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S.I. 2024 No.

**INCOME TAX (AUTOMATIC EXCHANGE OF INFORMATION)
(AMENDMENT) REGULATIONS, 2024**

Arrangement of Regulations

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Income Tax Act

CAP. 73

**INCOME TAX (AUTOMATIC EXCHANGE OF INFORMATION)
(AMENDMENT) REGULATIONS, 2024**

The Minister, in exercise of the powers conferred on him by section 83(2) of the *Income Tax Act*, makes the following Regulations:

Citation

1. These Regulations may be cited as the *Income Tax (Automatic Exchange of Information) (Amendment) Regulations, 2024*.

Amendment of regulation 2 of S.I. 2017 No. 26

2. Regulation 2 of the *Income Tax (Automatic Exchange of Information) Regulations, 2017* (S.I. 2017 No. 26), in these Regulations referred to as the principal Regulations, is amended

(a) by inserting the following definition in the appropriate alphabetical order:

“ “Commissioner” means the Revenue Commissioner appointed pursuant to section 7 of the *Barbados Revenue Authority Act, 2014* (Act 2014-1);”;

(b) by deleting the definitions of “Common Reporting Standard” and “Reporting Barbados Financial Institution” and substituting, in the appropriate alphabetical order, the following:

“ “Common Reporting Standard” or “CRS” means the Standard for Automatic Exchange of Financial Account Information in Tax

Matters including the Commentaries thereon, developed and approved by the Council of the Organisation for Economic Co-Operation and Development on 15th July, 2014, as amended from time to time;

“Reporting Barbados Financial Institution” means

- (a) Part II, a Reporting Barbados Financial Institution as defined in the Treaty;
- (b) Part III, a Barbados Financial Institution that is not a Non-Reporting Financial Institution and, for the purposes of Part III
 - (i) “Barbados Financial Institution” means
 - (A) a financial institution that is resident in Barbados, but excludes a branch of the financial institution that is located outside of Barbados; and
 - (B) a branch of a financial institution that is not resident in Barbados, where the branch is located in Barbados; and
 - (ii) “Non-Reporting Financial Institution” has the meaning assigned to it in the Common Reporting Standard;
- (c) Part IV, an entity described in paragraph (a) or (b), as the case may be;”.

Insertion of new regulation 2A into S.I. 2017 No. 26

3. The principal Regulations are amended by inserting immediately after regulation 2 the following:

**“Determining the balance or value of an account
denominated in a currency**

2A. In determining the balance or value of an account denominated in a currency, other than United States of America dollars, for the purposes of these Regulations, the Reporting Barbados Financial Institution shall translate the relevant United States of America dollars threshold amount described in these Regulations into the other currency by reference to the rate of exchange on the date for which the institution is determining the threshold amounts”.

Amendment of regulation 7 of S.I. 2017 No. 26

4. Regulation 7(2)(g) of the principal Regulations is deleted and the following substituted:

“(g) the account number of the account or, where there is no account number, the functional equivalent;”.

Amendment of regulation 10 of S.I. 2017 No. 26

5. Regulation 10 of the principal Regulations is amended

(a) in paragraph (3) by inserting following definition in the appropriate alphabetical order:

“ “Anti-money laundering and know your customer procedures” or “AML/KYC procedures” has the same meaning as “AML/KYC Procedures” in sub-paragraph E(2) of Section VIII of the Common Reporting Standard;”; and

(b) by deleting paragraph (6) and substituting the following:

“(6) For the purposes of complying with the Common Reporting Standard, “participating jurisdiction” and “reportable jurisdiction” means any jurisdiction listed by the Barbados Competent Authority in the *Official Gazette* as a participating jurisdiction or a reportable jurisdiction, as the case may be”.

Repeal and replacement of regulation 11 of S.I. 2017 No. 26

6. Regulation 11 of the principal Regulations is deleted and the following substituted:

“Due diligence obligations in relation to reportable account

11.(1) A Reporting Financial Institution shall establish, conduct, maintain and document the due diligence procedures referred to or described in paragraphs (2) to (5) that are designed to identify reportable accounts maintained by the institution.

(2) A Reporting Barbados Financial Institution shall

- (a) identify reportable accounts from among pre-existing accounts and new accounts maintained by the financial institution by applying the due diligence procedures set out in Sections II to VII of the Common Reporting Standard; and
- (b) identify each jurisdiction in which an account holder or a controlling person is resident for the purpose of income tax, corporation tax or any other tax imposed by the law of the jurisdiction that is similar in nature to either of those taxes.

