

Order of the Day

1. Income Tax Legislation (Amendment) Bill 2019 – Second Reading approved

Mr Henderson to move:

That the Income Tax Legislation (Amendment) Bill 2019 be read a second time.

The President: Hon. Members, our Order Paper begins with the Income Tax Legislation (Amendment) Bill for Second Reading, and I call on the mover, Hon. Member of Council, Mr Henderson.

10 **Mr Henderson:** Gura mie eu, Eaghtyrane.

This Bill confirms three Temporary Taxation Orders (TTOs), two of which it also amends. It also makes three amendments to the Income Tax Act 1970.

The Bill contains five clauses and I will now give an overview of what the Bill is intended to achieve.

15 The three Temporary Taxation Orders to be confirmed by the Bill were approved by Tynwald as part of the 2018 Budget and are already in operation. The confirmation of two of these Orders is subject to them being amended by the Bill. The two Orders to be amended are already producing positive results and the amendments being proposed are intended to further encourage their performance.

20 Before I provide a brief outline of the Orders, I would like to remind you and Hon. Members of the temporary taxation order process. A temporary taxation order is used by the Treasury to amend and introduce primary Income Tax legislation. It is mainly used to react quickly to international changes or to introduce measures for the Budget. The order has the same power as primary statute and has immediate effect once approved by Tynwald. However, it will cease to have effect within
25 12 months of the day on which it was approved by Tynwald, unless a Bill confirming the order is read for a second time in another place.

The first of the three Orders extends the existing tax relief available for nursing expenses so that it can include the costs of engaging a qualified physiotherapist in certain circumstances. The second
30 Temporary Taxation Order introduces legislation enabling a new type of pension scheme to be offered by pension providers, which will allow scheme members greater freedom to access their pension funds. It also makes a small number of amendments to both the Income Tax (Retirement Benefits Schemes) Act 1978 and the Income Tax Act 1989.

35 The third Temporary Taxation Order amends section 2PA of the Income Tax Act 1970 to clarify the definition of 'distribution'. It also introduces an anti-avoidance measure aimed at limiting the tax loss that can occur when Isle of Man companies are used to convert taxable income into capital gains, which are not taxable in the Isle of Man.

Lastly, it updates section 105AA of the Income Tax Act 1970 to clarify an existing provision regarding the appointment of authorised officers by the Assessor and their powers.

40 Confirmation of both the pensions Order and the anti-avoidance Order are subject to the introduction of amendments that are contained in the Bill. The amendments to the Temporary Taxation Order providing for the new pension scheme are intended to make the scheme both easier to operate and more flexible and also contain a measure to encourage pension providers to keep fees to a reasonable level. Meanwhile, the amendments to be made to the Temporary Taxation Order introducing the anti-avoidance measure will help ensure that three specific and completely
45 legitimate scenarios will not be unintentionally caught by the measure. The Bill provides that both of these amendments come into operation at the same time as the original Order.

As well as addressing Temporary Taxation Orders, the Bill also makes three amendments to the Income Tax Act 1970. The first of these concerns the Income Tax Commissioners and introduces a requirement in section 88 of the Act for at least one commissioner to be suitably qualified and experienced to be appointed as deputy chairman of the commissioners. The second expands the definition of 'tax position' in section 120 of the Income Tax Act 1970, so that it also includes compliance with the Common Reporting Standard, which is the OECD's standard for automatic exchange of financial account information.

The third and final amendment inserts a new section 63CA into the Act and is intended to address a recommendation made in the peer review of the Island undertaken by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. The new section introduces a requirement for a foreign company that is tax resident in the Island to ensure that information on the legal owners of the company is held by a person resident in the Island.

Eaghtyrane, I beg to move the Second Reading.

Mr Cretney: I beg to second.

The President: Mr Cretney, thank you.

I put the question that the Income Tax Legislation (Amendment) Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Income Tax Legislation (Amendment) Bill 2019 – Clauses considered

The President: We turn to the clauses stage. Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

As we know, the Bill contains five clauses. It amends and confirms two Temporary Taxation Orders (TTOs) and confirms a third Temporary Taxation Order without amendment. It also makes three amendments to the Income Tax Act 1970.

Turning to the Bill, I look at clause, which provides the short title of the Act. I beg to move that clause 1 do stand part of the Bill.

The President: Mr Cretney.

Mr Cretney: I beg to second.

The President: I put that clause 1 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 2 confirms three Temporary Taxation Orders that were approved as part of the 2018 Budget.

