



INCOME TAX LEGISLATION (AMENDMENT) BILL 2017

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 Legislation (Amendment) Bill 2017 confirms two temporary taxation orders, amends the *Income Tax (Instalment Payments) Act 1974* and the Income Tax (Modified I.T.I.P.) Regulations 1987, makes a number of amendments to the *Income Tax Act 1970*, modifies the interpretation of certain Social Security legislation and makes a consequential amendment to the *Tribunals Act 2006*.

This Bill contains 15 clauses.

OVERVIEW OF CLAUSES

Part 1 – Introduction

Clause 1- Short title

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

Clause 2 – Commencement

Clause 2 provides for clause 9 to come into operation on 6 April 2017 for accounting periods ending on or after that date. It also provides for the remainder of the Act to come into operation in accordance with clause 10 of the *Interpretation Act 1976*. However, it further provides that, for Part 3 and clause 14, this means the Act will come into effect in relation to payments that become due and payable after the date it comes into operation. For clauses 10, 11, 13 and 15 this means that the Act will come into effect in relation to any appeal in respect of which a notice is filed after the date it comes into operation.

Clause 3 - Expiry

Clause 3 provides for the expiry of the resulting Act on the day after its promulgation. This, however, does not apply to clause 14 or to those provisions that are automatically repealed on that day by section 115A(10) of the *Income Tax Act 1970*.

Part 2 – Temporary Taxation Orders Confirmed

Clause 4 – Confirmation of temporary taxation orders

Clause 4 confirms the following temporary taxation orders:

1. **Income Tax (Corporate Taxpayers) (Temporary Taxation) Order 2016**
This Order enables the temporary tax exemption provided for by section 2A of the Income Tax Act 1970 to apply to an eligible business that meets the criteria in regulation 4 of the Enterprise Act 2008 (Eligible Businesses) Regulations 2014.
2. **Income Tax (Individuals) (Temporary Taxation) Order 2016**
This Order enables the Assessor to suspend a person from being required to submit an annual tax return if the Assessor believes they have no liability to income tax and it also enables the Assessor to raise assessments if it is subsequently found that the person did have a tax liability during any year in which they were suspended. The Order also provides for a payment of a trivial commutation lump sum from an approved pension scheme to be treated as taxable income of the member in the year of assessment in which it is received and for that lump sum to be treated, for tax purposes only, as remuneration from an employer. Lastly, the Order introduces a penalty of up to 60% of the tax charged in circumstances where the Assessor believes the purpose or one of the purposes of any transaction is the avoidance or reduction of a person's income tax liability, and for the tax charged in these circumstances to carry interest.

Part 3 – Amendments to the Income Tax (Instalment Payments) Act 1974 and the Income Tax (Modified I.T.I.P.) Regulations 1987

Clause 5 – Income Tax (Instalment Payments) Act 1974 amended

Clause 5 introduces the amendment to the *Income Tax (Instalment Payments) Act 1974* (“the 1974 Act”).

Clause 6 – Amendment of section 1

Clause 6 amends section 1 of the 1974 Act by substituting subsection (2B). The original subsection enabled regulations to provide that a person contravening the regulations commits an offence and is liable on summary conviction to custody for up to 6 months or to a fine not exceeding £5,000 or both. However, the substituted subsection additionally enables regulations to provide for a fine of not more than £10,000 for a body corporate that is convicted of the offence of contravening the regulations as a result of failing to pay over to the Assessor ITIP deducted from employees.

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

Clause 7 makes a number of amendments to Part VI of the Regulations (“ITIP Regulations”). The first is to substitute the Part heading with “Civil Penalties and Criminal Offences” while the second is to substitute regulation 32(1) in order to reflect the insertion of a new regulation 32A. The clause then goes on to insert new regulations 32A, 32B and 32C.

Of these, 32A introduces an offence of extended default in payment of tax which applies to an employer who is a body corporate. Under existing regulations, if an employer fails to pay to the Assessor the monthly tax deductions it has made from its employees (“ITIP”) within 14 days of the end of the relevant income tax month it is liable to pay a civil penalty. Under the new regulation 32A, if an employer who is a body corporate fails to pay either the outstanding ITIP or the civil penalty within three months of the end of the relevant income tax month, it will be liable to a further civil penalty set out in regulation 32(3). However, if, after three months, it has still failed to make the required payments, the employer will have committed an offence and, on summary conviction, will be liable to a fine not exceeding £10,000.

Regulation 32A further provides that the prosecution of the company for this offence can be combined with similar proceedings that the body corporate may be subject to for non-payment of National Insurance contributions (“NI”) under Social Security legislation.

Following the conviction of a body corporate under regulation 32A, an authorised officer, appointed by the Assessor, will determine whether or not the directors of the body corporate knew or could reasonably be expected to have known that the payments due under the ITIP Regulations had not been made. If the company is convicted, in the same proceedings, of failing to pay NI, regulation 32A will allow the authorised officer to also determine whether the directors knew or could reasonably be expected to have known that the company had failed to pay the NI due and, if so, the amount due, jointly and severally, from the directors.

Regulation 32B addresses the making of such a determination by an authorised officer, and provides for the directors to appeal the determination to the Income Tax Commissioners. The directors may appeal a determination as to whether they knew or could reasonably be expected to have known that the payments due under the ITIP Regulations had not been made and/or, if appropriate, that the payments due under NI legislation had not been made. In addition, if the authorised officer determines that the directors knew or can reasonably be expected to have known of the failure to pay ITIP or both NI and ITIP, they may appeal the amount that is subsequently determined by the authorised officer to be due, jointly and severally, from the directors (for ITIP, see regulation 32C below).

