

Income Tax Bill 2012
Second Reading approved

1. Mr Braidwood to move:

That the Income Tax Bill 2012 be read a second time.

The President: Item 1 is the Income Tax Bill for Second Reading. I call on Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Madam President, this Bill confirms six Temporary Taxation Orders, repeals certain spent Income Tax legislation, makes various amendments to the Income Tax Act 1970 and amendment to the Income Tax Act 1989. The Bill is divided into six parts and has 17 clauses. I will now give an overview of what they are intended to achieve.

The first part of the Bill contains clause 1, which provides the short title of the Act.

The second part of the Bill contains clause 2, which confirms six Temporary Taxation Orders.

Madam President, before I provide Members with an outline of the Orders, I would like to remind everyone of the Temporary Taxation Order process. A Temporary Taxation Order is used by the Treasury to amend and introduce primary income tax legislation. Although the Order can have effect immediately, it will cease to have effect within 12 months on the day on which it was approved by Tynwald, unless a Bill confirming the Order is read for a second time in the House of Keys.

Temporary Taxation Orders to be approved by this Bill are as follows. The first is a Temporary Taxation Order that repeals the legislation providing for the Attribution Regime for Individuals (ARI). This Order was approved by Tynwald in October 2011. The regime was repealed because the European Code of Conduct Group ruled that when it was taken together with the corporate Zero-10 tax regime, it treated companies owned by non-residents beneficially and therefore could be considered to be harmful.

The second Order was approved by Tynwald in this year's Budget and provides that certain deductions will reduce liability to Income Tax and will only be allowed at the lower rate of tax. The deductions to which this Order applies are payments of private medical insurance, donations by individuals to charities and nursing expenses.

The third Order was also approved by Tynwald in February's Budget and prevents maintenance payments from being treated as taxable income.

The fourth Order, also part of this year's Budget, decreases the amount of Personal Allowance Credit payable and enables the amount of payment made to certain individuals to be set by regulations.

The fifth Order, another approved in the Budget, obliges employers to undertake their income tax transactions using the online service provided by Government. The introduction will be phased, applying to large employers first.

The sixth and final Order to be confirmed was approved by Tynwald in March of this year and amends the Assessor's information gathering powers. It allows the Assessor to ask taxpayers to provide additional information on their annual Income Tax Return.

Part 3 of the Bill contains clause 3 which repeals spent Income Tax legislation.

Part 4 of the Bill contains two clauses which amend the provisions regarding Temporary Taxation Orders and then move those provisions from the Income Tax Act 1995 into the Income Tax Act 1970.

Part 5 of the Bill contains 10 clauses, all of which concern the Income Tax Act 1970. Some of these make consequential amendments and repeals, while others amend the Assessor's powers to call for documents relating to a taxpayer under investigation. This amendment removes an obligation of the Assessor in circumstances where the taxpayer's whereabouts are unknown.

In addition, two new sections are inserted into the Act which amend the Assessor's powers to obtain information required under the terms of an international tax agreement. The amendment allows the Assessor to ask for information to be provided in the form of a sworn deposition.

Two further amendments concern existing statutory information gateways between Government Departments and allow information obtained by the respective gateway to be forwarded, provided that the consent of the disclosing body is given.

The final amendment to the 1970 Act inserts a new schedule which introduces savings and transitional provisions.

Finally, part 6 of the Bill replaces an out of date reference in the Income Tax 1989. In addition, its final clause provides that the Act itself will expire on the day after the promulgation.

Madam President, I beg to move the Second Reading of the Income Tax Bill.

The President: Mr Lowey.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

When one of these Orders went through in the other place with regard to maintenance, it was flagged up at the impact it would have – it was claimed it was going to be tax neutral. It may be for the Treasury, but for the people involved in those transactions it is far from tax neutral.

When maintenance orders were granted for people, the courts would generally take into account that the *payer* would have a level of tax relief, and at the time I think I voted against that provision, and of course this is putting into the primary Act those particular orders and formalising them.

