

INCOME TAX (AMENDMENT) ACT 2004

Chapter 5

Arrangement of sections

PART 1

BASIS OF ASSESSMENT AND SUPPLEMENTARY PROVISIONS

1. Assessment base.
2. Date when tax due and payable.
3. Payment on account of income tax.
4. Repayment supplements.
5. Interest on overdue tax.
6. Non-corporate taxpayers : commencement and cessation provisions.
7. Non-corporate taxpayers : transition to current year base.

PART 2

TAX RETURNS AND CIVIL PENALTIES

8. Returns.
9. Civil penalties for tax return defaulters.

PART 3

DOCUMENTS AND INFORMATION

10. Powers in respect of documents and information.

PART 4

DIFFERENTIAL TAX RATES : ANTI-AVOIDANCE

11. Differential tax rates : anti-avoidance.

PART 5

MISCELLANEOUS AND GENERAL

12. Personal allowances : non-residents.

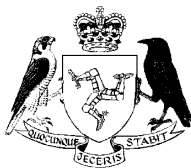
Income Tax (Amendment) Act 2004

13. Temporary taxation orders.
14. Taxation of mariners.
15. Minor and supplementary amendments.
16. Interpretation.
17. Short title and commencement.

Schedule 1 : New sections 111C to 111I inserted into the 1970 Act

Schedule 2 : New sections 105C to 105O inserted into the 1970 Act

Schedule 3 : Differential tax rates : anti-avoidance



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AN ACT

to change the assessment base for non-corporate taxpayers; to introduce civil penalties in respect of late tax returns; to confer powers on the Assessor to obtain documents, information and accounts; to provide certain anti-avoidance measures; to permit the grant of personal relief to non-residents; to amend provisions relating to temporary tax orders, to make minor and supplementary amendments to the Income Tax Acts; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and 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 (that is to say):—

PART 1

BASIS OF ASSESSMENT AND SUPPLEMENTARY PROVISIONS

Assessment base.

1. (1) This section changes the income tax base so that all the income of non-corporate taxpayers is taxed on a current year basis.

(2) After section 81 of the 1970 Act insert –

“Assessment of income tax : non-corporate taxpayers.

81A. Subject to section 2C of this Act, the Assessor shall, in respect of each year of assessment assess the income of every non-corporate taxpayer chargeable with income tax on the

amount of income received or accrued in that year or in any part of that year.”.

(3) Section 81 of the 1970 Act shall apply only in respect of bodies corporate and accordingly in that section –

- (a) after “2C” insert “and 96A”;
- (b) for “person” substitute “body corporate”.

Date when tax due and payable.

2. (1) This section changes the date on which income tax is due and payable by non-corporate taxpayers.

(2) After section 96 of the 1970 Act insert -

“Date when tax is payable.

96A. (1) This section applies in respect of all non-corporate taxpayers.

(2) Subject to section 96B, income tax in respect of a year of assessment shall be due and payable –

- (a) where a person dies or ceases to be regarded as resident in the Island, 30 days after the date of the assessment, and
- (b) in other cases, on 6 January in the year next following that year.

(3) Income tax due and payable under this section shall be paid to the Assessor.”.

(3) In section 93 of the 1970 Act, for the words from “a notice to the effect” to “next following:” substitute “public notice of the dates on which income tax and payments on account of income tax for the year ending on 5 April next are due and payable to the Assessor:”.

(4) In section 96 of the 1970 Act, at the beginning insert “In respect of bodies corporate,”.

Payment on account of income tax.

3. (1) This section introduces a requirement for non-corporate taxpayers to make a payment on account of income tax.

(2) After section 96A of the 1970 Act insert –

“Payment on account of income tax.

96B. (1) This section applies to non-corporate taxpayers as regards each year of assessment.

(2) Every non-corporate taxpayer shall make a payment on account of his liability to income tax for a year of assessment –

- (a) on or before 6 January in that year, or
- (b) if the Notice under subsection (4) is served after the 6 December in that year, before the end of the period of thirty days beginning with the day on which the Notice was given to the non-corporate taxpayer.

(3) The amount falling to be paid on account of tax shall be calculated in accordance with subsections (5) to (7).

(4) The Assessor shall give a payment on account notice (“the Notice”) to each non-corporate taxpayer to whom this section applies and the Notice shall specify the amount falling to be paid on account of tax.

(5) Subject to subsection (7), if a non-corporate taxpayer was liable to pay income tax under this Act in respect of income for the whole of the year of assessment immediately preceding the year to which the payment applies (“the preceding year”), the amount falling to be paid on account shall be 105% of the amount of tax due and payable in the preceding year.

(6) Subject to subsection (7), where subsection (5) does not apply, the amount falling to be paid on account shall be such amount as the Assessor estimates (to the best of his judgment) would have fallen to be paid if the non-corporate taxpayer had been liable to pay income tax under this Act for the whole of the preceding year.

(7) In calculating the amount falling to be paid on account, the Assessor shall take into account income tax

deducted, or to be deducted, at source and amounts otherwise standing to the credit of the non-corporate taxpayer.

(8) Section 119 (power of Tynwald to vary rates of allowances, etc. by resolution) shall apply in respect of the percentage under subsection (5) as it applies in respect of the power to vary any sum of money specified in this Act.

Section 96B : supplementary.

96C. (1) A non-corporate taxpayer to whom is given a notice of estimated payment on account under section 96B(6) shall be entitled to appeal to the Commissioners on the ground that the amount falling to be paid under the notice is not a fair and reasonable estimate.

(2) Subject to subsection (3), the provisions of the Income Tax Acts relating to appeals against an assessment apply to an appeal under subsection (1).

(3) An appeal under subsection (1) shall be made by written notice stating the grounds for the appeal and given to the Assessor before the end of the period of 30 days beginning with the day on which the notice was given to the appellant.

(4) The provisions of the Income Tax Acts as to the recovery of income tax shall apply to an amount falling to be paid on account of tax in the same manner as they apply to an amount of tax.

(5) In section 96B any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income.”.

Repayment supplements.

4. (1) This section amends the system of repayment supplements to take account of the change in the assessment base for non-corporate taxpayers and the introduction of payments on account of income tax.

(2) After section 107A of the 1970 Act insert –

“Repayment supplements : non-corporate taxpayers.

107B. (1) Subject to the following provisions of this section, a repayment of an amount of not less than £100 made by the Treasury in respect of –

- (a) an amount paid on account of income tax under section 96A for a year of assessment in which the non-corporate taxpayer was resident in the Isle of Man;
- (b) income tax paid by or on behalf of any non-corporate taxpayer for a year of assessment in which a non-corporate taxpayer was resident in the Isle of Man,

shall be increased under this section by an amount (a “repayment supplement”) equal to interest on the amount repaid at the rate of 3 per cent. per annum for the period (if any) between the relevant time and the date on which the order for the repayment is issued.

