

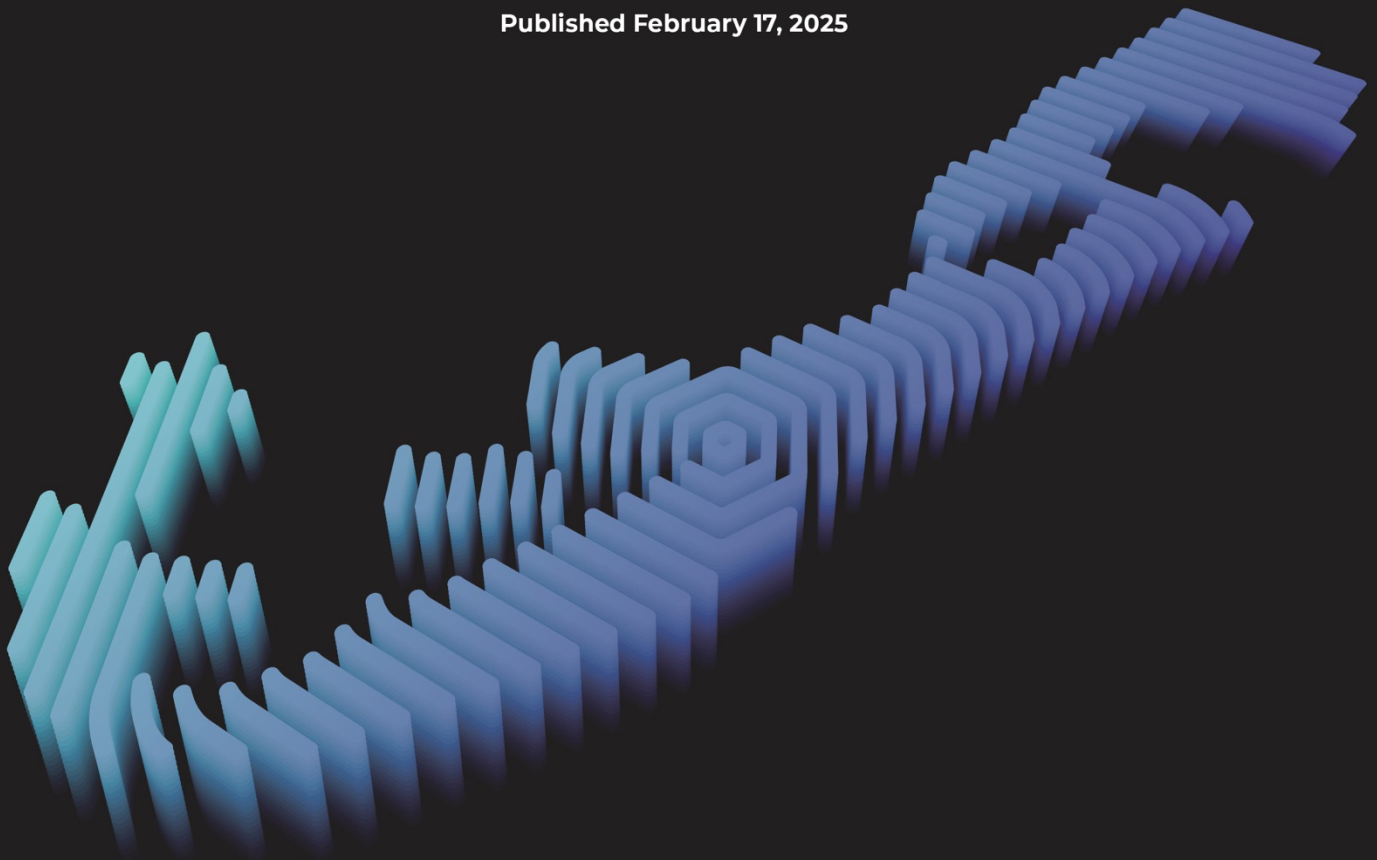


GOVERNMENT OF BERMUDA  
**Ministry of Finance**

THIRD PUBLIC CONSULTATION

# Corporate Income Tax Administration

Published February 17, 2025





**Government of Bermuda  
Ministry of Finance**

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# 1. Introduction

Following the First and Second Public Consultations with respect to the administration of the Corporate Income Tax (“CIT”), the Government has reviewed the responses, comments and submissions made as part of those consultations to date and will continue to consider those received for the Second Public Consultation in line with the consultation period. That review has enabled this Third Public Consultation to be undertaken.

This Third Public Consultation focuses on the broader provisions relating to the administration of the Corporate Income Tax Act 2023, as amended, (the “Principal Act”), which are proposed to be issued in the form of regulations.

The Principal Act, together with the Corporate Income Tax Agency Act 2024 (the “Agency Act”) are collectively referred in this document for the sake of convenience as the “CIT Laws”.

This Third Public Consultation is in three Sections. Following this Introduction, Section 2 addresses the proposed regulations together with certain matters and comments arising from the earlier Consultations, with specific references to certain areas of focus. Section 3 contains the illustrative draft of the regulations.

This Third Public Consultation period will run from 17 February, 2025 to 10 March, 2025. Submissions received after this date may not be considered. Consultation Paper Responses and Comments should be submitted by email to: [FINANCE@gov.bm](mailto:FINANCE@gov.bm). Respondents should include “*Corporate Income Tax Administration*” in the subject box.

Media Enquiries should be addressed to: [hsadams@gov.bm](mailto:hsadams@gov.bm).

## **2. Consultation**

### **General**

As noted in prior Consultations, the guiding principle behind the structure of the administration is 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.

This Third Public Consultation focuses on the provisions required for the orderly administration of the Principal Act and accompanies the provisions of that Act together with the amendments to that Act in the proposed Corporate Income Tax (Penalties) Act which was the subject of the Second Public Consultation.

### **Proposed Regulations**

The structure of the proposal is in the form of regulations through the introduction of the Corporate Income Tax Administrative Regulations 2025. Certain new terms are included to enable the introduction of necessary administrative procedures and the ability for the Agency to effectively administer the CIT.

### **Part 2: Registration and general administration**

Part 2 relates primarily to the registration requirements for Bermuda Constituent Entities (“BCEs”) and grants the Agency the authority to prescribe the format of registration and

electronic returns. Further provision is made regarding the confidentiality requirements of the Agency for electronic records.