(3) In furtherance of paragraph (1)(a), a Reporting Barbados Financial Institution

- (a) shall, where a pre-existing individual account is not a high value account as of the 30th day of June, 2017 but becomes a high value account as of the 31st day of December of 2017 or

of any subsequent calendar year, complete the enhanced review procedures described in Section III, paragraph C of the Common Reporting Standard, with respect to such account within the calendar year following the year in which the account becomes a high value account;

- (b) shall, where based on the enhanced review procedures referred to in subparagraph (a), it identifies an account as a reportable account, report, in relation to the account, the information set out in regulation 12(4) with respect to the year in which the account is identified as a reportable account and subsequent years, on an annual basis, unless the account holder ceases to be a reportable person;
- (c) shall complete the review of
 - (i) pre-existing high value individual accounts by the 31st day of December, 2017; and
 - (ii) pre-existing lower value individual accounts by the 31st day of December, 2018;
- (d) is not required to review, identify or report on a pre-existing entity account with an aggregate account balance or value that does not exceed USD\$250 000 as of the 30th day of June, 2017 until the aggregate account balance or value exceeds USD\$250 000 as of the 31st day of December of 2017 or of any subsequent calendar year;
- (e) shall review, in accordance with the procedures set out in Section V, paragraph D of the Common Reporting Standard, any pre-existing entity account with an aggregate account balance or value that exceeds USD\$250 000 as of the 30th day of June, 2017 and any pre-existing entity account with an aggregate account balance or value that does not exceed USD \$250 000 as of the 30th day of June, 2017 but exceeds USD

\$250 000 as of the 31st day of December of 2017 or of any subsequent calendar year; and

- (f) shall complete the review of
- (i) pre-existing entity accounts with an aggregate account balance or value that exceeds USD\$250 000 as of the 30th day of June, 2017, by the 31st day of December, 2018; and
 - (ii) pre-existing entity accounts with an aggregate account balance or value that does not exceed USD\$250 000 as of the 30th day of June, 2017 but exceeds USD\$250 000 as of the 31st day of December of 2017 or of any subsequent calendar year, within the calendar year following the year in which the aggregate account balance or value exceeds USD\$250 000.
- (4) An account is treated as a reportable account beginning as of the date it is identified to be a reportable account, pursuant to the due diligence procedures described in Sections II to VII of the Common Reporting Standard and, unless otherwise provided, information with respect to a reportable account must be reported annually in the calendar year following the year to which the information relates.
- (5) For the purposes of these Regulations, an account with a balance or value that is negative is deemed to have a balance or value equal to nil.
- (6) For the purposes of the Common Reporting Standard and these Regulations, a financial account held by an individual as a partner of a partnership is deemed to be an entity account.”.

Amendment of regulation 12 of S.I. 2017 No. 26

7. Regulation 12(4)(c) of the principal Regulations is deleted and the following substituted:

“(c) the account number of the account or, where there is no account number, the functional equivalent;”.

Amendment of regulation 15 of S.I. 2017 No. 26

8. Regulation 15(2) of the principal Regulations is deleted and the following substituted:

“(2) The Reporting Barbados Financial Institution shall ensure that the records made for the purposes of this regulation are kept for a minimum period of 5 years after the 31st day of December of the calendar year in which the Reporting Barbados Financial Institution is required to submit the report to which the records relate to the Barbados Competent Authority.”.

Repeal and replacement of regulation 18 of S.I. 2017 No. 26

9. Regulation 18 of the principal Regulations is deleted and the following substituted:

“Inspection and compliance

18.(1) The Barbados Competent Authority may, by notice in writing, require a Financial Institution to provide or make available to the Barbados Competent Authority within 14 days, any information, explanations, documents or particulars as the Barbados Competent

Authority may reasonably require for the purpose of determining whether the Financial Institution is

- (a) a Reporting Barbados Financial Institution; or
- (b) Non-Reporting Barbados Financial Institution.

(2) The Barbados Competent Authority may, in writing, require any person, within such period as the Barbados Competent Authority may specify, to provide or make available to the Barbados Competent Authority any information as the Barbados Competent Authority may reasonably require for any purpose relating to the administration or enforcement of these Regulations, whether such information is electronically stored or otherwise in the possession or control of the person.

(3) The Barbados Competent Authority may for any purpose related to the administration or enforcement of these Regulations, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or records are or should be kept for the purpose of these Regulations and

- (a) audit or examine FATCA and Common Reporting Standard controls, FATCA and Common Reporting Standard procedures and training manuals, risk registers, AML/KYC Procedures, Financial Account information including Know Your Customer forms or any other document utilized for the on-boarding of an account, or any other records, whether electronically stored or otherwise;
- (b) audit or examine any evidence relied upon by a Reporting Barbados Financial Institution, for the performance of its obligations under these Regulations, whether electronically stored or otherwise;
- (c) require the owner, manager or any relevant personnel to give him all reasonable assistance to review FATCA and Common

Reporting Standard controls, processes and documentation for his audit or examination either orally or, if he so requires, in writing, on oath or otherwise and, for that purpose, require the owner or manager or relevant personnel to attend at the premises or place with him.

(4) Where any information, which is required to be provided to, or inspected by, the Barbados Competent Authority is located outside Barbados, the Reporting Barbados Financial Institution shall take all necessary steps to bring the information to Barbados within the period specified in writing by the Barbados Competent Authority.

