A BILL

entitled

CORPORATE INCOME TAX AMENDMENT ACT 2026

TABLE OF CONTENTS

WHEREAS it is expedient to amend the Corporate Income Tax Act 2023 so as to make amendments to provide miscellaneous updates to enhance Bermuda's corporate income tax regime and to better facilitate the filing of tax returns; and to make consequential amendments to the Corporate Income Tax Agency Act 2024;

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 (the "principal Act") may be cited as the Corporate Income Tax Amendment Act 2026.

Amends section 2

2 Section 2 of the principal Act is amended—

(a) by repealing the definition of “Bermuda Corporate Income Tax Return”;

(b) by deleting the words “Bermuda Corporate Income Tax Return” and substituting the word “return” in the following definitions—

(i) “Filing Bermuda Constituent Entity”; and

(ii) “reporting fiscal year”;

(c) by repealing the definition of “five-year election” and substituting the following new definition—

“ “five-year election” means, subject to sections 49(6) and 49A, an election made by or on behalf of a Bermuda Constituent Entity that—

(a) once made, shall apply for the fiscal year in which it is made (the election year) and the four succeeding fiscal years;

(b) cannot be revoked with respect to the election year or the four succeeding fiscal years;

(c) shall continue to apply after the period specified in paragraph (b) unless and until the election is modified or revoked; and

(d) if revoked with respect to a fiscal year (the revocation year) cannot be made again with respect to the four fiscal years succeeding the revocation year;”.

(d) by inserting after subsection (3) the following new subsection (4)—

“(4) A reference to a return under this Act shall be a reference to the prescribed form.”.

Amends section 6

3 Section 6 of the principal Act is amended—

(a) in subsection (5)—

(i) by deleting in paragraph (b) after the semicolon, the word “and”;

(ii) by deleting in paragraph (c) after the word “nil” the full stop and inserting a semicolon;

(iii) by inserting after paragraph (c) the following new paragraphs (d) and (e)—

“(d) where—

(i) a Filing Bermuda Constituent Entity elects pursuant to section 21(1)(b) to calculate the net income or loss of a Bermuda Constituent Entity in accordance with an approved financial accounting standard—

(A) for the period specified in section 49(1) and where—

1 the election is revoked at the end of the period under section 49(6);

2 the election is revoked for a fiscal year beginning after the date specified under section 49(1)(b); or

3 a new election is made under section 21(1)(b) to calculate the net income or loss of the Bermuda Constituent Entity in accordance with another approved financial accounting standard for a fiscal year beginning after the date specified under section 49(1)(b); or

(B) for a fiscal year beginning after the date specified in section 49(1)(b), where the net income or loss of the Bermuda Constituent Entity is determined pursuant to section 21(1)(a) for the period specified in section 49(1); and

(ii) the amount of the opening tax loss carryforward determined with respect to the In Scope MNE Group exceeds the amount of the opening tax loss carryforward which would have been determined with respect to the In Scope MNE Group had the Filing Bermuda Constituent Entity—

(A) not made an election under section 21(1)(b) with respect to the Bermuda Constituent Entity for the period specified under section 49(1), where subparagraph (i)(A) applies; or

(B) made an election under section 21(1)(b) to apply the approved financial accounting standard specified under subparagraph (i)(B) with respect to the Bermuda Constituent Entity for the period specified under section 49(1), where subparagraph (i)(B) applies,

then the amount of the opening tax loss carryforward of the Bermuda Constituent Entity shall be reduced in accordance with subsection (9).

(e) for the purposes of this subsection, all references made to section 49(1), shall be read as subject to section 49(2).".

