

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CORPORATE INCOME TAX AMENDMENT (NO. 2) ACT 2025

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SCHEDULE

Amendment to Corporate Income Tax Agency Act 2024

WHEREAS it is expedient to amend the Corporate Income Tax Act 2023 so as to make certain technical amendments required to ensure that the law is consistent with the OECD’s Pillar 2 model rules and to incorporate substantive concepts from those rules and related guidance that is needed to enhance 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—

CORPORATE INCOME TAX AMENDMENT (NO. 2) ACT 2025

Citation

1 This Act, which amends the Corporate Income Tax Act 2023 (the “principal Act”),
may be cited as the Corporate Income Tax Amendment (No. 2) Act 2025.

Amends section 2

2 Section 2(1) of the principal Act is amended—

- (a) in the definition of “entity”, by inserting after paragraph (b) the following continuing sentence—

“provided that an entity shall not include a central, state, or local government or their administration or agencies that carry out government functions;”;

- (b) in the definition of “excluded equity gain or loss”—

- (i) by deleting the word “and” at the end of paragraph (b);

- (ii) by inserting the word “and” at the end of paragraph (c);

- (iii) by inserting after paragraph (c) the following new paragraph—

- “(d) foreign exchange hedging gains or losses and transferred foreign exchange hedging gains or losses, to the extent a foreign exchange hedging election has been made by or on behalf of the Bermuda Constituent Entity for the fiscal year;”;

- (c) in the definition of “ultimate parent entity”, by deleting the semicolon at the end of paragraph (b) and substituting a comma, and by inserting after paragraph (b) the following continuing sentence—

“provided that a governmental entity to which paragraph (b)(ii) of the definition of “governmental entity” applies, shall not be considered an ultimate parent entity, part of an MNE Group, or the owner of a controlling interest in any entity;”;

- (d) by inserting, in the correct alphabetical order, the following new definitions—

- “ “accrued substance-based tax credit benefit” has the meaning given to that term in section 6 of the Tax Credits Act;

- “community development tax credit” shall mean the tax credit described in Part 4 of the Tax Credits Act;

- “community development tax credit benefit” has the meaning given to that term in section 28 of the Tax Credits Act;

- “foreign exchange hedging election” means a five-year election made by or on behalf of a Bermuda Constituent Entity to treat all foreign exchange hedging gains or losses and transferred foreign exchange

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hedging gains or losses of the Bermuda Constituent Entity as excluded equity gains or losses for the purposes of section 27(1)(c);

“foreign exchange hedging gains or losses ” means gains or losses of a Bermuda Constituent Entity for a fiscal year which are attributable to hedging instruments entered into by the Bermuda Constituent Entity that hedge the currency risk in ownership interests held by the Bermuda Constituent Entity, to the extent that—

- (a) the ownership interests are not portfolio shareholdings;
- (b) the gains or losses are recognised in—
 - (i) the profit and loss statement of the Bermuda Constituent Entity utilised in the determination of the financial accounting net income or loss of the Bermuda Constituent Entity for the fiscal year in accordance with section 21;
 - (ii) other comprehensive income at the level of the consolidated financial statements; and
- (c) the hedging instruments are considered effective hedges under the financial accounting standard used in the preparation of the consolidated financial statements;

“hybrid entity” means an entity that is treated as a separate taxable person for income tax purposes in the jurisdiction where it is located but that is fiscally transparent in the jurisdiction in which its owner is located;

“passive income” means income included in net taxable income that is—

- (a) a dividend;
- (b) interest;
- (c) rent;
- (d) royalty;
- (e) annuity; or
- (f) net gains from the property of a type that produces income described in paragraphs (a) to (e),

but in each case only to the extent a constituent entity-owner of a Bermuda Constituent Entity is subject to tax on such income under a controlled foreign company tax regime or as a result of an ownership interest in a hybrid entity;”;

“substance-based tax credit” means the tax credit described in Part 3 of the Tax Credits Act;”

“Tax Credits Act” means the Tax Credits Act 2025;

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“transferred foreign exchange hedging gains or losses” means gains or losses of a Bermuda Constituent Entity for a fiscal year which arise due to a transfer of the economic effect of a hedge to the Bermuda Constituent Entity from another constituent entity, to the extent that—

- (a) the hedge arises due to entering into arrangements involving hedging instruments that hedge the currency risk in ownership interests held by the Bermuda Constituent Entity;
- (b) the hedging instruments are entered into by the other constituent entity;
- (c) the other constituent entity transfers the economic and accounting effect of the hedge to the Bermuda Constituent Entity through intercompany loans or other instruments;
- (d) the other constituent entity is a member of the same In Scope MNE Group as the Bermuda Constituent Entity;
- (e) the ownership interests held by the Bermuda Constituent Entity are not portfolio shareholdings; and
- (f) the hedging instruments are considered effective hedges under the financial accounting standard used in the preparation of the consolidated financial statements;”.

