



Isle of Man

Ellan Vannin

AT 8 of 2017

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



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INCOME TAX LEGISLATION (AMENDMENT) ACT 2017

<i>Signed in Tynwald:</i>	<i>18 July 2017</i>
<i>Received Royal Assent:</i>	<i>18 July 2017</i>
<i>Announced to Tynwald:</i>	<i>18 July 2017</i>

AN ACT to confirm certain temporary taxation orders; to amend various enactments relating to income tax; and for connected purposes.

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

PART 1 – INTRODUCTORY

1 Short title

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

2 Commencement

- (1) Section 9 (Amendment of section 2N) comes into operation on 6 April 2017 and has effect in relation to accounting periods ending on or after that date and all subsequent accounting periods.
- (2) Subject to subsections (3) and (4), the remainder of this Act comes into operation in accordance with section 10(1) and (2) of the *Interpretation Act 1976*.
- (3) Part 3 (Amendments to the Income Tax (Instalment Payments) Act 1974 and Income Tax (Modified I.T.I.P.) Regulations 1987) and section 14 (Modified interpretation of certain statutory provisions) have effect in relation to payments that become due and payable after the date on which those provisions come into operation.
- (4) Sections 10 (Amendment of section 87), 11 (Amendment of section 88), 13 (Repeal of Schedule 2) and 15 (Consequential amendment to the Tribunals Act 2006) have effect in relation to any appeal in respect of

which a notice is filed after the date on which those sections come into operation.

3 Expiry

- (1) The provisions of this Act, other than section 14 and those automatically repealed by section 115A(10) of the *Income Tax Act 1970*, expire on the day after its promulgation.
- (2) The expiry does not —
 - (a) affect the continuing operation of the amendments made by this Act; or
 - (b) revive any provision not in operation when the amendments took effect.

PART 2 – TEMPORARY TAXATION ORDERS CONFIRMED

4 Confirmation of temporary taxation orders

The following are confirmed as permanent orders —

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

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

5 Income Tax (Instalment Payments) Act 1974 amended

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

¹ SD 2016/0026

² SD 2016/0024

³ SD 2017/0024

⁴ SD 2017/0027

6 Amendment of section 1

Section 1 of the *Income Tax (Instalment Payments) Act 1974* (Definitions and regulations for ITIP) is amended by deleting subsection (2B) and substituting the following –

- ▣ (2B) The regulations may provide that a person who contravenes them commits an offence and is liable on summary conviction –
- (a) where the conviction relates to the failure of a body corporate to pay over income tax instalment payments to the Assessor, to a fine not exceeding £10,000; or
 - (b) where the conviction is of any other offence created by the regulations –
 - (i) to custody for a term not exceeding 6 months;
 - (ii) to a fine not exceeding £5,000; or
 - (iii) to both. ▣.

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

- (1) The amendments made by this section are to be treated for the purposes of subsequent amendments to the Income Tax (Modified I.T.I.P.) Regulations 1987⁵ as if they were made under the original enabling powers.
- (2) The Income Tax (Modified I.T.I.P.) Regulations 1987 are amended –
 - (a) by deleting the Part heading of Part VI and substituting the following –

**“PART VI
Civil Penalties and Criminal Offences”;**
 - (b) by deleting paragraph (1) of regulation 32 and substituting the following –