The first of these is the Income Tax (Nursing Expenses) (Temporary Taxation Order) 2018 [SD 2017/0374]. If a person is severely disabled physically or mentally, they or a relative can claim tax relief for certain nursing expenses in respect of that person. This Temporary Taxation Order amends section 39AA of the Income Tax Act 1970 to extend the scope of this relief so that it can also apply to some or all of the costs of a qualified physiotherapist providing treatment to the same person.

95 The second Temporary Taxation Order to be confirmed by this Bill is the Income Tax (Pensions)
Temporary Taxation Order 2018. This Order introduces a new part 5A into the Income Tax Act 1970
that allows for a new type of flexible pension scheme to be offered by pension providers. The new
scheme must be approved by the Assessor of Income Tax and can take the form of either a personal
or occupational pension. A person may only be a member of one such scheme at any one time and
the member will be able to access their funds from the age of 55, although in special circumstances
it will be possible to access them before this. On reaching 55, a member can access their entire
funds in one lump, 40% of which will be paid tax free. The alternative option is for the member to
100 take an initial lump-sum payment of at least 40% of the funds, which will be paid tax free. The
member can then take further payments of such amounts and at such times as they specify, and
these payments will be taxed as income in the normal way. Tax relief is allowed on contributions
made into the scheme up to an annual maximum of £50,000 and, on the death of the member, any
of the member's funds that remain are commuted and paid free of tax.

105 The new Part 5A also provides for a charge on unauthorised payments made from a new scheme,
a supplementary charge on those payments and for a charge on excess contributions. It also includes
provisions addressing the recycling of funds transferred from other approved pension schemes and
makes it an offence for a person to knowingly make a false statement or representation to obtain
relief or repayment of tax under the part.

110 In addition, the new part contains a reporting requirement for single payments of more than
£10,000 made by an employer to one of the new schemes and introduces a similar reporting
requirement into the Income Tax (Retirement Benefits Schemes) Act 1978 and the Income Tax Act
1989 for schemes approved under those Acts. It also provides that if funds are withdrawn from a
scheme approved under either of those Acts and paid into a new scheme, then tax relief will not be
115 allowed on those contributions into the new scheme as they will already have received tax relief.

The new part allows a pension scheme currently approved by the Assessor under sections 50B or
50C of the 1970 Act or the Income Tax (Retirement Benefits Schemes) Act 1978, or the Income Tax
Act 1989 to be transferred into a new scheme following the payment of a 10% transfer fee.

120 The confirmation of this Temporary Taxation Order is subject to the amendments set out in
clause 3 of the Bill.

The third Temporary Taxation Order to be confirmed by this Bill is the Income Tax (Non-
Corporate Taxpayers) Temporary Taxation Order 2018. Before I describe what this Order does, I
would like to briefly remind Members why the amendments it makes are considered to be
necessary.

125 In the Budget speech last year the Treasury Minister advised that the Assessor had informed him
that although our Income Tax system for companies is simple and very generous, some individuals
were abusing it and adopting aggressive planning measures to reduce their personal tax liabilities.
This commonly involves using Isle of Man companies to convert taxable income into capital, which is
not taxable. The method most commonly seen by the Assessor involves individuals selling either
130 goodwill or unquoted shares to their own companies in order to extract profits as non-taxable
capital loan repayments. These repayments are made using money that is the taxable profit of the
company and enables that money to be extracted as the repayment of a debt and in non-taxable
form rather than as a taxable dividend.

135 Turning now to the Order, this TTO amends section 2PA(1) of the Income Tax Act 1970 to clarify
that any income distribution is taxable. It also amends section 2PA(5) to clarify that the meaning of
the term 'distribution' in that section includes a payment made on the winding up, liquidation,
cessation or dissolution of a corporate taxpayer.

140 The Order goes on to insert a new section 2PB into the Income Tax Act 1970 and this is the anti-
avoidance measure. Under this provision, if an individual has sold unquoted shares or goodwill to
their own company after 6th April 2011 but before the coming into effect of the Order and the sale
creates a debt to the individual, then any repayment of that debt made after the Order has come
into effect will be a taxable dividend. The size of the dividend is limited to whichever is the smaller of
the amount of the debt or the total debt at the date the Order came into effect and cannot exceed

145 the amount of undistributed taxable profits of the company. If the sale of goodwill or shares occurs
 after the Order came into effect, the sale will be treated as a dividend taxable on the owner, the
 amount of the dividend being whichever is the smaller of the total sale price or the undistributed
 taxable profits of the company at the end of the accounting period in which the sale occurred.