Amends section 4

3 Section 4(2) of the principal Act is amended by repealing paragraph (b) and substituting the following—

- “(b) foreign tax credits applicable to the Bermuda Constituent Entity Group under Part 4.”.

Amends section 6

4 Section 6 of the principal Act is amended—

- (a) in subsection (1)(a), by deleting the words “section 5(a)” and substituting “section 5(1)(a)”;
- (b) by inserting after subsection (7) the following new subsection—

“(8) For the purposes of applying subsection (1) for a fiscal year with respect to a shock tax loss carryforward—

- (a) notwithstanding subsection (1)(a), the amount of the tax loss carryforward deduction attributable to a shock tax loss carryforward may not exceed 100% of the positive amount determined under section 5(1)(a) for the fiscal year; and
- (b) a shock tax loss carryforward is a tax loss carryforward—

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- (i) arising from a shock loss, determined as may be prescribed; and
- (ii) which the Filing Bermuda Constituent Entity has elected to treat as a shock tax loss carryforward.”.

Amends section 10

5 Section 10 of the principal Act is amended by inserting after subsection (4) the following new subsection—

“(5) For the purposes of subsection (2)(a)—

- (a) to the extent that a subsidiary of an excluded entity borrows funds from third parties to make direct acquisitions of assets (including ownership interests in other entities), the borrowing and acquisition should be treated as holding assets and investing funds for the benefit of its excluded entity parent; and
- (b) an entity should not be considered to fail the activities test in subsection (2)(a) where the aggregate of its activities falls within the combined scope of subparagraphs (i) and (ii) of that subsection.”.

Amends section 16

6 Section 16 of the principal Act is amended by deleting the words “allocated foreign taxes” and substituting “allocated creditable foreign taxes”.

Repeals and replaces section 18

7 The principal Act is amended by repealing section 18 and substituting the following—

“Allocation of adjusted creditable foreign taxes

18 (1) The allocated creditable foreign taxes of a Bermuda Constituent Entity shall be equal to the adjusted creditable foreign taxes of the Bermuda Constituent Entity as determined in accordance with section 17 and as further modified for allocations of adjusted creditable foreign taxes—

- (a) to the Bermuda Constituent Entity from another constituent entity in accordance with subsection (2); and
- (b) from the Bermuda Constituent Entity to another constituent entity in accordance with subsection (3).

(2) For the purposes of subsection (1)(a)—

- (a) the amount of any adjusted creditable foreign taxes of the main entity of a Bermuda Permanent Establishment which are related to taxable income or loss of the Bermuda Permanent

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Establishment shall be allocated to that Bermuda Permanent Establishment;

- (b) to the extent that the Bermuda Constituent Entity is the constituent entity-owner of a tax transparent entity, the adjusted creditable foreign taxes of the tax transparent entity related to taxable income or loss allocated to the Bermuda Constituent Entity pursuant to section 24(3) shall be allocated to the Bermuda Constituent Entity;
 - (c) to the extent that the Bermuda Constituent Entity is a hybrid entity, the adjusted creditable foreign taxes of its constituent entity-owners related to taxable income or loss of the Bermuda Constituent Entity shall be allocated to the Bermuda Constituent Entity;
 - (d) the amount of any adjusted creditable foreign taxes of a direct constituent entity-owner of the Bermuda Constituent Entity related to distributions from the Bermuda Constituent Entity shall be allocated to the Bermuda Constituent Entity; and
 - (e) to the extent that the constituent entity-owners of the Bermuda Constituent Entity are subject to a controlled foreign company tax regime, the adjusted creditable foreign taxes of the Bermuda Constituent Entity's direct or indirect constituent entity-owners under a controlled foreign company tax regime on their share of the Bermuda Constituent Entity's income shall be allocated to the Bermuda Constituent Entity.
- (3) For the purposes of subsection (1)(b)—
- (a) the amount of any adjusted creditable foreign taxes of a Bermuda Constituent Entity with respect to taxable income or loss of a permanent establishment for which the Bermuda Constituent Entity is the main entity and for which a branch exemption election has been made shall be allocated to the permanent establishment;
 - (b) to the extent that the Bermuda Constituent Entity is a tax transparent entity, the adjusted creditable foreign taxes of the Bermuda Constituent Entity related to taxable income or loss allocated to its constituent entity- owners pursuant to section 23(4) shall be allocated to the constituent entity-owners;
 - (c) to the extent that the Bermuda Constituent Entity is a constituent entity-owner of a hybrid entity, the adjusted creditable foreign taxes of the Bermuda Constituent Entity related to taxable income or loss of the hybrid entity shall be allocated to the hybrid entity; and