The registration provisions prescribe timeframes for BCEs to register, addressing both existing and newly formed entities. There are also provisions addressing the need to update registration information previously provided, and the cancellation of registration. This allows the Agency the ability to hold the necessary data for proper and fair administration of the CIT.

It is expected that in most cases, entities will have submitted the required information for registration in the annual declarations required under the governance rules for companies and partnerships which were updated for 2025. In those cases, provided the information is correct and complete and any questions or requests from the Registrar of Companies have been satisfied, the entity will meet the requirement for registration. Entities which have not provided the required information for any reason must separately register.

In addition to a discussion of registration requirements, Part 2 addresses Filing Bermuda Constituent Entity matters. Each Bermuda Constituent Entity Group (“BCEG”) must designate its Filing Bermuda Constituent Entity prior to the due date for filing a return or the payment of instalments, whichever is earlier. The Agency has the authority to designate the Filing Bermuda Constituent Entity in the absence of a designation by the BCE Group. Filing Bermuda Constituent Entities can be modified or revoked but will otherwise continue to be the Filing Bermuda Constituent Entities once initially designated. A BCE which is the sole member of its BCEG is automatically designated as the Filing Bermuda Constituent Entity (“FBCE”).

**Question 1: Are there any aspects of the proposals for registration and general administration that present concerns or require further clarification?**

### **Part 3: Payment of taxes**

Part 3 prescribes the regulations for paying tax due, manner of the payment, instalment payments, underpayments, and overpayments to provide clarity to BCEs and BCE Groups. FBCEs are obliged to pay tax, instalment payments and tax due by the due date for each payment type on behalf of their BCEG members.

Two instalment payments will be required prior to the filing of the tax return. Exceptions and exemptions to this requirement are available for short fiscal years and de minimis tax liabilities.. The methodology used to calculate instalment payments shall be disclosed along with necessary supporting calculations. Instalment payments can be re-allocated to other BCEGs within the same In Scope MNE Group.

The first instalment payment is the lesser of 50% of the tax liability for the year and a safe harbour calculation as prescribed in the regulations. The first instalment payment is required to be paid by the 15<sup>th</sup> day of the 8<sup>th</sup> month of the fiscal year.

The second instalment payment is the lesser of 90% of the tax liability and safe harbour calculation *less* the first instalment payment. The second instalment payment is required to be paid by the 15<sup>th</sup> day of the 12<sup>th</sup> month of the fiscal year.

The actual tax due for a fiscal year should be fully paid by the due date of the tax return, irrespective of whether a tax return is filed.

An underpayment can arise for various reasons and provisions are included with respect to the first or second instalment or at the due date of the tax return. Interest will accrue on instalment payments from the day after the date the instalment payment is required to be received in the amount prescribed by the regulations and end the day the underpayment is settled. An underpayment for a fiscal year can occur from any circumstance and exists when the payments received are not 100% of the actual tax due at the due date of the filing return.

An overpayment exists when the payments received exceed the amount required to satisfy the tax due and any interest that is otherwise attributable to instalment underpayments. Overpayments can be refunded or re-allocated and will accrue interest after 90 days of arising. The rates of interest applicable to both underpayments and overpayments are set out in the regulations.

**Question 2: Are there any aspects of the proposals for payment of taxes that present concerns or require further clarification?**

#### **Part 4: Returns**

Part 4 prescribes regulations for filing a return, amending a return and grants authority to the Agency to require filing of a return and to correct a return.

Taxpayers are required to file a return for each fiscal year by the end of the 10<sup>th</sup> month following the fiscal year covered by the return, including applicable declarations. However, the Agency may discharge the obligation to file a return in certain circumstances.

Amendments to tax returns can be made within the prescribed timeframe as described in the regulations. If an amendment is required after the prescribed timeframe, the Agency has the power to consent to the amendments in certain circumstances. Resulting over and underpayments will apply as provisioned under Part 3.

The Agency can require the filing of a return where a return has not been filed, which can ultimately be satisfied through the filing of a return or by the withdrawal of the request. The Agency can also correct a return which is deemed to be made by the FBCE within three years of the tax return being filed.

Where obvious errors or omissions exist, the Agency will have the power to correct the return with notice provided to the taxpayer.

Documentation must be retained for a period of five years from the filing date of the return and the Agency holds the power to require the production of the documents in connection with an assessment.

**Question 3: Are there any aspects of the proposals for returns and enquiries that present concerns or require further clarification?**

### **Part 5: Enquiries, assessments, clearance and disputes**

Part 5 focuses on the circumstances in which the Agency can enquire into or assess tax with respect to an FBCE. Part 5 also includes provisions for dispute resolution and introduces instalment agreement provisions.

To ensure CIT can be administered fairly to all taxpayers, the Agency may make reasonable enquiry of tax returns.

Enquiries can be made within four years of the later of the original due date for the return or the actual filing date of the return and will not be extended unless through mutual agreement. However, no time period for enquiry will exist where a return has not been filed or where fraud or intentional misstatement has occurred. Certain circumstances may allow an



enquiry to be made to an entity which was the subject of a previous enquiry. Enquiries can be partially or fully closed.

Where a tax return has not been filed or has been filed with materially incorrect or incomplete information, the Agency holds the power to propose an assessment of tax, interest and penalties as applicable. After the necessary process has been completed, a final assessment will be provided and the dispute resolution procedures will apply where the FBCE disagrees with the assessment.

The Agency appreciates that transactions completed before the end of a fiscal year can impact tax return obligations. The clearance procedure aims to deal with the obligation to make a return where a transaction results in the BCEG no longer having members which are considered Bermuda Tax Resident Entities or Bermuda Permanent Establishments. Clearance will only be granted where all information necessary to grant clearance has been received by the Agency.

Instalment agreements can be requested by the Agency, but the Agency has discretion in accepting, refusing, or proposing an amendment to the agreement. Where an instalment agreement is entered into, the Agency will not have further enforcement action against the amounts agreed to in the instalment agreement.

Many respondents in the first consultation were concerned about the ability to dispute an action from the Agency. Provision is made for an appeal to be made notwithstanding the appeals procedures set out in the other parts of the CIT Laws.