(5) If during the course of an audit or examination, it appears to the Barbados Competent Authority that there is

- (a) non-compliance with any of these Regulations;
- (b) a deficiencies in the due diligence procedures implemented for the purposes of these Regulations; or
- (c) gaps in a Reporting Barbados Financial Institution FATCA and Common Reporting Standard compliance; or

the Barbados Competent Authority may issue recommendations or a directive for a Reporting Barbados Financial Institution to correct its non-compliance, deficiency or address the gaps in its FATCA and Common Reporting Standard compliance and undertake corrective actions in a time prescribed by the Barbados Competent Authority.

(6) Where a Reporting Barbados Financial Institution fails

- (a) to comply with a recommendation or directive of the Barbados Competent Authority issued under regulation 18(5); or
- (b) to comply with a recommendation or directive of the Barbados Competent Authority in the time prescribed under regulation 18(5),

the Commissioner may impose on the Reporting Barbados Financial Institution a pecuniary penalty of \$10 000 and where the Reporting Barbados Financial Institution does not remedy a failure referred to in paragraphs (a) or (b), the institution is liable to a further penalty of \$5 000 for each day or part thereof for which the failure continues after the date on which the original penalty became due and payable.”.

Amendment of regulation 20 of S.I. 2017 No. 26

10. Regulation 20(2) of the principal Regulations is deleted and the following substituted:

“(2) A person who

- (a) with intent to avoid the provisions of these Regulations, alters, destroys, mutilates, defaces, hides or removes any document or information, including any document or information electronically held;
- (b) wilfully obstructs the Barbados Competent Authority in the exercise of its functions under regulation 18; or
- (c) negligently provides false or misleading information to a Reporting Barbados Financial Institution in the exercise of its due diligence functions under regulation 4(e) and 11.”.

Amendment of regulation 21 of S.I. 2017 No. 26

11. Regulation 21 of the principal Regulations is amended

- (a) by deleting paragraph (1) and substituting the following:

“(1) Notwithstanding regulation 20, the Commissioner may impose on a Reporting Barbados Financial Institution, a pecuniary penalty of

(a) \$10 000 where the institution

- (i) fails to deliver the information specified in regulation 7 or to submit a report containing the information to be reported under regulation 12 to the Barbados Competent Authority within the time prescribed by regulations 6 and 12, respectively;
- (ii) fails to notify the Barbados Competent Authority of any of the matters specified in regulations 4, 7, 8, 11, 12 and 14;
- (iii) fails to comply with a requirement of, or obligation imposed by, the Barbados Competent Authority under regulation 18; or
- (iv) without reasonable cause, fails to submit any new or corrected information within the required period after having been given notice that a report contains an administrative or other minor error and that the new or corrected information is required in accordance with regulation 19;

(b) \$5000 where the institution

- (i) fails to comply with the due diligence requirements described in regulations 4(e) and 11; or
- (ii) fails to establish and keep records in accordance with regulation 15.”.”

(b) by deleting paragraph (4) and substituting the following:

“(4) A pecuniary penalty imposed under paragraph (1) is due and payable, for every breach thereof, by the date specified in the notice referred to in paragraph (2).,

(4A) Where a Reporting Barbados Financial Institution does not remedy a failure referred to in paragraph (1), the institution is liable to a further penalty of

(a) \$5000 in relation subparagraphs (a), (b), (c) and (d); or

(b) \$1000 in relation subparagraphs (e) and (f)

for each day or part thereof for which the failure continues after the date on which the original penalty became due and payable.

(4B) The amount of an outstanding pecuniary penalty constitutes a debt to the State and is recoverable in civil proceedings before a magistrate’s court.”.

Repeal and replacement of regulation 26 of S.I. 2017 No. 26

12. Regulation 26 of the principal Regulations is deleted and the following substituted:

“Anti-avoidance

26. Where a person enters into an arrangement or engages in a practice, the main purpose or result or one of the purposes or results of which can reasonably be considered to be the avoidance of an obligation of the person or of another person under these Regulations, these Regulations shall apply as if the person had not entered into the arrangement or engaged in the practice.”.

Insertion of new regulation 26A into S.I. 2017 No. 26

13. The principal Regulations are amended by inserting after regulation 26, the following:

“Liability in respect of legal relationships

26A. Where by these Regulations a requirement or a penalty is imposed on a trust, partnership, joint venture or other legal relationship, the requirement shall be met or the penalty paid, in the case of

- (a) a trust, by the trustees of the trust;
- (b) a partnership, by the partners of the partnership;
- (c) a joint venture, by the members of the joint venture; and
- (d) any other legal relationship, by the persons in the relationship,

and the meeting of the requirement or the payment of the penalty shall be treated as being a joint and several requirement in each case.”

Amendment of S.I. 2017 No. 26

14. The *First, Second and Third Schedules* to the principal Regulations are deleted and the following substituted:

“SCHEDULE

(Regulation 2)

NON-REPORTING FINANCIAL INSTITUTIONS

For the purposes of the Common Reporting Standard, the following are Non-Reporting Financial Institutions:

1. Central Bank of Barbados

2. Caribbean Development Bank
3. National Insurance Fund
4. The Barbados Agency for Micro Enterprise Development Ltd. (Fund Access)
5. Enterprise Growth Fund Limited”.