

INCOME TAX (AMENDMENT) ACT 2008

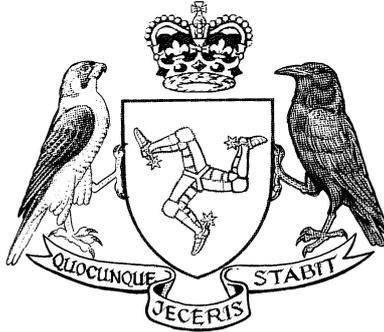
Arrangement of Sections

Miscellaneous amendments

1. Expenditure involving crime
2. Duty to keep and preserve tax records
3. Documents relating to taxpayers
4. Tax treatment of VAT penalties, etc.
5. Abolition of the corporate charge
6. Deductions in respect of interest payments

Confirmation and replacement of temporary orders

7. Corporate taxpayers
8. Confirmation of order in respect of the Netherlands
9. Confirmation of order in respect of tax retention and exchange of information
10. Short title and commencement



Isle of Man } Signed in Tynwald: 11th March 2008
 to Wit } Received Royal Assent: 11th March 2008
 Announced to Tynwald: 12th March 2008

AN ACT

to make miscellaneous amendments to the Income Tax Acts; 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:—

Miscellaneous amendments

1. After section 29 of the Income Tax Act 1970 insert —

Expenditure involving crime

“Crime-related payments

30. (1) No deduction shall be allowed for any purpose under the Income Tax Acts in respect of expenses incurred —

[XXI p.260]

(a) in making a payment if the making of the payment constitutes a criminal offence, or

(b) in making a payment outside the Island if the making of a corresponding payment in the Island would constitute a criminal offence in this Island.

(2) No deduction shall be allowed for any purpose under the Income Tax Acts in respect of expenses incurred in making a payment induced by a demand which constitutes the offence of blackmail under section 23 of the Theft Act 1981.”

[c.21]

2. (1) After section 80 of the Income Tax Act 1970 insert —

Duty to keep and preserve tax records

[XXI p.260]

“Duty to
preserve
records

80A. (1) A person who —

- (a) makes and delivers a return in compliance with section 62, 62A, 63, 63A, 66, A66, 68 or 79 must, in accordance with this section, preserve such records as were needed to enable that person to deliver the return; or
- (b) is required to make and deliver a return in compliance with section 62, 62A, 63, 63A, 66, A66, 68 or 79 but has not done so, must, in accordance with this section, preserve such records as are needed to enable that person to deliver the return.

(2) The records must be preserved —

- (a) in the case of a corporate taxpayer, for 4 years from the end of the relevant accounting period or, if later, 4 years after the delivery of the return in accordance with the relevant section;
- (b) in the case of a non-corporate taxpayer who carries on a trade, profession or business or who receives income arising from the rents of land (within the meaning of section 58(3)), 6 years from the end of the relevant year of assessment or, if later, 6 years after the delivery of the return in accordance with the relevant section;
- (c) in the case of other non-corporate taxpayers, 2 years from the end of the relevant year of assessment or, if later, 2 years after the delivery of the return in accordance with the relevant section.

(3) The records required to be preserved under this section are all such records and supporting documents as may be necessary for making a true, correct and complete return and include records of —

- (a) all receipts and expenses in the course of a corporate taxpayer’s activities, and the matters in respect of which the receipts and expenses arise; and
- (b) in the case of a trade involving dealing in goods, all sales and purchases made in the course of the trade.

(4) In subsection (3), “supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

(5) The duty under this section to preserve records may be satisfied by the preservation of the information contained in them if the Assessor is satisfied that any facts which the Assessor reasonably require to be proved, and which would have been proved by the records, are proved by other documentary evidence furnished to the Assessor.

(6) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings to the same extent as the records themselves.

(7) Any person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding £10,000.”.

(2) This section shall have effect in respect of records for years of assessment and accounting periods ending after the commencement of this Act.”.

3. (1) In section 105E of the Income Tax Act 1970 (notices in respect of documents of taxpayers), at the end add —

Documents
relating to
taxpayers

“(8) Subject to subsection (9), if, on the application of the Assessor, 2 members of the Income Tax Commissioners panel give their written consent, the copy and summary under section 105D(4) need not be given to the taxpayer to whom they relate.

[XXI p.260]

(9) Consent shall not be given under subsection (8) unless both Commissioners are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud.

(10) A Commissioner who gives a consent under subsection (8) shall not be liable in damages for, or in respect of, the consent nor any act or matter done or omitted to be done in relation to the consent unless the act or matter done or omitted to be done is shown to have been in bad faith.

(11) Subsection (10) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 2001.