**Question 4: Are there any aspects of the proposals for assessments, clearance and disputes that present concerns or require further clarification?**

# 3. Illustrative Draft

BERMUDA

CORPORATE INCOME TAX ADMINISTRATIVE REGULATIONS 2025

BR / 2025

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The Minister of Finance, in exercise of the powers conferred by section 52 of the Corporate Income Tax Act 2023 and section 24 of the Corporate Income Tax Agency Act 2024 makes the following regulations:—

### **PART I**

#### **INTRODUCTORY**

##### **Citation**

- 1 These Regulations may be cited as the Corporate Income Tax Administrative Regulations 2025.

##### **Interpretation**

- 2 In these Regulations, unless the context otherwise requires terms used in the Corporate Income Tax Act 2023 but not otherwise defined herein shall have the same meanings given to them in the Corporate Income Tax Act 2023 and further –
  - “Agency” means the Corporate Income Tax Agency established by the Agency Act;
  - “Agency Act” means the Corporate Income Tax Agency Act 2024;
  - “CIT Act” means the Corporate Income Tax Act 2023;
  - “first instalment” has the meaning given to that term in regulation 9;
  - “instalment” means, as the context shall require, a first instalment and/or a second instalment;
  - “original due date” shall, for any given fiscal year, refer to the date described in regulation 23(2) for such fiscal year;
  - “second instalment” has the meaning given to that term in regulation 9;
  - “Minister” means the Minister of Finance;
  - “tax” means tax chargeable pursuant to the CIT Act (i.e. as calculated pursuant to the

CIT Act including net of any applicable tax credits);

“tax due” shall mean, in respect of any fiscal year, 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, pursuant to regulation 16; *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 other fiscal years which have been credited to the fiscal year in question); and

“U.S. dollars” shall mean the lawful currency of the United States.

## **PART II**

### **REGISTRATION AND GENERAL ADMINISTRATION**

#### **Use of electronic records**

3 (1) Where there is a requirement in the CIT Act, the Agency Act or in any statutory instrument made thereunder (including these regulations) for a person to file or provide any document or for the Agency to issue or provide any certificate or other document, it shall be made by means of an electronic record.

(2) For the purposes of paragraph (1), “to file”, “to provide” and “to issue” includes to send, forward, give, deliver, provide, deposit, furnish, issue, leave at, serve, submit, circulate, lay, make available or lodge.

(3) The Agency shall have the discretion to accept or issue any document in non-electronic form.

#### **Form of electronic records**

4 (1) The Agency shall prescribe the form of any electronic record to apply to any form, return or certificate that is required to be filed with or issued by the Agency, including the form of any return or any associated tax form or filing.

(2) The form prescribed by the Agency pursuant to paragraph (1) shall be published by the Agency.

#### **Confidentiality and communications**

5 (1) Notwithstanding any provision of the Agency Act, any electronic record maintained by the Agency shall, subject to applicable law, be treated as confidential.

(2) The Agency shall ensure that it has appropriate safeguards in place to ensure the security of any electronic records.

(3) In respect of the affairs of any Bermuda Constituent Entity Group (including any Bermuda Constituent Entity which is a member thereof), the Agency shall only communicate with-

- (a) the directors and officers of the Filing Bermuda Constituent Entity for such Bermuda Constituent Entity Group; or
- (b) any other person (which need not be a director, officer or employee of the Filing Bermuda Constituent Entity) designated by the Filing Bermuda Constituent Entity (on such form and in such manner as may be prescribed by the Agency) as authorised to receive communications from the Agency and to communicate with the Agency on its behalf.

(4) In communicating with any person authorised to receive communications (including in respect of enquiries and assessments pursuant to these regulations), the Agency shall be entitled to regard any contact details supplied as current and valid unless notified otherwise.

### **Requirement to register**

6 (1) Each Bermuda Constituent Entity shall be required to be registered with the Agency no later than the earlier of:

- (a) 30 days prior to payment of any required instalment by or on behalf of the Bermuda Constituent Entity Group if the entity registering is the Filing Bermuda Constituent Entity; or
- (b) nine months prior to the original due date for the filing of the Bermuda Constituent Entity's return by the Filing Bermuda Constituent Entity of the relevant Bermuda Constituent Entity Group; or
- (c) 90 days following the formation, incorporation or registration (as the case may be) of the Bermuda Constituent Entity,

provided that the Agency may extend any time period or deadline for registration as it sees fit.

(2) References in paragraph (1) to the formation, incorporation or registration of a Bermuda Constituent Entity shall apply in cases where a previously existing entity becomes a Bermuda Constituent Entity for the first time.

(3) The Agency may specify from time to time such information relating to a Bermuda Constituent Entity's registration that must be updated following a change thereto, and in respect of any information so specified, the requirement to register pursuant to paragraph (1) shall include an obligation to update any registration within 90 days of a change to such information.

(4) A failure to provide any update as required by paragraph (3) shall be treated as a failure to register.

### **Form of registration**

7 (1) The form and manner of registration shall be prescribed by the Agency.

(2) Notwithstanding paragraph (1), the Agency shall be entitled to use information shared by the Registrar of Companies pursuant to the Companies Act 1981, Limited Liability Company Act 2016, Exempted Partnerships Act 1992 and Overseas Partnerships Act 1995 for the purposes of simplifying and expediting registration.

(3) A Bermuda Constituent Entity that identifies itself as such pursuant to any declaration submitted to the Registrar of Companies shall not be in default of the obligation to register pursuant to regulation 6 unless it receives a notification by the Agency that its registration is incomplete and/or further details are required in order to complete its registration, and it fails to comply within 90 days of such notification.

(4) Notwithstanding the foregoing, but subject to regulation 6, a Bermuda Constituent Entity may voluntarily submit to the Agency at any time an amendment to any details previously submitted in connection with registration.

### **Cancellation of registration**

8 (1) An entity may submit a request to cancel its registration in such form and manner as shall be prescribed by the Agency.

(2) The Agency shall not cancel any Bermuda Constituent Entity's registration unless it is satisfied that -

- (a) the entity has no tax due;
- (b) the entity is not in default (or will not be in default following the cancellation of its registration) of any obligation or requirement under these regulations, the CIT Act or the Agency Act; and
- (c) the cancellation of the entity's registration will not impair or prevent the collection of any tax which may become due following the cancellation of the registration (including as a result of any assessment by the Agency),

provided that the Agency may cancel an entity's registration in circumstances where any of paragraphs (a), (b) or (c) are not satisfied but the Agency is satisfied that appropriate provision has been made for any tax due (or any tax which may become due), obligations or requirements of the entity notwithstanding the request for cancellation.