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

“Offence of extended default in payment of tax

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

⁵ GC 92/87

- (a) for up to 3 months after the end of the income tax month to which the amount relates, the body corporate shall be liable to pay the further civil penalty set out in regulation 32(3); or
- (b) for more than 3 months after the end of the income tax month to which either amount relates –
 - (i) the body corporate shall continue to be liable for the amount referred to in paragraph (a);
 - (ii) the body corporate commits an offence –
 - (A) for which it may be prosecuted in the same proceedings in which it may be being prosecuted under section 114 of the Social Security Administration Act 1992 (as applied to the Island); and
 - (B) for which it shall be liable on summary conviction to a fine not exceeding £10,000; and
 - (iii) following the conviction of the body corporate, an authorised officer (as defined in section 120(1) of the *Income Tax Act 1970*) shall –
 - (A) determine whether the directors of the body corporate knew or can reasonably be expected to have known that the body corporate failed to pay either of the amounts referred to in regulation 32(2); and
 - (B) where the body corporate was, in the same proceedings, convicted under section 114 of the Social Security Administration Act 1992 (as applied to the Island) of failure to pay any contribution which it is liable to pay, exercise, for the purposes of section 121(3) of the Social Security Administration Act 1992 (as applied to the Island), the power conferred by section 7A(1)(ca) of the Social Security Act 1998 (as applied to the Island).⁶

Determinations as to directors' knowledge

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

- 32B — (1) When making a determination in accordance with regulation 32A(b)(iii), an authorised officer —
- (a) may make enquiries of any person and may consider such evidence of any description as he or she sees fit;
 - (b) shall make the determination with all reasonable speed; and
 - (c) shall —
 - (i) set out in writing his or her determination made under regulation 32A(b)(iii); and
 - (ii) forthwith furnish the directors with a copy of the written determination.
- (2) The directors may appeal to the Income Tax Commissioners (as defined in section 88 of the *Income Tax Act 1970* (Income Tax Commissioners)) the written determination with which they have been furnished in accordance with paragraph (1)(c)(ii). An appeal may relate to —
- (a) any determination made under regulation 32A(b)(iii);
 - (b) a decision, made under regulation 32C(2), as to the portion of the outstanding amount that is due from any director; or
 - (c) a determination made in exercise of the power conferred by section 7A(1)(ca)(ii) of the *Social Security Act 1998* (as applied to the Island).
- (3) Where the directors appeal under paragraph (2) —
- (a) the Commissioners shall conduct the proceedings in all respects in a manner identical to that prescribed in the *Income Tax Act 1970*;
 - (b) the Commissioners may either affirm or vary the determination of the authorised officer (including in particular any amounts referred to within it) or overrule it and substitute a different determination; and
 - (c) the Commissioners shall furnish the directors with their written findings on the determination of the appeal.

Effect of determination that directors knew or ought to have known

- 32C. — (1) Paragraph (4) applies only when an authorised officer determines, pursuant to regulation 32A, that the directors of a body corporate convicted under regulation 32A(b)(ii) knew or can reasonably be expected to have known of the facts in respect of which the body corporate was convicted.
- (2) Where an authorised officer determines in the manner referred to in paragraph (1), the authorised officer shall also decide the portion of the outstanding amount due from any of the directors, jointly and severally with any of the other directors or otherwise.
- (3) Paragraph (4) applies equally in respect of a determination that was appealed under regulation 32B(2) and affirmed or varied, as it applies in respect of a determination that was not appealed.
- (4) Where some or all of the outstanding amount has not been paid within 30 days after the date on which the written determination under regulation 32B(1)(c) was furnished to the directors, the Assessor may issue to the Coroner a warrant, in the form specified in Schedule 1A to the *Income Tax Act 1970*, for the immediate distraint of any property belonging to the directors in their personal capacities in order to recover the outstanding amounts.
- (5) Subsections (5), (6) and (7) of section 98A of the *Income Tax Act 1970* apply to the warrant referred to in paragraph (4) as if that warrant had been issued under the said section 98A.”

PART 4 – AMENDMENTS TO THE INCOME TAX ACT 1970

8 Income Tax Act 1970 amended

The *Income Tax Act 1970* is amended as follows.

9 Amendment of section 2N

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

- (a) in subsection (2)(c)(ii), by deleting “20%” and substituting ~~20~~ 15% ~~20~~; and

- (b) in subsection (4), by deleting “section 54 (Relief from double taxation)” from the definition of “double taxation agreement” and substituting ~~“~~section 104B (Power to make declarations about arrangements)~~”~~.