Regulation 32C provides that if it is determined that the directors knew or could reasonably be expected to have known that any payments due under the ITIP Regulations had not been made, the authorised officer can also decide the portion of the outstanding amount due, jointly and severally, from any of the directors. Under 32B the directors can also appeal this amount to the Income Tax Commissioners.

Regulation 32C further provides that if, within 30 days of the directors being provided with the determination, any amount of the outstanding tax has not been paid, the Assessor can issue the Coroner with a warrant to recover the outstanding amount from the directors.

Part 4 – Amendments to the Income Tax Act 1970

Clause 8 – Income Tax Act 1970 amended

Clause 8 introduces Part 4 of the Bill, which amends the Income Tax Act 1970 (“the 1970 Act”).

Clause 9 – Amendment of section 2N

This clause amends one of two alternative conditions that a company incorporated in the Isle of Man must satisfy if it is to prove to the satisfaction of the Assessor that it is not resident in the Isle of Man. The amended condition requires the highest rate at which a company may be charged to tax on any part of its profits, in the country in which it wishes to prove it is resident, to be at least 15% rather than the current 20%. It also substitutes an out-of-date reference to section 54.

Clause 10 – Amendment of section 87

Clause 10 introduces three new subsections - (1A), (1B) and (1C) - into section 87 of the 1970 Act. Under subsection (1A), a person who appeals to the Assessor against an assessment will be required to pay any amount that remains outstanding from that assessment at the time they make their appeal. However, subsection (1B) enables the Income Tax Commissioners to decide, in exceptional circumstances, that a person who is appealing an assessment does not have to pay the amount due at the time of making the appeal. Finally, subsection (1C) ensures that if a refund is due to the person it will be paid as soon as possible. The clause also makes a small consequential amendment that is necessary following the insertion of the three new subsections.

Clause 11 – Amendment of section 88

This clause makes a number of amendments to section 88. The first substitutes subsection (2) to enable the chairman of the Income Tax Commissioners to appoint one of the eight other commissioners as a deputy-chairman provided that the chosen commissioner is appropriately qualified to perform the functions of the chairman. It also repeals subsection (4) which is no longer appropriate following a further amendment made to section 88 by the clause. The clause goes on to amend subsection (10) to provide that the Commissioners need only keep Minutes of their proceedings if an audio recording is not being made. It also repeals subsection (12), which is no longer applicable, and substitutes subsection (17) to provide that on those occasions when Minutes are required to be kept the names of the Commissioners present at a sitting must be included in them. The clause also amends subsection (21) by extending the period of notice that the Commissioners must give, of the time and place of a sitting to those whose objections are to be heard, from 14 days to 28 days. Finally, the clause inserts new subsections (24) and (25). Subsection (24) enables the Treasury, after consulting with the chairman, to make regulations prescribing the practice and procedures of the Commissioners. Subsection (25)(a) sets out a variety of matters that the regulations can provide for while subsection (25)(b) provides for the sittings of the Commissioners to take place in public unless they relate to a matter of national security or the Commissioners, in their absolute discretion, decide that the proceedings should be conducted in private.

Clause 12 – Amendment of section 106

Clause 12 inserts a new subsection (4A) into section 106. This subsection enables the name, address and date of birth of relevant Island residents to be forwarded to the Private Secretary to the Lieutenant Governor in order for the Lieutenant Governor or the Crown to send those residents a special message to commemorate a significant birthday. It also makes a consequential amendment to subsections (1), (2), (3) and (5A) which reflect the introduction of the new subsection.

Clause 13 – Repeal of Schedule 2

Clause 13 repeals Schedule 2 to the 1970 Act, which is a declaration made by those taking up the post of Income Tax Commissioner, as it is no longer appropriate.

Part 5 – Miscellaneous

Clause 14 – Modified interpretation of certain statutory provisions

Clause 14 enables an authorised officer appointed by the Assessor to exercise, to the exclusion of the contributions decision-maker, the power conferred on the latter for the purposes of section 7A(1)(ca) of the Social Security Act 1998. It also provides that any other reference to a contributions decision-maker using the power given by that section is to be read as a reference to an authorised officer and that any decision made by an authorised officer using those powers can only be appealed under regulation 32C(2) of the Income Tax (Modified I.T.I.P.) Regulations 1987 (which is inserted into those Regulations by clause 7 of this Bill).

One effect of this clause is to enable an authorised officer to determine, under regulation 32A of the Income Tax (Modified I.T.I.P.) Regulations 1987, (which is inserted into those Regulations by clause 7 of this Bill), whether a director knew or could reasonably be expected to have known of the company's failure to make NI payments and, if so, to decide the amount due, jointly and severally, from the directors. It also enables the Treasury to issue a warrant to the appropriate Coroner if any amount of NI remains outstanding 30 days after an authorised officer has issued a notice containing their decision.

Clause 15 – Consequential amendment to the Tribunals Act 2006

This clause amends section 8 of the Tribunals Act 2006 by inserting a new subsection (4) which provides that section 8 does not apply to the Income Tax Commissioners. This reflects the insertion by the Bill of a new subsection (24) into section 88 of the Income Tax Act 1970, allowing Treasury, after consultation with the chairman, to make regulations prescribing the practice and procedures of the Commissioners.