

No. 3 of 2022

VIRGIN ISLANDS
INTERNATIONAL TAX AUTHORITY (AMENDMENT) ACT, 2022
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Section 2 amended
3. Section 4 amended
4. Sections 4A to 4N inserted
5. Schedule 1 amended

No. 3 of 2022

**International Tax Authority
(Amendment) Act, 2022**

**Virgin
Islands**

I ASSENT



Governor.

1 June, 2022



VIRGIN ISLANDS

No. 3 of 2022

AN ACT TO AMEND THE INTERNATIONAL TAX AUTHORITY ACT, REVISED EDITION
2020.

[Gazetted _____, 2022]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title

1. This Act may be cited as the International Tax Authority (Amendment) Act, 2022.

Section 2 amended

2. The International Tax Authority Act, Revised Edition 2020 (hereinafter referred to as the principal Act) is amended in section 2 by inserting the following definitions in chronological order:

““company” includes

- (a) a company within the meaning of section 3(1) of the BVI Business Companies Act, Revised Edition 2020;
- (b) a foreign company within the meaning of section 3(2) of the BVI Companies Act, Revised Edition 2020, which is registered under Part XI of that Act,

but does not include a non-resident company;

“Financial Institution” means a custodial institution, a depository institution, an investment entity or a specified insurance company;

“Intermediary (promoter)” means a person who is responsible for the design, and marketing of Common Reporting Standards avoidance arrangements and opaque offshore structures as well as those persons that provide assistance or advise with respect to the design, marketing, implementation or organisation of the arrangement or structure;

“legal entity” means a company, a limited partnership, Financial Institution, multinational enterprise group, intermediary (promoter) or a reportable taxpayer;

“limited partnership” includes

- (a) an existing limited partnership within the meaning of section 2 of the Limited Partnership Act, Revised Edition 2020;
- (b) a limited partnership within the meaning of section 2 of the Limited Partnership Act, Revised Edition 2020; and
- (c) a foreign limited partnership within the meaning of section 2 of the Limited Partnership Act, Revised Edition 2020, which is registered under Part VI of that Act;

“Multinational Enterprise Group” means any group that

- (a) includes two or more enterprises the tax residence for which is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an excluded Multinational Enterprise Group; and

“reportable taxpayer” means, in respect of a Common Reporting Standard avoidance arrangement, any actual or potential user of that arrangement and in respect of an opaque structure, a natural person whose identity as a beneficial owner cannot be accurately determined due to the opaque offshore structure.”.

Section 4 amended

3. The principal Act is amended in section 4(1)

(a) by deleting paragraph (c) and substituting the following paragraph

“(c) to administer, supervise and monitor the compliance of persons, legal entities, legal and other arrangements in the Virgin Islands under this Act and any other mutual legal assistance legislation;” and

(b) in paragraph (g) by inserting the word “legal” before the word “entities”.

Sections 4A to 4N inserted

4. The principal Act is amended by inserting after section 4 the following new sections:

“General powers of disclosure and related restrictions

4A. The Authority may, for the purpose of ensuring the discharging of its functions, request any person or legal entity to furnish the Authority with such information as may be specified, in such form as the Authority may require.

Recovery of costs

4B. Where assistance to a foreign competent authority is provided in accordance with the provisions of this Act or pursuant to the provisions of any mutual legal assistance legislation which makes no provision as to costs, the resulting extraordinary cost of that assistance shall be borne by the foreign competent authority requesting the assistance in a similar manner to a claim for costs submitted to the court.

Power of Authority to request information and documents

4C. (1) Without prejudice to the generality of section 4A, where it is required for the purpose of

- (a) discharging its functions;
- (b) ensuring compliance with any mutual legal assistance legislation; or
- (c) ensuring compliance with a request from a competent authority acting pursuant to an enactment,

the Authority may, by notice in writing given to a person specified in subsection (2), require such person

- (i) to provide specified information or information of a specified nature or description; or
- (ii) to produce specified documents or documents of a specified nature or description.

(2) A notice under subsection (1)

- (a) may be issued to
 - (i) a legal entity or a person connected with that legal entity;
 - (ii) any person reasonably believed to be in the possession or control of the information or documents to which the notice relates; and
- (b) shall specify the place where and the period within which the information or document is to be provided or produced; and
- (c) may require that the information is to be provided to, or the documents are to be produced to, such person as may be specified in the notice.

(3) The Authority may require any information provided pursuant to this section

- (a) to be provided in such form as the Authority may require; and
- (b) to be verified or authenticated in such manner as it may reasonably require.

(4) The Authority may take copies or extracts of any document produced pursuant to this section.