150 The Order also addresses the situation in which debt repayments are made to a number of
 individuals during an accounting period and the repayments exceed the undistributed profits. In
 such a case it provides a calculation to be used for prorating the tax charge. In addition, the Order
 provides that if a repayment took place before the Order came into effect but the Assessor is not
 satisfied that it physically took place before that date, then the repayment can be charged to tax
 under the new section. In addition, if the Assessor believes someone has taken measures to avoid
 Income Tax under the new part, then an assessment or additional assessment can be raised on that
 155 person.

The final provision of the TTO amends section 105AA of the Income Tax Act 1970. This section
 concerns the appointment by the Assessor of suitably qualified officers to perform certain functions
 as authorised officers, including functions delegated by the Assessor. The TTO inserts a new
 subsection (2A) which clarifies that the Assessor can, in writing, delegate any of the Assessor's
 160 functions to a suitably qualified authorised officer. It also substitutes subsection (3) to provide that
 the role of the authorised officer is subject to any conditions set down in regulations or in the
 officer's notice of appointment or the Assessor's written delegation. A new subsection (5) provides
 that any previous delegation of the Assessor's powers is unaffected by the section. The TTO also
 takes the opportunity to change a reference to a civil servant to a reference to an employee of the
 165 Public Services Commission.

The confirmation of this Temporary Taxation Order is subject to the amendments set out in
 clause 4 of the Bill.

Eaghtyrane, I beg to move that clause 2 stand part of the Bill.

170 **The President:** Mr Cretney.

Mr Cretney: Yes, Mr President, I beg to second, and in so doing, in relation to the tax planning
 part in particular I welcome that because I think it is something that has been known for some time
 that may be going on. Also I welcome the part about physiotherapy because again there is a
 175 shortage of physiotherapists and if this assists people in terms of obtaining physiotherapy support
 when they need it, then that is good.

The one question perhaps for clarification, if the Member could assist, is in relation to pensions: if
 somebody were to completely reduce their pension and place themselves in the position that they
 then become dependent on the state, is that something that there is any protection to avoid in the
 180 legislation?

The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

185 I thank Mr Cretney for his first two points acknowledging the benefits of the changes that we are
 making here, and in special reference I too am pleased with the addition of physiotherapy to be
 included for tax relief in the care of somebody – that is excellent; and indeed the avoidance
 measures that are produced in the legislation here.

As far as I am aware, if someone does use up all that particular pension pot, there is nothing to
 190 stop them from doing that other than advice from their pension provider or whatever mechanism
 they are using to make the withdrawals. However, if they do that, that may not be their only pension
 pot and if it were, then of course providing they meet the suitable qualifying criteria, they are open
 for the Manx State Pension and also, obviously if they meet the suitable qualifying criteria, they
 would be open to certain benefits from the Social Security system as well. So there is that backstop
 195 and I think that clarifies that point. The idea is to give people pensions freedoms to enable them to

reach lifetime planning goals such as paying off a mortgage or whatever else they may consider – home repairs and so on. I think that is all I need to say, Eaghtyrane – the reasoning behind it, not to disallow people access to the funds when they could at times really need access to them for whatever reason.

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The President: Mrs Lord-Brennan.

Mrs Lord Brennan: Thank you, Mr President.

I think something that I was not quite aware of was the significant impact of this Bill when I first looked at it. When we talk about pensions freedoms it is quite often of the sort that has been discussed today, about what age, but I am really pleased to see the freedoms that are being brought in to deal with personal pension schemes to provide benefits for the member and also requirements to enable pension payments to be made to a surviving spouse, civil partner or surviving child or dependant. I think that is really very welcome to see.

Also, on the matter to do with taxation of proceeds from companies, I think in the past there has been a lot of abuse to do with loan accounts and the mechanisms to not have the appropriate level of taxation from proceeds from companies and I think it is absolutely right that the authorities are just making this really super clear as to what should happen and how it should happen. I am just very pleased to see it and I think it is beneficial for the Island.

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The President: Mrs Maska.

Mrs Maska: Thank you, Mr President.

I welcome this Bill and that it actually adds to the portfolio that the Island has to prevent avoidance of tax.