I really hope the Treasury will review the situation because, following that debate, I did receive correspondence from people who had suffered to the tune of, quite literally, thousands of pounds difference to their annual income and it was affecting them. Whether those people have gone back to court or not to have their orders reassessed, I do not know, but at the time there were some pretty serious impacts on people.

I think for Treasury to just say, ‘Well, it is neutral for us,’ is not entirely fair on the people this is going to affect. I think this is not the best part of this legislation and I hope that it will be reviewed in due course with regard to the maintenance, because clearly it does have an effect on people. They said it would reduce a bit of administration. Well, that is no consolation to the people who are affected by this, particularly if it does not change anything in the Treasury coffers. I do not see why they had to change the system.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I think the Bill is very laudable and deals with issues like ARI and so on, but there are areas, I think, that do need a little bit of clarification.

If I could refer to clause 13, clause 13 will allow information obtained from the Department of Social Care and the Collector of Customs and Excise by the Assessor via an existing statutory gateway to be forwarded to another person provided that the consent of the disclosing body is given for it to be forwarded. What are we looking at doing here? Is this to check that people running a business are not claiming benefit? What is the idea of this?

This is something that I do not think we have seen before and I know various Government agencies have to work together, and in fact in the UK now Customs and Excise is part of Income Tax, so perhaps they have gone a bit further than we perhaps have gone on the Isle of Man. But I think we need to know a little bit more about what it is intended to achieve. Thank you.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Can I just comment on clause 4? I think it is my understanding that Temporary Taxation Orders (TTOs) generally fail if they are not confirmed by primary legislation in the year following the Temporary Taxation Order. I think clause 4 now brings in to it, shall we say, a saving provision that allows a Temporary Taxation Order to remain on the statute book until either a vote or appeal.

So I think you are building in, shall we say, a safety net for Temporary Taxation Orders that will become permanent, rather than temporary. So I think it is an interesting piece of drafting by the legislative draftsman and obviously it is a good provision so that all TTOs will not fail if they are not endorsed in primary legislation in the years following.

The President: The mover to reply, unless any other Member wishes to speak?

Mr Braidwood: Thank you, Madam President.

Madam President, I will leave the first till the last. In actual fact, Mr Downie with clause 13, the power is actually there already. It is just that this clause gives the ability to pass on to a third party if one of the party is in agreement for that to be passed on to a third party, but the legislation is already in existence for that gateway. All this is doing is allowing it to be passed on to a third party. I hope that clarifies.

I thank Mr Crowe for his query on clause 4. This will make the drafting of documents simpler and it simply moves the Temporary Taxation Orders into the 1970 Act, but it still must be endorsed by primary legislation within the 12 months.

Mr Crowe: It still must be in –

Mr Braidwood: Yes.

Turning to Mr Turner, Madam President, and maintenance payments, this was agreed in the Budget of this year that the recipient would receive the money and would be taxed on that money against, you could say, the giver of the money, who used to be able to have that put against his tax payments.

I have had a little quote sent over to me:

‘It is not the beginning but the ending of the same that yeildeth the true glory.’

(Laughter)

The President: I wonder where that came from! *(Laughter and interjections)*

Mr Braidwood: So with that, Madam President, I beg to move the Second Reading.

The President: The motion is that the Bill be read a second time. Those in favour, please aye; against, no. The ayes have it. The ayes have it.

Income Tax Bill 2012 Clauses considered

The President: We will move on to clauses. Perhaps we can take clauses 1 and 2 together.

Mr Braidwood: Madam President, clause 1 provides the short title of the Act.

Clause 2 confirms six Temporary Taxation Orders.

Madam President, I think I covered most of the points in clause 2 in the Second Reading and therefore I beg to move that clauses 1 and 2 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 1 and 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3.

Mr Braidwood: Thank you, Madam President.

Clause 3 repeals a number of Income Tax Acts or provisions of Income Tax Acts that have come fully into operation and are therefore spent. The repeal of these Acts and provisions does not affect their previous operation.