(5) Where a person claims a lien on a document, the production of the document pursuant to this section is without prejudice to his or her lien.

Authority may apply for a search warrant

4D. (1) Where

- (a) a person who is issued a notice under section 4C, fails to comply or only partly complies with such notice;
- (b) the Authority is of the opinion that if a notice is issued to a person under section 4C it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed; or
- (c) the Authority is of the opinion that
 - (i) an offence under a mutual legal assistance legislation has been or is being committed, or may be committed unless swift action is taken to prevent the commission of the offence;
 - (ii) there are documents, or there is information, on the premises of a person referred to in section 4C(2) which may reveal the commission of an offence; and
 - (iii) if a notice under section 4C is issued it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed,

the Authority may, on oath sworn to on its behalf by an officer of the Authority, apply to a Magistrate for a search warrant.

(2) On receipt of an application under subsection (1), the Magistrate may authorise a named representative of the Authority, together with a police officer and any other person named in the warrant

- (a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) to search the premises and take possession of any documents or information appearing to be documents or information of a type in respect of which the warrant was issued or to take, in relation to such

documents or information, any other steps which appear to be necessary for preserving or preventing interference with them;

- (c) to take copies of, or extracts from, any documents or information appearing to be documents or information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any document or information appearing to be documents or information of a type of which the warrant was issued or to state where such documents or information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

(3) Unless the court, on the application of the Authority, otherwise orders, any document of which possession is taken under this section may be retained

- (a) for a period of three months; or
- (b) if within that period proceedings for a criminal offence, to which the document is relevant, are commenced against any person, until the conclusion of those proceedings.

(4) For the purposes of this section, "premises" includes a vehicle, a vessel or an aircraft.

Examination under oath before a Magistrate

4E. (1) Where the Authority considers it necessary to examine a person on oath, the Authority may apply to a Magistrate to have that person examined before the Magistrate and to have the results of that examination transmitted to the Authority.

(2) Subject to subsections (3) and (4), on an application under subsection (1), the Magistrate may order the examination of a person under oath on such terms and conditions as he or she considers fit.

(3) Where the Magistrate orders the examination of a person under subsection (2), that person may choose to be represented by a legal practitioner, and the proceedings of the examination shall be held in camera.

(4) An application to a Magistrate under subsection (1) shall be processed by the Magistrate within seven days of the application and the results of the examination shall be transmitted to the Authority within a reasonable period, not exceeding fourteen days, from the date of the examination.

Examination under oath by the Authority

4F. (1) Where the Authority on reasonable grounds believes that a person (referred to in this section as "the examinee") can provide

information that is required under section 4C(1) the Authority may, by notice in writing, require the examinee to attend before a specified officer of the Authority (referred to in this section as ‘the examiner’) to be examined under oath.

(2) A notice under subsection (1) shall state

- (a) the general nature of the matters on which the examinee is to be examined;
- (b) the date, time and place of the examination; and
- (c) the entitlement of the examinee to be represented by a legal practitioner in accordance with subsection (5).

(3) Any change in the matters required to be stated in the notice under subsection (2) shall be confirmed by the Authority to the examinee in writing.

(4) The examiner is entitled to administer an oath to the examinee for the purposes of this section, notwithstanding that the examiner may not otherwise be entitled to administer an oath.

(5) An examinee may be represented at the examination by a legal practitioner of his or her choice who may, at such times as the examiner determines

- (a) address the examiner; and
- (b) examine the examinee on any matters on which the examiner has examined the examinee.

(6) Subject to subsection (7), an examination under this section shall be held in camera.

(7) The examiner may in his or her discretion permit to be present at the examination

- (a) any officer or employee of the Authority and any other person that, in the opinion of the examiner, is essential to the examination; and
- (b) any person whom the examinee requests to be present.

(8) The examiner shall cause a written record to be made of the examination and shall, within a reasonable period following the examination, provide a written copy of the record to the examinee, subject to such conditions (including a condition as to disclosure of the record or any part thereof or information relating thereto) as the examiner may impose.

(9) A person commits an offence if

- (a) having received a notice under subsection (1), he or she fails or refuses to submit to examination in accordance with the notice;
- (b) as an examinee, he or she fails to answer a question properly put to him or her by the examiner; or

- (c) having been issued with a record of an examination pursuant to subsection (8), he or she fails to comply with any condition imposed by an examiner.

(10) A person who commits an offence under subsection (9) is liable on summary conviction to a fine not exceeding five thousand dollars.

(11) The operation of this section shall not be construed to be contingent on the Authority first complying with section 4C(1).

