

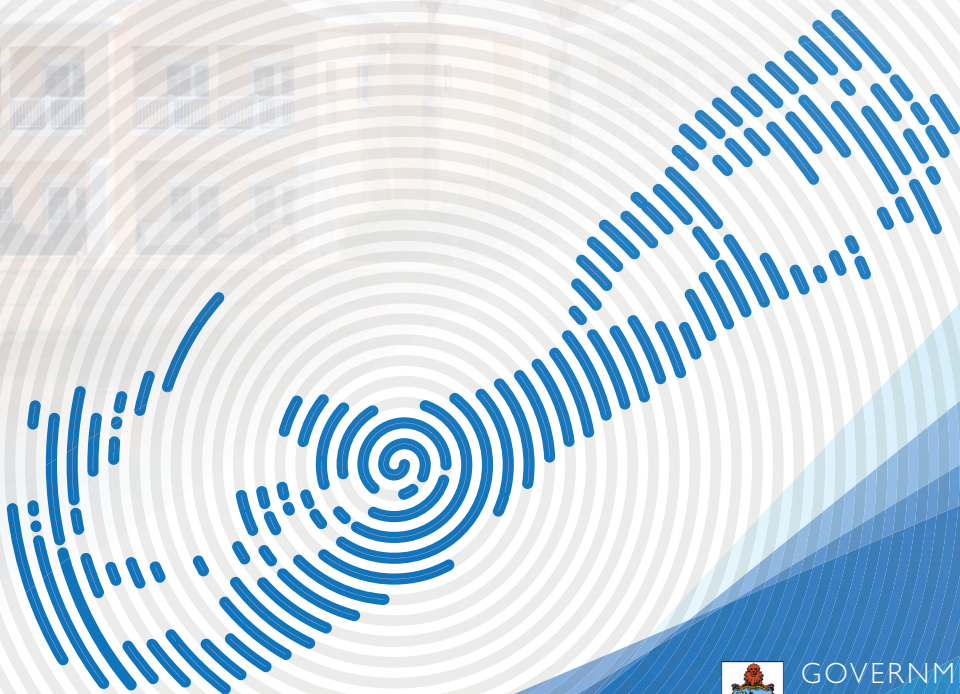


Corporate Income Tax Act

Technical Amendments

Second Public Consultation

SEPTEMBER 12, 2025





Corporate Income Tax Agency

Corporate Income Tax Act – Technical Amendments

Second Public Consultation

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1. Introduction

The Corporate Income Tax Agency (“the Agency”) is publishing this consultation paper to invite stakeholder feedback with respect to the second set of proposed technical amendments to the Corporate Income Tax Act 2023 (“the CIT Act”). These amendments are intended to clarify certain provisions and better align the CIT Act with the GloBE Rules where appropriate.

The CIT Act marks a significant advancement in strengthening Bermuda’s corporate tax framework, reinforcing the jurisdiction’s ongoing commitment to global compliance and transparency, while further enhancing its strong international reputation.

The Agency acknowledges that some stakeholder feedback has already been considered and, where appropriate, incorporated into the illustrative draft legislation. As part of this Public Consultation, the Agency now seeks further input on the revised illustrative draft legislation, as well as recommendations for additional guidance that may be needed to support implementation.

Additional amendments to the illustrative draft legislation may be made before the final Bill is submitted to Parliament for debate, including changes informed by feedback received through this Consultation.

This Public Consultation period will run from **12 September 2025 to 26 September 2025**. Submissions received after this date may not be considered. Consultation Paper Responses and Comments should be submitted by email to: consultation@cita.bm. Respondents should include “Corporate Income Tax Act – Second Technical Amendments” in the subject box.

Media Enquiries should be addressed to: media@cita.bm

2. Summary of Provisions

The following is a summary of the proposed second technical amendments to the Corporate Income Tax Act 2023, as set out in the illustrative draft legislation accompanying this consultation.

1. Section 2 - Definitions

A number of definitions are added to section 2 as required by the amendments introduced in this Act and other legislation such as the proposed Tax Credits Act and related measures.

2. Section 6 - Shock Losses

This amendment will allow the additional use of losses for tax purposes in a period where there is a 'shock loss' event, as defined, by suspending the normal limitation (80%) in the tax rules for how much of a company's losses can be used against current income, when a shock loss occurs. The definition of a shock loss is being finalised and will be contained in regulations to be published alongside this Act.

3. Section 10 - Excluded Entities

The proposed amendments clarify the definition of "excluded entities" under the CIT Act, aligning with the February 2023 OECD Administrative Guidance. The changes ensure that entities which:

- Hold assets or invest funds for the benefit of an excluded entity, and/or
 - Carry out ancillary activities related to those of the excluded entity
- can still qualify as excluded entities.

4. Section 18 - Allocation of Adjusted Creditable Foreign Taxes

These amendments provide for the allocation of adjusted creditable foreign taxes to Bermuda Permanent Establishments and to entities subject to a controlled foreign company tax regime. The detailed mechanisms for the allocation, which are intended to align with the corresponding provisions in the Pillar 2 Model Rules as augmented by the Commentary and Administrative Guidance, will be contained in regulations.