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- (d) the amount of any adjusted creditable foreign taxes of the Bermuda Constituent Entity related to distributions from another constituent entity of which the Bermuda Constituent Entity is a direct constituent entity-owner shall be allocated to the distributing constituent entity.”.

Repeals section 19

8 The principal Act is amended by repealing section 19.

Amends section 21

9 Section 21 of the principal Act is amended by inserting after subsection (6) the following new subsection—

“(7) To the extent that the financial accounts of a Bermuda Constituent Entity—

- (a) are maintained on the basis of a different financial reporting period than the fiscal year used to prepare the consolidated financial statements; and
- (b) are not included in the consolidated financial statements (including, without limitation, where the Bermuda Constituent Entity is excluded from the consolidated financial statements on materiality grounds),

the determination of the financial accounting net income or loss of the Bermuda Constituent Entity for the fiscal year shall be made on the basis of the financial accounting net income or loss reported in the financial accounts of the Bermuda Constituent Entity for its financial reporting period which ends during the fiscal year used to prepare the consolidated financial statements, provided that no item of income or loss should be included in the financial accounting net income or loss of the Bermuda Constituent Entity for more than one fiscal year.”.

Amends section 26

10 Section 26 of the principal Act is amended by repealing subsection (1) and substituting the following—

“(1) The taxable income or loss of a Bermuda Constituent Entity for a fiscal year shall be adjusted with respect to qualified refundable tax credits, as follows—

- (a) first, any income or expense included in financial accounting net income or loss for the fiscal year with respect to—
 - (i) the substance-based tax credit;
 - (ii) the community development tax credit; and
 - (iii) any other qualified refundable tax credits,

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shall be excluded from the determination of taxable income or loss for the fiscal year;

(b) second, with the exception of any tax credit benefits described in paragraph (c)(i) through (iv)—

(i) the accrued substance-based tax credit benefit of the Bermuda Constituent Entity for the fiscal year;

(ii) the community development tax credit benefit of the Bermuda Constituent Entity for the fiscal year; and

(iii) the face value of any other qualified refundable tax credit benefit entitlements derived by the Bermuda Constituent Entity for the fiscal year,

shall be included in the determination of taxable income or loss for the fiscal year;

(c) third, with respect to each tax credit benefit—

(i) which is described in paragraph (b)(i) or (iii);

(ii) which relates to the acquisition or construction of assets;

(iii) for which the Bermuda Constituent Entity engaged in the activities that generated the tax credit benefit; and

(iv) for which the Bermuda Constituent Entity has an accounting policy of reducing the carrying value of its assets in respect of such tax credit benefit, or recognising the tax credit benefit as deferred income, such that the income from the tax credit benefit is recognised over the productive life of the asset,

by including in the determination of taxable income or loss for the fiscal year, as well as any subsequent fiscal years, the amount determined by applying the accounting policy described in subparagraph (iv) to the tax credit benefit.”.

Amends section 27

11 Section 27 of the principal Act is amended—

(a) in subsection (2), by repealing paragraph (b) and substituting the following—

“(b) with respect to pension expense or income, by—

(i) excluding any pension expense or income included in financial accounting net income or loss for the fiscal year;

(ii) deducting contributions made by the Bermuda Constituent Entity to pension funds during the fiscal year; and

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- (iii) adding surplus distributions received by the Bermuda Constituent Entity from pension funds during the fiscal year, but only to the extent such pension funds were in a surplus position at the time of the distribution,

provided that the adjustments in this paragraph shall only apply with respect to pension plans that are provided through a pension fund and shall not apply to pension expense or income related to other pension arrangements (such as where pension payments are made directly by the Bermuda Constituent Entity to former employees).”;

- (b) by inserting after subsection (2) the following new subsection—

“(3) In the case of a Bermuda Permanent Establishment, to the extent that the main entity of the Bermuda Permanent Establishment is located in a foreign jurisdiction which would not impose income tax on one or more categories of revenue earned by a Bermuda Constituent Entity for the fiscal year with respect to the international operation of ships, the financial accounting net income or loss of the Bermuda Permanent Establishment for the fiscal year shall be adjusted by—