Duty to cooperate

4G. (1) Subject to the provisions of this Act, the Authority shall take such steps as it considers appropriate to co-operate with

- (a) foreign competent authorities; or
- (b) a competent authority acting pursuant to an enactment.

(2) Co-operation may include

- (a) the sharing of documents and information which the Authority is not prevented by this Act or any other enactment from disclosing;
- (b) making requests for assistance to foreign competent authorities; and
- (c) making application for the examination of a person by a Magistrate under section 4E or requiring a person to be examined under section 4F.

Provision of assistance to foreign competent authorities

4H. (1) Subject to subsection (2), the Authority may, on the written request of a foreign competent authority and subject to such conditions as it considers appropriate

- (a) exercise the power conferred on it by section 4C;
- (b) appoint one or more competent persons as examiners to investigate any matter;
- (c) make an application for the examination of a person under section 4E or require a person to be examined under section 4F; or
- (d) disclose information, or provide documentation, to the foreign competent authority, whether such information or documentation is already in the Authority's possession or whether it is obtained pursuant to the exercise of a power under paragraph (a), (b) or (c).

(2) The Authority shall not exercise the power conferred on it by subsection (1) unless it is of the opinion that the information or documentation to which the request relates, or the investigation is sought, is reasonably required by the foreign competent authority for the purposes of its regulatory functions.

(3) Where the Authority considers it appropriate in any case to do so, it may, notwithstanding anything to the contrary contained in this Act, provide a foreign competent authority with information in its control or possession, whether or not obtained pursuant to the exercise of any power under this Act, although the information has not been specifically requested by the foreign competent authority.

(4) Section 4K(2) to (5) apply to an examiner appointed under subsection (1)(b).

(5) In deciding whether or not to exercise the powers conferred on it by subsection (1), the Authority may take into account, in particular

- (a) whether corresponding assistance would be given to the Authority in the country or territory of the foreign competent authority concerned;
- (b) the nature and seriousness of the matter to which the request for assistance relates, the importance of the assistance to be provided in the Virgin Islands and whether the assistance can be obtained by other means;
- (c) the relevance of the information or documentation to the enquiries to which the request relates; and
- (d) whether it is otherwise appropriate in the public interest to provide the assistance sought.

(6) For the purposes of subsection (5)(a), the Authority may require the foreign competent authority making the request to give a written undertaking, in such form as the Authority may require, to provide corresponding assistance to the Authority.

(7) If a foreign competent authority fails to comply with a requirement of the Authority made under subsection (5), the Authority may refuse to provide the assistance sought by the foreign competent authority.

(8) Without limiting the discretion of the Authority under this section, the Authority may decide that it will not, on the request of a foreign competent authority, exercise its powers under this section unless

- (a) the foreign competent authority undertakes to make such contribution towards the cost of exercising its powers as the Authority considers appropriate;
- (b) it is satisfied that the foreign competent authority is subject to adequate legal restrictions on further disclosure of the information and documents and that it will not, without the written permission of the Authority obtained at the time of the request or thereafter
 - (i) disclose information or documents provided to it to any person other than an officer or employee of the foreign competent authority

engaged in the exercise of its supervisory functions; or

- (ii) take any action on information or documents provided to it; and
- (c) it has received satisfactory assurances from the foreign competent authority that any information provided to it will not be used in any criminal proceedings against the person furnishing it, other than proceedings for an offence of perjury or any equivalent offence.

Compliance function

4I. (1) A legal entity shall establish and maintain adequate systems and controls for ensuring its compliance with the requirements of, and its obligations under

- (a) this Act and any mutual legal assistance legislation;
- (b) any Guidance or Rules issued by the Authority, that applies to the legal entity;
- (c) any directives issued by the Authority that apply to a legal entity.

(2) Without limiting subsection (1), a legal entity shall establish and maintain a compliance procedures manual.

Compliance inspections

4J. (1) The Authority may, for a purpose or purposes specified in subsection (2)

- (a) inspect the premises and business, whether in or outside the Territory, including the procedures, systems and controls, of a legal entity;
- (b) inspect the assets, including cash, belonging to or in the possession or control of a legal entity;
- (c) examine and make copies of documents belonging to or in the possession or control of a legal entity that, in the opinion of the Authority, relate to the carrying on of services or business by the legal entity; and
- (d) seek information and explanations from the officers, employees, agents and representatives of a legal entity, whether verbally or in writing, and whether in preparation for, during or after a compliance inspection.