10 Amendment of section 87

Section 87 (Aggrieved person may contest assessment) of the *Income Tax Act 1970* is amended by inserting the following immediately after subsection (5) —

- “(6) Unless subsection (7) applies, a person —
- (a) giving notice under subsection (5); or
 - (b) in respect of whom notice is given under subsection (5) by either the Assessor or the person’s representative,
- must simultaneously pay over to the Assessor the full amount demanded in the assessment or such portion of it as remains outstanding, as the case may be.
- (7) The Commissioners may, in exceptional circumstances, determine that in a particular case the person to whom the assessment relates need not pay the amount demanded in the assessment at the time the notice is given under subsection (5), and if the Commissioners so determine they shall so notify the person in writing.
- (8) If the assessment is —
- (a) determined by the Commissioners under subsection (5); or
 - (b) amended at the direction of the Staff of Government Division under section 90(5) (Appeal from decision of Commissioners to Staff of Government Division),
- any refund due to the person shall be paid as soon as is reasonably practicable.”.

11 Amendment of section 88

Section 88 (Income Tax Commissioners) of the *Income Tax Act 1970* is amended —

- (a) by repealing subsection (2) and replacing it with the following —
- “(2) The Commissioners shall consist of —
- (a) a chairman;
 - (b) a deputy-chairman, who shall —
 - (i) be a barrister, advocate or solicitor, in each case of not less than 7 years’ standing;
 - (ii) be appointed for the purpose by the chairman, from among the eight other commissioners to

- be appointed in accordance with paragraph (c); and
 - (iii) be responsible for performing the functions of the chairman on all occasions when the chairman is unavailable and the deputy-chairman is available; and
- (c) eight other commissioners, also appointed by the Appointments Commission.”;
- (b) by repealing subsection (4);
- (c) in subsection (10), by inserting immediately after the words “The Commissioners shall” the words “, if an audio recording of the proceedings is not being made,”;
- (d) by repealing subsection (12);
- (e) by repealing subsection (17) and replacing it with the following —
 - “(17) Where, pursuant to subsection (10), minutes of the proceedings at a sitting of the Commissioners are required to be kept on account of no audio recording being made of said proceedings, the names of the Commissioners present at the sitting shall be recorded in the minutes.”;
- (f) in subsection (21), by deleting “fourteen days’ notice” and substituting “twenty-eight days’ notice”;
- (g) by inserting immediately after subsection (23) the following —
 - “(24) The Treasury, after consultation with the chairman, may make regulations generally for the purpose of prescribing the practice and procedure of the Commissioners.
 - (25) Without limiting subsection (24), regulations —
 - (a) may make provision —
 - (i) with respect to the period within which and the manner in which proceedings before the Commissioners may be commenced;
 - (ii) with respect to the parties to such proceedings, and for the giving of notice of such proceedings;
 - (iii) for the burden of proof in such proceedings;
 - (iv) for the summoning of witnesses and the administration of oaths;
 - (v) for securing the production of documents and other records (including records held on a computer);

- (vi) for conducting such proceedings in the absence of a party;
 - (vii) for prescribing the quorum of sittings of the Commissioners;
 - (viii) for determining such proceedings without a hearing;
 - (ix) for enabling any matter preliminary or incidental to such proceedings to be dealt with by the chairman;
 - (x) for the awarding of costs, and for taxing or otherwise settling any such costs (and in particular for enabling such costs to be taxed in the High Court);
 - (xi) for the registration and proof of decisions and orders of the Commissioners;
 - (xii) for the publication of reports of the Commissioners' decisions;
 - (xiii) for the enforcement of summonses and orders of the Commissioners by the High Court; or
 - (xiv) for conferring on the Commissioners such ancillary powers as the Treasury, with the agreement of the Council of Ministers, thinks necessary for the proper discharge of its functions; and
- (b) shall provide for proceedings of the Commissioners to be conducted in public unless —
- (i) the proceedings relate to a matter of national security; or
 - (ii) the Commissioners in their absolute discretion decide that their proceedings shall be conducted wholly or partly in private.”.