(b) by inserting after subsection (8) the following new subsection (9)—

"(9) For the purposes of subsection (5)(d), where—

(a) subsection (5)(d)(i)(A)(1) applies, the amount of the opening tax loss carryforward which would have otherwise been determined in accordance with subsection (4) shall be reduced, but not below zero, by the amount of the excess determined in accordance with subsection (5)(d)(ii);

(b) subsections (5)(d)(i)(A)(2) or (3), or (5)(d)(i)(B) apply, the amount of the opening tax loss carryforward allocated to the Bermuda Constituent Entity shall be reduced by an amount equal to the lesser of—

(i) the amount of the excess determined in accordance with subsection (5)(d)(ii); or

(ii) the amount computed by—

(A) adding the amount of the opening tax loss carryforward allocated to the Bermuda Constituent Entity in accordance with subsection (3)(a), subject to any reduction in the opening tax loss carryforward pursuant to subsection (6); and

(B) subtracting any portion of the amount determined under subparagraph (A) that has been included in the determination of a tax loss carryforward deduction for any fiscal year preceding—

1 the revocation year specified under subsection (5)(d)(i)(A)(2), if applicable;

2 the fiscal year for which a new election is made under section 21(1)(b) as specified under subsection (5)(d)(i)(A)(3), if applicable;

3 the fiscal year for which an election is made under section 21(1)(b) as specified under subsection (5)(d)(i)(B), if applicable.".

Amends section 7

4 Section 7 of the principal Act is amended—

(a) in subsection (2) by deleting the full-stop after the last word "year" and substituting a comma and by inserting after the inserted comma, the words "other than Bermuda Constituent Entity Groups which are comprised exclusively of stateless constituent entities or investment entities or both.";

(b) by repealing subsection (4) and substituting the following new subsections (4) and (4A)—

"(4) For the purposes of subsection (1)—

(a) the amount specified in subsection (1)(a) shall be computed based on the aggregate revenues of all Bermuda Constituent Entities of the relevant In Scope MNE Group; and

(b) subject to subsection (4A) the term "revenue" means the amount of revenue included in the determination of the financial accounting net income or loss in accordance with section 21.

(4A) For the purposes of subsection (4), the revenue shall be subject to the adjustments set out in Parts 5 and 6, except—

(a) any adjustments to revenue arising from the application of sections 21(6), 29, 33 or 34 shall be disregarded;

(b) any adjustments to revenue arising from the application of section 28(2) shall be determined without regard to section 28(2)(a); and

(c) with respect to any other adjustments specified in Parts 5 or 6, only those adjustments which affect the amount of revenue included in the determination of the net taxable income or loss shall be considered.".

(c) by repealing subsection (6) and substituting the following new subsection (6)—

"(6) An election made under subsection (1) shall not apply in relation to a Bermuda Constituent Entity which is a stateless constituent entity or an investment entity, and—

(a) the revenue and the taxable income or taxable loss of a stateless constituent entity and of an investment entity shall be excluded from the computations in subsection (3); and

(b) the election under subsection (1) shall not be made with respect to a Bermuda Constituent Entity Group which is comprised, in whole or in part, of stateless constituent entities or investment entities or both.".

Amends section 15

5 Section 15 of the principal Act is amended—

(a) by amending the chapeau in subsection (5) by deleting after the word "company" the following words "may make an annual election under this section to treat any segregated accounts within such a company as";

(b) in subsection (5) by repealing paragraphs (a) and (b) and substituting the following new paragraphs—

"(a) may make an annual election under this section to treat—

(i) any segregated accounts within such a company as a separate entity; or

(ii) the company as a separate entity from its segregated accounts; and

(b) may, following an election under paragraph (a), further elect to treat—

(i) a segregated account or accounts treated as a separate entity pursuant to paragraph (a)(i); or

(ii) the company, where it is treated as a separated entity pursuant to paragraph (a)(ii),

as fiscally transparent or not fiscally transparent under subsection (1).".

Amends section 15A

6 Section 15A(1) of the principal Act is amended by inserting a closed parenthesis after the words and figures "section 46(1)".

Amends section 18

7 Section 18(2)(b) of the principal Act is amended by deleting the words and figures "section 24(3)" and substituting the words and figures "sections 24(3) and 25".

