into account reductions of any understatement arising from treatment of any given item for which there is substantial authority, and where adequate disclosure has been made. The meaning of “substantial authority” and “substantial understatement” is also addressed – a substantial understatement being 20% of the tax liability which would have been reported absent the understatement, or \$1,000,000, whichever is the lesser.

Failure to pay tax when due

This is a provision which addresses situations where a BCE Group has failed to timely pay its tax for a given year, by the due date prescribed by the Principal Act or the Agency Act or other related regulations. This penalty is set at 0.5% of the tax due (as described above) reduced by any partial payments after the due date.

Part 8B – Criminal Penalties

Personal liability

This provision extends the liability for any offence committed by a body corporate under Part 8B to any employee, director, manager, secretary, member, or other officer to the extent the offence can be proved to have been committed with the consent or connivance of said individual or to be attributable to any neglect on their part. Similar provisions extend the liability of a partnership to its partners, save where a given partner is proven to have been unaware of the offence or to have attempted to prevent its commission. Further provisions apply to trusts, unincorporated bodies or other associations and extend liability to every officer of the entity bound to fulfil any duty the breach of which is the offence, or, where there is no such office, every member of the governing body (such as a Trustee) other than a member proved to have been unaware of the offence or to have attempted to prevent its commission.

Deliberate failure to file return

This provision addresses the failure to file a return when no return is filed by the BCE Group. The provision creates an offence if the failure to file extends beyond six months after the deadline to file by prescribed in the CIT Laws, but only where that failure is intentional. The liability of the offence is joint and several for all BCEs that are members of the same In Scope MNE Group.

Tax evasion

This offence arises where any BCE evades or attempts to evade any payment of tax, makes a false or misleading statement in writing to the Agency (where in a return or otherwise) with the intent to evade any payment of tax, or by any fraud evades or attempts to evade any payment of tax. It does not matter whether any attempt to evade is successful.

The liability of the offence is joint and several for all BCEs that are members of the same In Scope MNE Group. Upon conviction by indictment, a fine of up to 100% of the tax which was sought to be evaded or imprisonment of up to five years, or both, may apply.

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

3. Illustrative Draft

A BILL

entitled

CORPORATE INCOME TAX (PENALTIES) ACT 2025

WHEREAS it is expedient to make provision for the establishment of civil and criminal penalties to ensure the due observance of Bermuda's corporate income tax regime;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PART I

INTRODUCTORY

Citation

1 This Act, which amends the Corporate Income Tax Act 2023, may be cited as the Corporate Income Tax (Penalties) Act 2025.

Amends Corporate Income Tax Act 2023

2 The Corporate Income Tax Act 2023 is hereby amended-

- (a) by the insertion of the text contained in the Schedule after Part 8 of such Act; and
- (b) by the substituting the following the text for the current text of subsection 4(3) of such Act-

'Each Bermuda Constituent Entity of an In Scope MNE Group shall be jointly and severally liable for the tax chargeable pursuant to this Act to a Bermuda Constituent Entity Group that is part of the same In Scope MNE Group, regardless of whether or not such Bermuda Constituent Entity is a member of a particular Bermuda Constituent Entity Group within such In Scope MNE Group.'

- (c) by the insertion of the words “(including the Agency)” after the words “administering this Act” in sub-section 48(1) of such Act.

Amends Corporate Income Tax Agency Act 2024

3 The definition of “tax receipts” in section 2 of The Corporate Income Tax Agency Act 2024 is hereby amended by-

- (a) the deletion of the parenthetical; and
- (b) the insertion of the words “and shall include any instalment payments, any penalties, and any interest in respect of any of the foregoing” at the end of the definition.

SCHEDULE

PART 8A

CIVIL PENALTIES

Power to impose civil penalties

46A (1) The Agency shall have the power to impose the civil penalties prescribed by this Part.

(2) Civil penalties under this Part shall be imposed on Bermuda Constituent Entities, but where a penalty is imposed on a Bermuda Constituent Entity, each other Bermuda Constituent Entity that is a member of the same In Scope MNE Group shall be jointly and severally liable for the penalty.