(2) A compliance inspection may be undertaken for the purpose of the supervision of legal entities, including monitoring and assessing a legal entity's compliance with

- (a) this Act and any mutual legal assistance legislation;

(b) any Guideline or Rules issued by the Authority, that applies to the legal entity; and

(c) any directives issued by the Authority that apply to the legal entity.

(3) Subject to subsection (4), the Authority shall give reasonable notice to a relevant person of its intention to exercise its powers under subsection (2).

(4) Where it appears to the Authority that the circumstances so justify, the Authority may exercise its powers under subsection (1) without giving notice to the legal entity.

(5) Subject to subsection (6), the Authority may, upon the request of a foreign competent authority, permit the authority to take part in a compliance inspection undertaken by the Authority under this section.

(6) The Authority shall not permit a foreign competent authority to take part in a compliance inspection under subsection (5) unless it is of the opinion that the participation of the foreign competent authority is reasonably required

(a) for the effective supervision of a legal entity; or

(b) for the purposes of the regulatory functions of the foreign competent authority.

(7) In deciding whether to permit a foreign competent authority to take part in a compliance inspection under subsection (5), the Authority may take into account, in particular, whether the foreign competent authority is subject to adequate legal restrictions on further disclosure and, in particular, whether it is likely, without the written permission of the Authority

(a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or

(b) to take any action on information obtained or documents examined or obtained during the compliance inspection.

(8) The Authority may, by Regulations, specify circumstances in which a legal entity may be required to contribute towards the costs of a compliance inspection, except that a legal entity shall not be required to contribute more than seventy five per cent of the total costs of any compliance inspection.

(9) Where an inspection is conducted under this section, the Authority shall within a reasonable time, issue a compliance report, notifying any person or legal entity:

(a) of the findings of the Authority;

(b) of the reasons for its findings;

(c) of what actions the Authority considers should be taken by any person or legal entity to ensure

compliance pursuant to subsection (2) and the date by which such actions need to have been taken; and

- (d) any other information which the Authority deems necessary.

Appointment of examiners

4K. (1) The Authority may appoint one or more competent persons as examiners to conduct an investigation on its behalf where it appears to the Authority on reasonable grounds that there are, or may be, grounds for taking enforcement action against a legal entity.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following:

- (a) the nature, conduct or state of the business of the person under investigation;
- (b) a particular aspect of the business of the person under investigation;
- (c) the ownership or control of the person under investigation; and
- (d) in the case of a legal entity, whether there are grounds for taking enforcement action against the legal entity.

(3) Subject to subsection (4), an examiner appointed under this section shall have the powers of the Authority under sections 4C, 4D, 4E and 4F.

(4) The Authority may give directions to the examiner concerning any one or more of the following:

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation; and
- (c) the manner in which the examiner shall report to him or her.

(5) An examiner appointed under subsection (1) may, if he or she considers it necessary for the purposes of his or her investigation, also investigate the business of any person who is, or at any relevant time has been

- (a) a member of the group of which the person under investigation is a part; or
- (b) a partnership of which the person under investigation is a member.

(6) Where a person appointed as an examiner under this section is not a member or officer of the Authority he or she shall, unless otherwise agreed between him and her and the Authority be remunerated on such terms as the Authority may determine.

(7) An examiner shall submit a report of his or her investigation to the Authority.

Enforcement action

4L. (1) The Authority may take enforcement action against a legal entity if

- (a) in the opinion of the Authority, the legal entity
 - (i) has contravened or is in contravention of this Act or a mutual legal assistance legislation;
 - (ii) has failed to comply with a directive given to it by the Authority;
 - (iii) has provided the Authority with any false, inaccurate or misleading information;
- (b) in the opinion of the Authority
 - (i) a legal entity has refused or failed to cooperate with the Authority on a compliance inspection conducted by the Authority under section 4J; or
 - (ii) a legal entity has refused to take such actions as required to comply with the compliance report; or
- (c) the legal entity fails to pay an administrative penalty imposed pursuant to regulations made under section 26(2) on or before the date on which the penalty is due to be paid.

(2) The Authority may take enforcement action against any person who

- (a) has contravened or is in contravention of this Act or a mutual legal assistance legislation;
- (b) fails to comply with a directive given to him or her by the Authority; or
- (c) fails to pay an administrative penalty imposed pursuant to regulations made under section 26(2) on or before the date on which the penalty is due to be paid.