Amends section 21

8 Section 21 of the principal Act is amended by inserting after subsection (7) the following new subsection (8)—

"(8) Where the financial accounts of a Bermuda Constituent Entity are maintained on the basis of a different financial reporting period than the fiscal year used to prepare the consolidated financial statements, the determination of the financial accounting net income or loss of the Bermuda Constituent Entity for a fiscal year shall be made on a basis that is consistent with the accounting convention which is used to include the financial accounts of the Bermuda Constituent Entity for its financial reporting period in the consolidated financial statements for the fiscal year; and for this purpose if the financial accounts of the Bermuda Constituent Entity for its financial reporting period—

(a) are fully included in the consolidated financial statements for a fiscal year, then 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, notwithstanding that some of the financial accounting net income or loss will have been earned prior to the beginning of the fiscal year used to prepare the consolidated financial statements; or

(b) are segregated to align with the fiscal year used to prepare the consolidated financial statements, such that a portion of each of the two financial reporting periods of the Bermuda Constituent Entity which straddle the fiscal year used to prepare the consolidated financial statements are combined for purposes of inclusion in the consolidated financial statements, then 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 portions of the two financial reporting periods which have been combined to prepare the consolidated financial statements.".

Amends section 24

9 Section 24 of the principal Act is amended in the marginal note by deleting the words "flow through entities" and substituting the words "fiscally transparent entities".

Amends section 25

10 Section 25 of the principal Act is amended in the marginal note by deleting the words "flow through entities" and substituting the words "fiscally transparent entities".

Amends section 30

11 Section 30(6)(c) of the principal Act is amended by deleting the semicolon after the word and figures "section 6(4)(b)".

Amends section 46B

12 Section 46B of the principal Act is amended—

(a) in subsection (1), in the definition of "adjusted tax payments" by inserting in paragraph (a) after the words "Bermuda Constituent Entity Group" the following figure and words "(and payments from other Bermuda Constituent Entity Groups which have been applied to the Bermuda Constituent Entity Group)" ;

(b) in subsection (5) by deleting in paragraph (c) the word "enquires" and substituting the word "enquiries";

(c) in subsection (9)—

(i) by deleting the words and figures "Subject to subsections (10) and (11)" and substituting the following words and figures "Subject to subsections (10), (11) and (11A)";

(ii) by deleting in paragraph (a) after the word "of" the words "such notice" and substituting the following words "a decision notice";

(d) in subsection (10) by deleting in paragraph (c) after the word "and" the word "severalty" and substituting the word "severally";

(e) by inserting after subsection (11) the following new subsection (11A)—

"(11A) Notwithstanding subsection (11), where a decision notice has been issued imposing a penalty and a particular penalty amount is stated as of the date of the decision notice, the penalty amount in the decision notice shall be adjusted without further action or notice by the Agency—

(a) where the penalty is imposed pursuant to section 46D or 46F, by increasing at the same monthly rate specified in the decision notice or if no rate is specified at the same monthly rate pursuant to the application of section 46D or 46F, as applicable, for so long as the default which gave rise to the decision notice remains uncured; and

(b) where the penalty is calculated by reference to the amount of tax or the amount of tax due, then the penalty shall be automatically recalculated if there is an adjustment of tax or tax due following an amendment, correction, or assessment of the relevant return pursuant to regulations made under this Act.".

Amends section 46D

13 Section 46D of the principal Act is amended by repealing subsections (2) and (3) and substituting the following new subsections (2) and (3)—

"(2) The civil penalty that may be imposed under this section with respect to the failure to file a return by the due date shall be—

(a) with respect to each of the first five months following the due date in which the failure continues, the greater of—

(i) $3,000 per month for each month; or

(ii) an amount per month equal to 5% of the tax due as of the due date; and

(b) with respect to each month following the period specified in paragraph (a) in which the failure continues, $3,000 per month.

(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 for a fiscal year under any regulations made under this Act (other than a return) shall be $3,000 for each month—

(a) beginning on the day following the deadline for filing the information or documentation; and

(b) ending with the earliest of—

(i) the date on which the information or documentation is filed with the Agency in accordance with the regulations;

(ii) the date on which the Bermuda Constituent Entity Group's return is filed for the fiscal year; or

(iii) the original due date for the Bermuda Constituent Entity Group's return for the fiscal year.".

Amends section 46F

14 Section 46F(2) of the principal Act is amended by deleting after the word "recalculated" the words and figure "(as at the start of each month)" and substituting the following words and figure "(as at the start of the month following the partial payment)".