(3) In deciding—

- (a) whether to impose a civil penalty under this Part; and
- (b) the amount of the penalty to be imposed (in circumstances where a maximum penalty is specified),

the Agency shall, in addition to such further criteria prescribed herein, consider the conduct of the In Scope MNE Group including-

- (a) whether or not any relevant guidance was followed;
- (b) the amount of tax (if any) not paid when due as result of the conduct which is the subject of the penalty; and
- (c) whether or not responses were received in respect of any enquires by the Agency together with the content and timeliness of such responses.

(4) A civil penalty imposed hereunder shall not relieve any person from their obligation to pay tax (including any interest thereon).

(5) Multiple penalties may be imposed hereunder where the circumstances give rise to multiple failures.

(6) Where a penalty is specified for each month that a failure continues, then-

- (a) the minimum penalty for the failure shall be one month; and
- (b) a penalty for one month may be imposed for any part of a month,

regardless of the duration of the failure.

(7) References in this part to-

- (a) a “tax” shall mean tax calculated pursuant to section 4 hereof (i.e. net of any tax credits applicable pursuant to Part 4 of this Act); and
- (b) “tax due” shall mean an amount equal to-
 - (i) tax; *plus*
 - (ii) interest in respect of underpayments (or non-payments) of instalments for the same fiscal year as the tax; *less*
 - (iii) payments made on account of (i) and (ii) (including, but not limited to instalment payments for the current fiscal year and overpayments from prior fiscal years which have been credited to the current fiscal year).

(8) Penalties shall be imposed by way of written notice from the Agency to the person against whom the penalty is imposed provided-

- (a) a penalty shall be due and payable as of the date of such notice; and
- (b) notwithstanding subsection (2), such notice shall not be required to be addressed to each member of the In Scope MNE Group to be valid.

Failure to register

46B (1) A civil penalty may be imposed where, without reasonable excuse a Bermuda Constituent Entity has failed to register as required by this Act, the Agency Act or any regulations made under either of the foregoing Acts.

(2) The maximum amount of the civil penalty that may be imposed under this section shall not exceed \$10,000 per Bermuda Constituent Entity.

Failure to file return

46C (1) A civil penalty may be imposed where, without reasonable excuse, a Filing Bermuda Constituent Entity has failed to file any return for a fiscal year by the deadline prescribed by this Act, the Agency Act or any regulations made under either of the foregoing Acts.

(2) The civil penalty that may be imposed under this section shall be the greater of:

- (a) \$3,000 per month for each month past the deadline; or
- (b) an amount per month equal to 5% of the tax due as of the deadline for the return filing,

but subject to a cap (solely when paragraph (b) is applicable) of an aggregate amount equal to 25% of the tax due as of the deadline for the return filing.

Failure to accurately state tax on a return

46D (1) To the extent an understatement of tax is included on any return filed with respect to a Bermuda Constituent Entity Group and is attributable to:

- (a) negligence;
- (b) careless, reckless or intentional disregard of the provisions of the this Act (or any related regulations); or
- (c) a substantial understatement,

then the Agency may impose a civil penalty of up to 20% of the amount of such understatement on the Filing Bermuda Constituent Entity of the Bermuda Constituent Entity Group.

(2) The term “understatement of tax” refers to the circumstances where the amount of tax shown on any return for the fiscal year, together with any qualified amended return for the same fiscal year, is less than the actual amount of tax for the Bermuda Constituent Entity Group which ought to have been reported on such return.

(3) The amount of any understatement shall be deemed reduced by that portion of the understatement which is attributable to:

- (a) the tax treatment of any item by the Bermuda Constituent Entity Group if there is or was substantial authority for such treatment;

or

- (b) any item if the relevant facts affecting the item's tax treatment are adequately disclosed in the return (or any qualified amended return) of the Bermuda Constituent Entity Group for the fiscal year, provided that-
 - (i) disclosure with respect to a recurring item must be made for each fiscal year in which the item is taken into account; and
 - (ii) a item shall only be adequately disclosed if it is disclosed in the manner prescribed by the Agency and disclosed with sufficient detail and clarity so as to enable the Agency to make a reasonably informed and accurate assessment of the nature, scope and effect of the item disclosed.