[c.1]

(12) Where a consent has been given by the Commissioners under subsection (8), the person to whom the notice is given under section 105D(2) shall not —

- (a) inform the taxpayer, or cause or permit the taxpayer to be informed, that the notice has been given, or
- (b) disclose to any person, or cause or permit to be disclosed to any person (including the taxpayer), any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance of the Assessor's functions.

(13) Subject to the defences in subsection (16), a person who fails to comply with subsection (12) is guilty of an offence and liable on summary conviction to fine not exceeding £5,000 or to custody for a term of 6 months, or to both.

(14) If an offence under subsection (13) is committed by a body corporate and 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, that person, as well as the body corporate, is guilty of the same offence and liable to be proceeded against and punished accordingly.

(15) Where the affairs of a body corporate are managed by its members or by agents, subsection (14) applies in relation to the acts and defaults of a member or an agent in connection with the functions of management as if that person were a director of the body corporate.

(16) It is a defence in proceedings for an offence under subsection (13) for the person concerned to satisfy the court —

- (a) that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence by the person concerned and by any person under his control, or
- (b) in the case of an offence in respect of an alleged contravention of subsection (12)(b), that the person concerned did not know or

suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance of the Assessor's functions.”.

(2) In the Income Tax Act 1970 —

(a) at the end of section 88 (Income Tax Commissioners) add —

“(23) Commissioners who have given their consent under section 105E(8) in respect of a particular taxpayer shall be disqualified for appointment to hear an appeal by that taxpayer against any assessment or matter that arises out of the circumstances to which that consent applied.”.

(b) in section 105D(4), at the beginning insert “Subject to section 105E(8),”.

4. For section 61A of the Income Tax Act 1970 substitute —

Tax treatment of VAT penalties, etc.

“Tax treatment of VAT penalties etc and repayment supplement

61A. (1) Where, under —

[XXI p.260]

(a) the Value Added Tax Act 1996;

[c.1]

(b) a provision of the Customs and Excise Acts (within the meaning of section 184 of the Customs and Excise Management Act 1986); or

[c.34]

(c) any instrument applied to the Island as part of the law of the Island by an order under section 1 of the Customs and Excise Act 1993 (including an order under any enactment repealed and replaced by that Act),

[c.7]

a person is liable to make a payment by way of surcharge, civil penalty or interest, the payment shall not be allowed as a deduction in computing any income, profits or losses for income tax purposes.

(2) A sum paid to any person by way of supplement under section 79 of the Value Added Tax Act 1996 shall be disregarded for all purposes of income tax.”.

5. (1) The corporate charge is abolished and accordingly sections 14A to 14D of the Income Tax Act 1970 are repealed.

Abolition of the corporate charge

[XXI p.260]

[c.4] (2) Part 1 of the Income Tax (Amendment) Act 2006 is repealed.

Deductions in respect of interest payments

[XX p.260]

6. (1) For section 58(9) of the Income Tax Act 1970 substitute —

“(9) Subsection (8)(b) shall have effect in respect of a loan if and only if —

- (a) the interest payable on the loan is assessable to income tax on the lender; and
- (b) if the lender is a corporate taxpayer, the circumstances specified in subsection (10) apply.

(10) Those circumstances are —

- (a) the corporate taxpayer has a fixed place of business in the Island through which its business is wholly or partly carried on; and
- (b) the loan is arranged and made in the course of that business.

(11) Interest will not be allowed under this section on a loan the purpose or one of the purposes of which is the reduction of the liability of any person to income tax and the provisions of Schedule 1 to the Income Tax Act 1980 shall apply accordingly.”.

[c.16]

(2) This section shall have effect in respect of the amount of any loan paid on or after the date on which this section comes into operation whether the arrangement for the loan was made before or after that date.

Confirmation and replacement of temporary orders

Corporate taxpayers
[XXI p.260]

7. (1) The Income Tax (Corporate Taxpayers) (Temporary Taxation) Order 2006 is confirmed for the purposes of section 15(4)(a) of the Income Tax Act 1995.

(2) In section 2N of the Income Tax Act 1970 —

- (a) in subsection (2), after “1931” add “and includes a 2006 company”;
- (b) after subsection (3) add —

“(4) In this Act, “2006 company” means a company incorporated, continued or re-registered under the Companies Act 2006.”

[c.13]

- (3) After section 62B of the Income Tax Act 1970 insert — [XX p.260]

“Production and auditing of accounts of corporate taxpayer

62C. (1) The Assessor may at any time cause a notice to be served on any corporate taxpayer requiring that taxpayer to deliver to the Assessor within such reasonable period as is specified in the notice such accounts in respect of such accounting period as the notice requires.