- (a) excluding the categories of revenue earned by the Bermuda Permanent Establishment for the fiscal year which—
 - (i) are consistent with the categories of revenue identified in the income tax laws (or related provisions) of the foreign jurisdiction as excludible for income tax purposes if earned by a Bermuda Constituent Entity with respect to the international operation of ships; or
 - (ii) are described in Article 8 of the OECD Model Tax Convention, but only to the extent that the income tax laws (or related provisions) of the foreign jurisdiction do not specifically identify the categories of revenue which are excludible for income tax purposes if earned by a Bermuda Constituent Entity with respect to the operation of ships in international traffic; and
- (b) excluding expenses incurred by the Bermuda Permanent Establishment for the fiscal year in connection with the revenues determined in accordance with paragraph (a).”.

Amends section 33

12 Section 33 of the principal Act is amended by inserting after subsection (8) the following new subsection—

- “(9) To the extent that—

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- (a) with respect to an asset, the value described in subsection (2)(a) exceeds the value described in subsection (2)(b);
- (b) with respect to a liability, the absolute value described in subsection (2)(b) exceeds the absolute value described in subsection (2)(a); or
- (c) with respect to an asset, the value described in subsection (3)(a)(ii) exceeds the value described in subsection (3)(a)(i),

the adjustments described in subsections (2) or (3) with respect to such asset or liability, as the case may be, shall be zero.”.

Amends section 46A

13 Section 46A of the principal Act is amended—

- (a) by renumbering the existing text as subsection (1); and
- (b) inserting a new subsection (2) as follows—

“(2) Notwithstanding subsection (1), the Agency shall, subject to the existence of such circumstances as it may prescribe, have the power to waive all or part of any interest chargeable as may be prescribed in regulations made pursuant to section 52 of this Act.

Amends section 46B

14 Section 46B of the principal Act is amended by repealing subsection (1) and substituting the following—

“(1) In this Part—

“adjusted tax payments” means, in respect of a fiscal year, the sum of—

- (a) tax payments of the Bermuda Constituent Entity Group for the fiscal year; and
- (b) the total distributable tax credit benefits of the Bermuda Constituent Entity Group for the fiscal year;

“Qualifying Bermuda Group BCE” has the meaning given to that term in section 2 of the Tax Credits Act 2025;

“tax” means corporate income tax chargeable pursuant to section 4 and converted into U.S. dollars pursuant to section 47;

“tax due” means in respect of a fiscal year, an amount equal to the excess, if any, of—

- (a) the sum of—
 - (i) tax for the fiscal year; and

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(ii) interest in respect of underpayments (or non-payments) of instalments determined as may be prescribed by regulations for the fiscal year; over

(b) adjusted tax payments of the Bermuda Constituent Entity Group for the fiscal year;

“tax payments” means, in respect of a fiscal year, the sum of—

(a) instalment payments made on behalf of the Bermuda Constituent Entity Group for the fiscal year;

(b) overpayments from other Bermuda Constituent Entity Groups and other fiscal years which have been applied to the Bermuda Constituent Entity Group for the fiscal year; and

(c) any other payments made on behalf of the Bermuda Constituent Entity Group on account of—

(i) tax for the fiscal year; and

(ii) interest in respect of underpayments (or non-payments) of instalments determined pursuant to regulations under this Act for the fiscal year;

“total accrued tax credit benefits” means, in respect of a fiscal year, the aggregate of the amounts determined for the fiscal year in accordance with section 29(2) of the Tax Credits Act 2025 for each Qualifying Bermuda Group BCE which is a Bermuda Constituent Entity member of the Bermuda Constituent Entity Group for the fiscal year;

“total distributable tax credit benefits” means, in respect of a fiscal year, the aggregate of the amounts determined for the fiscal year in accordance with section 5(1)(a) of the Tax Credits Act 2025 for each Qualifying Bermuda Group BCE which is a Bermuda Constituent Entity member of the Bermuda Constituent Entity Group for the fiscal year; ”.

Amends section 46D

15 Section 46D of the principal Act is amended—

(a) in subsection (1), by inserting, after the words “file any return”, the words “or any information or documentation required to be filed under any regulations made under this Act”;

(b) in subsection (2), by inserting, after the words “under this section”, the words “where the failure relates to the filing of a return”;

(c) by inserting a after subsection (2) the following new subsection—

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“(3) The civil penalty that may be imposed under this section where the failure relates to the filing of any information or documentation required to be filed under any regulations made under this Act (other than a return) shall be \$1,000 for each month or part of a month past the deadline.”.

