

VIRGIN ISLANDS
INTERNATIONAL TAX AUTHORITY (ADMINISTRATIVE
PENALTIES) REGULATIONS, 2023
REGULATIONS

REGULATION

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VIRGIN ISLANDS
STATUTORY INSTRUMENT 2023 NO. 92
INTERNATIONAL TAX AUTHORITY ACT, 2018
(No. 7 of 2018)

International Tax Authority (Administrative Penalties) Regulations, 2023

[Gazetted 1st December, 2023]

The Minister with the approval of Cabinet in exercise of the powers conferred by section 26(2)(d) of the International Tax Authority Act, Revised Edition 2020, makes the following regulations:

Citation

1. These regulations may be cited as the International Tax Authority (Administrative Penalties) Regulations, 2023.

Interpretation

2. In these Regulations

“administrative penalty” means the penalty imposed under regulation 3(1);

“breach notice” means the notice mentioned in regulation 4(1);

“continuing penalty” means the penalty mentioned in regulation 3(4);

“continuing penalty notice” means the notice mentioned in regulation 7; and

“the Act” means the International Tax Authority Act, Revised Edition 2020.

Power of Authority to impose administrative and continuing penalties

3. (1) If the Authority considers that a person or legal entity has contravened a provision of the Act or any mutual legal assistance legislation, it may impose an administrative penalty on the legal entity, with respect to the contravention, as provided for in these regulations.

(2) Where the Authority decides to impose an administrative penalty on a person or legal entity under subregulation (1), it shall, after taking into account the matters specified in regulation 5, fix the amount of the administrative penalty for the contravention as provided in the Schedule.

(3) Where a person or legal entity has, by reason of committing more than one contravention, becomes liable to more than one penalty, the Authority may compound the penalties.

(4) Where an administrative penalty has been imposed under regulation 3(1) which

- (a) has not been stayed;
- (b) the contravention has not been remedied; and
- (c) the person or legal entity is capable of remedying the contravention,

the Authority may impose further penalties on the person or legal entity of \$50.00 for each day the contravention continues (each a “continuing penalty”).

(5) An administrative penalty imposed by virtue of this regulation shall be paid into the Authority’s account for the use of the Authority in accordance with section 13 of the Act.

Procedure to be followed by Authority

4. (1) Where the Authority proposes to impose an administrative penalty on a person or legal entity, it shall send a breach notice to the person or legal entity stating

- (a) the name of the person or legal entity;
- (b) the contravention in respect of which the Authority proposes to impose the administrative penalty;
- (c) the circumstances that the Authority believes constitutes the offence;
- (d) the amount of the proposed administrative penalty (the “proposed amount”); and
- (e) the entitlement of the person or legal entity to make representation to the Authority in accordance with subregulation (2).

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

(3) The Authority may at any time prior to the issuing of a penalty notice under subregulation (4), withdraw a breach notice and substitute a new breach notice for a different amount.

(4) Subject to subregulation (5), following the expiration of 21 days from the date of the breach notice, the Authority 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 breach notice.

(5) Before imposing an administrative penalty on a person or legal entity, the Authority shall consider any representations received under subregulation (2).

(6) Subject to subregulation (7), a person or legal entity that receives a penalty notice shall pay the administrative penalty stated in the notice to the Authority within 14 days of receipt of the notice.

(7) The Authority may agree to the payment of an administrative penalty in instalments over such period of time as it considers appropriate.

(8) A prosecution against a person or legal entity for an offence (whether or not a conviction resulted) precludes the imposition of an administrative penalty against that person for the same offence, but not *vice versa*.

Determination of appropriate administrative penalty

5. In determining the administrative penalty to be imposed on a person or legal entity, the Authority

- (a) shall take into account the following matters:
 - (i) the nature and seriousness of the contravention;
 - (ii) the need to ensure strict compliance with, and to penalise and deter contravention of, these regulations;
 - (iii) whether the person or legal entity has previously contravened the Act or any mutual legal assistance legislation;
 - (iv) whether the contravention was deliberate or reckless or caused by the negligence of the person or legal entity;
 - (v) whether any loss or damage has been sustained by third parties as a result of the contravention;
 - (vi) the ability of the person or legal entity to pay the penalty, including any gain resulting to the person or legal entity as a result of the contravention; and
- (b) may take into account such other matters as it considers appropriate.