(2) Subsections (2) to (4) of section 62B shall apply in respect of a notice served under this section as they apply in respect of a notice served under that section.

(3) The generality of this section is not limited by section 62B, B84 or any other provision of the Income Tax Acts.”

- (4) In section 119E of the Income Tax Act 1970 at the end add —

“(8) Where a corporate taxpayer is the surviving company in respect of a merger which has taken place under Part X of the Companies Act 2006, the accounting period in respect of that corporate taxpayer ends and a new accounting period begins upon the issue of a certificate of merger under section 154 of the 2006 Act.

[c.13]

In this subsection, “merger” and “surviving company” each has the meaning given by section 152 of the Companies Act 2006.”

- (5) After section 2P of the Income Tax Act 1970 insert —

“Production and auditing of accounts of corporate taxpayer

2PA. (1) Income arising or accruing to any person residing in the Island and derived from any income distribution paid by a corporate taxpayer resident in the Island shall be income in respect of which income tax is imposed by this Act for the purposes of section 2.

(2) Where an income distribution takes a non-monetary form, an amount equal to whatever is the cash equivalent of the income distribution is income in respect of which income tax is imposed by this Act for the purposes of section 2.

(3) The cash equivalent of an income distribution is deemed to be the market value of the asset transferred at the time of transfer (where an asset is transferred by a corporate taxpayer) or the amount of debt incurred (where the corporate taxpayer incurs a debt).

(4) For the avoidance of doubt, a payment made by a corporate taxpayer to or for the benefit of another corporate taxpayer in the same group shall not be treated as an income distribution for the purposes of this section provided that the whole of such payment is used to discharge (in whole or in part) the liability of that other corporate taxpayer to pay the distributable profits charge payable under section 13.

(5) In this section —

“distribution” means —

- (a) the direct or indirect transfer of any assets of a corporate taxpayer, other than the corporate taxpayer’s own shares, to or for the benefit of a member of the corporate taxpayer; or
- (b) the incurring of a debt by a corporate taxpayer to or for the benefit of a member of the corporate taxpayer,

in relation to shares held by a shareholder, or the entitlements to distributions of a member who is not a shareholder, and whether by means of —

- (i) the payment of a dividend;
- (ii) the purchase of an asset;
- (iii) the purchase, redemption or other acquisition of shares;
- (iv) the transfer or assignment of indebtedness,

or otherwise;

“group” shall be construed in accordance with Schedule 2 to the Income Tax Act 1980;

[c.16]

“income distribution” means a distribution made from —

- (a) the corporate taxpayer’s income from its current accounting period; or

- (b) the undistributed profits of the corporate taxpayer from an earlier accounting period;

“member” shall be construed in accordance with section 12(7).

(6) This section does not prejudice the generality of section 2.”.

(6) In section 120 of the Income Tax Act 1970, at the beginning insert —

““2006 company” has the meaning given in section 2N;”.

(7) This section shall be deemed to have come into operation on 1 November 2006 and shall apply in respect of —

- (a) that part of the year of assessment; or
- (b) in the case of a corporate taxpayer, that part of the accounting period,

commencing on that date and ending on 5 April 2007 and in respect of every subsequent year or, as the case may be, period.

8. (1) The Income Tax (Netherlands) (Temporary Taxation) Order 2006 (“the Order”) is confirmed.

Confirmation
of order in
respect of the
Netherlands

(2) The Order shall, from the date on which this section comes into operation, continue in operation as a permanent order.

[S.D. 167/06]

(3) Subsections (3) to (6) of section 15 of the Income Tax Act 1995 (expiry of orders) do not have effect in respect of this section or the Order.

(4) The Treasury may exercise the enabling powers in subsections (1) and (2) of section 15 of the 1995 Act to amend, revoke or replace the Order and subsection (3) of this section shall apply in respect of any such exercise of those enabling powers.

9. (1) The Income Tax (Retention of Tax and Exchange of Information) (Temporary Taxation) (Amendment) Order 2007 (“the Order”) is confirmed.

Confirmation
of order in
respect of tax
retention and
exchange of
information

(2) The Order shall, from the date on which this section comes into operation, continue in operation as a permanent order.

[S.D. 01/07]

(3) Subsections (3) to (6) of section 15 of the Income Tax Act 1995 (expiry of orders) do not have effect in respect of this section or the Order.

Short title and
commencement

10. (1) This Act may be cited as the Income Tax (Amendment) Act 2008.

(2) Except in respect of sections 8 and 9 and except where otherwise specifically provided, this Act shall have effect in respect of the year of assessment commencing on 6 April 2007 or, as the case requires, any accounting period commencing on or after that date, and in respect of every subsequent year or, as the case may be, period.