Amends section 49

15 Section 49 of the principal Act is amended by inserting after subsection (5) the following new subsection (6)—

"(6) Where a Filing Bermuda Constituent Entity makes a five-year election with respect to a Bermuda Constituent Entity for the period specified in subsection (1), subject to subsection (2), the Filing Bermuda Constituent Entity may revoke the five-year election at the end of the period specified in subsection (1) and may subsequently make a new election during the four-year period succeeding the date determined in accordance with section 49(1)(b).".

Inserts section 49A

16 The principal Act is amended by inserting after section 49 the following new section 49A—

"**Power to permit a revocation of an election**

49A (1) The Agency may permit the revocation of a five-year election under this Act where during a period, an election cannot be revoked within the meaning provided pursuant to paragraph (b) of the defined term "five-year election" under section 2.

(2) Notwithstanding subsection (1), the Agency may permit the making of a new five-year election during the period specified within the meaning provided pursuant to paragraph (d) of the defined term "five-year election" under section 2.".

Consequential amendment to Corporate Income Tax Agency Act 2024

17 (1) Section 4(1)(d) of the Corporate Income Tax Agency Act 2024 is amended by deleting before the word "enforcement" the words "prosecuting any" and substituting the words "conducting any civil".

(2) Section 17(3) of the Corporate Income Tax Agency Act 2024 is amended—

(a) by deleting the comma after the word “care” in paragraph (d) and substituting a full stop; and

(b) by deleting after the inserted full stop in paragraph (d) the following words “except that, notwithstanding any of the foregoing, where there is a range of possible figures for tax due, the Agency shall not settle by agreement for an amount which is less than what is reasonably likely to be obtained through litigation.”.

CORPORATE INCOME TAX AMENDMENT BILL 2026

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Corporate Income Tax Act 2023 to provide for the better administration of the corporate income tax regime, to better facilitate the filing of tax returns and to make consequential amendments to the Corporate Income Tax Agency Act 2024. The Government finds that there is a need to ensure that the administration of the corporate income tax is founded upon clear legal principles. Therefore, the purposes of these amendments are to clarify and refine the existing provisions to ensure that the Corporate Income Tax Agency is given the administrative and operational mechanisms to effectively oversee and administer the corporate income tax regime.

Clause 1 provides for the citation of the Bill.

Clause 2 amends the interpretation under section 2 by removing redundant definitions and inserting a new definition for “five-year election”.

Clause 3 amends section 6 to provide additional provisions for the calculation of the opening tax loss carryforward and adjustments that may arise in relation to the calculations.

Clause 4 provides for additional clarification to section 7 to ensure that the provisions within section 7 are consistent with each other.

Clause 5 amends section 15 to provide greater clarity over elections that can be made by segregated accounts companies.

Clause 6 amends section 15A to correct a typographical error.

Clause 7 amends section 18 to correct a typographical error.

Clause 8 inserts a new subsection under section 21 to address the issues arising where there is a mismatch between the financial reporting period for a Bermuda Constituent Entity and the period used by its ultimate parent entity in preparing consolidated financial statements for the group.

Clause 9 amends the marginal note in section 24 so that it better reflects the contents of the section.

Clause 10 amends the marginal note in section 25 so that it better reflects the contents of the section.

Clause 11 amends section 30 to correct a typographical error.

Clause 12 amends section 46B by providing that penalties that are assessed by reference to the time elapsed continue to accrue for so long as a default is outstanding, notwithstanding the date on which a taxpayer is notified of the penalty and providing also that penalties calculated by reference to outstanding amounts shall be automatically recalculated where the underlying outstanding amount changes due to amendments to tax returns.

Clause 13 amends section 46D to provide greater clarity in the calculation of penalties for the failure to file a return by the due date and also provides in subsection (3) that a penalty may not be imposed for an indefinite period.

Clause 14 amends section 46F to correct a typographical error.

Clause 15 amends section 49 to address the additional flexibility in making and revoking a five year election.

Clause 16 inserts a new section 49A to grant the Agency power to permit a revocation of an election within the five-year election period as defined under section 2.

Clause 17 provides for a consequential amendment to the Corporate Income Tax Agency Act 2024 to clarify the enforcement regime to be applied by the Corporate Income Tax Agency.