(2) For the purposes of subsection (1), if the repayment is the repayment of –

- (a) an amount paid in accordance with the requirements of section 96A on account of income tax for a year of assessment;
- (b) income tax for such a year which is not income tax deducted at source; or
- (c) income tax deducted at source for a year of assessment,

the relevant time is the 6 January in the year to which the payment relates but, if the non-corporate taxpayer has failed by that date to pay a sum equal to either –

- (i) the full amount required to be paid under section 96A; or

- (ii) the amount of income tax finally assessed as due and payable,

whichever is the lower, the relevant time is the day after full payment is made of the amount of income tax assessed as due and payable.

(3) For the purposes of subsection (2), where a repayment in respect of income tax for a year of assessment is made to any non-corporate taxpayer, that repayment –

- (a) shall be attributed to the payment made by him under section 96A on account of income tax for that year;
- (b) in so far as it exceeds the amount (if any) to which it is attributable under paragraph (a), shall be attributed to income tax deducted at source for that year; and
- (c) in so far as it is attributable to a payment made in instalments, shall be attributed to a later instalment before being attributed to an earlier one.

(4) In this section any reference to income tax deducted at source for a year of assessment is a reference to income tax deducted or treated as deducted from any income, or treated as paid on any income, in respect of that year.

(5) The Treasury may by order increase or decrease the rate of interest by reference to which repayment supplements are calculated under subsection (1).

(6) A repayment supplement shall not be payable under this section in respect of a repayment or payment made in consequence of an order or judgment of a court having power to allow interest on the repayment or payment.

(7) A repayment supplement paid to any non-corporate taxpayer under this section shall not be income of that taxpayer for any tax purposes.

Income Tax (Amendment) Act 2004

(8) An order under this section shall not come into operation unless it is approved by Tynwald.

(9) No interest shall be paid under this section in respect of any period preceding the date on which this section comes into operation.

(10) If a non-corporate taxpayer –

- (a) is liable to a civil penalty under section 111D on the grounds that he has not made and delivered a return of income; or
- (b) is not so liable and an assessment in default of a return of income is made under section 86,

no repayment supplement shall be due to that taxpayer in the case of any repayment of tax in respect of the year of assessment to which the relevant return relates.

(11) This section shall not apply in respect of a repayment of income tax that falls due by reason of a claim made under section 27A of this Act under which the whole or any part of a loss incurred in any period is set off against profits of an earlier period.

(12) Subsections (1) to (11) shall apply in relation to the trustees of a settlement or personal representatives as they apply in relation to a non-corporate taxpayer.

(13) For the purposes of this section income tax deducted by virtue of the Income Tax (Instalment Payments) Act 1974 from a person's remuneration during any year of assessment shall be treated as paid by him for that and no other year of assessment.”.

(3) Section 107A of the 1970 Act shall apply only in respect of bodies corporate and accordingly –

(a) for subsection (1) substitute –

“(1) Subject to the provisions of this section, where –

- (a) income tax has been paid by or on behalf of a body corporate for a year of assessment in which it was resident in the Isle of Man; and
- (b) a repayment of that tax of not less than £250 is made by the Treasury after the end of 12 months following that year of assessment,

the repayment shall be increased under this section by an amount (a “repayment supplement”) equal to interest on the amount repaid at the rate of 3 per cent. per annum for the period (if any) between the relevant time and the end of the tax month in which the order for the repayment is issued.”;

- (b) subsection (3) is repealed;
- (c) in subsection (4), for the words from “£100” to “association” substitute “£250”.

(4) Notwithstanding subsections (1) and (2), section 107A of the 1970 Act (as it had effect immediately before the date on which this section comes into operation) shall continue to have effect in respect of any period preceding the date on which this section comes into operation.

Interest on overdue tax.

5. (1) This section amends the system of charging interest on overdue tax to take account of the change in the assessment base for non-corporate taxpayers.

- (2) In section 111A of the 1970 Act –
 - (a) in subsection (1), for “thirty first day after the date on which the tax becomes due and payable” substitute “relevant date”;
 - (b) after subsection (1) insert –

“(1A) For the purposes of subsection (1), the relevant date –

- (a) in respect of a non-corporate taxpayer who has failed to pay the full amount required to be paid under section 96A by 6 January in the year to which the payment relates, is 6 January in that year;
- (b) in respect of a non-corporate taxpayer who has not made and delivered a return under this Act by 5 April in the year following the year of assessment to which the return relates, is the date on which the tax becomes due and payable;
- (c) in all other cases, is the date on which the tax becomes due and payable,

whichever is the sooner.”;

- (c) at the end of subsection (9) add “and the Treasury may prescribe a different rate of interest (to be known as the “surcharge rate”) in respect of cases to which subsection (1A)(b) applies”.

Non-corporate taxpayers : commencement and cessation provisions.

6. (1) Except for the purposes of section 7 of this Act, sections 3, 4, 5, 6 and 7 of the 1970 Act shall not apply in respect of non-corporate taxpayers and accordingly, in the 1970 Act –

- (a) at the end of section 3 add –
 - “(4) This section shall not apply in respect of non-corporate taxpayers.”;
- (b) in section 4 –
 - (i) in subsection (1), the words “Subject to subsection (3),”, “or vocation, held or”, “or shall die”, “or death,” and “or death” are repealed;
 - (ii) for subsections (2) substitute –
 - “(2) This section shall not apply in respect of non-corporate taxpayers.”;

- (iii) subsection (3) is repealed;
- (c) at the end of section 5 add –
“(5) This section shall not apply in respect of non-corporate taxpayers.”;
- (d) at the end of section 6 add –
“(3) This section shall not apply in respect of non-corporate taxpayers.”;
- (e) at the end of section 7 add –
“(5) This section shall not apply in respect of non-corporate taxpayers.”.

- (2) After section 7 of the 1970 Act insert –

“Non-corporate taxpayers : cessation.

7A. Where a non-corporate taxpayer ceases to be regarded as resident in the Isle of Man during the year of assessment, the Assessor shall allow only a proportion of all the allowances and deductions in respect of that taxpayer corresponding to the proportion which the period during which the taxpayer was resident in the Isle of Man in the year of assessment bears to the year.

Individuals : death.

7B. In the case of the death of an individual, the income tax which is, or would have become, chargeable under the Income Tax Acts in respect of any year shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate.”.

Non-corporate taxpayers: transition to current year base.

7. (1) This section applies for the purpose of the transition from previous year assessment to current year assessment in respect of the income of non-corporate taxpayers that was assessed on a previous year basis immediately before the commencement of this section.

(2) At midnight on 5 April 2004 all non-corporate taxpayers shall, for the purposes of the Income Tax Acts, be treated as –

- (a) ceasing to carry on any profession, trade or vocation which was then carried on by them and assessed on a previous year basis; and
- (b) ceasing to receive income from all other sources which was then assessed on a previous year basis,

and the provisions of the Income Tax Acts will apply with the necessary modifications.