(3) The circumstances in which the Agency may be satisfied that there is appropriate provision in accordance with paragraph (2) may include, without limitation-

- (a) where clearance has been granted pursuant to these regulations; or
- (b) where the entity-
  - (i) is not a Filing Bermuda Constituent Entity;
  - (ii) has ceased to carry on business and/or is being wound-up or dissolved; and
  - (iii) notwithstanding (ii), other Bermuda Tax Resident Entities and/or Bermuda Permanent Entities of the Bermuda Constituent Entity Group and/or In Scope MNE Group shall remain following the cancellation of the registration of the Bermuda Constituent Entity.

### **Filing Bermuda Constituent Entity**

9 (1) Each Bermuda Constituent Entity Group shall, subject to this regulation, designate its Filing Bermuda Constituent Entity (which shall be a member of the Bermuda Constituent Entity Group) in such form and manner as shall be prescribed by the Agency.

(2) Where a Bermuda Constituent Entity Group consists of only one Bermuda Constituent Entity, such Bermuda Constituent Entity shall be automatically designated as the Filing Bermuda Constituent Entity for that Bermuda Constituent Entity Group.

(3) Where a Bermuda Constituent Entity Group fails to designate a Filing Bermuda Constituent Entity on or before the earlier of:

- (a) the original due date for the filing of its return; or
- (b) the payment of any instalment,

and paragraph (2) does not apply, then the Agency shall designate such member of the Bermuda Constituent Entity Group as the Filing Bermuda Constituent Entity as it sees fit and shall notify the Bermuda Constituent Entity Group of the same.

(4) Once a Bermuda Constituent Entity is designated as a Filing Bermuda Constituent Entity, such designation shall apply for the fiscal year in which it is made and all subsequent fiscal years, unless and until such designation is modified or revoked.

### **PART III**

#### **PAYMENT OF TAXES**

##### **Obligation to pay tax**

10 (1) Each Filing Bermuda Constituent Entity shall, on behalf of its Bermuda Constituent Entity Group, be obliged to make payments of tax in the manner and by the dates set out herein.

(2) The obligation to make instalment payments pursuant to these regulations shall apply notwithstanding that tax for the full fiscal year shall not have been finally determined at the due date of such instalment payments.

(3) Notwithstanding the amount of instalments, or the amount of tax shown on any return submitted to the Agency, the actual tax of a Bermuda Constituent Entity Group shall be determined by the Agency including, if necessary, in accordance with any assessment issued by the Agency pursuant to Part V.

##### **Manner of payment**

11 (1) Any amounts payable pursuant to the operation of this regulation shall be paid in the manner, and shall be accompanied by such documentation, as is prescribed by the Agency, subject to the operation of section 50A of the CIT Act and any regulations published thereunder.

(2) Any refund payable by the Agency shall be made to such account as a Bermuda Constituent Entity Group shall notify to the Agency in the form the Agency shall prescribe.

(3) Any-

- (a) payment made by or on behalf of a Bermuda Constituent Entity Group (or any member thereof) in respect of its obligations under these regulations and/or the CIT Act; and
- (b) payment made to a Bermuda Constituent Entity Group (or any member thereof) in respect of any refunds,

shall be made in U.S. dollars.

(4) Notwithstanding paragraph (3), payments may be accepted in Bermuda Dollars instead of U.S. dollars if the Agency has given its prior consent thereto.

(5) Any amounts of tax due shall be rounded to the nearest dollar.

(6) Notwithstanding the deadlines prescribed herein for any payments-

(a) where a payment deadline has been missed in respect of any payment, payment may be made at any time after the deadline to make good the missed payment without waiting for the next prescribed payment date hereunder, provided that such a late payment shall not affect any interest charges or penalties which have accrued or which may be assessed prior to the date the late payment is made; and

(b) a payment may be made in advance of any deadline.

### **Requirement to make instalment payments**

12 (1) A Bermuda Constituent Entity Group shall make two payments prior to the end of its fiscal year on account of its tax for such fiscal year; such instalments shall be known as the "first instalment" and the "second instalment" respectively.

(2) To the extent that a Bermuda Constituent Entity Group has a fiscal year which is more than 32 weeks but less than 52 weeks in length, there shall be no requirement to pay the second instalment.

(3) To the extent that a Bermuda Constituent Entity Group has a fiscal year which is 32 weeks or less in length, there shall be no requirement to pay the first or second instalment.

(4) The requirement to pay the first instalment and second instalment shall not apply if a Bermuda Constituent Entity Group's tax for the fiscal year is expected to be less than \$10,000.

(5) Any required payment of a first instalment or second instalment shall be subject to the prior application of any overpayments in accordance with these regulations to set-off any payment obligation.

### **First instalment**

13 (1) The first instalment shall be due on the 15th day of the 8th month of the fiscal year of the Bermuda Constituent Entity Group.

(2) The first instalment shall be the lesser of:

(a) 50% of the tax; or

(b) 100% of the tax that would have applied if:

(i) with respect to each Bermuda Constituent Entity in the Bermuda Constituent Entity Group:

(A) the amount described in section 20(a) of the CIT Act was computed by reference to the net income or loss determined for the Bermuda Constituent Entity in preparing the profit and loss statement in the consolidated financial statements of the ultimate parent entity for the first 6 months of the fiscal year;

(B) the adjustments pursuant to Part 6 of the CIT Act (other than the adjustments described in paragraphs (C) and (D)), and the allocations pursuant to Part 7 of the CIT Act were computed by reference to the



relevant components of the financial accounting net income or loss described in paragraph (A);

(C) the adjustments described in sections 28(2)(a), 29 (prior to consideration of the application of subsection 29(4)), and 33(3) (prior to consideration of the application of subsection 33(5)) of the CIT Act, were limited to 50% of the amounts otherwise applicable for the full fiscal year; and

(D) the limitations described in sections 29(4) and 33(5) of the CIT Act were applied by reference to the relevant amounts described in paragraphs (A), (B) and (C), and

(ii) the amounts described in sections 5, 6, and 4(2)(b) of the CIT Act were determined by reference to the relevant income or loss amounts described in paragraph (i) rather than the amounts otherwise applicable for the full fiscal year.

(3) The Filing Bermuda Constituent Entity may elect to disregard regulation 13(2)(b), and such election shall be made at the time of the filing of the return for the same fiscal year to which the first instalment relates.

