



Isle of Man

Ellan Vannin

AT 8 of 2017

**INCOME TAX LEGISLATION
(AMENDMENT) ACT 2017**



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INCOME TAX LEGISLATION (AMENDMENT) ACT 2017

Signed in Tynwald: 18 July 2017
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AN ACT to confirm certain temporary taxation orders; to amend various enactments relating to income tax; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Income Tax Legislation (Amendment) Act 2017.

2 Commencement

- (1) Section 9 (Amendment of section 2N) comes into operation on 6 April 2017 and has effect in relation to accounting periods ending on or after that date and all subsequent accounting periods.
- (2) Subject to subsections (3) and (4), the remainder of this Act comes into operation in accordance with section 10(1) and (2) of the *Interpretation Act 1976*.
- (3) Part 3 (Amendments to the Income Tax (Instalment Payments) Act 1974 and Income Tax (Modified I.T.I.P.) Regulations 1987) and section 14 (Modified interpretation of certain statutory provisions) have effect in relation to payments that become due and payable after the date on which those provisions come into operation.
- (4) Sections 10 (Amendment of section 87), 11 (Amendment of section 88), 15¹ (Repeal of Schedule 2) and 17² (Consequential amendment to the

Tribunals Act 2006) have effect in relation to any appeal in respect of which a notice is filed after the date on which those sections come into operation.

3 Expiry

- (1) The provisions of this Act, other than section 16³ and those automatically repealed by section 115A(10) of the *Income Tax Act 1970*, expire on the day after its promulgation.
- (2) The expiry does not —
 - (a) affect the continuing operation of the amendments made by this Act; or
 - (b) revive any provision not in operation when the amendments took effect.

PART 2 – TEMPORARY TAXATION ORDERS CONFIRMED

4 Confirmation of temporary taxation orders

The following are confirmed as permanent orders —

- (a) the Income Tax (Corporate Taxpayers) (Temporary Taxation) Order 2016¹;
- (b) the Income Tax (Individuals) (Temporary Taxation) Order 2016²;
- (c) the Income Tax (Personal Allowance Credit) (Temporary Taxation) Order 2017³; and
- (d) the Income Tax (Disclosure of Information) (Temporary Taxation) Order 2017⁴.

PART 3 - AMENDMENTS TO THE INCOME TAX (INSTALMENT PAYMENTS) ACT 1974 AND THE INCOME TAX (MODIFIED I.T.I.P.) REGULATIONS 1987

5 Income Tax (Instalment Payments) Act 1974 amended

The *Income Tax (Instalment Payments) Act 1974* is amended as follows.

¹ SD 2016/0026

² SD 2016/0024

³ SD 2017/0024

⁴ SD 2017/0027

6 Amendment of section 1

[Substituted subsection 1(2B) of the *Income Tax (Instalment Payments) Act 1974*.]

7 Amendment of the Income Tax (Modified I.T.I.P.) Regulations 1987

(1) The amendments made by this section are to be treated for the purposes of subsequent amendments to the Income Tax (Modified I.T.I.P.) Regulations 1987⁵ as if they were made under the original enabling powers.

(2) The Income Tax (Modified I.T.I.P.) Regulations 1987 are amended —

(a) by deleting the Part heading of Part VI and substituting the following —

“PART VI

Civil Penalties and Criminal Offences”;

(b) by deleting paragraph (1) of regulation 32 and substituting the following —

“(1) Subject to regulation 32A, an employer is liable to pay a further civil penalty if either of the amounts referred to in paragraph (2) is not paid in full within 6 months of the end of the income tax month to which it relates.”;

(c) by inserting the following immediately after regulation 32 —

“Offence of extended default in payment of tax

32A Despite regulation 32, if an employer who is a body corporate fails to pay either of the amounts referred to in regulation 32(2) —

(a) for up to 3 months after the end of the income tax month to which the amount relates, the body corporate shall be liable to pay the further civil penalty set out in regulation 32(3); or

(b) for more than 3 months after the end of the income tax month to which either amount relates —

(i) the body corporate shall continue to be liable for the amount referred to in paragraph (a);

(ii) the body corporate commits an offence —

(A) for which it may be prosecuted in the same proceedings in which it may be being prosecuted under section 114 of the Social Security Administration Act 1992 (as applied to the Island); and

⁵ GC 92/87

- (B) for which it shall be liable on summary conviction to a fine not exceeding £10,000; and
- (iii) following the conviction of the body corporate, an authorised officer (as defined in section 120(1) of the *Income Tax Act 1970*) shall —
 - (A) determine whether the directors of the body corporate knew or can reasonably be expected to have known that the body corporate failed to pay either of the amounts referred to in regulation 32(2); and
 - (B) where the body corporate was, in the same proceedings, convicted under section 114 of the Social Security Administration Act 1992 (as applied to the Island) of failure to pay any contribution which it is liable to pay, exercise, for the purposes of section 121(3) of the Social Security Administration Act 1992 (as applied to the Island), the power conferred by section 7A(1)(ca) of the Social Security Act 1998 (as applied to the Island).⁶

Determinations as to directors' knowledge

- 32B — (1) When making a determination in accordance with regulation 32A(b)(iii), an authorised officer —
- (a) may make enquiries of any person and may consider such evidence of any description as he or she sees fit;
 - (b) shall make the determination with all reasonable speed; and
 - (c) shall —
 - (i) set out in writing his or her determination made under regulation 32A(b)(iii); and
 - (ii) forthwith furnish the directors with a copy of the written determination.
- (2) The directors may appeal to the Income Tax Commissioners (as defined in section 88 of the

⁶ In accordance with section 14 of this Act, an authorised officer instead of a contributions decision-maker shall exercise the power conferred by section 7A(1)(ca) of the Social Security Act 1998.