The question I have actually leads on from the Hon. Mr Cretney's question. If someone were to take their pension pot and, I think it has been termed elsewhere 'blow it all in one go' – for instance, purchase a property in another jurisdiction, a holiday home or something – but then resort to living on the state, the Manx pension, is that entirely equitable and is there anything we can do to look into that? It is very difficult, I know, to find out what happens in another jurisdiction in these kind of circumstances.

Thank you.

The President: Anyone else wish to speak before I call Mr Henderson?
Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

I think, starting with the Hon. Member Mrs Maska, in relation to her point I would suspect it would be a very rare instance that somebody would be planning to do that, although it is obviously something we would keep under review should their pension pot be that large.

What we have found so far is that pension pots are not maybe as large as that to allow for somebody to participate in some sort of buying operation to allow them to have a holiday home elsewhere. The usual thing for withdrawal of amounts from pension pots like this is to cover lifetime goals, assisting with paying a mortgage off, some urgent repairs to a property that may need to be undertaken and matters of that ilk. But just for completeness, Eaghtyrane, I think I would just like to ask some of our Treasury staff who are in the Gallery this morning in case of technical questions just to add a little more weight to my overview there. If that is agreeable to Hon. Members, I would like Mr Martin, the Deputy Assessor and legislative officer to put some further clarification on Mrs Maska's question.

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The President: Thank you.

Good morning, Mr Martin. If you could speak into the microphone and state your name and title for the record, please.

250 **Mr Martin:** Paul Martin, Deputy Assessor of Income Tax.

The President: Thank you.

255 **Mr Martin:** I think, first of all, I will make it clear that there is no protection within this Bill for somebody taking their money and spending it on whatever they like. The whole point is it is pension freedoms and they can take their whole pot to do with it what they want. I think the suggestion that somebody could purchase a property either on or off Island and then fall back on the state ... If they were to do that, they still keep the property so they still have capital, so when they claim benefits the likelihood is that Social Security will look at their overall portfolio. They will know that they have
260 got capital, wherever that is, and the likelihood of them receiving income-based benefits from that would be unlikely. They obviously would still be entitled to a retirement pension because everybody is entitled to a retirement pension.

The President: Thank you very much, sir.
265 Mr Henderson.

Mr Henderson: Thank you, Eaghtyrane, and I thank Mr Martin for his clarification on that. I thank Mrs Lord-Brennan for her positive comments regarding the changes we are making here in special reference to aggressive tax planning.

270 I think we have answered Mr Cretney already on his use of the pension pot.
With that, Eaghtyrane, I beg to move the clause standing in my name.

The President: The motion is that clause 2 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.
275 Clause 3.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 3 sets out a number of amendments to the pensions TTO if that Order is to be confirmed.

280 Before I go into these amendments in more detail, I would like to inform Members that this new flexible pension scheme has been very successful already. The new scheme has encouraged more of the large providers into the pension market and the Assessor has already approved many new schemes. However, these amendments will ensure that this new scheme is easy to use and even more flexible.

285 All of the amendments address Article 3 of the TTO, which is the Article that inserts a new Part 5A into the Income Tax Act 1970, providing for a new, more flexible type of pension scheme to be offered in the Island. The amendments are directed at the legislation forming the new Part 5A, which consists of sections 61G to 61X.

The first amendments address section 61H, which largely concerns the Assessor's approval of a pension scheme to qualify for tax relief. The first amendment to this section affects one of the considerations that must be met in order for the Assessor to approve a personal pension scheme.
290 This substitutes subsection (4)(b) with a broader condition that requires the scheme to provide benefits not only for the member but also for a surviving spouse or civil partner, or a child, dependant or personal representative.

The second amendment substitutes subsection (5)(b) to make a similar change to the conditions for approval of an occupational pension scheme.

295 The third and final amendment to this section removes subsection (8), which currently prevents a person from being a member of more than one scheme of this type at any one time, regardless of whether it is a personal or occupational scheme.

The next amendment affects section 61L. This section currently provides the member with two options for accessing their funds. The first allows them to access their entire pension fund in one lump sum, whilst the second allows them to take an initial lump sum of at least 40% of the funds and to take the remainder in such amounts and at such times as they specify. The amendment introduces a third option to improve the flexibility of the scheme, which allows the member to specify any size of payment at any time until the funds are exhausted. It also amends the wording of the two existing options to clarify that they refer to funds in the pension scheme to which the member is entitled.