12 Amendment of section 106

Section 106 (Information confidential) of the *Income Tax Act 1970* is amended —

- (a) by inserting immediately after subsection (4) the following —

“(4A) Subsections (1) to (3) shall not preclude —

- (a) the extraction from documents and information of the name, address and date of birth (collectively referred to as “personal data”) of a person resident in the Island; and

(b) the transmission of that personal data to the Private Secretary to the Lieutenant Governor,
solely for the purpose of enabling the Lieutenant Governor or the Crown to prepare and send to the person a special message in commemoration of the person's having attained a significant age of advanced years, the significance of which shall be determined at the discretion of the person extracting and transmitting the personal data.”;

- (b) in subsections (1), (2) and (3), by deleting “subsections (4) and (5)” and substituting “subsections (4), (4A) and (5)”; and
- (c) in subsection (5A), by deleting “subsection (4) or (5)” and substituting “subsection (4), (4A) or (5)”.

13 Amendment of section 106A

Section 106A (Disclosure of information between the Assessor and the Collector of Customs and Excise) of the *Income Tax Act 1970* is amended in subsection (3) by deleting “section 106(2)” and substituting “section 106(3)”.

14 Insertion of new section 106F

The *Income Tax Act 1970* is amended by inserting immediately after section 106E (Disclosure of information to Treasury and Assessor by certain authorities) the following —

“**106F Disclosure of information between the Assessor and the Department of Education and Children**

- (1) No restriction on the disclosure of information imposed by statute (including this Act), or otherwise, prevents the Assessor and the Department of Education and Children from disclosing information to each other for the purpose of statistical analysis to be used to inform Government strategy or for any other similar purpose.
- (2) Information obtained under subsection (1) must not be disclosed except —
- (a) for a purpose mentioned in that subsection; or
- (b) with the consent of the provider.
- (3) Any person who discloses information under subsection (1) shall not be guilty of an offence under section 106(3) of this Act.
- (4) If any person fails to comply with subsection (2) they shall be guilty of an offence.”.

15 Repeal of Schedule 2

Schedule 2 (Form of declaration to be made by the Isle of Man Income Tax Commissioners) to the *Income Tax Act 1970* is repealed.

PART 5- MISCELLANEOUS

16 Modified interpretation of certain statutory provisions

- (1) This section shall not be construed as diminishing the effect of or impliedly repealing the original enabling powers for the application of the Social Security Act 1998⁷ as part of the law of the Island. Accordingly, despite this section, subsequent amendments to that Act as it applies to the Island may be made in exercise of those enabling powers.
- (2) Section 7A(1)(ca) of the Social Security Act 1998 (as applied to the Island) shall be read and construed as empowering an authorised officer (as defined in section 120(1) of the *Income Tax Act 1970*) instead of a contributions decision-maker.
- (3) By virtue of subsection (2) —
 - (a) in any other enactment that is part of the law of the Island, all references to a contributions decision-maker exercising the power conferred by the provision specified in subsection (2) shall be read and construed as references to an authorised officer (as defined in section 120(1) of the *Income Tax Act 1970*); and
 - (b) a decision made by an authorised officer under the provisions specified in subsection (2) —
 - (i) shall be appealable only in the manner referred to in regulation 32B(2)⁸ of the Income Tax (Modified I.T.I.P.) Regulations 1987; and
 - (ii) shall not be appealable in accordance with any of the provisions of the Social Security Act 1998 (as applied to the Island).

17 Consequential amendment to the Tribunals Act 2006

In section 8 (Rules of procedure) of the *Tribunals Act 2006*, immediately after subsection (3) insert the following —

“(4) This section does not apply to the Income Tax Commissioners referred to in Part 1 of Schedule 2.”.

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

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

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