(4) Where the first instalment is calculated by reference to regulation 13(2)(b), the Filing Bermuda Constituent Entity shall -

- (a) indicate that it is relying upon the calculation pursuant to regulation 13(2)(b) for the purpose of determining the amount of its first instalment;
- (b) disclose such information to the Agency as is prescribed by the Agency as being required to support such calculation,

in each case at the time of the filing of the return for the same fiscal year to which the first instalment relates and in the form and manner prescribed by the Agency.

### **Second instalment**

14 (1) The second instalment shall be due on the 15th day of the 12th month of the fiscal year of the Bermuda Constituent Entity Group.

(2) The second instalment shall be the lesser of the amounts described in paragraphs (a) or (b) below, reduced, in either case (but not below zero) by the amount of the first instalment:

(a) 90% of the tax, or

(b) 120% of the tax that would have applied if:

(i) with respect to each Bermuda Constituent Entity in the Bermuda Constituent Entity Group:

(A) the amount described in section 20(a) of the CIT Act was computed by reference to the net income or loss determined for the Bermuda Constituent Entity in preparing the profit and loss statement in the consolidated financial statements of the ultimate parent entity for the

first 9 months of the fiscal year;

- (B) the adjustments pursuant to Part 6 of the CIT Act (other than the adjustments described in paragraphs (C) and (D)), and the allocations pursuant to Part 7 of the CIT Act were computed by reference to the relevant components of the financial accounting net income or loss described in paragraph (A);
  - (C) the adjustments described in sections 28(2)(a), 29 (prior to consideration of the application of subsection 29(4)), and 33(3) (prior to consideration of the application of subsection 33(5)) of the CIT Act, were limited to 75% of the amounts otherwise applicable for the full fiscal year; and
  - (D) the limitations described in sections 29(4) and 33(5) of the CIT Act were applied by reference to the relevant amounts described in paragraphs (A), (B) and (C), and
- (ii) the amounts described in sections 5, 6, and 4(2)(b) of the CIT Act were determined by reference to the relevant income or loss amounts described in paragraph (i) rather than the amounts otherwise applicable for the full fiscal year.

(3) The Filing Bermuda Constituent Entity may, elect to disregard regulation 14(2)(b), and such election shall be made at the time of the filing of the return for the same fiscal year to which the second instalment relates.

(4) Where the second instalment is calculated by reference to regulation 14(2)(b), the Filing Bermuda Constituent Entity shall -

- (c) indicate that it is relying upon the calculation pursuant to regulation 14(2)(b) for the purpose of determining the amount of its second instalment;
- (d) disclose such information to the Agency as is prescribed by the Agency as being required to support such calculation,

in each case at the time of the filing of the return for the same fiscal year to which the second instalment relates and in the form and manner prescribed by the Agency.

### **Re-allocation of instalments**

15 (1) At the election of a Filing Bermuda Constituent Entity (in the form and manner prescribed by the Agency), any portion of the first instalment and/or second instalment made with respect to the Bermuda Constituent Entity Group for the fiscal year, including any overpayment applied to such fiscal year pursuant to regulation 21, may be reallocated to another Bermuda Constituent Entity Group within the same In Scope MNE Group.

(2) To the extent that an overpayment for a fiscal year is applied pursuant to regulation 21 to any other fiscal year:-

- (a) the overpayment will be applied to any payment obligations in the order they would ordinarily arise; and
- (b) if a tax deficiency is subsequently determined which reduces the overpayment for the fiscal year, such reduction will not affect the application of the overpayment (as determined prior to consideration of the subsequent tax deficiency) to the subsequent fiscal year.

### **Underpayments in relation to first instalment and second instalment**

16 (1) Where a Bermuda Constituent Entity Group fails to pay in full the first instalment and/or second instalment on or before the due date prescribed herein (subject to the application of any overpayments pursuant to regulation 21 against the obligation to pay such amounts), an underpayment arises which shall be equal to the amount of the required first instalment or second instalment (as the case may be) less the amount (if any) paid in respect of the relevant instalment on or before the due date of the relevant instalment.

(2) The underpayment shall be treated as arising on the day succeeding the relevant due date as prescribed herein, and the underpayment (or any portion thereof) shall cease to be owing on the date on which the underpayment (or portion thereof) is paid.

(3) For the period an underpayment of an instalment persists, interest shall be chargeable on the underpayment at the rate specified pursuant to regulation 19.

### **Final payment**

17 All of a Bermuda Constituent Entity Group's tax due for a fiscal year shall be paid by no later than the original due date for the filing of the Bermuda Constituent Entity Group's return.

### **Underpayments for a fiscal year**

18 (1) An underpayment for a fiscal year shall be deemed to have arisen when a Bermuda Constituent Entity Group has not, on or prior to the original due date for its return for the fiscal year, made payments sufficient to pay its tax due for such fiscal year.

(2) This regulation will apply regardless of the circumstances under which the underpayment arose.

(3) To the extent that:

- (a) an overpayment for the fiscal year is credited to another fiscal year pursuant to regulation 21; and
- (b) a deficiency is subsequently determined with respect to the fiscal year such that an underpayment of tax due arises,

then the period of the underpayment shall be deemed to begin with respect to any portion of the overpayment that was used to satisfy a required first instalment or second instalment in such other fiscal year on the due date of the first instalment or the second instalment (as the case may be); to the extent the overpayment was not used to satisfy a required instalment in the other fiscal year, the period of the underpayment shall begin with the day immediately succeeding the original due date for the filing of the Bermuda Constituent Entity Group's return for such other fiscal year.

### **Interest on underpayments**

19 (1) Interest shall be chargeable to a Bermuda Constituent Entity Group at the underpayment rate determined in accordance with these regulations, beginning with the day following the day on which the underpayment has arisen (but subject to regulation 18(3),(4) and regulation (19)(2) below) and ending with the day on which the underpayment has been paid (provided that where only a portion of the underpayment is paid, interest shall only cease to be chargeable on that portion which has been paid).

(2) If notice and demand is made for payment of any underpayment and if such

amount is paid within 21 days after the date of such notice and demand, interest under this section on the underpayment shall not be imposed for the period after the date of such notice and demand.

(3) Interest prescribed under this regulation shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as tax and may be assessed and collected at any time during the period within which any underpayment to which such interest relates may be collected.

(4) The interest rates on any underpayment shall, for any calendar quarter, be the sum of:

- (a) four per centum per annum; and
- (b) the one-year U.S. dollar risk free spot rate published by the Bermuda Monetary Authority with respect to the immediately preceding calendar quarter, rounded to the nearest 0.5%.