The introduction of a third withdrawal option requires a number of consequential amendments to be made to other sections. The first of these is section 61N, which concerns the tax treatment and calculation of the lump-sum payments. Three amendments are made to this section, the first of which addresses subsection (1). This subsection currently provides that if the entire funds are withdrawn in a single lump sum, then 40% of that amount will be tax free. It also provides that if the member chooses instead to take an initial lump sum of at least 40% of the total funds, then that 40% will be paid tax free, anything more being taxed in the normal way.

Following the addition of the third withdrawal option in section 61L that has just been described, subsection (1) is substituted in order to also include the tax treatment of the new option. This amendment will allow 40% of each payment made to the member under the new withdrawal option to be tax free. The new subsection also amends the wording of the second of the two existing options to clarify that it refers to funds in the pension scheme to which the member is entitled.

The second amendment made to section 61N concerns subsection (3). This subsection ensures that any funds that are transferred into one of the new pension schemes from another approved pension scheme after a tax-free lump sum has been paid out of that approved scheme are not taken into account when calculating the tax-free lump sum taken from the new scheme. The amendment to this subsection ensures that this treatment is extended to the new withdrawal option.

The final amendment made to section 61N substitutes subsection (4). This subsection requires the administrator of a scheme to notify the Assessor within 30 days of a lump sum being paid to a member. However, this now needs to be amended to reflect the introduction of the third withdrawal option. The amended subsection requires the Assessor to be notified within 30 days of a lump sum being paid or within 30 days of a first payment being made under the new option.

The next section to be amended is 61P, which concerns the treatment of any of the member's funds which remain after their death. This currently requires any remaining funds to be commuted within two years of the member's death and provides that those funds will not be taxable. The Bill amends subsection (1) to extend it to cover the scenario where a pension comes into payment under the new withdrawal option and funds remain after the member's death.

The Bill also substitutes subsection (2) to reflect the broadening of the condition in section 61H to require the pension to also provide benefits to surviving dependants. The new subsection (2) provides that where there is no surviving spouse or civil partner, or child, dependant or personal representative, any remaining pension funds should still be commuted in full within two years of the member's death.

However, where there is such a surviving person, the commutation can still take place in accordance with pension scheme rules but a second option will also be available. The second option will allow an appropriate surviving individual to claim and receive payments from the remaining funds of the member. If this option is chosen, the payments made to the surviving individual will be treated, for tax purposes, in exactly the same manner as they were treated for the member.

The next amendment inserts a new section 61PA into Part 5A. This provides Treasury with the power to make regulations to restrict the level of exit and transfer fees that can be charged by pension providers for this particular type of pension scheme. I would like to stress that these regulations will only apply where a person wants to transfer an approved pension into a new scheme or wants to take out the whole fund in a new scheme.

As well as making amendments to the pensions TFO, clause 3 also ensures that any pension schemes that have already been approved by the Assessor under Part 5A of the Income Tax Act 1970

350 when the amendments come into operation will not need to be re-approved by the Assessor in order to continue to qualify for tax relief after implementing the amendments. Normally, if an approved scheme is amended after approval has been given, it needs to receive further approval in order for relief to continue to apply.

355 Finally, clause 3 provides that the amendments will be considered to have come into operation at the same time as the pensions TTO itself came into operation in 2018 and to have been in operation since that time.

Eaghtyrane, I beg to move clause 3.

The President: Mr Cretney.

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Mr Cretney: I beg to second, Mr President.

The President: Miss August-Hanson.

365 **Miss August-Hanson:** Thank you, Mr President.

I have just got a quick question, if that is all right? I may make myself unpopular by asking it, I suppose, as well.

370 It is just: we have, during a member's life, withdrawing the funds of a pension scheme to which the member is entitled, 40% of the amount withdrawn is to be exempt from Income Tax. This applies to whether the funds are withdrawn all in one go or in instalments. I suppose what I would like to ask the mover is where we actually came up with that particular figure? I wondered where the 40% itself came from, simply because I have just popped on to the www.pensionwise.gov.uk website and we have on there that there are two options: to take all the pension out in one go or to take it out in chunks – both. You can take 25% out as a lump sum without paying tax, leaving the remaining 75% untouched; and in chunks, again, the same.

375 I wondered where we actually came up with the 40% figure; and if you would not mind asking the experts from Treasury to answer that question I would be very grateful, if you are willing.

The President: Mr Henderson.

380 **Mr Henderson:** Gura mie eu, Eaghtyrane.