(3) From midnight on 5 April 2004, all non-corporate taxpayers shall, for the purposes of the Income Tax Acts, be treated as –

- (a) commencing to carry on any profession, trade or vocation to which subsection (2)(a) applies; and
- (b) in respect of income to which subsection (2)(b) applies, as receiving income from a new source,

and the provisions of the Income Tax Acts will apply with the necessary modifications.

PART 2

TAX RETURNS AND CIVIL PENALTIES

Returns.

8. In the 1970 Act –

- (a) in section 62 (income tax returns) –
 - (i) in subsection (1), for “the thirtieth day of June” substitute “the sixth day of October”;
 - (ii) in subsection (4), for “twenty-one days” substitute “6 months”;
 - (iii) after subsection (5), add –
 - “(6) This section is subject to section 62A.”;
- (b) after section 62 insert –

“Cessation of residence : return.

62A. (1) Where in any year of assessment an individual ceases to be regarded as resident in the Isle of Man, then notwithstanding section 62, the individual shall within 6 months of that cessation make and deliver

to the Assessor a true and correct return of the whole of his income arising in that year up to the date of the cessation.

(2) A return under subsection (1) shall give the particulars of the items and sources of income, and specify the items of income in respect of which income tax is payable by law elsewhere, and the rates and amount of such tax.

(3) The proviso to subsection (1) of section 62 and subsections (2) and (3) of that section shall apply in respect of a return under this section as they have effect in respect of a return under that section.

Production and auditing of accounts.

62B. (1) Where a person has made and delivered to the Assessor a return of income in respect of any year of assessment, the Assessor may cause a notice to be served requiring him to prepare (or have prepared) such accounts as the notice may require and deliver such accounts within such reasonable period as may be specified in the notice.

(2) A notice under subsection (1) may require that the accounts shall be certified or audited in such manner as is so required and by a person who holds a qualification referred to in section 2(3)(a) to (f) of the Audit Act 1983 [c.20].

(3) Where a notice under subsection (1) includes a requirement under subsection (2), the Treasury shall reimburse the amount of the direct accountancy cost of the certification or audit if –

- (a) the person on whom notice is served is under no obligation under any other statutory

- provision to have such accounts certified or audited; and
- (b) the accounts were not otherwise required to be certified or audited; and
- (c) the person on whom notice is served has incurred the cost of the certification or audit; and
- (d) the amount of income shown in the certified or audited accounts does not vary by –
 - (i) more than 10% from the income from the same source shown in the original return; or
 - (ii) if there is less than 10% variation, more than £10,000 from the income from the same source shown in the original return.

(4) A person to whom a notice is given under this section who fails to comply with the notice shall be guilty of an offence.

(5) This section is additional to and not in derogation of section 105C.”;

- (c) after section 111I of the 1970 Act (inserted by section 9 of this Act) insert –

“Criminal offence : failure to make return.

111J. (1) If a non-corporate taxpayer has not made and delivered –

- (a) a return as required by section 62(1) before the expiry of the period of 24 months immediately

following the end of the year of assessment to which the return relates; or

- (b) a return as required by section 62(4) before the expiry of the period of 24 months immediately following the date on which a notice under that section was served by the Assessor; or
- (c) a return as required by section 62A before the expiry of the period of 24 months immediately following the date on which the taxpayer ceases to be regarded as resident in the Isle of Man,

that non-corporate taxpayer shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £5,000 or custody for a term not exceeding 6 months, or to both.

(2) If any non-corporate taxpayer is convicted of an offence under subsection (1), the court may order the non-corporate taxpayer to take such action as is necessary to rectify such failure.”.

Civil penalties for tax return defaulters.

9. After section 111B of the 1970 Act insert the new sections set out in Schedule 1 (civil penalties).

PART 3

DOCUMENTS AND INFORMATION

Powers in respect of documents and information.

10. (1) After section 105B of the 1970 Act insert the new sections set out in Schedule 2 (production and inspection of documents and information, etc.).

- (2) In section 19 of the Income Tax Act 2003 [c.11] –
- (a) after subsection (1) insert –
- “(1A) Without prejudice to the generality of subsection (1), an order under this section may modify the effect of section 62A and sections 105C to 105O of the 1970 Act for the purpose of implementing or otherwise giving effect to the applicable arrangements.”;
- (b) in subsection (2), after “this Act” insert “but other than section 21”.

PART 4

DIFFERENTIAL TAX RATES : ANTI-AVOIDANCE

Differential tax rates : anti-avoidance.

11. (1) Before the cross-heading relating to section 108 of the 1970 Act insert the new sections set out in Schedule 3 (anti-tax avoidance measures in respect of differential rates of income tax, etc.).

(2) In section 2H of the 1970 Act (benefits in kind : cash equivalent), after subsection (9) insert –

“(10) The cash equivalent of a benefit referred to in section D108(3) (disapplication of section D108 where an amount is treated as income attributable to employment) is a sum equal to the amount released or written off plus an amount equal to such proportion of the amount of the loan or advance released or written off as corresponds to the relevant higher rate in force for the year of assessment in which the loan or advance was released or written off.”.

PART 5

MISCELLANEOUS AND GENERAL

Personal allowances : non-residents.

12. (1) After section 35B of the 1970 Act insert –

“Personal allowance for non-residents.

35C. (1) An individual who is not resident in the Isle of Man shall be entitled, for the purpose of ascertaining taxable income in any year of assessment, to a deduction from total income from all sources within the Isle of Man (“Manx total income”) in accordance with subsection (2) or (3), as the case requires.

(2) If the individual has not made and delivered a return under section 62 in respect of the whole of his income, the amount of the deduction from Manx total income shall be £2,000.

(3) If the individual has made and delivered a return under section 62 in respect of the whole of his income, the amount of the deduction from Manx total income shall be determined either –

(a) by the formula –

$$\frac{\mathbf{M}}{\mathbf{M} + \mathbf{T}} \times \mathbf{A}$$

where –

M = the total Manx income

T = the total income from other sources

A = the sum equal to the amount of a single person’s deduction under section 35(3)(a);

or

(b) £2,000,

whichever is the greater.

(4) The allowance under this section in respect of a married claimant shall be the same as it is for a single claimant.

Cessation of non-residence.

35D. Where an individual ceases to be regarded as non-resident and commences residence in the Isle of Man during the year of assessment, the Assessor shall allow only a proportion of the deduction under section 35C in respect of that individual corresponding to the proportion which the period during which the individual was non-resident in the year of assessment bears to the year.

Cessation of residence.

35E. Where an individual ceases to be regarded as resident in the Isle of Man during the year of assessment, the Assessor shall allow only a proportion of the deduction under section 35C in respect of that individual corresponding to the proportion which the period during which the individual was non-resident in the year of assessment bears to the year.”.

Temporary taxation orders.