The main reason for the repeals is to remove dead wood from the Income Tax parts of the Island’s statute book, therefore making it easier to find items of current legislation. This will produce an ongoing cost saving to Government of not having to reprint such Acts and provisions; however, they will always be accessible in the annual volumes and in previous reprints produced in the Reprints Act 1981.

Madam President, I beg to move that clause 3 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

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

Clause 4.

Mr Braidwood: Thank you, Madam President.

Clause 4 amends section 15 of the Income Tax Act 1995 concerning Temporary Taxation Orders (TTOs). It provides that a TTO will apply to all future tax years, unless it states otherwise. Also, once confirmed by an Act, a Temporary Taxation Order becomes permanent, but can still be amended by a future TTO.

The inclusion of these provisions in section 15 will remove the need for them to be included in each individual Temporary Taxation Order and confirmatory Act, as has been the case to date, and will make the drafting of those documents simpler.

The clause also provides that any Act or any provision of any Act that confirms a Temporary Taxation Order will be automatically repealed on the day after the Act's promulgation, by which time they will be considered to be spent.

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

Mr Lowey: I beg to second and reserve my remarks.

The President: Mr Callister.

Mr Callister: Thank you, Madam President.

During the First Reading, I have got a note here against clause 4 – I am not absolutely certain it is the right clause, but I think it is – where the question of returns made online were referred to and the mover, I think, told us that these would only apply to employers with over 100 employees.

It turns out that all the accountants on the Isle of Man, who are handling accounts for companies, do have to use online returns, whether or not there are 100 people or just one person. So it is not strictly accurate to say that the '100' figure is the figure that is being used by the Treasury if the accountants have to in fact work online with all of their customers, or clients, then it can be a company with two or three people even, or just a single person.

The President: I am not sure it is relevant to this clause, but –

Mr Callister: No, I was not certain of that.

The President: Well, I think we have passed it already.

Mr Callister: Oh, right.

Mr Braidwood: Madam President, I can clarify, because I think during the First Reading, I did say the introduction of the requirement to use online will be phased in applying to employers with more than 100 employees from 6th April 2012, for employers with more than 10 employees from 6th April 2013 and for five or more employees from 6th April 2014. So there will be, in actual fact, a *de minimus* amount and so where people only have four employees, they will not have to go online to submit their application.

I will have clarification on accountants if they are doing it for a client who has only got four employees or for 10 employees, that they have to do it automatically, but I will... (*Interjections*)

Mr Lowey: It is phased in.

Mr Braidwood: Madam President, I beg to move that clause 4 stand part of the Bill.

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

Clause 5.

Mr Braidwood: Thank you, Madam President.

Clause 5 moves the amended section 15 concerning Temporary Taxation Orders from the Income Tax Act 1995 into the Income Tax 1970.

The main Income Tax Act forms new section 115A. This section sits more comfortably in the main Act and is tidier legislatively as the remainder of the Income Tax Act 1995 has been repealed by clause 3 of this Bill.

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

Mr Lowey: I beg to second and reserve my remarks.

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

Moving to part 5, perhaps we could take clauses 6 to 10?

Mr Braidwood: Certainly, Madam President.

Clause 6 confirms that part 6 of the Bill amends the Income Tax Act 1970.

Clause 7 amends sections 11A and 48B of the Income Tax 1970 by replacing references to the Department of Health and Social Security with the Department of Social Care to reflect the changes in Government structure introduced in 2010.

Clause 8 provides that section 32A of the Income Tax Act 1970 provides for a deduction to be applied in the collection of class 4 contributions. However, as a deduction is no longer applied, clause 8 will repeal this section.

Clause 9 amends section 65A of the Income Tax Act 1970 concerning the election for joint tax treatment by replacing the reference to 'husband and wife's' with 'spouses' or civil partners'. This is coming into effect, Madam President, because of the Civil Partnership Act 2011.

Clause 10 will remove the requirement in cases where the Assessor is not aware of the address of the taxpayer under investigation.

Madam President, I beg to move that clauses 6 to 10 of the Income Tax Bill 2012 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 6 to 10 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 11.

Mr Braidwood: Thank you, Madam President.