I just need to clarify the questioner's question, if I may. Is the Hon. Member indicating that our untaxed element is greater than that of the UK – if I have got that right?

Miss August-Hanson: I am asking that question, yes.

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Mr Henderson: I think the overview answer is that it is a policy decision we came up with to have an attractive alternative flexible pension scheme here in the Isle of Man and to generate interest in the scheme, and to cause it to be positive and have membership and interest from providers to actually provide a new product here in the Isle of Man.

390 So we considered it was a policy decision for that. (**Miss August-Hanson:** Okay.) But, just to be on the safe side, Eaghtyrane, I will once again call on the Deputy Assessor for Income Tax just to confirm my overview there or add any more detail.

Miss August-Hanson: Thank you.

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The President: Mr Martin, please.

Mr Martin: Thank you, Mr President.

400 Yes, you are quite correct, Mr Henderson, it was a policy decision to go for the 40%. The UK is
25%. Our current schemes, prior to this one coming in, are at 30% but the political decision was to
go for 40% to encourage people to save for their retirement.

Miss August-Hanson: Permission to ask a question, please, Mr President.

405 **The President:** Miss August-Hanson.

Miss August-Hanson: Thank you.

I wonder then, the difference between the 30% and the 40%: why was the 40% arrived at from
30%? Was there any reason or evidence base behind that?

410 **Mr Martin:** No. There were a number of different scenarios put to Treasury based on amounts
going in. We must remember that in order to transfer from your current scheme into the new
scheme there is a 10% charge, so people are paying that additional 10% if they want to move over. It
was calculated and looked at as being ... It is generous, obviously.

415 **Miss August-Hanson:** But of course that would have been occurring before anyway, so they
would have ended up being on 20% as opposed to ...

Can you please just explain a little bit of the detail around that?

420 **The President:** Miss August-Hanson, could you direct your questions through the mover, please?

Miss August-Hanson: Yes, of course, I apologise, Mr Henderson.

425 Can I ask, then, am I right in understanding that the 10% would have occurred before, anyway,
when it was at 30% previously? I am wondering why the difference was made. I am trying to
understand it.

Mr Henderson: Well, Eaghtyrane, if I can answer? We are now moving into policy direction here,
which is a little unusual with regard to the Income Tax Act here.

430 As Mr Martin has explained already, the idea was to offset the 10% transfer charge in relation to
offering a 40% tax relief on the lump sum withdrawal. Also, it was a policy decision that, if we were
going to have such a new, flexible product that it should be attractive and offer some chance of
success on its launch and for providers to come into the market to offer the scheme as well.

435 So I do not think I can offer any more explanation other than Mr Martin and myself have put
forward, Eaghtyrane.

The President: Thank you.

Could I clarify, Mr Henderson? The 10% transfer fee: who is that paid to? Is it the existing pension
provider? Is it Treasury?

440 To take advantage of accessing 40% of the existing funds it would require a scheme-holder to
transfer those funds into a new scheme. Presumably the 10% transfer fee – which could be quite
substantial – will be money lost forever; and would it be then part of the calculation as to whether it
was worthwhile foregoing that lost money through the transfer fee when deciding whether it was
worth accessing the funds up to 40%?

445 **Mr Henderson:** Yes, Eaghtyrane, you make good observations. And yes, a person would have to
make that calculation, presumably with their financial advisers or existing pension providers, before
they wish to make such a transfer. But the converse is true also, whereby somebody may not wish to
make a transfer but wish to start off a new flexible pension product in its own right. So, in that
instance, there would be no 10% transfer fee.

450 And again, yes, if there were large sums of money involved a 10% transfer fee could be considerable, but it may be that that individual in their financial planning and upon best advice might see it as a viable alternative option to actually effect a transfer to the new pension product. However, there are capping restrictions with regard to the pension and to the amount to which the pension freedoms do apply.

455 And for that, if I may, I would just like to refer again to Mr Martin, if he can just give some technical clarity on the capping mechanisms and what you can put in in a year, and transfers –

The President: If it could also be clarified who the transfer fee is paid to?

460 **Mr Henderson:** And who the transfer fee is paid to, yes.

The President: Mr Martin.

465 **Mr Martin:** Mr President, the transfer fee is paid to the Assessor of Income Tax – it is a Treasury fee. (**The President:** Thank you.) And the amount of contribution into the new flexible pension scheme is restricted to £50,000 a year.

The President: Thank you, Mr Henderson.

