

A BILL

entitled

CORPORATE INCOME TAX (PENALTY PROVISIONS) AMENDMENT ACT 2025

WHEREAS it is expedient to amend the Corporate Income Tax Act 2023 to provide for civil and criminal penalties to ensure the due observance of the corporate income tax regime set out under that Act; and to amend the Corporate Income Tax Agency Act 2024 so as to revise the definition of “tax receipts”;

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:

Citation

1 This Act, which amends the Corporate Income Tax Act 2023 and the Corporate Income Tax Agency Act 2024 may be cited as the Corporate Income Tax (Penalty Provisions) Amendment Act 2025.

Amends Corporate Income Tax Act 2023

2 The Corporate Income Tax Act 2023 is amended—

(a) in section 4, by repealing subsection (3) and substituting the following—

“(3) 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 that 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.”;

(b) in section 48(1), by inserting after the words “administering this Act” the words “(including the Agency)”;

(c) by inserting after Part 8 the following new Parts—

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“PART 8A

CIVIL PENALTIES

Interest to be chargeable

46A Interest shall be chargeable in respect of tax and tax due at the rates and in the manner prescribed in regulations made pursuant to section 52 of this Act.

Power to impose civil penalties

46B (1) References in this Part to—

- (a) “tax” means tax chargeable pursuant to this Act (i.e. as calculated pursuant to this Act including any netting of any applicable tax credits) and converted into U.S. dollars pursuant to this Act; and
- (b) “tax due” shall be construed to 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 subparagraphs (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).

(2) The Agency may, where it deems appropriate, impose the civil penalties prescribed by this Part.

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

(4) The Agency shall, upon having considered the conduct of the In Scope MNE Group as provided in subsection (5), decide—

- (a) whether a failure requiring the imposition of a civil penalty under this Part has occurred; and
- (b) the amount of the penalty to be imposed (in circumstances where a maximum penalty is specified).

(5) The Agency shall, for purposes of subsection (4) and in addition to such further criteria prescribed in this Part, 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

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(c) whether or not responses were received in respect of any enquires by the Agency together with the content and timeliness of such responses.

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

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

(8) Where a penalty is specified for each month that a failure continues, such penalty—

- (a) shall be imposed for at least one month as the minimum penalty; and
- (b) may be imposed for a failure that is committed during any part of a month,

regardless of the duration of the failure.

(9) Subject to subsections (10) and (11), the Agency may impose a penalty against a Bermuda Constituent Entity referred to in subsection (3) by way of written notice, which notice shall—

- (a) provide that a penalty shall be due and payable as of the date of such notice; and
- (b) notwithstanding subsection (3), not be required to be addressed to each member of the In Scope MNE Group to be valid.

(10) The Agency must, prior to imposing a penalty under subsection (9), issue a warning notice to the Bermuda Constituent Entity against whom such penalty is proposed, and such warning notice shall—

- (a) indicate the offence for which a penalty is proposed and the reasons the Agency has determined to impose such penalty;
- (b) indicate the proposed amount of the penalty;
- (c) state that if a penalty is imposed 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; and
- (d) state that the affected Bermuda Constituent Entity has 28 days from the date of the warning notice to respond in writing to the warning notice.

(11) Following the expiry of the 28 day response period provided for in subsection (10), the Agency shall issue a decision notice in respect of any warning notice, and a decision notice shall confirm whether or not a penalty has been imposed and, if it has been imposed, the amount of such penalty.

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(12) A civil penalty imposed pursuant to this Part may be recovered by the Agency as a debt.

Failure to register

46C (1) A Bermuda Constituent Entity shall be liable to a civil penalty under this Part where, without reasonable excuse, it has failed to register for tax as required by this Act, the CIT Agency Act or any regulations made thereunder.

(2) A Bermuda Constituent Entity that fails to comply as provided in subsection (1) shall be liable to a civil penalty not exceeding \$10,000.

Failure to file return

46D (1) A Filing Bermuda Constituent Entity shall be liable to a civil penalty where, without reasonable excuse, it fails to file any return for a fiscal year by the deadline prescribed by this Act, the CIT Agency Act or any regulations made thereunder.

(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

46E (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 shall 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 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

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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) an 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.

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

(4) 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.

