INCOME TAX LEGISLATION (AMENDMENT) 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 Legislation (Amendment) Bill 2019 amends and confirms temporary taxation orders, and makes three amendments to the *Income Tax Act 1970*.

This Bill contains 5 clauses.

OVERVIEW OF CLAUSES

<u>Clause 1- Short title</u>

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

<u>Clause 2 – Confirmation of temporary taxation orders</u>

Clause 2 confirms the following temporary taxation orders:

1. Income Tax (Nursing Expenses) (Temporary Taxation) Order 2018
   This Order extends the existing tax relief for nursing expenses to also apply to the costs of engaging a qualified physiotherapist in instances where the current criteria for relief for nursing expenses have already been met and where the physiotherapy forms an integral part of the treatment of the individual.

2. Income Tax (Pensions) (Temporary Taxation) Order 2018
   This Order inserts Part 5A into the *Income Tax Act 1970* providing for a new type of flexible pension scheme which may be either a personal or occupational scheme, but which restricts an individual to being a member of only one such scheme at any one time. The new scheme must be approved by the Assessor of Income Tax and allows a member aged 55 or over to take a tax-free lump sum of 40% and also to have full access to the funds as and when required, while a member below the age of 55 can also withdraw funds in special circumstances. Tax relief is allowed on contributions to the pension scheme up to an annual contribution limit of £50,000 and, on the death of the member, no tax will be charged on any funds remaining. A pension scheme approved under section 50B or 50C of the *Income Tax Act 1970* can be transferred into a new scheme following payment of a 10% transfer fee.

The new Part provides for a charge on unauthorised payments, which will be added to the amount of the tax cap, and for a supplementary charge on those payments. It also provides for a charge on excess contributions and contains measures to address churning of pension funds. It enables Treasury to make regulations needed to implement the new Part and contains a reporting requirement for single payments of more than £10,000 made to a pension scheme by an employer. It also makes it an offence to make a false statement or representation to obtain tax relief or repayment of tax under the new Part.

In addition, the Order amends the *Income Tax (Retirement Benefit Schemes) Act 1978* and the *Income Tax Act 1989.* The amendments provide that if a pension scheme approved under either Act is transferred into a pension scheme introduced by the new Part 5A of the *Income Tax Act 1970* a 10% transfer fee must be paid. The remaining amendments to these two Acts introduce measures to prevent churning of pension funds, and a reporting requirement for single payments of more than £10,000 made by an employer.

Confirmation of this Order ("the pensions TTO") is subject to the amendments specified in clause 3.

3. Income Tax (Non-Corporate Taxpayers) (Temporary Taxation) Order 2018
This Order amends section 2PA of the *Income Tax Act 1970* to clarify that the definition of "distribution" in that section includes a payment made on the winding up, liquidation, cessation or dissolution of a company. The Order also introduces a new section 2PB into that Act which contains measures aimed at limiting the tax loss that can occur when a member sells goodwill or unquoted shares to their own company in order to extract capital as non-taxable loan repayments from the company. The new section also contains an anti-avoidance measure. Lastly, the Order clarifies provisions in section 105AA of the *Income Tax Act 1970* regarding the appointment of authorised officers by the Assessor, and their powers.

Confirmation of this Order ("the avoidance TTO") is subject to the amendments specified in clause 4.

<u>Clause 3 – Amendments to pensions TTO</u>

Clause 3 makes the following amendments to article 3 of the Income Tax (Pensions) (Temporary Taxation) Order 2018. This is the article that provides for a new pension scheme by introducing Part 5A into the *Income Tax Act 1970*, consisting of sections 61G to 61X.

Section 61H(4)(b) of the new Part 5A introduced into the *Income Tax Act 1970* is substituted. The substituted section expands the condition contained in this section so that rather than just requiring a personal pension scheme to provide benefits for the member, it will require the scheme to also enable pension payments to be made to a surviving spouse/civil partner, or a surviving child or dependant, or a personal representative, where funds remain following the death of the member.

Section 61H(5)(b) is substituted to make a similar amendment to that above, expanding the equivalent condition for occupational pension schemes.

Section 61H(8) is omitted in order to remove the restriction of only permitting an individual to be a member of one Part 5A pension scheme at any one time. This will, for example, enable an individual to be a member of both an occupational and a personal pension scheme of this type at the same time or a member of more than one occupational pension scheme.

Section 61L is substituted to make the pension scheme more flexible. This section currently allows a scheme member to choose either to take the pension funds all in one lump sum payment (section 61L(a)) or to take an initial single lump sum payment of at least 40% of the funds followed by payments of any amount they choose until the funds have been exhausted (section 61L(b)). The Bill expands this section by introducing a third option, 61L(c), which allows the member to receive payments of any amount they choose at any interval they wish until their funds have been exhausted. It also amends the wording in paragraphs (a) and (b) to clarify that those paragraphs refer to the funds in the pension scheme to which the member is entitled.