470 **Mr Henderson:** Gura mie eu, Eaghtyrane.
If there is no further –

The President: Miss August-Hanson.

475 **Miss August-Hanson:** Thank you.

Just in relation to the transfer fee itself and the 10% that was come up with for that transfer fee: where did that figure come from? Where did the 10% ... It is another round figure, so I am just asking the question.

480 **The President:** Mr Henderson.

Mr Henderson: Again, I would just refer to my Treasury colleague in the Gallery, Mr Martin, if he could just put a little clarification on it?

485 **The President:** Mr Martin.

Mr Martin: Again, Mr President, it was a policy decision from Treasury. There were a number of different figures looked at and discussed, whether it should be 10%, 15% – and I think 20% at one point was being discussed. And the new scheme and how that should look.

490 All of these different things were weighed up by Treasury at the time and what you see now is what was decided.

The President: Thank you.
Any further comments? Mr Henderson?

495 **Mr Henderson:** No, just to further elaborate on what Mr Martin said there. The 10% fee was also looked at to try and make a sustainable product as well and ensure also – I think I am correct in saying – that we did not see a mass exodus from existing pension schemes transferring into this, which may cause individuals financial concern. So it was a considered measure to try and control any
500 transfers as well – if there were to be any transfers, that is, into the new scheme.

The President: I put the motion that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4, please.

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Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 4 sets out the amendment which is to be made to the avoidance TTO if that order is to be confirmed.

Eaghtyrane, the Assessor has confirmed to me that she has already seen that this measure is working and, even at this early stage, her officers are seeing there is a change in behaviour.

510 The amendment is made to article 4 of the TTO. This article inserts a new section 2PB into the Income Tax Act 1970 which, as already described, addresses practices used to pay profits out of a company in non-taxable forms rather than in the form of taxable dividends.

515 The amendment inserts a new subsection (1A) into section 2PB. The new subsection sets out three scenarios to which the section will not apply provided that the Assessor receives satisfactory evidence that it should not do so. The scenarios address transactions involving the sale of unquoted shares. These are commercial and are in no way a form of tax avoidance but, without the amendment, they will be unintentionally caught by the measure contained in section 2PB. The scenarios have come to light since the TTO came into operation.

520 Clause 4 also provides that the amendment to section 2PB will be considered to have come into operation at the same time as the avoidance TTO itself came into operation in 2018 and to have been in operation since that time.

Eaghtyrane, I beg to move that clause 4 stand part of the Bill.

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The President: Mr Cretney.

Mr Cretney: I beg to second.

530 **The President:** I put the motion that clause 4 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 5.

Mr Henderson: Gura mie eu, Eaghtyrane.

Clause 5 makes three separate amendments to the Income Tax Act 1970.

535 The first of these amendments addresses section 88 which provides for the Income Tax Commissioners, including their constitution and certain practices and procedures. The commissioners consist of a Chairman and eight commissioners who are appointed under the Tribunals Act 2006 by the Appointments Commission. The Act requires the Chairman of the commissioners to have been a barrister, advocate or solicitor for at least seven years. There is no such requirement for the commissioners themselves.

540 Section 88 was amended by the Income Tax Legislation (Amendment) Act 2017 to require the Income Tax Commissioners to also have a Deputy Chairman. The Deputy is appointed from the eight commissioners by the Chairman and, like the Chairman, must also have been a barrister, advocate or solicitor for at least seven years. However, there is currently no requirement for any of the commissioners to have suitable qualifications and experience to act as Deputy. This Bill therefore substitutes subsection (2)(c) in order to introduce a requirement for at least one commissioner to be suitably qualified and experienced to be appointed to act as Deputy Chairman.

545 The second amendment to the Income Tax Act 1970 addresses section 120 which contains definitions for the Act. The amendment to this section expands the definition of 'tax position'. The Income Tax Act 1970 currently contains inspection powers which enable the Assessor to examine a person's tax position. These powers permit an officer authorised by the Assessor to enter business premises and to inspect those premises as well as the business assets and documents there if this is

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considered necessary. Such a measure might be considered appropriate in certain cases of suspected non-compliance with the Income Tax Acts.

555 The amendment to section 120 expands the definition of 'tax position' to include compliance with the Common Reporting Standard. This standard was developed by the OECD and is the global standard for the automatic exchange of financial account information. The Isle of Man has been exchanging information under the Common Reporting Standard since 2017. Changing the definition of 'tax position' in this way will mean that the inspection powers may also be used to investigate
560 suspected non-compliance with the standard.

