

Administration of Bermuda's Corporate Income Tax (CIT)

Briefing Summary: This briefing summarises the progression of the proposed administrative framework with respect to corporate income tax and certain key proposed procedural requirements relating to registration, tax return filings and payment of taxes.

Service Area: Corporate, Corporate Regulation and Compliance, Taxation and Economic Substance Requirements

Location: Bermuda

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In August 2024, Bermuda's Ministry of Finance published a public consultation paper setting out certain proposed compliance obligations for Bermuda corporate taxpayers including certain anticipated procedural requirements with respect to registration, tax return filings, and payment of taxes.

As the operative provisions of Bermuda's Corporate Income Tax Act 2023 (the "**CIT Act**") are set to come into force on 1 January 2025, this first public consultation paper provides taxpayers with an indication of what the administrative and procedural framework surrounding the CIT Act may be. It is anticipated that further information, including draft legislation, will be available in late 2024.

Corporate Income Tax Act – the Filing Bermuda Constituent Entity

On 27 December 2023, Bermuda enacted the CIT Act, the operative provisions of which are set to come into force on 1 January 2025. Subject to exclusions, the CIT Act will apply to "Bermuda Constituent Entities" (i.e. "Bermuda Tax Residents" and "Bermuda Permanent Establishments") that are part of an "In Scope MNE Group." Corporate income tax will be chargeable to the "Bermuda Constituent Entity Group" (made up of one or more Bermuda Constituent Entities of the In Scope MNE Group) at a rate of 15% of net taxable income of the Bermuda Constituent Entity Group less applicable tax credits. Each Bermuda Constituent Entity within the Bermuda Constituent Entity Group will be joint and severally liable for the tax chargeable to the group. For further detail on the CIT Act click [here](#).

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With respect to filing a tax return, the CIT Act introduces the concept of a "Filing Bermuda Constituent Entity" (i.e. the Bermuda Constituent Entity that is the entity that will file a "Bermuda Corporate Income Tax Return" ("CIT Return") on behalf of a Bermuda Constituent Entity Group). At this time, neither the criteria nor the process to follow to determine which Bermuda Constituent Entity will be the Filing Bermuda Constituent Entity have been provided. That said, the CIT Act does set out certain rights and responsibilities of the Filing Bermuda Constituent Entity including:

- designating tax loss carryforward for deduction;
- making the election with respect to reducing the amount of tax loss carryforward deduction with respect to a fiscal year;
- making the election with respect to permanently disregarding the tax loss carryforward of a Bermuda Constituent Entity;
- making the election with respect to, on behalf of all Bermuda Constituent Entity Groups of an In Scope MNE Group, the de minimis exemption when applicable;
- making the election with respect to whether to treat the MNE Group of which the filing entity is a member as an In Scope MNE Group;
- making the election with respect to varying the fiscal transparency of a Bermuda Constituent Entity that it is filing on behalf of; and
- making the election with respect to establishing the fiscal transparency classification of entities in which the Bermuda Constituent Entity filing the form holds an ownership interest.

The Corporate Income Tax Elections (CT-ELP) form published by the Government on 15 December 2023 sets out these elections to be made by the Filing Bermuda Constituent Entity. The form can be found [here](#). The filing instructions with respect to this form can be found [here](#). The filing instructions indicate that the elections form is not a required filing and is provided for those that would like to make elections in advance of filing the CIT Return.

Bermuda's Corporate Income Tax Agency

In July 2024, the Bermuda Government passed the Corporate Income Tax Agency Act (the "**Agency Act**") which, among other things, establishes the Bermuda Corporate Income Tax Agency (the "**Agency**").

The Agency is responsible for the administration of the CIT Act and the collection of tax receipts (i.e. any monies collected or paid in respect of a tax liability including a prospective or estimated tax liability). This responsibility includes without limitation administering the processes and procedures for the filing of tax returns and the calculation of taxes owed.

For further detail on the Agency Act and the establishment, powers, and functions of the Agency click [here](#).

Administration of Bermuda's CIT (First Public Consultation Paper)

Neither the CIT Act nor the Agency Act provide specific instruction to taxpayers with respect to the administration of the CIT Act or the processes or procedures for filing a tax return and making payment. However, Bermuda's Ministry of Finance is currently engaged in a public consultation process with respect to such issues and, on 7 August 2024, they released a public consultation paper entitled "Introduction of Corporate Income Tax Administrative Provisions" (the **"CIT Administration Paper"**).

The CIT Administration Paper provides Bermuda stakeholders with a preliminary, high-level summary of the proposed taxpayer compliance framework (and invited feedback from interested parties between 7 August to 5 September 2024). According to such paper, the Ministry is contemplating prescribing certain compliance obligations with respect to Bermuda Constituent Entity Groups (as defined in the CIT Act) including specific procedural obligations related to registration, tax return filing, and payment of taxes. As a result, the information provided below is only proposed by the Ministry at this time (unless it is a definition or provision from CITA or the Agency Act) and is therefore subject to change. It is anticipated that additional information will be released by the Ministry in late 2024.

