



BERMUDA

SPECIFIED BUSINESS LEGISLATION AMENDMENT ACT 2012

2012 : 27

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WHEREAS it is expedient, pursuant to Bermuda's obligation to implement the Organization for Economic Cooperation and Development (OECD) Internationally Agreed Tax Standard, for Bermuda to continue to demonstrate progress in the implementation of the Internationally Agreed Tax Standard;

AND WHEREAS the Specified Business Legislation Amendment Act 2011 was passed by this Honourable House for the purpose of addressing some of the recommendations that were made in the Peer Review Assessment regarding inconsistencies identified in Bermuda's legislation;

AND WHEREAS some of the remaining recommendations that were made in the Peer Review Assessment are being addressed by amendments to the following specified legislation that pertains to several forms of businesses being conducted in Bermuda, that is to say—

Companies Act 1981;

Limited Partnership Act 1883;

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Overseas Partnerships Act 1995;
Trustee Act 1975;
Trusts (Regulation of Trust Business) Exemption Order 2002;
U.S.A. - Bermuda Tax Convention Act 1986; and
International Cooperation (Tax Information Exchange Agreements) Act 2005;

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 Specified Business Legislation Amendment Act 2012.

Amendment of Companies Act 1981

2 The Companies Act 1981 is amended by repealing section 145 and substituting the following—

“Records to be kept by permit company

145 (1) Every permit company shall keep proper records of account with respect to the trade or business it is engaging in or carrying on or has engaged in or carried on in Bermuda, including records of account with respect to—

- (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the company;
- (c) the assets and liabilities of the company.

(2) The records of account shall be kept at the principal place in Bermuda from which the company engages in or carries on any trade or business in Bermuda provided that if the records of account are kept at some place outside Bermuda, there shall be kept at an office of the permit company in Bermuda such records as will enable the directors or a principal representative referred to in section 136A(1) to ascertain with reasonable accuracy the financial position of the permit company at the end of each three month period.

(3) Every permit company shall keep, for a period of five years from the date on which they were prepared, records of account referred to in subsection (1) and, if applicable, subsection (2).

(4) A permit company and any officer of the company who knowingly contravenes, permits or authorizes the contravention of the requirements of subsection (3) shall be liable on summary conviction to a fine of seven thousand five hundred dollars.”

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Amendment of Limited Partnership Act 1883

3 (1) The Limited Partnership Act 1883 is amended in section 7 by inserting, after subsection (7), the following subsection—

“(8) A general partner of the limited partnership who knowingly contravenes, permits or authorizes the contravention of the requirements of subsection (1) shall be liable on summary conviction to a fine of seventy five dollars per day for every day that the limited partnership fails to comply as required.”

Amendment of Overseas Partnerships Act 1995

4 The Overseas Partnerships Act 1995 is amended—

(a) by repealing section 15(1) and substituting the following—

“(1) Every overseas partnership shall keep at its registered office in Bermuda proper records of account with respect to the trade or business it is engaging in or carrying on or has engaged in or carried on in Bermuda, including records of account with respect to its—

- (a) assets;
- (b) liabilities and capital;
- (c) cash receipts and disbursements;
- (d) purchases and sales; and
- (e) income costs and expenses:

Provided that if the records of account are kept at some place outside Bermuda there shall be kept at the registered office of the overseas partnership in Bermuda such records as will enable all the partners to ascertain with reasonable accuracy the financial position of the partnership at the end of each three month period.”

(b) by inserting, after section 22(6), the following subsection—

“(7) Any general partner of the overseas partnership who knowingly contravenes, permits or authorizes the contravention of the requirements of this section shall be liable on summary conviction to a fine of seventy five dollars per day for every day that the overseas partnership fails to comply as required.”

Amendment of Trustee Act 1975

5 The Trustee Act 1975 is amended by inserting after section 13 the following sections-

“Accounts and records

13A (1) A trustee, who is subject to section 9 of the Trusts (Regulation of Trust Business) Act 2001 and irrespective of whether he is exempted under the provisions

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of an Order made pursuant to section 10 of the Trusts (Regulation of Trust Business) Act 2001, shall keep or cause to be kept accurate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property with respect to—

- (a) assets;
- (b) liabilities;
- (c) additions to trust and distributions, purchases and sales; and
- (d) income and expenses.

(2) All accounts and records required to be kept under subsection (1) shall be retained for a minimum period of five years from the date on which they are prepared.

(3) A trustee who knowingly and wilfully contravenes subsection (1) or (2) shall be subject to a penalty of seven thousand five hundred dollars.

Information to be retained by exempted company and exempted trustee

13B (1) Any company exempted under an order made pursuant to section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, shall retain identification information in respect of the trustees, settlors and beneficiaries for the trusts for which it acts as trustee or trust administrator.

(2) Any other trustee—

- (a) exempted under an order made pursuant to section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, shall ensure there is retained in Bermuda identification information on trusts for which such trustee acts as trustee, including identification information on trustees, settlors and beneficiaries; or
- (b) referred to in paragraph 7 of the Trusts (Regulation of Trust Business) Exemption Order 2002, shall retain or be in control of identification information on trusts for which such trustee acts as trustee including identification information on trustees, settlors and beneficiaries.

(3) Any company, or other trustee, exempted under an order made pursuant to section 10(2) of the Trusts (Regulation of Trust Business) Act 2001, which knowingly and wilfully contravenes—

- (a) the provisions of subsection (1), in the case of such company that is exempted; or
- (b) the provisions of subsection (2), in the case of such trustee that is exempted,

shall be guilty of an offence and liable on summary conviction to a fine of \$75 per day for every day that such company or trustee fails to comply as required.”

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Amendment of Trusts (Regulation of Trust Business) Exemption Order 2002

6 The Trusts (Regulation of Trust Business) Exemption Order 2002 is amended by revoking paragraph 8.

Amendment of U.S.A. - Bermuda Tax Convention Act 1986

7 The U.S.A. - Bermuda Tax Convention Act 1986 is amended in section 2 by inserting, in the correct alphabetical order, the following definition—

“control” in relation to the use of the term with respect to “information in his possession, custody or control”, means control of information whether the information is located in Bermuda or outside of Bermuda;”

Amendment of International Cooperation (Tax Information Exchange Agreements) Act 2005

8 The International Cooperation (Tax Information Exchange Agreements) Act 2005 is amended—

(a) in section 2 by inserting, in the correct alphabetical order, the following definition—

“control” in relation to the use of the term with respect to “information in the possession or control of a person” or “in the person’s possession or control”, means control of information, whether the information is located in Bermuda or outside of Bermuda;”

(b) by renumbering section 5 as section 5(1) and inserting after subsection (1) the following—

“(2) Where a request for assistance by a requesting party so stipulates, the Minister shall obtain the information sought by the request in the form of depositions of witnesses, being depositions so made as the laws of Bermuda permit.

(3) Where a request for assistance by a requesting party so stipulates, the Minister may require that original documents or copies of original documents be certified or authenticated, in accordance with the laws of Bermuda.”

[Assent Date: 13 July 2012]

[Operative Date: 13 July 2012]