(5) For the purposes of calculating interest hereunder, interest shall be compounded annually.

(6) If any portion of tax due is satisfied by the credit of an overpayment from another fiscal year pursuant to regulation 21, then no interest shall be imposed under this regulation on such portion for any period during which, if the credit had not been made and the overpayment had instead been refunded, interest would have been allowable pursuant to regulation 20; for the purpose of this paragraph, the determination as to whether interest would have been allowable pursuant to regulation 20(2) shall be made by replacing the words "90 days after" with the word "with".

### **Overpayments**

20 (1) An overpayment for a fiscal year shall be deemed to have arisen when a Bermuda Constituent Entity Group has made payments which exceed the amount necessary to discharge the sum of-

- (a) tax; plus
- (b) interest in respect of underpayments (or non-payments) of instalments for the same fiscal year as the tax in paragraph (a).

(2) The period of an overpayment shall begin 90 days after the date on which the overpayment arises for the fiscal year (determined in accordance with paragraph (3)) and, in the case of an overpayment that is:

- (a) refunded to the Bermuda Constituent Entity Group, shall end no earlier than 10 days prior to the payment date of the refund; or
- (b) credited and set-off against another liability of the Bermuda Constituent Entity Group, other than as described in paragraph (6)(a), shall end with the due date of the amount against which the overpayment was credited;

(3) The date on which an overpayment (or portion thereof) shall arise shall be:

- (a) the date of the payment of the first amount which, when added to earlier payments, causes an excess as specified in paragraph (1), and
- (b) the dates of payment of all amounts subsequently paid (provided that an excess as specified in paragraph (1) still exists as of such dates).

(4) For purposes of paragraph (3), payments (including instalment payments) for the fiscal year which are made prior to the original due date for a return for the same fiscal year, and any overpayments credited to the fiscal year pursuant to regulation 21, will be deemed paid-

- (a) on the original due date, to the extent the overpayment arises with respect to a return or amended return filed on or before the original due date for a return for the same fiscal year; or
- (b) on the date the return is filed, to the extent the overpayment arises with respect to an original or amended return filed after the original due date for the return.

(5) This regulation will apply regardless of the circumstances under which the overpayment arose.

(6) Notwithstanding paragraph (2):

- (a) to the extent that the Bermuda Constituent Entity Group elects to credit an overpayment for the fiscal year to another fiscal year pursuant to regulation 21(2)(a) or (b), no interest shall be allowed pursuant to this regulation on the overpayment for the fiscal year; and
- (b) in the case of a return which is filed with respect to the fiscal year after the due date for such return, no interest shall be allowed or paid for any day before the date on which the return is filed.

#### **Re-allocation and refund of overpayments**

21 (1) If an overpayment in respect of a fiscal year as described in regulation 20 arises, and there exists at the time such overpayment arises-

- (a) any underpayments arising under regulation 18 (including any interest thereon as determined in accordance with regulation 19) in respect of another fiscal year; or
- (b) any penalties assessed by the Agency in respect of any fiscal year for which any member of the Bermuda Constituent Entity Group is liable,

then the Agency shall apply the overpayment against the sums described in paragraph (a) and (b) until either the overpayment is exhausted or all such sums have been fully discharged, provided that in applying the overpayment the Agency shall apply the overpayment in the same order as the ordering of paragraphs (a) and (b).

(2) If an overpayment as described in regulation 20 arises, and to the extent paragraph (1) does not apply to set-off the full amount of the overpayment, then a Filing Bermuda Constituent Entity may elect at the time of filing a return (in the form and manner prescribed by Agency), with respect to all or a portion of the overpayment, to:-

- (a) to apply such overpayment to the subsequent fiscal year; or
- (b) re-allocate such overpayment to another Bermuda Constituent Entity Group in accordance with regulation 15; or

(c) receive a refund of the amount of the overpayment,

provided that where no election is made on the return, then paragraph (2)(c) shall apply.

(3) References in this regulation to application, reallocation and/or refunds of overpayments shall include any interest accrued thereon in accordance with regulation 22.

#### **Interest on overpayments**

22 (1) Interest shall accrue on any overpayment during the period described in regulation 20(2) (but ceasing when the overpayment has been eliminated whether pursuant to refund or as a credit against some other liability).

(2) The interest rates on any overpayment shall, be the one-year U.S. dollar risk free spot rate published by the Bermuda Monetary Authority with respect to the immediately preceding calendar quarter, rounded to the nearest 0.5%.

(3) For the purposes of calculating interest hereunder, interest shall be compounded annually.

### **PART IV**

#### **RETURNS**

##### **Requirement to file and due date for return**

23 (1) Every Bermuda Constituent Entity Group shall be required to file a return with the Agency for each fiscal year, which shall be filed by the Filing Bermuda Constituent Entity for the Bermuda Constituent Entity Group designated in accordance with regulation 9.

(2) The due date for the filing of the return required by paragraph (1) shall be the end of the tenth month following the end of the fiscal year to which such return relates.

(3) Every return shall include a declaration by the person making the return to the effect that-

(a) such person is duly authorized to sign the return on behalf of Filing Bermuda Constituent Entity and that the Filing Bermuda Constituent Entity is duly authorized to deliver the return on behalf of the Bermuda Constituent Entities to which the return relates; and

(b) the return is to the best of their knowledge and belief correct and complete.

(4) The Agency shall be entitled to accept electronic signatures on any return.

(5) The Agency may dispense with the requirement for a return to be filed in circumstances where clearance has been granted in accordance with regulation 33.

### **Power to require filing of return**

24 (1) Where a Filing Bermuda Constituent Entity has not filed a return, regardless of whether or not such Filing Bermuda Constituent Entity has complied with any requirement to register, the Agency may by notice to such Filing Bermuda Constituent Entity require it to make and deliver to the Agency a return within such time period as may be specified in such notice.

(2) A Filing Bermuda Constituent Entity may satisfy any notice delivered pursuant to this regulation through the amendment of any previously filed return.

(3) A notice delivered pursuant to this regulation may be withdrawn by the Agency prior to the filing of any return or the date of any notice of assessment hereunder.

(4) Any filing pursuant to this regulation shall not relieve any penalties or interest charges which may otherwise attach.