The third and final amendment to the Income Tax Act 1970 concerns foreign companies that are resident for tax purposes in the Island. However, before I describe what the amendment does I would like to provide Members with a brief explanation as to why it is required.

565 The Isle of Man is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and is subject to an in-depth peer-review process which assesses the implementation of international standards of transparency and exchange of information for tax purposes. The Island has been subject to two rounds of peer reviews, the first in 2010 and the second in 2017, and has been awarded the top rating of 'compliant' in both reviews. However, in the follow-up report to the 2017 review a recommendation was made for rules to be put in place to
570 ensure the availability of legal ownership information for foreign companies that are resident in the Isle of Man for tax purposes.

In order to address the recommendation, the third amendment to the Income Tax Act 1970 inserts a new section 63CA into the Act. As the majority of foreign companies on the Island will already have a corporate service provider here who is regulated and who will keep the necessary
575 ownership information on the Island, this section is directed only at those companies that do not have a corporate service provider with regulatory oversight. The new section introduces a requirement for such a company to nominate an individual who is tax-resident in the Island and who will hold information on the legal owners of the company and provide it to the Assessor if requested to do so. In order to help ensure compliance with this measure the section also makes it an offence
580 for the company to fail to comply with this requirement, and for the individual to fail to hold the necessary information or to provide it when requested.

Eaghtyrane, I beg to move that clause 5 stand part of the Bill.

The President: Mr Cretney.

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Mr Cretney: Happy to second, Mr President.

The President: I put the motion that clause 5 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

**Income Tax Legislation (Amendment) Bill 2019 –
Suspension of Standing Orders to take Third Reading –
Motion lost**

590 **Mr Henderson:** Eaghtyrane, could I move a point of order, or a point ...?

I was just wondering if I could indulge yourself and Hon. Members for the suspension of Standing Orders to allow for the Third Reading of the Income Tax (Amendment) Bill on the grounds that it is a very short Bill, non-controversial. I think from Members' questions they are suitably satisfied with the contents therein. And to progress the legislation.

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The President: We have had a motion to suspend Standing Orders to allow the Third Reading to be moved at this sitting. Is there a seconder to that motion?

600 **Mrs Lord-Brennan:** I will second it.

The President: There is a seconder. Would anyone like to speak to the motion?
Mrs Poole-Wilson.

605 **Mrs Poole-Wilson:** Thank you, Mr President.

I accept the hon. mover's rationale for requesting suspension of Standing Orders in the case of this Bill. My one concern, which I think is worth articulating, is that we do not get into a habit of moving through all the stages of a Bill (**Two Members:** Hear, hear.) unless there is an overriding need, because sometimes there are points of reflection and it is the reason that we have the procedure in Standing Orders.

610 So whilst I accept that probably in the case of this particular Bill what he says is correct and there probably would not be any adverse consequence if we did suspend Standing Orders today and take the Third Reading, I just wanted to express that concern that we do not make it a habit.

Thank you, Mr President.

615 **The President:** Yes, Lord Bishop.

The Lord Bishop: Thank you, Mr President.

620 I think I would like to express that same concern. We have suspended Standing Orders recently to move legislation through in cases where there has been a compelling requirement or necessity. I am not entirely convinced in the current case that I see that necessity and I wonder whether the suspension of Standing Orders perhaps is taking on a profile beyond that which it deserves.

Thank you, Mr President.

The President: Mrs Lord-Brennan.

625 **Mrs Lord-Brennan:** It is really just to ask if there is a pressing time-sensitive requirement. That would be good to know.

Miss August-Hanson: Quite.

630 **The President:** Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

635 I accept the points that the Hon. Member, Mrs Poole-Wilson has made and they are fair and correct. As I said in my opening commentary to Hon. Members, the reason I am asking for permission is the fact that the Bill is very short and it is technical in detail. It has positive outcomes and measures contained within it which have been well-consulted upon throughout the industry and indeed it is acting upon industry commentary coming back to us.

640 So for those reasons, Eaghtyrane, and to note that there are no controversial elements within the Bill, or negative impact, and that it has been well-discussed and thoroughly examined – and in the interest to expedite the legislation, Eaghtyrane. There is no timeframe on it but, having said that, the fact that it is essentially a technical Bill it would seem practical to try and move it on. And those are my reasons.

645 **The President:** I will put the motion, in that case. Those in favour, say aye; against, no. The motion is not carried.

Thank you very much.