13. After section 15(1)(a) of the Income Tax Act 1995 [c.12] insert –

- “(aa) the implementation in the Island of, or compliance with,
–
- (i) any agreement or arrangement made in respect of taxation between the Government and the government of any other country or territory;
 - (ii) any international obligation in respect of taxation that extends to or affects the Island;
 - (iii) any regulation, directive, code or standard in respect of taxation that is made issued or established by the European Community, any international organisation or any multilateral body, where such regulation, directive, code or standard does not fall within sub-paragraph (i) or (ii);
- (ab) without prejudicing the generality of paragraph (aa), the exchange of information and documents with any other

country or territory for the purpose of implementing or complying with any agreement, arrangement, obligation, regulation, directive, code or standard referred to in that paragraph;”.

Taxation of mariners.

14. In section 2L of the 1970 Act –

- (a) in subsection (1), the words from “less all other” to the end of the subsection are repealed;
- (b) after subsection (1) insert –
 - “(1A) For the purposes of this section, the amount of the remuneration for a year of assessment from any employment shall be taken to be the amount remaining after –
 - (a) any allowable expenses, deductions and reliefs attributable to or arising in respect of that remuneration; and
 - (b) the deduction of an amount equivalent to the amount of a single person’s personal allowance under section 35(3)(a).”.

Minor and supplementary amendments.

15. (1) In section 33 of the 1970 Act, for the words from “specified” to the end of the section substitute “permitted to be made from total income by the Income Tax Acts”.

(2) In section 61 of the 1970 Act for “sections thirty-four to forty four” substitute “35 to 35B, 39A, 39AA, 39B, 39C, 39D, 43A and 44”.

(3) In section 64 of the 1970 Act, for subsection (3)(a) substitute –

- “(a) one of them is not, or both of them are not, resident in the Isle of Man for a year of assessment, or”.

(4) After section 81A of the 1970 Act insert –
“Accounting periods for trading profits.

81B. (1) The Treasury may make regulations to provide for the trading profits of a non-corporate taxpayer to be assessed by reference to the accounting period relating to such trade.

(2) Without prejudice to the generality of the power in subsection (1), regulations may include provision –

- (a) for the determination of the beginning and the end of accounting periods;
- (b) for the treatment to be applied to the commencement or cessation of the trade;
- (c) for circumstances where more than one trade is carried on by a non-corporate taxpayer, each with a different accounting period;
- (d) for the treatment to be applied to income or losses not otherwise falling within an accounting period.

(3) Regulations under this section shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

(5) In section 102 of the 1970 Act, for “seventh” substitute “thirtieth”.

(5) After section 107A(6) of the 1970 Act, insert –

- “ (6A) This section shall not apply in respect of a repayment of income tax that falls due by reason of –
- (a) a claim made under section 27A of this Act under which the whole or any part of a loss incurred in any period is set off against profits of an earlier period; or
 - (b) a claim for any group relief under Schedule 2 to the Income Tax Act 1980 [c.16] under which a body corporate in the same group as the claimant surrenders trading losses or other

amounts eligible for relief from income tax for the benefit of the claimant.”.

- (6) In section 120 of the 1970 Act –
- (a) in paragraph (a) of the definition of “taxable income”, for the words from “under” to the end of that paragraph substitute “permitted under the Income Tax Acts;”;
- (b) insert the following definitions –
- ““non-corporate taxpayer” means a person that is not a corporate taxpayer;
- “corporate taxpayer” means an association that is –
- (a) a limited liability company;
- (b) any other body corporate created by or under a statutory provision or charter (other than a corporation sole, a Scottish firm or a limited liability partnership);
- (c) an investment club;
- (d) a members’ club;
- (e) the Isle of Man Agricultural Marketing Society; or
- (f) such person or class of persons as may be specified in an order made by the Treasury for the purpose of this definition and such an order shall not come into operation unless it is approved by Tynwald,
- and includes a receiver or liquidator of an association referred to in paragraphs (a) to (f) when exercising that office in respect of the association in question;”.
- (7) The following enactments are repealed –
- (a) section 64(3) and (4) of the Income Tax Act 1989 [c.10];
- (b) section 4(2) the Income Tax Act 1991 [c.17];

Interpretation.

16. In this Act, “1970 Act” means the Income Tax Act 1970 [XXI p.260].

Short title and commencement.

17. (1) This Act may be cited as the Income Tax (Amendment) Act 2004 and shall be construed as one with the 1970 Act.

(2) Except where this Act otherwise provides, this Act shall have effect in respect of the income tax year commencing on 6 April in such year as may be specified in an order made by the Treasury and subsequent years.

(3) An order under subsection (2) may specify different commencement years for different provisions and for different purposes.

(4) The Treasury may by order make such transitional provisions or savings as it may consider necessary in connection with the commencement of any provision of this Act.

(5) An order under subsection (4) may have effect in respect of the whole of the year of assessment in which the order is made.

(6) Subsections (4), (5) and this subsection shall expire on 6 April 2005.

SCHEDULES

Section 9

SCHEDULE 1

NEW SECTIONS 111C TO 111I INSERTED INTO THE 1970 ACT

“Tax return defaulters – civil penalties

Initial default.

111C. (1) If, by the last day on which a non-corporate taxpayer is required in accordance with section 62(1) or (4) or section 62A to make and deliver a return in respect of any year of assessment or part of a year of assessment, the non-corporate taxpayer has not made and delivered that return, the non-corporate taxpayer shall be liable to a civil penalty.

(2) If –

- (a) a non-corporate taxpayer who is liable to a civil penalty under subsection (1) subsequently delivers a return; and
- (b) the amount of tax assessed as due and payable is less than the amount of the penalty,

then the amount of the penalty shall be a sum equal to the amount of tax assessed as due and payable.

Extended default.

111D. (1) If a non-corporate taxpayer has not made and delivered –

- (a) a return as required by section 62(1) before the expiry of the period of 12 months immediately following the end of the year of assessment to which the return relates; or
- (b) a return as required by section 62(4) before the expiry of the period of 12 months immediately following the date on which a notice under that section was served by the Assessor; or
- (c) a return as required by section 62A before the expiry of the period of 12 months immediately following the date on which the taxpayer ceases to be regarded as resident in the Isle of Man,

the non-corporate taxpayer shall be liable to a civil penalty.

(2) The penalty under this section is additional to any penalty under section 111C.

Mitigation of penalties under sections 111C and 111D.

111E. (1) Where a person is liable to a penalty under section 111C or 111D the Assessor or, on appeal, the Commissioners may reduce the penalty to such amount (including nil) as he or they think proper.

(2) In the case of a penalty reduced by the Assessor under subsection (1), the Commissioners, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Assessor.

(3) The Assessor or the Commissioners shall not be entitled to take into account in exercising their powers under this section –

- (a) the insufficiency of the funds available to any person for paying any income tax due or for paying the amount of the penalty;
- (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss to the revenue;
- (c) the fact that the person liable to the penalty or a person acting on his behalf has acted in good faith.