(4) For the purposes of this section-

- (a) a "qualified amended return" is an amended return filed prior to the Agency raising any enquiry with respect to the original tax return, but shall not include any return which is subject to unilateral amendment by the Agency pursuant to the Corporate Income Tax Administrative Regulations 2025.
- (b) "substantial authority" shall refer to authority from one or more the following sources-
 - (i) this Act, the Agency Act or any regulations made under either of such acts;
 - (ii) decisions of the Court;
 - (iii) determinations by the Agency;
 - (iv) official guidance or "frequently asked questions" issued in relation to any of the foregoing,

where the authority is sufficient to give rise to more than a reasonable basis for the treatment, but does not necessarily establish that the treatment is correct on the balance of probabilities.

- (c) a "substantial understatement" is an understatement which exceeds the lesser of:
 - (i) 20% of the tax which should have been reported had the understatement not occurred; or
 - (ii) \$10,000,000.

(5) The Agency shall not impose a civil penalty under this section on all or portion of an understatement if there was reasonable cause for and the Filing Bermuda Constituent Entity acted in good faith with respect to such understatement.

(6) In assessing whether or not a Filing Bermuda Constituent Entity had reasonable cause and acted in good faith for the purposes of this section, the Agency shall, notwithstanding section 46A, take into account, if disclosed to the Agency, any advice the Filing Bermuda Constituent Entity received from professional tax advisors qualified to advise upon this Act and any related laws or guidance pertaining to Bermuda's corporate income tax regime.

Failure to pay tax when due

46E (1) A civil penalty may be imposed on a Filing Bermuda Constituent Entity where, without reasonable excuse, it fails to pay the tax due for the fiscal year by the due date prescribed under this Act, the Agency Act, or any regulations made thereunder.

(2) The amount of civil penalty imposed under this section shall be equal to 0.5% of the amount of tax due as of the date of the failure, provided that, where one or more partial payments of tax due is made subsequent to the original failure, then the penalty for each month that the failure continues after each partial payment shall be recalculated (as at the start of each month) to take account of the reduction in tax due caused by applying any partial payment against the original tax due.

PART 8B

CRIMINAL PENALTIES

Personal liability

46F (1) Where an offence under this Part is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any employee, director, manager, secretary, or other officer of the body corporate, they, as well as the body corporate, shall be deemed to be guilty of an offence and is liable to be proceeded against and punished accordingly

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with its functions of management as if he were a director of the body corporate.

(3) Where a partnership is guilty of an offence under this Part, every partner, other than a partner who is proved to have been ignorant or to have attempted to prevent the commission of the offence, is also guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) Where any trust, unincorporated body or any other association, (whether incorporated or not,) is guilty of an offence under this Part—

- (a) every officer of the body or association who is bound to fulfil any duty of which the breach is the offence; or
- (b) if there is no such officer, every member of the governing body

(which in the case of a trust, shall mean its trustee and, in the case of a corporate trustee, sub-section (1) shall apply) other than a member who is proved to have been ignorant of or to have attempted to prevent the commission of the offence,

is also guilty of the offence and is liable to be proceeded against and punished accordingly.

Deliberate failure to file return

46G (1) If a Filing Bermuda Constituent Entity has failed to file any return for a fiscal year by any deadline prescribed by this Act, the Agency Act or any regulations made under either of the foregoing Acts, and-

- (a) such failure has continued beyond the date falling six months after the prescribed deadline; and
- (b) such failure is intentional,

then the Filing Bermuda Constituent Entity, commits an offence and each other Bermuda Constituent Entity that is a member of the same In Scope MNE Group shall be jointly and severally liable for such offence.

(2) On conviction by indictment under this section, a person shall be liable to a fine of up to \$5,000,000 or to imprisonment for up to six months or both.

Tax Evasion

46H (1) Where any Bermuda Constituent Entity-

- (a) by intentional act or default evades or attempts to evade any payment of tax;
- (b) makes any false or misleading statement in writing to the Agency (whether on or as part of a return or otherwise) with the intent to evade any payment of tax (whether or not such evasion is successful); or
- (c) by any fraud evades or attempts to evade any payment of tax,

then the Bermuda Constituent Entity, and each other Bermuda Constituent Entity that is a member of the same In Scope MNE Group shall be jointly and severally liable for such offence.

(2) On conviction by indictment under this section, a person shall be liable to a fine of an amount up to 100% of the tax evaded (or which the person attempted to evade) or to imprisonment for up to five years or both.

4. Further Provisions

As discussed above, further provisions addressing the administration of the Principal Act will be released shortly in the form of proposed regulations. Attached below is the current draft Table of Contents we expect to issue with the proposed regulations.

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