(3) If the Authority is entitled to take enforcement action against a legal entity under subsection (1), it may exercise one or more of the following powers:

- (a) appoint an examiner to conduct an investigation under section 4K;
- (b) issue a directive under section 4M(1) and (2);
- (c) initiate such investigation as may be necessary to ensure compliance with this Act, any mutual legal assistance legislation or the Rules;
- (d) where the legal entity is a company, apply to the Court under section 162(1) or section 163(1) of the Insolvency Act, Revised Edition 2020 for the

appointment of a liquidator in respect of the company;

- (e) issue a warning letter against the legal entity.
- (f) impose such administrative penalties on the legal entity as may be provided for in regulations made under section 26(2); or
- (g) require the legal entity to pay such costs and expenses as are incurred by the Authority in the taking of enforcement action against the legal entity as the Authority thinks fit.

(4) If the Authority is entitled to take enforcement action against any person under subsection (2), it may

- (a) issue a warning letter against the person;
- (b) appoint an examiner to conduct an investigation under section 4K as if the person were a legal entity, or initiate and conduct such other investigation as the Authority thinks fit;
- (c) issue a directive under section 4M(3);
- (d) impose such administrative penalty on the person as may be provided for in regulations made under section 26(2);
- (e) require the person to pay for costs and expenses incurred by the Authority in the conduct of any investigation or the taking of enforcement action against the person as the Authority thinks fit.

(5) Where a power exercisable by the Authority under subsection (3) or (4) is also exercisable by it under a mutual legal assistance legislation, such power may be exercised either under this Act or under the mutual legal assistance legislation, but not both.

(6) The Authority's power under subsection (3)(g) and (4)(e) to require a legal entity to pay costs and expenses incurred by the Authority shall be construed to include the power to require payment of costs and expenses associated with any investigation against or in relation to the legal entity, including the appointment of an examiner, irrespective of whether or not enforcement action has been taken against the legal entity.

(7) Where the Authority takes enforcement action against a legal entity or former legal entity, the Authority shall consider whether to provide the Commissioner with a report of any enforcements taken against the legal entity and any sanctions that the Authority may have imposed.

Power to issue directives

4M. (1) Where the Authority is entitled to take enforcement against a legal entity, the Authority may issue a directive

- (a) requiring the legal entity to take such other action as the Authority considers may be necessary to address any deficiencies identified during a compliance inspection.
- (b) requiring the legal entity to take such actions as the Authority considered may be necessary to address any deficiencies identified during any other assessment or review conducted under this Act or any mutual legal assistance legislation.

(2) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a) and (b).

(3) Where it appears to the Authority that a person is carrying on unauthorised tax matters, the Authority may issue a directive to that person requiring him or her to take such other action as the Authority considers may be necessary to protect his or her property, or property in his or her custody, possession or control, or to protect his or her customers or creditors or potential customers or creditors.

Approved forms

4N. (1) The Authority may, by publication in such manner as may be specified in the regulations, approve forms for the purposes under the mutual legal assistance legislation.

(2) Where, pursuant to subsection (1), the Authority has published an approved form with respect to a document, the document shall

- (a) be in the form of, and contain the information specified in, the approved form; and
- (b) have attached to it such documents as may be specified in the approved form.”.

Schedule 1 amended

5. The principal Act is amended in Schedule 1 by inserting the following new items after item 1:

- “2. Beneficial Ownership Secure Search System Act, Revised Edition 2020
- 3. Economic Substance (Companies and Limited Partnership) Act, Revised Edition 2020.”.

Passed by the House of Assembly this 3rd day of May, 2022.


Neville A. Smith,
Deputy Speaker.


Phyllis Evans,
Clerk of the House of Assembly.

LEGAL REPORT

This Act seeks to amend the International Tax Authority Act, Revised Edition 2020, (hereinafter referred to as “the principal Act”).

Section 1 set out the short title.

Section 2 amends section 2 of the principal Act by inserting new definitions.

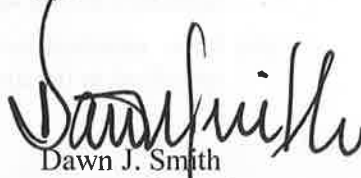
Section 3 provides for an amendment to section 4 of the principal Act.

Section 4 provides for the insertion of sections 4A to 4N which provides for matters including General powers of disclosure and related restrictions, Recovery of costs, Power of the Authority to request information and documents, Application for search warrant by the Authority, Examination under oath before a magistrate and by the Authority, Provision to assist foreign competent authorities, Compliance function and inspections, Appointment of examiners , Enforcement action and Approved forms.

Section 5 provides for amendment to Schedule 1 of the principal Act to insert additional Mutual Legal Assistance legislation.

This Act was introduced in the House of Assembly on the 3rd day of May, 2022 taken through its remaining stages and passed on the 3rd day of May, 2022.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.



Dawn J. Smith
Attorney General
24th May, 2022