Sections 111C to 111E : supplementary.

111F. (1) A penalty under section 111C or 111D shall not arise if the non-corporate taxpayer satisfies the Assessor or, on appeal, the Commissioners that there is a reasonable excuse for his having failed to make and deliver the return.

(2) For the purpose of subsection (1) –

- (a) an insufficiency of funds to pay any income tax due is not a reasonable excuse; and
- (b) where reliance is placed on any other person to perform any task, neither the fact of that reliance nor any dilatoriness on the part of the person relied upon is a reasonable excuse.

(3) Where by reason of having failed to make and deliver a return a non-corporate taxpayer is convicted of an offence under section 108 of this Act, the failure shall not also give rise to a penalty under section 111C or 111D.

Amount of penalty.

111G. (1) The amount of the penalty under sections 111C(1) and 111D shall be £50 or such other sum as the Treasury may prescribe by order.

(2) An order under subsection (1) shall not come into operation unless it is approved by Tynwald.

Collection of penalty.

111H. (1) A penalty under section 111C or 111D shall be recoverable as a debt due to the Assessor from the person in respect of whom the return should have been made.

(2) A certificate of the Assessor that a penalty is payable under section 111C or 111D and that payment of the penalty has not been made, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Assessor.

(3) A certificate under this section shall be deemed to be authentic, and no proof shall be required of the signature or of the official character of the person signing the same as Assessor.

(4) A penalty under section 111C or 111D shall be treated as a debt due to the Crown or to any person on behalf of the Crown for the purposes of section 3 of the Preferential Payments Act 1908 [VIII p.143].

(5) A penalty payable under section 111C or 111D shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any income tax purposes.

Appeals.

111I. (1) An appeal shall lie to the Commissioners with respect to –

- (a) any liability to a penalty under sections 111C or 111D; or
- (b) a decision of the Assessor under section 111E,

and the Commissioners may confirm, vary or reverse the penalty or, as the case may be, decision.

(2) The procedure with respect to an appeal under subsection (1) shall, with the necessary modifications, be the same as that for an appeal against an assessment.”.

Section 10

SCHEDULE 2

NEW SECTIONS 105C to 105O INSERTED INTO THE 1970 ACT

“Delivery of documents, etc.

Power to call for documents, etc. of taxpayer. P1970/9/20 & 20B in part

105C.(1) Subject to this section, the Assessor may by notice in writing require a person -

- (a) to deliver to him such documents as are in the person's possession or power and as (in the Assessor's reasonable opinion) contain, or may contain, information relevant to -
 - (i) any liability to income tax to which the person is or may be subject, or
 - (ii) the amount of any such liability;
- (b) to furnish to him such particulars as the Assessor may reasonably require as being relevant to, or to the amount of, any such liability; or
- (c) to furnish to him such evidence as the Assessor may reasonably require as being relevant to the person's residence status for the purposes of this Act.

(2) Before a notice is given to a person by the Assessor under this section, the person must have been given a reasonable opportunity to deliver the documents in question, or to furnish the particulars in question.

(3) When the Assessor gives a notice under subsection (1), he shall also give to the person to whom the notice applies a written summary of his reasons for the giving of the notice.

(4) Subsection (3) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which he took into account in deciding whether to give the notice.

(5) A notice under subsection (1) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal by him in respect of tax.

(6) To comply with a notice under subsection (1), copies of documents may be delivered instead of the originals; but -

- (a) the copies must be in such form as the Assessor may reasonably require; and

- (b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

Power to call for documents relating to taxpayer. P1970/9/20 & 20B
in part

105D. (1) The powers conferred by this section may be used for the purpose of enquiring into the liability to income tax of any person ("the taxpayer") in any case in which the Assessor has reasonable grounds for believing -

- (a) that the taxpayer concerned may have failed or may fail to comply with any provision of the Income Tax Acts; and
- (b) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax.

(2) Subject to this section and section 105E, the Assessor may by notice in writing require any person other than the taxpayer to deliver to the Assessor or, if so required by the Assessor, to make available for inspection by the Assessor, such documents as are in his possession or power and as (in the Assessor's reasonable opinion) contain, or may contain, information relevant to -

- (a) any liability to income tax to which the taxpayer is or may be subject;
- (b) the amount of any such liability;
- (c) the taxpayer's residence status for the purposes of this Act.

(3) Before a notice is given to a person by the Assessor under this section, that person must have been given a reasonable opportunity to deliver or make available the documents in question.

(4) When the Assessor gives a notice under subsection (2), he shall also give to the taxpayer concerned -

- (a) a copy of the notice; and
- (b) a written summary of his reasons for the giving of the notice.

(5) Subsection (4) does not require the disclosure of any information which would, or might, identify any person who has provided the

Assessor with any information which he took into account in deciding whether to give the notice.

(6) As an alternative to delivering documents to comply with a notice under subsection (2), copies of documents may be delivered instead of the originals; but -

- (a) the copies must be in such form as the Assessor may reasonably require; and
- (b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

Notices under s. 105D : further provisions. P1970/9/20 and 20B in part

105E. (1) A notice under section 105D(2) shall name the taxpayer with whose liability the Assessor is concerned unless the Assessor is satisfied –

- (a) that the notice relates to a taxpayer whose identity is not known to the Assessor or to a class of taxpayers whose individual identities are not so known;
- (b) that there are reasonable grounds for believing that the taxpayer or any of the class of taxpayers to whom the notice relates may have failed or may fail to comply with any provision of the Income Tax Acts;
- (c) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax; and
- (d) that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(2) A person to whom a notice under section 105D(2) is given may, if, in accordance with subsection (1), the notice does not name the taxpayer concerned, by notice in writing given to the Assessor within 30 days after the date of the notice under that section, object to that notice on the ground that it would be onerous for him to comply with it, and if the matter is not resolved by agreement, it shall be referred to the Commissioners, who may confirm, vary or cancel that notice.

(3) The Treasury may by order declare that information of a particular description is not to be subject to the obligation imposed by section

105C(3) or 105D(4) if it is satisfied that there are reasonable grounds for suspecting the taxpayer of fraud or disclosure of information of that description would prejudice the assessment or collection of tax.

(4) An order under subsection (3) shall not come into operation unless it is approved by Tynwald.

(5) A notice under section 105D(2), does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice.

(6) Subsection (5) does not apply where –

- (a) the Assessor is satisfied that there is reasonable ground for believing that tax has, or may have been, lost to the General Revenue owing to the fraud of the taxpayer; and
- (b) the notice is so expressed as to exclude the restrictions of that subsection.

(7) A notice under section 105D(2) in relation to a taxpayer who has died cannot be given if more than 6 years have elapsed since the death.

S. 105D : auditors and tax advisers. P1970/9/20 and 20B in part

105F. (1) Subject to subsection (3), a notice under section 105D(2) –

- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
- (b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.