(5) In determining whether or not to assess any Bermuda Constituent Entity to tax, the Agency may proceed with such assessment without first requiring the filing of a return pursuant to this regulation.

### **Amendments to return by taxpayer**

25 (1) A Filing Bermuda Constituent Entity may amend any previously filed return by notice to the Agency on the prescribed form.

(2) An amendment under this regulation may not be made after the later of:

(a) in the case a return filed other than as required by notice pursuant to regulation 24, three years after the original due date; or

(b) in the case of a return pursuant to a notice pursuant to regulation 24, twelve months after the date that a return was filed pursuant to such notice.

(3) An amendment may be made after the timelines specified in paragraph 2 if-

(a) it is made during or as a consequence or condition of any enquiry, and the Agency consents to such amendment being made; or

(b) the Agency, at the request of the Filing Bermuda Constituent Entity, agrees to extend any of the time periods specified in paragraph (2).

(4) Where an amendment to a return gives rise to a change in the amount of a tax such that an overpayment or underpayment arises, such overpayment or underpayment shall be administered in accordance with Part III and shall be treated as arising on the dates and for the periods set out therein, and shall be subject to the charging or accrual of interest accordingly.

### **Corrections to returns by Agency**

26 (1) The Agency may correct by way of amendment any return so as to correct obvious errors or omissions in the return.

(2) Where the Agency exercises its power pursuant to this regulation, it shall give notice of the same to the Filing Bermuda Constituent Entity.

(3) A correction under this regulation is deemed made by the Filing Bermuda Constituent Entity.

(4) No correction may be made by the Agency pursuant to this regulation more than three years after the date on which a return is filed.

(5) A correction under this section is of no effect if the person whose return it is gives notice rejecting the correction, provided that such notice of rejection must be given no later than 90 days after the date of the notice of correction given by the Agency.

(6) Paragraph (4) of regulation 25 shall apply to this regulation *mutatis mutandis*.

### **Document retention**

27 (1) All Bermuda Constituent Entities shall be required to keep books and records sufficient to establish the items and matters shown in any return.

(2) The requirement pursuant to paragraph (1) shall expire in respect of any item included in a return on the fifth anniversary of the filing of such return.

(3) Notwithstanding its powers under the Agency Act, the Agency shall be entitled to require the production of any documents required to be kept pursuant to this regulation in connection with any assessment conducted pursuant to Part V.

(4) Where the time period for any assessment has been extended by agreement with the Agency pursuant to regulation 28, such that the time period for the assessment now extends beyond the date described in paragraph (2), then, notwithstanding paragraph (2), the document retention requirements of paragraph (1) shall continue until the date falling one year after the end of the time period for the assessment as so extended.

## **PART V**

### **ENQUIRIES, ASSESSMENTS, CLEARANCE AND DISPUTES**

#### **Timing for enquiries and assessments**

28 (1) Subject to this regulation, any enquiry or assessment under this Part shall be in respect of a fiscal year and must be closed (in the case of an enquiry) or issued (in the case of a notice of proposed assessment) by the later of-

- (a) the fourth anniversary of the original due date for the return for the fiscal year, to the extent that a return for such fiscal year was filed on or before such due date; or
- (b) the fourth anniversary of the date on which a return is filed, to the extent the return is filed after the original due date for the return for the fiscal year.

(2) The time periods prescribed by paragraph (1) may be extended by agreement between the Agency and the Filing Bermuda Constituent Entity for the Bermuda Constituent Entity Group to which the enquiry or assessment relates.

(3) The filing of any amended return shall not alter the time periods specified in paragraph (1) (but subject to the application of paragraph (2)).

(3) The time periods prescribed by this regulation shall not apply, and any enquiry or assessment shall not be time limited in any respects-

- (a) where no return has been filed; or
- (b) in cases of fraud or intentional misstatement.

#### **Notice of enquiry**

29 (1) Notwithstanding its powers under the Agency Act, the Agency may issue a notice



of enquiry in respect of any return.

(2) An item on a return which has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of-

- (a) an amendment (or an amendment to an amendment) of a return; or
- (b) a change in law or guidance

(3) A notice of enquiry may extend (but is not limited) to-

- (a) anything contained in a return, or required to be contained in a return, including any claim or election; and/or
- (b) any election made prior to the filing of any return.

(4) The Agency may amend any notice of enquiry to take account of-

- (a) obvious errors or omissions; or
- (b) facts or circumstances which become known to the Agency following the date of the original notice of the enquiry (whether through the filing of an amended return or otherwise).

#### **Closure of enquiry**

30 (1) The Agency shall issue-

- (a) a notice of partial closure of enquiry upon being satisfied that part only of the notice of enquiry has been (or will be according to any conditions specified in the notice) addressed to its reasonable satisfaction; and
- (b) a notice of final closure of enquiry upon being satisfied that all of the notice of enquiry has been (or will be according to any conditions specified in the notice) addressed to its reasonable satisfaction.

(2) Any notice issued pursuant to paragraph (1) may require, as a condition to closure of the enquiry (or relevant part thereof) the taking of such actions (including the payment of tax due) as the Agency may require.

#### **Assessments**

31 (1) Where-

- (a) any Filing Bermuda Constituent Entity fails to furnish a return in accordance with these regulations;
- (b) it appears to the Agency that any return furnished by a Filing Bermuda Constituent is materially incomplete (whether as a consequence of an enquiry or otherwise); or
- (c) the Agency, acting reasonably, concludes that the return does not accurately state the amount of tax,

the Agency may cause an assessment to be made of the amount of tax which is properly chargeable.

(2) Any assessment of tax shall not alter the original due date for any payment of tax and accordingly the interest provisions of Part III shall apply in respect of any tax assessed, notwithstanding that the Agency, when issuing a notice of assessment may also indicate separately any amounts of interest it calculates as due and owing.

(3) An assessment of tax shall not preclude the Agency from imposing a civil penalty pursuant to the CIT Act.

(4) References in this regulation to a notice of assessment shall include a notice of proposed assessment.

### **Procedure for assessments**

32 (1) Where the Agency proposes to exercise its powers of assessment pursuant to these regulations, it shall first issue a notice of proposed assessment to the Filing Bermuda Constituent Entity of the Bermuda Constituent Entity Group for which the assessment is proposed.

