

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

## PROCEEDS OF CRIME AMENDMENT (NO. 2) ACT 2017

WHEREAS it is expedient to amend the Proceeds of Crime Act 1997; the Financial Intelligence Agency Act 2007; and the Chartered Professional Accountants of Bermuda Act 1973:

Be it enacted by The Queen'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 may be cited as the Proceeds of Crime Amendment (No. 2) Act 2017.

### Amends the Proceeds of Crime Act 1997

2 The Proceeds of Crime Act 1997 is amended, in section 3, in the definition of "relevant offence", by—

- (a) deleting the word "or" at the end of paragraph (a) and by adding the same at the end of paragraph (b); and
- (b) deleting the full-stop at the end of paragraph (b), and by adding after paragraph (b), the following—
  - "(c) any criminal act or omission in relation to any tax lawfully established in a jurisdiction outside Bermuda which, notwithstanding section 2 of the Taxes Management Act 1976, would have constituted an offence contrary to section 37(2) of that Act, had it occurred in Bermuda."

### Amends the Financial Intelligence Agency Act 2007

3 The Financial Intelligence Agency Act 2007 is amended, in section 18(1), by—

- (a) deleting the word "or", at the end of paragraph (e), and placing it after paragraph (f);
- (b) deleting and substituting the full-stop, at the end of paragraph (f), with a semi-colon; and

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(c) adding after paragraph (f) the following—

“(g) the professional body designated by the Minister in accordance with section 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, to discharge its functions under any statutory provision.”.

Amends the Chartered Professional Accountants of Bermuda Act 1973

4 The Chartered Professional Accountants of Bermuda Act 1973 is amended, in section 8B(3), by repealing the word “public”.

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### EXPLANATORY MEMORANDUM

This Bill seeks to amend the to amend the Proceeds of Crime Act 1997; the Financial Intelligence Agency Act 2007; and the Chartered Professional Accountants of Bermuda Act 1973.

Clause 1 is the citation.

Clause 2 amends section 3 of the Proceeds of Crime Act 1997, adding paragraph (c), thereby closing the gap in Bermuda's framework in relation to the manner in which it incorporates overseas tax crimes into the predicates for money laundering. This amendment seeks to close the gap in Bermuda's framework in relation to the manner in which it incorporates tax crimes into the predicates for money laundering. Although criminal tax evasion under the Taxes Management Act 1976, by implication, is already included as one of Bermuda's existing predicates for money laundering, the conduct which occurs in Bermuda and overseas; the predicate only relates to specific tax-types that match the categories of tax that currently exist in Bermuda. Therefore, in its present form in Bermuda, criminal tax evasion as a predicate for money laundering, excludes income/profit based taxes that exist in the vast majority countries outside of Bermuda. The AML/ATF framework requires strengthening in order to fully comply with the FATF requirements. This will be achieved by expanding the definition of "relevant offence" to include a new category of criminal conduct which captures, as a predicate for money laundering, foreign tax crimes that are derived from wider range of categories of tax.

Clause 3 amends section 18(1) of the Financial Intelligence Agency Act 2007, adding paragraph (g), thereby increasing the number of authorities to whom permitted disclosures can be made. At present, the ability of the FIA and the supervisor for barristers and accountants to fully cooperate with the various national authorities is impeded by the absence of appropriate legal authority to facilitate the same. The amendment to section 18(1) of the principal Act will remedy this impediment.

Clause 4 amends section 8B(3) of the Chartered Professional Accountants of Bermuda Act 1973, thereby removing the public accounting component of the eligibility requirement for accountants, to serve as Chairman or a member of the Barristers and Accountants AML/ATF Board. The Chartered Professional Accountants of Bermuda has been experiencing difficulty in identifying qualified persons willing to undertake membership and or chairmanship of the Barristers and Accountants AML/ATF Board. It has been very difficult in the case of the eligibility requirement for the Chair of the Board, because persons with 10 years public accounting experience are usually either in partnership positions in the accounting firms, thereby presenting an irreconcilable conflict or they have retired from the profession.