(2) In subsection (1) –

“relevant communications” means communications between the tax adviser and -

- (a) a person in relation to whose tax affairs he has been appointed, or
- (b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

(3) Subject to subsection (4), if, in accordance with section 105E(1), a notice does not name the taxpayer concerned, subsection (1) shall not have effect in relation to any document which contains information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

(4) Subsection (1) is not disappplied by subsection (3) in the case of any document if -

- (a) the information within subsection (3) is contained in some other document, and
- (b) either -
 - (i) that other document, or a copy of it, has been delivered to the Assessor, or
 - (ii) that other document has been inspected by the Assessor.

(5) Where subsection (1) is disappplied by subsection (3) in the case of a document, the person to whom the notice is given either shall deliver the document to the Assessor or make it available for inspection by the Assessor or shall -

- (a) deliver to the Assessor a copy (in such form as the Assessor may reasonably require) of any parts of the document which contain the information within subsection (3), and
- (b) if so required by the Assessor, make available such parts of the document as contain that information for inspection by the Assessor in accordance with the requirement;

and failure to comply with any requirement under paragraph (b) above shall constitute a failure to comply with the notice.

Ss. 105C – 105F : supplementary. P1970/9/20 and 20B in part

105G.(1) The persons who may be treated as “the taxpayer” for the purposes of sections 105C to 105E include a company which has ceased to exist and an individual who has died.

(2) In sections 105C to 105E references to documents do not include -

- (a) personal records, or
- (b) journalistic material, or
- (c) items subject to legal privilege,

and references to particulars do not include particulars contained in such personal records, journalistic material or items.

(3) Subject to subsection (2), references in sections 105C to 105F to documents and particulars are to those specified or described in the notice in question; and -

- (a) the notice shall require documents to be delivered (or delivered or made available), or particulars to be furnished, within such time (which shall not be less than 30 days after the date of the notice) as may be specified in the notice; and
- (b) the person to whom they are delivered, made available or furnished may take copies of them or of extracts from them.

Court orders to deliver documents, etc.

Orders for the delivery of taxpayer's documents.

105H.(1) The High Court may make an order under this section if satisfied on information on oath given by the Assessor –

- (a) that a notice under section 105C(1) has not been complied with; or
- (b) that there is reasonable ground for suspecting that such a notice will not be complied with.

(2) An order under this section is an order requiring the person to whom the notice is given to –

- (a) deliver to the Assessor such documents as are in the person's possession or power and as (in the Court's opinion) contain, or may contain, information relevant to -
 - (i) any liability to income tax which the person is or may be subject, or
 - (ii) the amount of any such liability;
- (b) furnish to the Assessor such particulars as the Court may specify as being relevant to, or to the amount of, any such liability; or
- (c) furnish to the Assessor such evidence of residence as the Court may specify.

Orders for the delivery of documents relating to taxpayer.

105I. (1) The High Court may make an order under this section if satisfied on information on oath given by the Assessor –

- (a) that a notice under section 105D(1) has not been complied with; or
- (b) that there is reasonable ground for suspecting that such a notice will not be complied with; or
- (c) that the taxpayer concerned may have failed or may fail to comply with any provision of the Income Tax Acts, and that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax.

(2) An order under this section is an order requiring the person who appears to the Court to have in his possession or power the documents specified or described in the order to deliver them to the Assessor.

Ss. 105H & 105I : supplementary.

105J. (1) An order under section 105H or 105I shall require compliance within –

- (a) 7 days after the day on which notice of the order is served on him, or
- (b) such shorter or longer period as may be specified in the order.

(2) If a person fails to comply with an order made under section 105H or 105I, he may be dealt with as if he had committed a contempt of the court.

(3) Where an order under section 105H or 105I applies to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

(4) Sections 105H or 105I do not apply to -

- (a) personal records, or
- (b) journalistic material, or
- (c) items subject to legal privilege.

Ss. 105H & 105I : notices and procedures.

105K.(1) A person is entitled –

- (a) to at least 14 days notice of the intention to apply for an order against him under section 105H or 105I, and
- (b) to appear and be heard at the hearing of the application,

unless the High Court is satisfied that this would seriously prejudice the investigation of the offence.

(2) A person who has been given notice of intention to apply for an order under section 105H or 105I shall not –

- (a) conceal, destroy, alter or dispose of any document to which the application relates, or
- (b) disclose to any person (other than his professional legal adviser or tax adviser) information or any other matter likely to prejudice the investigation of the offence to which the application relates.

(3) Subsection (2)(a) does not prevent anything being done –

- (a) with the leave of the Court,
- (b) with the written permission of the Assessor authorised for the purpose,
- (c) after the application has been dismissed or abandoned, or
- (d) after any order made on the application has been complied with.

(4) Subsection (2)(b) does not prevent a professional legal adviser from disclosing any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person –
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Subsection (2)(b) does not prevent a tax adviser from disclosing any information or other matter to, or to a representative of, a client of his in connection with the giving by the adviser of tax advice to the client

(6) Subsections (4) and (5) do not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

(7) A person who fails to comply with the obligation in subsection (2)(a) or (b) may be dealt with as if he had failed to comply with an order under section 105H or 105I as the case requires.

Falsification, etc. of documents.

P1970/9/20BB

105L. (1) Subject to subsections (2) to (4), a person is guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which –

- (a) he has been required by a notice under section 105C or 105D or an order under section 105H or 105I, or
- (b) he has been given an opportunity in accordance with section 105C(2) or 105D(3),

to deliver, or to deliver or make available for inspection.

(2) A person does not commit an offence under subsection (1) if he acts –

- (a) with the written permission of the Assessor authorised for the purpose; or
- (b) after the document has been delivered or, in a case within section 105C, inspected, or
- (c) after a copy has been delivered in accordance with section 105C(1) or 105D(2) and the original has been inspected.

(3) A person does not commit an offence under subsection (1)(a) if he acts after the end of the period of 2 years beginning with the date on which the notice is given or the order is made, unless before the end of that period the Assessor has notified the person in writing that the notice or order has not been complied with to his satisfaction.

(4) A person does not commit an offence under subsection (1)(b) if he acts after an application for consent to a notice being given in relation to the document has been refused.

(5) A person guilty of an offence under subsection (1) shall be liable -

- (a) on summary conviction, to a fine not exceeding £5,000;
- (b) on conviction on indictment, to custody for a term not exceeding 2 years or to a fine or to both.

Entry with warrant to obtain material. P/1970/9/20C

105M. (1) If a Deemster is satisfied on information on oath given by the Assessor that there is reasonable ground for suspecting that –

- (a) an offence involving fraud in connection with, or in relation to, income tax is being, has been or is about to be committed; and
- (b) that evidence of it is to be found on premises specified in the information,

the Deemster may issue a warrant in writing authorising the Assessor to enter the premises, if necessary by force, at any time within 14 days from the time of issue of the warrant, and search them.