(5) In this section—

“qualified amended return” means 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 regulations the Minister may prescribe under this Act or the CIT Agency Act;

“substantial authority” means authority from one or more of the following sources—

- (a) this Act, the CIT Agency Act or any regulations made thereunder;
- (b) decisions of the Court;
- (c) determinations by the Agency;
- (d) 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;

“substantial understatement” means an understatement which exceeds the lesser of—

- (a) 20% of the tax which should have been reported had the understatement not occurred; or

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(b) \$10,000,000;

“understatement of tax” means 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 amount of tax that the Bermuda Constituent Entity Group ought to have reported on such return.

Failure to pay tax when due

46F (1) A Filing Bermuda Constituent Entity shall be liable to a civil penalty where, without reasonable excuse, it fails to pay the tax due for the fiscal year by the due date prescribed under this Act, the CIT 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

Offences by body corporate and other entities

46G (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 any director, manager, or other similar officer of the body corporate (or any person who is purporting to act in any such capacity), such person, 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 unaware 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

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- (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, subsection (1) shall apply) other than a member who is proved to have been unaware 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

46H (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 CIT Agency Act or any regulations made thereunder, 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) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine not exceeding \$5,000,000 or to imprisonment for a period not exceeding six months or both.

Tax Evasion

46I (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 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) A person guilty of an offence under this section shall be liable on conviction on indictment to a fine of an amount up to 100% of the tax evaded (or which the person attempted to evade) or to imprisonment for a period not exceeding five years or both.

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Application of civil and criminal penalties

46J (1) When a person is liable to a civil penalty imposed by or under Part 8A of this Act, such person shall not also be charged with an offence under Part 8B of this Act in relation to the same matters.

(2) When a person is convicted of an offence under Part 8B of this Act, such person shall not also be liable to a civil penalty imposed by or under Part 8A of this Act in relation to the same matters.”.

Amends Corporate Income Tax Agency Act 2024

3 Section 2 of the Corporate Income Tax Agency Act 2024 is amended in the definition of "tax receipts" by deleting the parenthetical and substituting the following “(and shall include any instalment payments and any penalties)”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Corporate Income Tax Act 2023 so as to provide for civil and criminal penalties to ensure the due observance of the corporate income tax regime set out under that Act; and further seeks to amend the Corporate Income Tax Agency Act 2024 so as to provide for a revised definition of “tax receipts”.

Clause 1 provides a citation for the Bill.

Clause 2 amends the Corporate Income Tax Act 2023: (a) in section 4(3), to clarify how liability for civil and criminal penalties is to be shared amongst corporate groups; (b) in section 48(1), to clarify that the acts of the Agency in imposing civil penalties are subject to the jurisdiction and oversight of the Supreme Court; and (c) to insert new Parts 8A and 8B to introduce new provisions relating to civil and criminal penalties. Part 8A contains provision for civil penalties in sections 46A to 46F and Part 8B contains provision for criminal penalties in sections 46G to 46J, as follows:

- Section 46A provides for interest to be chargeable in respect of overdue amounts of tax and tax due, as set out in regulations.
- Section 46B provides the Corporate Income Tax Agency with the power to impose civil penalties and prescribes the factors the Agency shall take into account in imposing such penalties, as well as prescribe a procedure for imposing such penalties.
- Section 46C creates the offence of failing to register for tax and prescribes the civil penalty to apply to that offence.
- Section 46D creates the offence of failing to file a tax return by the prescribed deadline and prescribes the civil penalty to apply to that offence.
- Section 46E creates the offences relating to failures to accurately state the amount of tax on a tax return and prescribes the civil penalty to apply to those offences.
- Section 46F creates a civil offence relating to a failure to pay the full amount of tax due by the required deadline and prescribes the civil penalty to apply to that offence.
- Section 46G specifies when liability for a criminal offence committed by a body corporate or other legal person such as a partnership is shared by the individuals complicit in the commission of such criminal offence.
- Section 46H creates the criminal offence of deliberately failing to file a tax return and prescribes the penalty to apply to that offence.
- Section 46I creates the criminal offence of tax evasion in relation to corporate income tax and prescribes the penalty to apply to that offence.

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- Section 46J provides that where a person is found liable for a civil penalty under Part 8A, such person cannot also be charged with a criminal offence under Part 8B with respect to the same matter, and vice versa.

Clause 3 amends the Corporate Income Tax Agency Act 2024 in section 2, in the definition of “tax receipts”, to clarify that any penalties imposed and collected by the Agency are tax receipts and not the property of the Agency.