Income Tax Act 1970 (Income Tax Commissioners)) the written determination with which they have been furnished in accordance with paragraph (1)(c)(ii). An appeal may relate to –

- (a) any determination made under regulation 32A(b)(iii);
- (b) a decision, made under regulation 32C(2), as to the portion of the outstanding amount that is due from any director; or
- (c) a determination made in exercise of the power conferred by section 7A(1)(ca)(ii) of the Social Security Act 1998 (as applied to the Island).

(3) Where the directors appeal under paragraph (2) –

- (a) the Commissioners shall conduct the proceedings in all respects in a manner identical to that prescribed in the *Income Tax Act 1970*;
- (b) the Commissioners may either affirm or vary the determination of the authorised officer (including in particular any amounts referred to within it) or overrule it and substitute a different determination; and
- (c) the Commissioners shall furnish the directors with their written findings on the determination of the appeal.

Effect of determination that directors knew or ought to have known

32C. – (1) Paragraph (4) applies only when an authorised officer determines, pursuant to regulation 32A, that the directors of a body corporate convicted under regulation 32A(b)(ii) knew or can reasonably be expected to have known of the facts in respect of which the body corporate was convicted.

(2) Where an authorised officer determines in the manner referred to in paragraph (1), the authorised officer shall also decide the portion of the outstanding amount due from any of the directors, jointly and severally with any of the other directors or otherwise.

(3) Paragraph (4) applies equally in respect of a determination that was appealed under regulation 32B(2) and affirmed or varied, as it applies in respect of a determination that was not appealed.

- (4) Where some or all of the outstanding amount has not been paid within 30 days after the date on which the written determination under regulation 32B(1)(c) was furnished to the directors, the Assessor may issue to the Coroner a warrant, in the form specified in Schedule 1A to the *Income Tax Act 1970*, for the immediate distraint of any property belonging to the directors in their personal capacities in order to recover the outstanding amounts.
- (5) Subsections (5), (6) and (7) of section 98A of the *Income Tax Act 1970* apply to the warrant referred to in paragraph (4) as if that warrant had been issued under the said section 98A.”

PART 4 – AMENDMENTS TO THE INCOME TAX ACT 1970

8 **Income Tax Act 1970 amended**

[Amended the *Income Tax Act 1970* follows.]

9 **Amendment of section 2N**

Section 2N (Residence of Isle of Man incorporated companies) of the *Income Tax Act 1970* is amended —

- (a) [Amended subsection (2)(c)(ii).]
- (b) [Amended subsection (4).]

10 **Amendment of section 87**

[Amended section 87 by inserting subsections (6), (7) and (8).]

11 **Amendment of section 88**

[Amended section 88 of the *Income Tax Act 1970* as follows —

- (a) [Substituted subsection (2).]
- (b) [Repealed subsection (4).]
- (c) [Amended subsection (10).]
- (d) [Repealed subsection (12).]
- (e) [Substituted subsection (17).]
- (f) [Amended subsection (21).]
- (g) [Inserted subsections (24) and (25).]

12 Amendment of section 106

[Amended section 106 of the *Income Tax Act 1970* as follows —

- (a) [Inserted subsection (4A).]
- (b) [Amended subsections (1), (2) and (3).]
- (c) [Amended subsection (5A).]

13 Amendment of section 106A

[Amended section 106A of the *Income Tax Act 1970*.]

14 Insertion of new section 106F

[Inserted section 106F in the *Income Tax Act 1970*.]

15 Repeal of Schedule 2

[Repealed Schedule 2 to the *Income Tax Act 1970*.]

PART 5- MISCELLANEOUS

16 Modified interpretation of certain statutory provisions

- (1) This section shall not be construed as diminishing the effect of or impliedly repealing the original enabling powers for the application of the Social Security Act 1998⁷ as part of the law of the Island. Accordingly, despite this section, subsequent amendments to that Act as it applies to the Island may be made in exercise of those enabling powers.
- (2) Section 7A(1)(ca) of the Social Security Act 1998 (as applied to the Island) shall be read and construed as empowering an authorised officer (as defined in section 120(1) of the *Income Tax Act 1970*) instead of a contributions decision-maker.
- (3) By virtue of subsection (2) —
 - (a) in any other enactment that is part of the law of the Island, all references to a contributions decision-maker exercising the power conferred by the provision specified in subsection (2) shall be read and construed as references to an authorised officer (as defined in section 120(1) of the *Income Tax Act 1970*); and
 - (b) a decision made by an authorised officer under the provisions specified in subsection (2) —

⁷ 1998 c.14, applied to the Island by SD 92/00.

- (i) shall be appealable only in the manner referred to in regulation 32B(2)⁸ of the Income Tax (Modified I.T.I.P.) Regulations 1987; and
- (ii) shall not be appealable in accordance with any of the provisions of the Social Security Act 1998 (as applied to the Island).

17 Consequential amendment to the Tribunals Act 2006

[Inserted subsection 8(4) in the *Tribunals Act 2006*.]

⁸ Inserted into the Income Tax (Modified I.T.I.P.) Regulations 1987 by section 7 of this Act.

ENDNOTES**Table of Endnote References**

¹ Editorial note: Printed as 13 in original text.

² Editorial note: Printed as 15 in original text

³ Editorial note: Printed as 14 in original text