(2) A notice of proposed assessment shall be a provisional finding of the Agency which shall state:

- (a) why the Agency has exercised its power of assessment;
- (b) the fiscal year to which the assessment relates;
- (c) whether the Agency requires the production of any books or records that the Bermuda Constituent Entities are required to maintain pursuant to these regulations; and
- (d) the amount of any proposed adjustment to tax (including any interest and/or penalties, which shall take account of any previous payments made on account thereof).

(3) A Filing Bermuda Constituent Entity shall have 60 days from the date of the notice of proposed assessment to make submissions to the Agency in order to challenge any of the provisional findings of the notice of proposed assessment.

(4) The Agency shall be required to take into account any submissions received pursuant to paragraph (3), following which it shall either-

- (a) make no amendments to the proposed notice of assessment;
- (b) make such amendments to the proposed notice of assessment as it determines appropriate; or
- (c) cancel the proposed notice of assessment,

provided that in any event it shall notify the Filing Bermuda Constituent Entity after determining which of paragraphs (a) to (c) to apply and immediately upon such notification, if not cancelled, the proposed notice of assessment (as amended, if relevant) shall be automatically converted to a final notice of assessment.

(5) Notwithstanding the foregoing, after a final notice of assessment has been issued, the Agency shall not be precluded from issuing a further notice of proposed assessment in relation to the same fiscal year to the extent the Agency subsequently determines that any previous final notice of assessment is incorrect or incomplete in any material respect (including as a result of taking into account facts and circumstances that were not known to the Agency at the time of the original assessment).

(6) A Filing Bermuda Constituent Entity that disagrees with any final notice of assessment shall be entitled to apply to the Supreme Court in accordance with these regulations.

(7) The Agency's power of compromise pursuant to section 17 of the Agency Act shall apply in relation to any final notice of assessment.

### **Clearance procedure**

33 (1) Where, prior to the end of a fiscal year, one or more members of a Bermuda Constituent Entity Group, whether in one transaction or in a series of connected transactions, propose to discontinue (whether by merger or otherwise), liquidate or otherwise dissolve, such that upon conclusion of the transaction or connected transactions, there will no longer be any members of the Bermuda Constituent Entity Group that will be either Bermuda Tax Resident Entities or Bermuda Permanent Establishments, then the Agency may, upon the filing of such forms as it may prescribe, grant clearance for the Bermuda Constituent Entity Group to dispense with the requirement for the Bermuda Constituent Entity Group to file a return and/or make payment of any tax (including any instalments) for the fiscal year in question.

(2) The grant of clearance shall be subject to such conditions as the Agency may impose, including (but not limited to) requirements that the Bermuda Constituent Entity Group-

- (a) pay an amount sufficient to discharge any tax for the fiscal year in question;
- (b) make good any tax due (in respect of previous fiscal years) or late returns;
- (c) respond to any outstanding enquiries; or
- (d) file a return on the basis of a shortened fiscal year.

(3) When granting clearance, the Agency may agree that it shall only exercise its powers of assessment pursuant to these regulations within a shorter time period that would otherwise apply.

(4) The Agency shall not give clearance unless it has received indemnification, in form and substance satisfactory to the Agency, from a transferee party, which may include any shareholding entity in the Bermuda Constituent Entities that receive clearance, which shall indemnify the Crown in respect of any tax due (whether by result of assessment or otherwise) that has not been paid prior to the date of clearance, provided that where such transferee is not ordinarily subject to the jurisdiction of the Bermuda Courts, such indemnification must include a submission to the jurisdiction of the Bermuda Courts.

(5) The Agency shall promptly notify the Registrar of Companies and the Office of the Tax Commissioner of-

- (a) any application for clearance; and
- (b) the grant of any clearance.

### **Instalment agreements**

34 (1) Whether as part of a compromise pursuant to section 17 of the Agency Act or otherwise, the Agency shall have the power to enter into an instalment agreement with a Filing Bermuda Constituent Entity in respect of overdue amounts.

(2) A Filing Bermuda Constituent Entity may request that the Agency enter into an instalment agreement with it, but Agency shall not be obliged to do so.

(3) An instalment agreement shall be an agreement in writing which shall-

- (a) state that it is an instalment agreement;
- (b) identify the Bermuda Constituent Entities and Bermuda Constituent Entity Groups covered by the agreement;

- (c) state the amounts (whether or tax due or penalties or otherwise) covered by the agreement;
- (d) establish a payment plan for the amounts due and owing by a Bermuda Constituent Entity Group which are covered by the agreement; and
- (e) automatically terminate if any required payment thereunder is missed by the deadline specified therein.

(4) For so long as an instalment agreement is in existence, the Agency shall be precluded from commencing any enforcement action before the Bermuda Court in respect of the amounts covered by the instalment agreement.

(5) An instalment agreement shall not vary the amount of tax due or penalties, nor shall the existence of an instalment agreement cause interest to cease to be chargeable for so long as amounts remain outstanding.

### **Disputes and right of appeal**

35 (1) Notwithstanding the CIT Act or the Agency Act, appeal may be brought by a Filing Bermuda Constituent Entity on behalf of its Bermuda Consistent Entity Group to the Supreme Court against any final notice of assessment, provided that-

- (a) if such appeal is commenced within 120 days of the final notice of assessment, no payment into court shall be required in order for the appeal to proceed;
- (b) if such appeal is commenced after 120 days of the final notice of assessment, payment into court of the amount of tax stated of the final notice of assessment shall be required prior to the appeal proceeding.

(2) In lieu of the payment into court required by paragraph 1(b), a Filing Bermuda Constituent Entity may provide a letter of credit, payment bond or surety (or any combination thereof), subject to the Agency, acting reasonably, accepting any of the foregoing (or any combination thereof) in substitution for a payment into court.

(3) On any appeal under this section, the Court may make such order, including an order for costs, as it thinks just.

(4) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulating the practice and procedure on an appeal under this section.

### **Recovery of tax**

36 The Agency may pursue any payments that are overdue pursuant to these regulations as a debt due to the Crown, including by way of any statutory demand and/or winding-up petition.

### **Evidence**

37 Where tax due is in arrears, a certificate of the Agency that tax due is unpaid, shall, subject to these regulations, be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Crown; and any document purporting to be such a certificate as is mentioned in this regulation shall be deemed to be such a certificate until the contrary is proved.

**Liquidator to give notice**

38 Every person who is the liquidator of a company which is being wound up and which is a Bermuda Constituent Entity shall, within fourteen days after he has become liquidator of that company, serve on the Agency notice in writing of his appointment as liquidator.

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