Online tax portal and registration

It is anticipated that Bermuda Constituent Entities will be required to register via an online portal and input certain entity-specific information as well as information about its broader group (for example, identification of the Ultimate Parent Entity and the Filing Bermuda Constituent Entity).

Existing Bermuda Constituent Entities will likely be required to register with the Agency on or about 31 March 2025. New Bermuda Constituent Entities will likely be required to register with the Agency within 60 to 90 days of the date of formation, incorporation, organization, acquisition or another event causing the entity to meet the requirements to be treated as a Bermuda Constituent Entity.

It is anticipated that the online registration portal will serve as the primary means of interaction between Bermuda entities and the Agency including with respect to:

- entity registration and issuance of a taxpayer identification number (TIN);
- filing of the CIT Return;
- processing of instalment payments;
- ongoing communications related to assessment, compliance, and enforcement;
- transmission of ad hoc queries or communications to and from the Agency; and
- access to technical guidance and other compliance aids.

Filing a Bermuda Corporate Income Tax Return

The CIT Return for the Bermuda Constituent Entity Group will likely need to be filed by the Filing Bermuda Constituent Entity on or before a specified return date for the applicable fiscal year. According to the CIT Administration Paper, it is anticipated that:

- returns will be due on or before the 15th day of the 10th month following the end of the relevant fiscal year;
- the requirement to file a tax return will be an annual obligation so long as the MNE Group is in scope;
- the return will include all matters, information, accounts, statements, reports and further particulars as may be prescribed;
- the return is to be signed by a responsible person (i.e. an officer of the company or any other person that is authorized to sign on behalf of the company);
- the return will contain a declaration to the effect that the information provided is correct, complete, and to the best of the signatory's knowledge and belief;
- amendments to a filed tax return will likely be permissible under certain circumstances;
- failure to file a tax return in accordance with prescribed procedures and timeframes may result in civil penalties (in addition to any sanctions for specific offences set out in the Agency Act);
- supporting records will likely need to be retained for seven years following the date of filing and failure to retain records may result in penalties; and
- the Agency will have the power to raise an enquiry into a return within three years of the later of the filing due date or the date on which the CIT return was filed, with potential to extend based on mutual agreement between the Filing Bermuda Constituent Entity and the Agency.

Payment and collection

The Filing Bermuda Constituent Entity will likely be required (i) to remit, prior to the due date for filing its CIT return for such year, two instalments payments reflecting a portion of the estimated CIT liability of the Bermuda Constituent Entity Group for the fiscal year, and (ii) to ensure that the remaining total tax liability is remitted no later than the due date for filing the return in accordance with the following timing requirements:

- **first instalment** – likely to be due by the 15th day of the 8th month after the beginning of the fiscal year in the amount of 50% of the expected tax liability for the year or a safe harbour backstop (an amount computed on the basis of a projected annualised approach based on earnings to date);
- **second instalment** – likely to be due by the 15th day of the 12th month after the beginning of the fiscal year to bring combined total instalments to 90% of the expected tax liability for the year or the safe harbour backstop;
- **“true-up” payment** – payment of the total tax liability indicated on the return likely due upon the due date for filing the return (i.e. on or before the 15th day of the 10th month following the end of the relevant fiscal year) irrespective of when the return is filed.

Further guidance will likely be provided with respect to information required to be provided to support the calculation of the estimates.

Interest and penalties for failure to pay

Overpaid tax which is refunded will likely accrue interest at the published reference rate starting 90 days after the return is filed. Entities may be able to elect to apply any overpayment amount to future amounts due. Underpayment of tax will likely accrue interest at the published reference rate plus 150 basis points calculated from the date of respective first, second, and true-up instalments.

Failure to remit instalment payments in accordance with prescribed procedures and timeframes will likely result in the assessment of an interest charge. In addition, civil penalties will likely be prescribed for late returns, either in the form of fixed penalties over time, tax-gearied penalties, or a combination of the two.

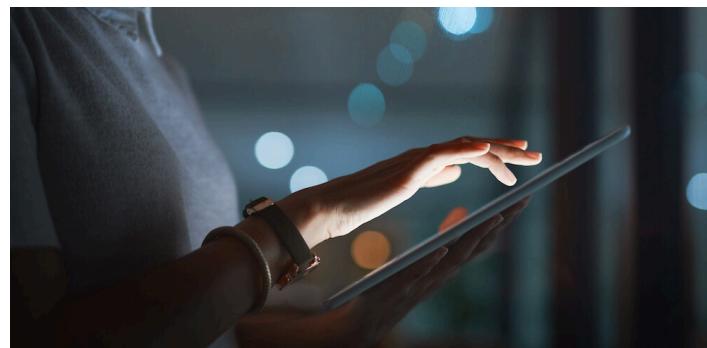
Companies Act annual declarations

It is anticipated that the annual declaration required to be submitted by a Bermuda entity to the Registrar of Companies each year in accordance with the Companies Act will need to provide certain information with respect to its CIT status (e.g. whether the entity is in scope of the CIT Act and, if not, the reason for such determination).

Looking forward, it is anticipated that a subsequent consultation paper will be released by the Ministry in late 2024 and that the subsequent paper will contain draft legislation on these issues. For further information or for assistance with corporate income tax matters, please contact us.

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