Clause 11 inserts two new sections into the Income Tax Act 1970, which concerns depositions for International Information Exchange Agreements. The Isle of Man has now signed 32 International Tax Agreements – six of these are Double Taxation Agreements, while 26 are Tax Information Exchange Agreements. When these Agreements have been ratified by both countries and are in force, requests for information can be made by either party in accordance with the terms of the Agreement.

In some countries which are signatories to a Tax Agreement with the Isle of Man, information is only admissible in court proceedings when produced by a sworn deposition. If this cannot be produced, the person providing the information could be required to attend court in the requesting country in person.

The Assessor of Income Tax currently does not have the power to request information to be provided by means of a sworn deposition. Therefore, in order to help simplify the process of complying with the request, the first of the two new sections, section 105P introduces this power in cases where the information is requested under the terms of an International Tax Agreement.

The new section 105Q makes it an offence for the person requested to provide the information by a sworn deposition to notify the taxpayer under investigation or to disclose to anyone any information which is likely to prejudice the inquiry.

Madam President, I beg to move that clause 11 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Can I just recap on what the hon. mover is saying here? If a taxpayer living on the Isle of Man is required to attend a hearing in another jurisdiction, the other jurisdiction would first of all apply to the Assessor under the Double Tax Treaty for information from that particular client and the Assessor would then ask the High Bailiff to request this person to attend and make a sworn statement to the High Bailiff and that statement would then be forwarded to the tax authority in the jurisdiction that is –

Mr Braidwood: Requesting the information.

Mr Crowe: Is this purely a method of saving the client's expenses in not having to attend the court in another country or is it an administrative issue that helps the Assessor and helps the other jurisdictions?

The President: Does any other Member wish to speak?

Mr Braidwood: Madam President, this is only for certain countries that we have Tax Information Agreements with, otherwise the information could be passed on, but that information in some countries has to be a sworn deposition, otherwise that person who is requiring the information would have to attend the court in that jurisdiction. So in actual fact it saves that person having to go to that country to give the information. A sworn deposition will be sufficient.

Mr Crowe: Right. Thank you.

Mr Braidwood: I beg to move, Madam President.

The President: The motion is that clause 11 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Braidwood: Thank you, Madam President.

Clause 12 amends the statutory information gateway that currently exists between the Assessor and the Collector of Customs and Excise. Under the current terms of the gateway, the Assessor may disclose information to the Collector that is required to assist him in the performance of his duties. However, unlike a number of other existing gateways, it does not allow the Collector to forward information obtained in this way to a third party. This clause therefore updates the terms of the gateway to allow the Collector to forward information obtained through it, provided that the Assessor gives his consent. It also makes it an offence for information obtained in this way to be forwarded without consent.

Madam President, I beg to move that clause 12 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

The last clause in this clause refers to a process. The question I would like to ask is when a person is asked to appear in front of the High Bailiff, or whoever, and provide this information, is this done during the normal process of the courts or is it done *in camera*? What happens if that information is sensitive to a particular business or could be advantageous to a competitor? Are there provisions where that information is shared purely with the High Bailiff and the officials of Government and then forwarded on to the agency who is seeking the information or do the entire press and Manx Radio sit and hear it?

The President: Member to reply.

Mr Braidwood: Thank you, Madam President.

I do not think that... If a sworn deposition is being given, this will be given in private. It will not be in an open court where every Tom, Dick and Harry is sitting in the court and listening to the information which is given. Remember, this will not be the taxpayer; this information is being asked of somebody else and that one deposition will then go to the jurisdiction who is requiring it.

Mr Downie: Right. That is fine. It clears that up.

Mr Braidwood: I beg to move, Madam President.

The President: The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Braidwood: Thank you, Madam President.

Clause 13 also amends the terms of a statutory information gateway. This exists between the Assessor and both the Collector of Customs and Excise and the Department of Social Care, and allows the Collector and the Department of Social Care to disclose information to the Assessor for the purpose of assisting him in the performance of his duties under the Income Tax Acts.

