



## INCOME TAX BILL 2019

### EXPLANATORY NOTES

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Cannan, MHK. They do not form part of the Bill.*

#### **INTRODUCTION**

The Income Tax Bill 2019 confirms temporary taxation orders, and makes an amendment to the Income Tax Act 1970.

This Bill contains 3 clauses.

#### **OVERVIEW OF CLAUSES**

##### Clause 1- Short title

Clause 1 provides for the short title of the resulting Act.

##### Clause 2 – Confirmation of temporary taxation orders

Clause 2 confirms the following temporary taxation orders which were made under section 115A of the Income Tax Act 1970 and approved by Tynwald, but which must be confirmed within 12 months of that approval:

1. Income Tax (Substance Requirements) Order 2018 (“the First TTO”); and
2. Income Tax (Periodical Payments) (Temporary Taxation) Order 2019 (“the Second TTO”).

For ease of reference the Explanatory Notes to the First and Second TTOs described the effect of the TTO’s as follows —

First TTO:

*“This Order inserts a new Part 6A into the Income Tax Act 1970 introducing substance requirements for corporate taxpayers that are resident companies in the Island for income tax purposes. The legislation requires a company that receives income from a relevant business sector (defined in the legislation) to have adequate substance in the Island.*

*The Order requires the submission of further information from a company in order for the Assessor to determine whether the company has substance in the Island.*

*The amendments to the Act further provide that —*

*a) a relevant sector company which fails to provide any additional information which the Assessor requires in order to determine whether that company meets the substance requirements, commits an offence;*

*b) where a relevant sector company, other than a high risk IP company, fails to meet the substance requirements —*

*(i) the Assessor will disclose relevant information about that company to a foreign tax official of an EU Member State which the Island has an international arrangement and in which an immediate or ultimate parent company or ultimate beneficial owner of the company is resident; the company will also be liable to a civil penalty;*

*(ii) in respect of a second consecutive accounting period, the company will be subject to disclosure of information and to an additional, and larger, civil penalty;*

*(iii) in respect of a third consecutive accounting period, the company will be subject to disclosure of information and to an additional, and further increased, civil penalty and, if the Assessor believes the company cannot realistically meet the substance requirements the Assessor can serve notice on the Department for Enterprise or the Registrar, as appropriate, requiring the company to be struck off the register;*

*(iv) in the case of a fourth consecutive accounting period, the company will be subject to disclosure of information and the Assessor can serve notice requiring the Department for Enterprise or the Registrar, as the case may be, to strike the company off the relevant register.*

*c) where a relevant sector company is a high risk IP company —*

*(i) it will be presumed that the substance requirement is not met unless the company provides evidence to rebut that presumption;*

*(ii) in any accounting period the Assessor will disclose relevant information about that company to a foreign tax official of an EU Member State or any other jurisdiction with which the Island has an international arrangement and in which an immediate or ultimate parent company or ultimate beneficial owner of the company is resident;*

*(iii) if the company fails to meet the substance requirements it will be subject to disclosure of relevant information and to a civil penalty in the first accounting period in which the failure occurs in the same manner as a non-high risk IP company except that the civil penalty for*

*a high risk IP company is larger;*

*(iv) if the company fails to meet the requirements in a second consecutive accounting period, it will be subject to disclosure of information and to an additional, and larger, civil penalty and, if the Assessor believes the company cannot realistically meet the substance requirements the Assessor can serve notice on the Department for Enterprise or the Registrar, as appropriate, requiring the company to be struck off the register;*

*(v) if the company fails to meet the requirements in a third consecutive accounting period, it will be subject to disclosure of information and the Assessor can serve notice on the Department for Enterprise or the Registrar, as appropriate, requiring the company to be struck off the register;*

*d) in any accounting period following the issue of a notice to a high risk IP company under (2)(b) or to a relevant sector company other than a high risk IP company under (3)(b), if the Assessor is still not satisfied that the relevant sector company meets the substance requirements, the company will be subject to disclosure of information, to a further civil penalty and the Assessor can serve notice on the Department for Enterprise or the Registrar, as appropriate, requiring the company to be struck off the register.*

*In each case, if the company is not incorporated in the Island, the Assessor will notify the tax administration in the company's jurisdiction of incorporation, of the failure to comply with Part 6A, in accordance with an international arrangement.*

*The Order also creates an offence of fraudulently avoiding or seeking to avoid the application of the new Part 6A of the Act, enables appeals to be made to the Income Tax Commissioners, provides that the Assessor may issue guidance and amends both the Companies Act 1931 and the Companies Act 2006 to provide that receipt of a notice from the Assessor by the Department for Enterprise or the Registrar, as appropriate, can require a company to be struck off the register.*

*This Order was amended under section 80N of the Income Tax Act 1970. The amendment order amended the definition of "foreign tax official" in Part 6A of that Act so as to include other jurisdictions in addition to EU Member States with which the Island has an International Arrangement.*

*The order also amended Part 6A of the Act to —*

*(a) amend the definition of a pure equity holding company and the core income-generating activities required for an IP company;*

*(b) amend the definitions in respect of a high risk IP company, and an IP asset;  
and*

*(c) specify the type of information required to satisfy the Assessor that the presumption that a high risk IP company fails the substance requirements is rebutted."*

Clause 2(2) of the Bill notes that certain provisions inserted into the Income Tax Act 1970 by the First TTO were subsequently amended by the Income Tax (Substance Requirements) (Amendment) Order 2019<sup>1</sup> and so the First TTO has effect subject to those amendments.

The Second TTO  
*“This Order is made under section 115A of the Income Tax Act 1970. It amends the Act by inserting three new sections which address the tax treatment of periodical payments made under an order of the High Court on awarding damages for future pecuniary loss in respect of personal injury. The new sections exempt those payments from any liability to income tax in the circumstances specified.”*

### Clause 3 – Assistance in collection of taxes

Clause 3 introduces an enabling provision to allow the Treasury by regulations to make provision for the recovery of foreign tax debts relating to international arrangements which contain an article for assistance in collection.

Regulations may make provision for the taking of action to recover debts relating to foreign tax by applying with appropriate modification, any enactment or rule of law that applies in relation to the recovery tax under domestic law.

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<sup>1</sup> SD 2019/0271