Section 61N(1) is substituted to reflect the addition of 61L(c) described above. This section currently provides that if the member takes their entire pension in a single lump sum, then 40% of the amount will be paid tax-free. It also provides that if the member instead chooses to take an initial single payment of at least 40% of the pension then that payment will be tax-free up to an amount equal to 40% of the total value of the pension. In addition to these tax treatments, the substituted section 61N(1) also provides that where the pension scheme member chooses to receive payments under the new section 61L(c), 40% of each of the payments made to the member will not be chargeable to income tax. It also amends the wording in section 61N(1)(b) to clarify that it refers to the funds in the pension scheme to which the member is entitled.

Section 61N(3) is also amended to reflect the addition of 61L(c). This section concerns the treatment of funds that are transferred into one of the new pension schemes from a different approved pension scheme after the tax-free lump sum has been paid out from that different scheme. It ensures that the transferred funds are not taken into account when calculating the amount of the tax-free lump sum taken under section 61L(a) or (b). The Bill amends this section by also applying the same treatment to withdrawals made under the new section 61L(c).

Section 61N(4) is substituted in order to reflect the change made to 61L. This section currently requires the administrator to notify the Assessor within 30 days of the date on which a pension lump sum is paid. In addition to the current requirements, the substituted section 61N(4) also requires a scheme administrator to advise the Assessor of the first payment being made to a member in accordance with the new section 61L(c), within 30 days of the payment date.

Section 61P(1) is also amended to reflect the addition of section 61L(c). This section addresses the treatment of any funds that remain after the death of the member and paragraph (b) refers to the scenario where the pension came into payment under section 61L(b) before the death of the member and funds still remain following the member’s death. As this scenario could now also refer to a pension that came into payment under the new withdrawal option at section 61L(c), paragraph (b) is amended to reflect this.

Section 61P(2) is substituted to reflect the change made to the pension provision requirements in section 61H(4)(b) and 61H(5)(b). Currently, under section 61P(2), if any of the member's funds remain after their death, the amount remaining must, in all cases, be commuted within two years of the date of death. However, the substituted section 61P(2) provides that commutation within two years must still occur if the member does not have a surviving spouse/civil partner or at least one surviving child/dependant, or a personal representative. However, if the member is survived by any of those persons, the amendment allows two options: one is commutation within two years in accordance with the scheme rules while the other option enables a surviving individual, in accordance with the scheme rules, to choose to take pension payments. If the second option is selected, the person who will receive the payments can choose between the same three withdrawal options that were available to the member under section 61L.

Finally, a new section 61PA is inserted. The new section enables Treasury to make regulations to cap transfer and exit fees charged by providers of the new pension scheme if such a measure is considered necessary.

Clause 3 also provides that when the amendments set out above come into operation all existing pension schemes which have already been approved by the Assessor under Part 5A will automatically retain approval if changes are made in respect of those amendments (normally, if a scheme approved by the Assessor is subsequently altered, approval will cease to apply unless the alteration is approved by the Assessor).

Clause 3 further provides that the amendments to the pensions TTO will be taken to have come into operation at the same time as the original pensions TTO came into operation.

<u>Clause 4 – Amendments to the avoidance TTO</u>

Clause 4 makes the following amendment to article 4 of the Income Tax (Non-Corporate Taxpayers) (Temporary Taxation) Order 2018. Article 4 inserts new section 2PB into the *Income Tax Act 1970*.

The clause inserts subsection (1A) into section 2PB. The new subsection sets out three scenarios to which the section will not apply providing the Assessor is presented with satisfactory evidence to that effect.

The clause also provides that the above amendment will be taken to have come into operation at the same time as the original avoidance TTO came into operation.

<u>Clause 5 – Amendments to the Income Tax Act 1970</u>

Clause 5 makes three amendments to the *Income Tax Act 1970* ("the 1970 Act").

The first of these amends section 88(2) which concerns the composition of the Income Tax Commissioners. This section currently provides for the Commissioners to consist of a Chairman and eight commissioners appointed by the Appointments Commission. It also enables the Chairman to appoint a suitably qualified and experienced commissioner to act as a deputy chairman. Clause 5 substitutes paragraph (c), concerning the appointment of the eight commissioners, to introduce a requirement for at least one of the eight individuals to be a barrister, advocate or solicitor of at least 7 years' standing. This amendment will ensure that the commissioners include at least one person who is suitably qualified and experienced to be appointed to act as deputy chairman.

The second amendment to be made by clause 5 is to section 120(1) which contains definitions for the 1970 Act. The amendment expands the existing definition of "tax position" to include compliance with the Common Reporting Standard (the OECD's standard for automatic exchange of financial account information in tax matters). This will enable the existing inspection powers in the 1970 Act to be used to investigate suspected cases of non-compliance with the Common Reporting Standard.

Finally, the third amendment to the 1970 Act inserts a new section 63CA. This new section concerns any company that is tax-resident in the Island but is incorporated in another country. The section introduces a requirement for such a company to appoint a "nominated officer" who is tax-resident in the Island. It also requires that officer to hold information on the legal owners of the company and to provide the Assessor with that information if requested to do so. Lastly, it introduces sanctions for failure by the company to comply with the requirement within a specified time and for failure by the nominated officer to hold the information or to provide it when requested.