However, as in the previous case, the gateway does not allow any information provided to be forwarded to a third party. This amendment will allow the Assessor to disclose the information obtained via the gateway to a third party, providing the consent of the disclosing body is given.

Also, as in the previous clause, it will be an offence for information obtained in this way to be disclosed without consent.

Madam President, I beg to move that clause 13 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

Mr Downie: Madam President, I just wondered if the Hon. Member could clarify who would be entitled to receive this information? Would it be an agent appointed by the Assessor? Would it be some other agency or body? It is not quite clear. There is a third person referred to in this particular clause and I think I would just like to know or see an example of how this would actually operate.

The President: Mover to reply.

Mr Braidwood: Thank you, Madam President.

Madam President, I presume that the third party could be another department in, say, the UK, or the Department of Social Care in the UK where people have pensions there and are claiming pensions here, and that would be using it in that way so they can obtain information.

The President: The motion is, Hon. Members, that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 14 ad 15.

Mr Braidwood: Thank you, Madam President.

Clause 14 inserts a new cross-heading into the 1970 Act to introduce the new Temporary Taxation Order section at 115A.

Clause 15 inserts schedule 3 into the Income Tax Act 1970. The schedule consists of two paragraphs. Paragraph (1) provides savings provisions to ensure that the ongoing effect of any transitional provisions contained in those Income Tax Acts and provisions are repealed in clause 3.

The second paragraph of the schedule makes provisions regarding section 11A of the Income Tax Act 1970, which is inserted by clause 5.

Madam President, I beg to move that clauses 14 and 15 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

It is interesting to see so many amendments and repeals of legislation. Could the hon. mover just repeat what he said with clause 3 where he talked about the Reprints Act 1981 because I am thinking of a taxation adviser wanting to look through the Isle of Man Income Tax Acts would have a maze of Acts and various repeals. Is there a consolidated Income Tax Act of 1970 which would be reproduced under this Reprints Act 1981?

The President: Mover to reply, please.

Mr Braidwood: Thank you, Madam President.

I think now the way that the legislative draftspeople are using or going and drafting Bills is to repeal. You can see now that once a Bill is introduced, it is automatically repealed and what it is trying to do is make the legislation a lot more simpler instead of having all these...

The note I have just received is something which I was just going to say. This process will make it easier to follow the IT legislation. There is currently not a consolidation, but we are moving towards it. So in actual fact when you go online – I think the majority of people now go online – it is like ourselves, Madam President, with the legislation, now it is all up to date looking online. So it will be the same thing as well. This will make it a lot simpler for people looking at the legislation when everything has been repealed and parts taken out and that is why even with the Income Tax 1995 is being incorporated into the 1970 Act which is the primary Act.

I think Mr Crowe, during the First Reading, Madam President, mentioned why was the 1970 Act superseding the 1995 Act and this is one of the reasons because the 1970 Act is the primary legislation.

Mr Crowe: And you repeal the 1995 Act under clause –

Mr Braidwood: That is right. So everything is going.

So I hope that clarifies for Mr Crowe. If there are any other queries, if he comes back and I will ask Mr Martin to give me the update, that I might have said something incorrectly, Madam President, but apart from that, I beg to move.

The President: I wonder if the mover could just perhaps in some future time confirm whether or not the historic versions of the Bills are still available.

Mr Braidwood: I will clarify that, Madam President.

The President: The motion is then that clauses 14 and 15 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clauses 16 and 17.

Mr Braidwood: Thank you, Madam President.

Clause 16 amends section 12 of the Income Tax Act 1989 by replacing a reference to 'Department of Health and Social Security' with 'Department of Social Care' to reflect the changes in Government structure introduced in 2010.

Clause 17 provides for the Act to expire on the day after its promulgation, by which time it will be spent. This will help to restrict the contents of the Income Tax parts of the Island's statute books to current legislation.

Madam President, I beg to move that clauses 16 and 17 stand part of the Bill.

Mr Lowey: I beg to second and reserve my remarks.

The President: The motion is that clauses 16 and 17 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.