Penalty notice for administrative penalty

6. A penalty notice shall be dated and state

- (a) the name of the person or legal entity;
- (b) that the Authority has imposed an administrative penalty of a stated amount on the person or legal entity;
- (c) the reasons for the decision to impose the administrative penalty and its amount;
- (d) that the administrative penalty stated in the penalty notice shall be paid to the Authority within 14 days of receipt of the penalty notice; and
- (e) the details pertaining to the right of the person or legal entity to appeal.

Continuing penalty notice

7. A continuing penalty notice shall be dated and state

- (a) the name of the person or legal entity;
- (b) that the Authority has imposed a continuing penalty of a stated amount on the person or legal entity;
- (c) the date of the penalty notice for each relevant administrative penalty;
- (d) the reason for the decision to impose a continuing penalty; and
- (e) the details of the right of the person or legal entity to appeal.

Appeal rights

8. (1) Where a person or legal entity is aggrieved by a decision of the Authority to impose any penalty on it under these regulations, or by the amount of any such penalty, or in respect of any other decision under these 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, continuing penalty notice or decision, stating the grounds of appeal.

(2) The notice of the appeal under subregulation (1) shall be served on the Authority which shall be entitled to appear and be heard at the hearing of the appeal.

(3) On an appeal, the Court may

- (a) confirm, vary or revoke the penalty; or
- (b) confirm, vary or cancel the decision.

(4) The Authority cannot, without the Court's leave, enforce any penalty that is the subject of an appeal or interest, until the outcome of the appeal and for the avoidance of doubt, this does not limit or otherwise affect any obligation of the person or legal entity under this regulation.

Limitation period

9. (1) The Authority may not issue a breach notice to a person or legal entity with respect to a contravention after the end of the period of 2 years commencing on the date that the Authority first knew of the contravention.

(2) For the purposes of subregulation (1), the Authority is deemed to know of a contravention if it has information from which the contravention can reasonably be inferred.

Miscellaneous provisions concerning administrative penalties

10. (1) The imposition by the Authority of an administrative penalty on a person or legal entity with respect to a contravention does not limit the power of the Authority to take any other enforcement action against the person or legal entity with respect to that contravention.

(2) Where the Act provides for the payment of a penalty by a person or legal entity with respect to a contravention, the Authority

- (a) may, in its discretion, determine whether to impose a penalty under these regulations or under the Act; and
- (b) shall not impose more than one administrative penalty on a person or legal entity in respect of the same contravention.

(3) Where a contravention committed by a person or legal entity falls into more than one of the categories specified in the Schedule, the Authority

- (a) may, in its discretion, determine into which category the contravention will fall; and
- (b) shall not impose an administrative penalty under more than one category.

Revocation of International Tax Authority (Administrative Penalties) Regulations, 2022

11. The International Tax Authority (Administrative Penalties) Regulations, 2022, S.I. No. 70 of 2022, is revoked.

SCHEDULE

[Regulations 3(2) and 10(3)]

ADMINISTRATIVE PENALTIES

1. Late Filing / Late Response 1 to 30 business days late 31 to 60 business days late 61 to 90 business days late 91 to 120 business days late 121 to 150 business days late 151 or more business days late	\$100 - \$500 \$500 - \$2,000 \$750 - \$3,000 \$1,000 - \$4,000 \$2,500 - \$6,000 \$3,000 - \$10,000
2. Providing/submitting false information to the Authority	\$2,000 - \$50,000
3. Failure to comply with a notice to produce information	\$1,000 - \$50,000
4. Compliance contravention - Failure to establish and maintain policies and procedures under section 27 of the Mutual Legal Assistance Act - Failure to produce information by request of the Authority	\$1,000 - \$15,000
5. Late payment of any fee required under any mutual legal assistance legislation or any penalty required to be paid under these Regulations	5% of the total fee or penalty payable for each month or part thereof that the fee or penalty (or any part of the fee or penalty) is outstanding, up to a maximum of 60% of the total fee or penalty
6. Committing any other contravention not falling within any category specified under this schedule	\$100 - \$50,000

Made this 30th day of November, 2023.

(Sgd.) Kye M. Rymer
Acting Minister of Finance.