



BVI ITA and Ministry of Finance requires entities to establish and maintain adequate systems and controls including a compliance manual.

October 2022

The following BVI legislative supplements to the Mutual Legal Assistance (Tax Matters) Act (“MLA Act”) and the International Tax Authority Act (“ITA Act”) were gazetted on 13 June 2022:

- » The Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2022 (the “MLA Amendment”); and
- » The International Tax Authority (Amendment) Act, 2022 (the “ITA Amendment”)

In a BVI Government [press release](#) dated 26 July 2022, the International Tax Authority (“ITA”) and the BVI Ministry of Finance confirmed that all persons subject to the provisions of the MLA and ITA Amendments were required to take action to ensure that they are in compliance with the amendments further detailed below.

On 4 August 2022, the International Tax Authority (Administrative Penalties) Regulations 2022 (the “ITA Regulations”) were gazetted, and are deemed to have come into force on 14 June 2022.

On 8 September 2022, the International Tax Authority issued a [notice](#) reminding all BVI Financial Institutions of the Obligation to register on the BVI Financial Account Reporting System. Each VIFI is required to register with the Competent Authority. The VIFI may appoint a third party to carry out the duties and obligations however, as a Secondary User. The responsibility to ensure all obligations have are met, is with the VIFI.

Key requirements of the ITA Amendment

The ITA Amendment amends the ITA Act by inserting the following new requirements]:

- » **Powers of the ITA to request information and documents** – the ITA may request any person or legal entity to provide the ITA with such information as may be specified, in such form the ITA may require. This includes a wide ranging power of authority for the ITA to request information and documents upon notice to a person or legal entity or request a search warrant if the notice is unlikely to be complied with, or the documents to which the notice relates tampered with, removed or destroyed.
- » **Compliance manual** – Legal entities are required to establish and maintain adequate systems and controls for ensuring compliance with the requirements of the ITA Act and the MLA Act and other mutual legal assistance legislation and any



guidance, rules or directives issued by the ITA that apply to the legal entity. A key new requirement includes legal entities being required to establish and maintain a compliance procedures manual. As currently drafted the manual should be established and implemented by the end of 2023. To assist with the implementation process, the ITA intends to publish advance guidance on the requirements and mechanisms that would suffice to demonstrate and evidence compliance with these elements. We will cover this in a further Walkers Client Advisory once the guidance is published.

- » **Compliance inspections** – the ITA may undertake a compliance inspection to include monitoring and assessing an entity's compliance with the ITA Act and the MLA Act or other mutual legal assistance legislation and any guidance, rules or directives issued by the ITA that apply to the legal entity. The inspection could be on reasonable notice although the ITA has the power not to give notice where the circumstances justify. The inspection can be of the premises and business whether in or outside the territory including the procedures and systems and controls of the legal entity. The ITA may inspect the assets including cash belonging to or in control of the legal entity and 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. If it is thought that the participation of a foreign competent authority is reasonably required then the ITA can permit the foreign competent authority to take part in the compliance inspection.
- » **Examination under oath before a magistrate or an officer of the ITA** – the ITA can apply to have a person examined under oath before a magistrate or an officer of the ITA if the ITA considers it necessary.
- » **Duty to cooperate** – the ITA shall take all appropriate steps to cooperate with foreign competent authorities or a competent authority acting pursuant to an enactment. Cooperation might include the sharing of documents and information and making requests for assistance to foreign competent authorities.
- » **Enforcement action** – the ITA may take enforcement action against a legal entity if in its opinion the legal entity has contravened the ITA Act or MLA Act or associated legislation, has failed to comply with a directive given to it by the ITA or has provided the ITA with any false, inaccurate or misleading information. The ITA shall appoint one or more competent persons as examiners to conduct an investigation on its behalf where it appears to the ITA that there may be reasonable grounds for taking enforcement action against a legal entity.
- » **Power to issue directives** – where the ITA is entitled to take enforcement action against a legal entity, the ITA may issue a directive requiring the legal entity to take action to address any deficiencies identified in a compliance inspection or any other assessment or review conducted under the ITA Act, MLA Act or associated legislation.

Key requirements of the MLA Amendment

Key amendments provided by the MLA Amendment include the following:

- » **Repealing the previous Part II of the MLA Act** – a new Part II which inserts the Foreign Account Tax Compliance Act ("FATCA") requirements under the Intergovernmental Agreement entered into between the USA and the BVI ("IGA") into the MLA Act. The effect of replacing the previous Part II of the MLA Act removes the previous provisions relating to the EU Savings Directive on taxation of savings income which is not applicable.
- » **Common Reporting Standard ("CRS")** - record keeping requirements for CRS policies and procedures are amended to five years rather than six years as previously provided, with the CRS requirements set out in Part III of the MLA Act remaining largely the same following the MLA Amendment.
- » **Country by country reporting** – each ultimate parent entity of a multinational enterprise group that is resident for tax purposes in the BVI is required to file a country by country report conforming to the requirements of section 39 of the MLA Act with the competent authority.



Following the ITA Amendment and the MLA Amendment, (i) CRS; (ii) FATCA; and (iii) Country-by-Country reporting are now within the scope of ITA Act and MLA Act and associated legislation. Therefore it is likely that all policies and procedures will need to be reviewed and where necessary amended or established to ensure compliance with the requirements.

Key requirements of the ITA Regulations

The ITA Regulations have the effect of empowering the ITA to impose administrative penalties if a person or legal entity fails to meet the standards of transparency and exchange of information for tax purposes that the ITA requires, has contravened a provision of the ITA Act, the Regulatory Code or any directive issued by the ITA to reinforce its remit. Examples of contraventions include late filing or late responses to the ITA, providing false information to the ITA, failure to comply with a notice to produce information, failure to maintain policies or procedures or late payment of fees.

Where the ITA proposes to impose an administrative penalty on a person or legal entity, it will send a notice of the proposed penalty to the person or legal entity stating (a) the contravention in respect of which it proposes to impose the penalty; (b) the amount of the proposed penalty; (c) the period within which the penalty is to be paid; and (d) the entitlement of the person or legal entity to make representation to the ITA.

Where a person or legal entity receives a proposed penalty notice, it may, within 21 days of the date of the notice, make representation to the ITA as to why it should not be required to pay the administrative penalty or why the proposed penalty should be reduced.

The ITA may at any time prior to the issuing of a penalty notice withdraw a notice of proposed penalty and substitute a new notice of proposed penalty for a different amount. Following the expiration of 21 days from the date of the proposed penalty notice, the ITA may by written penalty notice impose an administrative penalty on the person or legal entity in an amount not exceeding the amount stated in the proposed penalty notice. A person or legal entity that receives a penalty notice shall pay the penalty stated in the notice to the ITA within 14 days of receipt of the notice or in instalments over such period of time that the ITA considers appropriate.

Where a person or legal entity is aggrieved by a decision of the ITA to impose an administrative penalty on it, or by the amount of such administrative penalty, or in respect of any other decision under the ITA Regulations or any mutual legal assistance legislation, the person or legal entity may file an appeal before the Court within 30 days of the date of receiving the penalty notice or decision, stating the grounds of appeal.

Walkers has a dedicated Regulatory & Risk Advisory group which assists BVI entities in satisfying their BVI regulatory obligations. If you would like advice regarding how these updates might apply to your BVI entity, please get in touch with your usual Walkers contact or alternatively contact the authors overleaf directly.



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