(2) An application for a warrant under this section shall not be approved under subsection (1)(b) unless there are reasonable grounds for believing that use of the procedure under section 105H or 105I (order for production of documents) might seriously prejudice the investigation.

(3) The powers conferred by a warrant under this section shall not be exercisable –

- (a) outside such times of day as may be so specified;
- (b) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(4) When entering the premises under the authority of a warrant under this section the Assessor may –

- (a) take with him such other persons as appear to him to be necessary;
- (b) seize and remove any thing whatsoever found there which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1); and
- (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such things;

but no person shall be searched except by a person of the same sex.

(5) In the case of any information contained in a computer stored in any electronic form which is information that –

- (a) the Assessor has reasonable cause to believe may be required as evidence for the purposes mentioned in subsection (4)(b); and
- (b) is accessible from the premises,

the power of seizure under that subsection includes a power to require the information to be produced in a form in which it can be taken away and in

which it is visible and legible or from which it can readily be produced in a visible and legible form.

(6) Nothing in subsection (4) authorises the seizure and removal of items subject to legal privilege.

(7) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

(8) A person seeking to exercise the powers conferred by a warrant under this section or, if there is more than one person, that one of them who is in charge of the search –

- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the Assessor to be in charge of the premises is present, shall supply such a copy to that person; and
- (c) if neither paragraph (a) nor paragraph (b) applies, shall leave such a copy in a prominent place on the premises.

(9) Where entry to premises has been made with a warrant under this section, and the person making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.

Procedure where documents etc. are removed. P1970/9/20CC

105N. (1) A person who removes anything in the exercise of the power conferred by section 105M shall, if so requested by a person showing himself –

- (a) to be the occupier of premises from which it was removed, or
- (b) to have had custody or control of it immediately before the removal,

provide that person with a record of what has been removed.

(2) The record shall be provided within a reasonable time from the making of the request for it.

(3) Where anything that has been removed by the Assessor as mentioned in subsection (1) is of such a nature that a photograph or copy of it would be sufficient –

- (a) for use as evidence at a trial for an offence, or

- (b) for forensic examination or for investigation in connection with an offence,

it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

(4) Subject to subsection (8), if a request for permission to be granted access to anything which –

- (a) has been removed, and
- (b) is retained for the purpose of investigating an offence,

is made to the Assessor by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Assessor shall allow the person who made the request access to it under the supervision of the Assessor.

(5) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the Assessor by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Assessor shall –

- (a) allow the person who made the request access to it under the supervision of the Assessor for the purpose of photographing it or copying it, or
- (b) photograph or copy it, or cause it to be photographed or copied.

(6) Where anything is photographed or copied under subsection (5)(b) the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the Assessor has reasonable grounds for believing that to do so would prejudice –

- (a) the investigation of an offence for the purposes of which the thing was removed;
- (b) the investigation of another offence; or
- (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b).

Interpretation of ss. 105C to 105N.

105O. In sections 105C to 105N –

Income Tax (Amendment) Act 2004

“document” means anything in which information of any description is recorded but without prejudice to the definition of that word in the Interpretation Act 1976 [c.20];

“items subject to legal privilege” has the same meaning as in the Police Powers and Procedures Act 1998 [c.9];

“journalistic material” has the same meaning as in the Police Powers and Procedures Act 1998;

“personal records” has the same meaning as in the Police Powers and Procedures Act 1998;

“tax adviser” means a person who –

- (a) in the ordinary course of his business, gives, and holds himself out as giving, advice to others about their tax affairs; and
- (b) has been appointed to give such advice either by the person in relation to whose tax affairs he has been appointed or by another tax adviser of that person.”.

Section 11

SCHEDULE 3
DIFFERENTIAL TAX RATES : ANTI-AVOIDANCE

“Differential tax rates : anti-avoidance

Loans to participators, etc.

A108. (1) This section applies in respect of a company (“the company”) the whole or part of the profits of which are chargeable to income tax at a rate less than the higher rate determined under section 1(2A) of the 1970 Act for the purposes of section 1(2)(b) of that Act (in this section and sections B108 to J108 referred to as “the relevant higher rate”).

(2) Subsection (3) applies if the company makes any loan or advances any money to an individual who is liable to income tax in the Isle of Man and who is –

- (a) a participator in the company; or
- (b) an associate of a participator; or
- (c) an officer of the company; or
- (d) an associate of an officer of the company,

otherwise than in the ordinary course of a business carried on by the company (which includes the lending of money).

(3) If this subsection applies, there shall be assessed on and recoverable from the company, as if it were an amount of income tax chargeable on the company for the year of assessment in which the loan or advance is made, an amount equal to such proportion of the amount of the loan or advance as corresponds to the relevant higher rate in force for the year of assessment in which the loan or advance is made.

(4) Subsection (3) is subject to the following provisions of this section and to the provisions of sections B108 to J108.

(5) Subsection (3) shall not apply to a loan advanced at a normal commercial rate if –

- (a) the ordinary business carried on by the company includes the lending of money; and
- (b) the company is authorised by a financial regulator to carry on a business which includes the lending of money.

(6) The amount assessed under subsection (3) shall not be deductible in computing the profits for the purposes of income tax.

Section A108 : treatment of certain loans.

B108. (1) For the purposes of section A108, the cases in which the company is to be regarded as making a loan to any person shall include a case where —

- (a) that person incurs a debt to the company, or
- (b) a debt due from that person to a third person is assigned to the company,

and in such a case the company shall be regarded as making a loan of an amount equal to the debt.

(2) Subsection (1)(a) shall not apply to a debt incurred for the supply by the company of goods or services in the ordinary course of its trade or business unless the period of credit given exceeds 6 months or is longer than that normally given to the company's customers.

(3) Section A108(3) shall not apply to a loan made to a director or employee of the company, or of an associated company of the company, if —

- (a) the borrower works full-time for the company or any of its associated companies; and
- (b) the borrower does not have a material interest in the company or in any associated company of the company; and
- (c) such other conditions as are prescribed by order made by the Treasury are complied with.

(4) If a borrower referred to in subsection (3)(b) acquires a material interest in the company or in any associated company of the company at a time when the whole or part of any such loan remains outstanding, the company shall be regarded as making to the borrower at that time a loan of an amount equal to the sum outstanding.

(5) Where, after a company has been assessed to tax under section A108 in respect of any loan or advance, the loan or advance or any part of it is repaid to the company, relief shall be given from that tax or a proportionate part of that tax by discharge or repayment.

(6) Relief under subsection (5) shall be given on a claim which shall be made within 6 years from the end of the year of assessment in which the repayment is made and shall be treated on a first in first out basis.

(7) For the purposes of this section, a person has a "material interest" in a company if the person, either alone or with one or more of the person's associates, or if any associate of the person with or without any such other associates, is the beneficial owner of, or is able directly or indirectly, to control, more than 5% of the ordinary share capital of the company.