5. Section 21 - Fiscal Year Mismatches

Fiscal year mismatches between Ultimate Parent Entities (UPEs) and Bermuda Constituent Entities (BCEs) can lead to inconsistencies in income and tax calculations. The proposed amendments to Section 21 permit the BCE to use financial statements for a period falling within the year adopted for consolidation purposes at the UPE, provided there is no double counting of any item of income or loss as a result.

6. Section 26 - Taxable Adjustments

These amendments introduce provisions to give effect to the impact of the proposed tax credits arising from the separate proposed Tax Credits Act and related measures.

7. Section 27 - Adjustments to Financial Accounting Net Income or Loss

Pension expense adjustments are clarified to exclude accounting entries and focus solely on actual contributions and surplus distributions. This aligns Bermuda's CIT treatment with OECD guidance and ensures only real economic transactions affect taxable income.

Shipping industry stakeholders have requested a reciprocal shipping exemption in the CIT Act. The proposed amendment to Section 27 is a common provision contained in other corporate income tax regimes. This change supports international consistency and minimizes double taxation risks.

8. Section 33 and Deferred Tax Liabilities

These amendments aim to align Bermuda's CIT treatment of deferred tax liabilities (DTLs) with the OECD's January 2025 Administrative Guidance. Specifically, the guidance disregards taxable temporary differences when calculating GloBE Top-Up Taxes. This legislative change ensures Bermuda's tax outcomes are consistent with international standards.

9. Other Changes

Hedging provisions are being updated to reflect the February 2023 OECD guidance. A five-year election will allow foreign exchange gains or losses from net investment hedges to be excluded from income, provided they meet specific criteria. This change prevents distortions in taxable income due to currency fluctuations.

Minor corrections are made to legislative references and wording to improve clarity and ensure consistency throughout the CIT Act. These updates address typographical errors; update outdated cross-references (e.g., correcting a reference from Section 46A to 46B), and enhancing the overall coherence of the legislation.

Question: Are there any aspects of the proposals that present concerns or require further clarification?

3. Illustrative Draft Legislation

CORPORATE INCOME TAX AMENDMENT (NO. 2) ACT 2025

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WHEREAS it is expedient to amend the Corporate Income Tax Act 2023 so as to make certain technical amendments required to provide miscellaneous updates 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-

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 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 (1) an ultimate parent entity, (2) part of an MNE Group, or (3) to own 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 7 of the Tax Credits Act;”;

“ “community development tax credit” shall mean the tax credit described in Part 5 of the Tax Credits Act;”;

“ “community development tax credit benefit” has the meaning given to that term in section 22 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 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; and

(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 or dividend equivalent;

(b) interest or interest equivalent;

(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" shall mean the tax credit described in Part 4 of the Tax Credits Act;";

"Tax Credits Act" means the Tax Credits Act 2025;"; and

"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 6

- 3 Section 6 of the principal Act is amended 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 paragraph (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(a) for the fiscal year; and
- (b) a shock tax loss carryforward is a tax loss carryforward:
 - (i) arising from a shock loss, as determined pursuant to regulations; and
 - (ii) which the Filing Bermuda Constituent Entity has elected to treat as a shock tax loss carryforward.”.

Amends section 10

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

“(5) For the purposes of paragraph (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 paragraph (2)(a) where the aggregate of its activities falls within the combined scope of subparagraphs (i) and (ii).”.

Amends section 16

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

Amends section 18

- 6 Section 18 of the principal Act is amended-

- (a) in the chapeau, by deleting the words “the following”;
- (b) by repealing paragraphs (a) and (b) and substituting the following-

“(a) to the Bermuda Constituent Entity, including-

- (i) the amount of any adjusted creditable foreign taxes of a non-Bermuda main entity related to taxable income or loss allocated to a Bermuda Permanent Establishment is allocated to that Bermuda Permanent Establishment;
- (ii) 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;
- (iii) 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;
- (iv) 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 are allocated to the Bermuda Constituent Entity;
- (v) 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 are allocated to the Bermuda Constituent Entity;

(b) from the Bermuda Constituent Entity, including-

- (i) 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 is allocated to the permanent establishment;
- (ii) 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;
- (iii) 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
- (iv) 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 are allocated to the distributing constituent entity.”.

Repeals section 19

- 7 Section 19 of the principal Act is repealed.

Amends section 21

- 8 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 (for example, 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

- 9 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,

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 subparagraphs (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 subparagraphs (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

10 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

(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 operation of ships in such foreign jurisdiction, 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 operation of ships in the foreign jurisdiction; 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 the foreign jurisdiction; 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

11 Section 33 of the principal Act is amended by inserting, after subsection (8), the following new subsection-

“(9) To the extent that-

(a) with respect to an asset, the value described in paragraph (2)(a) exceeds the value described in paragraph (2)(b);

(b) with respect to a liability, the absolute value described in paragraph (2)(b) exceeds the absolute value described in paragraph (2)(a); or

(c) with respect to an asset, the value described in subparagraph (3)(a)(ii) exceeds the value described in subparagraph (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 46B

- 12 Paragraph 46B(5)(b) of the principal Act is amended by inserting the word “a” after the words “the amount of tax (if any) not paid when due as”.

Amends section 46E

- 13 Section 46E of the principal Act is amended-

- (a) in paragraph (1)(b), by deleting the word “the” after the words “careless, reckless or intentional disregard of the provisions of”;
- (b) in subsection (4), by deleting the words “section 46A” and substituting the words “section 46B”.