Amends section 46E

16 Section 46E of the principal Act is amended in subsection (4), by deleting the words “section 46A” and substituting “section 46B”.

Repeals and replaces section 47

17 The principal Act is amended by repealing section 47 and substituting the following—

“Conversion of Foreign Currency

47 For the purposes of converting any amount denominated in a currency other than Bermuda or United States Dollars for the purposes of this Act (including any filing hereunder), the Minister may prescribe by regulations—

- (a) the method; and
- (b) the official foreign exchange rate,

for converting such amounts into U.S. dollars.”.

Consequential amendments

18 The Schedule has effect with respect to the consequential amendment to the Corporate Income Tax Agency Act 2025.

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SCHEDULE

(section 18)

AMENDMENT TO CORPORATE INCOME TAX AGENCY ACT 2024

chgm

Amends Corporate Income Tax Agency Act 2024

1 Section 4 of the Corporate Income Tax Agency Act 2024 is amended by inserting, after subsection (1), the following new subsection—

“(1A) In addition to subsection (1), the Agency shall also be responsible for—

- (a) calculating and administering the application, award and refund of any tax credits including under and in connection with the Tax Credits Act 2025; and
- (b) such other functions or duties as may be conferred on or delegated to the Agency by virtue of, or pursuant to, any statutory provision.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Corporate Income Tax Act 2023 (“the principal Act”) so as to make certain technical amendments required to ensure that the law is consistent with the OECD’s Pillar 2 model rules as well as to incorporate substantive concepts from those rules and related guidance that is needed to enhance Bermuda’s corporate income tax regime.

Clause 1 provides a citation for the Bill.

Clause 2 amends section 2 of the principal Act to refine certain definitions and to incorporate clarifications made by the OECD on equivalent definitions under the model rules and ensure consistency with OECD guidance.

Clause 3 amends section 4 of the principal Act to clarify that only foreign tax credits are relevant for the calculation of tax under the CIT Act, as domestic tax credits are now dealt with separately under the draft Tax Credits Act 2025

Clause 4 amends section 6 of the principal Act to address the permitting exceptional “shock losses”.

Clause 5 amends section 10 of the principal Act to align the section with updated OECD guidance by inserting a new subsection (5) that provides for how the borrowing and acquisition of an excluded entity that borrows funds from third parties to make such acquisitions should be treated.

Clause 6 amends section 16 of the principal Act to correct a typographical error.

Clause 7 amends section 18 of the principal Act to align the section with updated OECD guidance by revising the computation of the adjusted creditable foreign taxes.

Clause 8 amends the principal Act to repeal section 19 as matters of tax credit are to be provided in a separate piece of legislation.

Clause 9 amends section 21 of the principal Act to align the section with updated OECD guidance by inserting a new subsection (7) to provide further with respect to the computation of the financial accounting net income and loss of a Bermuda Constituent entity that relate to different financial reporting periods.

Clause 10 amends section 26 of the principal Act to align the section with updated OECD guidance by repealing and replacing subsection (1) with a subsection that provides a revised method of adjusting the taxable income or loss of a Bermuda Constituent Entity for a fiscal year.

Clause 11 amends section 27 of the principal Act to align the section with updated OECD guidance by revising the provisions relating to adjustments to financial accounting net income or loss relating to pension expense or income.

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Clause 12 amends section 33 of the principal Act to align the section with updated OECD guidance by inserting a new subsection that provides the calculation of the taxable income or loss of a Bermuda Constituent Entity in relation to stock-based compensation.

Clause 13 amends section 46A of the principal Act to provide empowerment for the Agency to waive all or part of any interest chargeable pursuant to regulations made under section 52 of the principal Act.

Clause 14 amends section 46B of the principal Act to repeal and replace subsection (1) so as to provide additional definitions for purposes of the Part.

Clause 15 amends section 46D to provide further clarification regarding information or documentation required to be filed with the Agency.

Clause 16 amends section 46E of the principal Act to correct the cross references in that section

Clause 17 repeals and replaces section 47 to revise the provision empowering the Minister to prescribe regulations relating to converting any amount denominated in a currency other than Bermuda or United States Dollars for the purposes of the principal Act.

Clause 18 provides for consequential amendments to the Corporate Income Tax Agency Act 2025.