(8) An order under subsection (3)(c) shall not come into operation unless it is approved by Tynwald.

Loans through intermediaries, etc.

C108. (1) Where under arrangements made by any person otherwise than in the ordinary course of a business carried on by that person —

- (a) the company makes a loan or advance which apart from this subsection does not give rise to any charge on the company under section A108(3), and
- (b) some person other than the company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator or an officer of the company or an associate of an officer,

then, unless in respect of the matter referred to in paragraph (b) there is to be included in the total income of the participator, officer or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to the participator, officer or associate.

(2) In subsection (1)(b) and section A108(2), the references to an individual apply also to –

- (a) a company receiving the loan or advance in a fiduciary or representative capacity; and
- (b) to a company not resident in the Island.

(3) In a case where the company is not resident in the Island, the amount assessed on and recoverable from the company under section A108(3) shall be payable by the borrower on behalf of the company and shall be a debt due by the borrower in all respects as income tax due under the Income Tax Acts.

(4) For the purposes of this section and sections A108 and Section B108, any participator in, or officer of, a company which controls another company shall be treated as being also a participator in, or officer of, that other company.

Effect of release, etc. of debt in respect of loan under section A108.

D108. (1) Subject to this section, where the company is assessed or liable to be assessed under section A108(3) in respect of a loan or advance and it releases or writes off the whole or part of the debt in respect of the loan or advance, then —

- (a) for the purpose of computing the total income of the person to whom the loan or advance was made, a sum equal to the amount so released or written off shall be treated as income received by such person after deduction of income tax (at the relevant higher rate) from a corresponding gross amount;
- (b) no repayment of income tax shall be made in respect of that income;
- (c) the notional deduction of income tax under paragraph (a) shall not relieve the person to whom the loan or advance was made of any obligation to account for tax.

(2) If the loan or advance referred to in subsection (1) was made to a person who has since died, or to trustees of a trust which has come to an end, this section, instead of applying to the person to whom it was made, shall apply to the person from whom the debt is due at the time of release or writing off (and accordingly, if it is due from such person as personal representative, the amount treated as received by such person shall be chargeable to income tax at the relevant higher rate), and subsection (1) shall apply accordingly with the necessary modifications.

(3) Where the whole or part of the debt in respect of a loan or advance made to an individual is released or written off –

- (a) subsections (1) and (2) shall not have effect in relation to the loan or advance if, under section 2G, the amount so released or written off falls to be treated as income attributable to the employment of that individual; and
- (b) but without prejudice to the generality of section 2G, that section shall (subject to section 2H) continue to

apply to such amount as income attributable to the employment of that individual.

(4) Subsections (1) to (3) shall be construed together with sections A108 to C108.

Returns.

E108. (1) If a company –

- (a) makes any loan or makes an advance of money and the advance or loan falls within section A108(1); or
- (b) receives repayment of such a loan or advance; or
- (c) releases or writes off the whole or part of a debt under such a loan or advance,

it shall submit a return of the transaction to the Assessor.

(2) A return under this section shall be submitted to the Assessor with the return of income under section 66.

(3) A company that fails to submit a return under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding £5,000.

(4) In proceedings against a person for an offence under this section it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) If an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Definitions

“Participator”.

F108. (1) In sections A108 to J108 –

“participator”, in relation to any company, means a person having a share or interest in the capital or income of the company and, without prejudice to the generality of the foregoing, includes—

- (a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;
- (b) any loan creditor of the company;
- (c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to

loan creditors by means of premium on redemption; and

- (d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for such person's benefit.

(2) References in subsection (1) to being entitled to do anything apply where a person is entitled to do it at a future date or will at a future date be entitled to do it.

(3) Subsection (1) is without prejudice to any particular provision of sections A108 to J108 requiring a participator in one company to be treated as being also a participator in another company.

“Associate”.

G108. (1) In sections A108 to J108, but subject to subsections (2) and (3), “associate”, in relation to a participator, means —

- (a) any relative or partner of the participator,
- (b) the trustee or trustees of any settlement in relation to which the participator is, or any relative (living or dead) of the participator is or was, a settlor, and
- (c) where the participator is interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, any other person interested in those shares or obligations, and has a corresponding meaning in relation to a person other than a participator.

(2) In subsection (1), “relative” means husband, wife, ancestor, lineal descendant, brother or sister.

(3) Subsection (1)(c) shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust —

- (a) if the trust relates exclusively to a collective investment scheme within the meaning of the Financial Supervision Act 1988 [c.16]; or
- (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of the directors or their relatives) and the individual in question is not (and could not as a result of the operation of the trust become), either on his or her own or with his or her relatives, the beneficial owner of more than 5 per cent of the ordinary share capital of the company,

and, in applying subparagraph (b), any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

“Director”.

H108. In sections A108 to J108, but subject to subsection (2), “director” includes any person —

- (a) occupying the position of director by whatever name called,
- (b) in accordance with whose directions or instructions the directors are accustomed to act, and
- (c) who is a manager of the company or otherwise concerned in the management of the company's trade or business.

“Associated company”.

I108. (1) For the purposes of sections A108 to J108, a company shall be treated as another company's associated company at a particular time if, at that time or at any time within one year previously, one of the two companies has control of the other company, or both companies are under the control of the same person or persons.

(2) For the purposes of sections A108 to J108, a person shall be taken to have control of a company if such person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if such person possesses or is entitled to acquire —

- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company;
- (b) such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without regard to any rights which such person or any other person has as a loan creditor), entitle such person to receive the greater part of the amount so distributed, or
- (c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle such person to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(3) Where 2 or more persons together satisfy any of the conditions of subsection (2), they shall be taken to have control of the company.

(4) For the purposes of subsection (2), a person shall be treated as entitled to acquire anything which such person is entitled to acquire at a future date or will at a future date be entitled to acquire.

(5) For the purposes of subsections (2) and (3), there shall be attributed to any person any rights or powers of a nominee for such person, that is, any rights or powers which another person possesses on such person's behalf or may be required to exercise on such person's direction or behalf.

(6) For the purposes of subsections (2) and (3), there may also be attributed to any person all the rights and powers of —

- (a) any company of which such person has, or such person and associates of such person have, control,
- (b) any 2 or more companies of which such person has, or such person and associates of such person have, control,
- (c) any associate of such person, or
- (d) any 2 or more associates of such person,

including the rights and powers attributed to a company or associate under subsection (5).

“Loan creditor”.

J108. (1) In sections A108 to J108, “loan creditor”, in relation to a company, means a creditor in respect of —

- (a) any debt incurred by the company for —
 - (i) any money borrowed or capital assets acquired by the company,
 - (ii) any right to receive income created in favour of the company, or
 - (iii) consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on the debt), or
- (b) any redeemable loan capital issued by the company.