

4.2 Income Tax (Amendment) Bill 2013 – Second Reading approved

The Speaker: We turn now to the Income Tax (Amendment) Bill 2013. Again, I call on the mover, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

This Bill confirms a number of Temporary Taxation Orders and makes amendments to both the Income Tax Act 1970 and the Income Tax (Instalment Payments) Act 1974. It also makes two small amendments to the Interpretation Act 1976 and one to the Customs and Excise Management Act 1986.

The Bill is divided into four parts and has 14 clauses and one schedule. I will now give Hon. Members an overview of what they are intended to achieve. The first part of the Bill contains clauses 1 to 4; of these, clauses 1 to 3 provide the short title, commencement and expiry of the Act, while clause 4 confirms three Temporary Taxation Orders.

Before I provide you with an outline of the Temporary Taxation Orders, or TTOs, I would like to remind you of the TTO process. A TTO is used by the Treasury to amend and introduce primary Income Tax legislation. It was originally introduced in 1995 and 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 12 months of the day on which it was approved by Tynwald unless this House reads a Bill confirming the Order for the second time.

The Hon. Member for Douglas raised the issue of the Temporary Taxation Order a couple of weeks ago in another place. The TTO is not the norm for the introduction of new Income Tax statute; it should only be used when Treasury has to move quickly to introduce or to amend statute. However, in a world where taxation, and in particular international taxation, is changing so rapidly, Treasury has to be in a position to legislate quickly.

The Temporary Taxation Orders to be approved by the Bill are as follows. The first is the Income Tax (Company Residents) (Temporary Taxation) Order 2012, [SD 0682/12]. This Order was approved by Tynwald in December 2012 and helps to simplify the Income Tax position of certain companies with dual residents.

The Bill also confirms articles 3 and 5 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013 [SD 0190/13] and articles 1 and 2 of that Order insofar as they relate to articles 5 and 6. The Order was approved by Tynwald in July of this year. One of the articles updates the Island's legislation concerning the European Union Savings Directive, while the other introduces an obligation for financial intermediaries under the disclosure facility agreed between the Isle of Man Government and HM Revenue and Customs.

Clause 4 of the Bill also confirms the Taxes (International Arrangements) Order, [SD 0315/13]. This Temporary Taxation Order was approved by Tynwald in October 2013 and broadens and consolidates international legislation. In addition, it introduces inspection powers, amends the Assessor's powers to request information and introduces a requirement for insurers to provide certain information. It also includes savings and transitional provisions and makes consequential amendments to the Income Tax Act 1970.

Part 2 of the Bill contains five clauses, all of which concern the Income Tax Act 1970. One of these inserts two categories of remuneration on which Income Tax is payable. A further amendment consolidates the legislation regarding taxation and social security benefits and enables Treasury to exempt a benefit from taxation by means of secondary legislation. A further amendment introduces a new part heading and a new criminal offence of fraudulent evasion of Income Tax. Finally, part 2 of the Bill makes two minor amendments to the Temporary Taxation Order legislation, introducing one definition and amending an existing one.

Part 3 of the Bill contains four clauses which govern the Income Tax (Instalment Payments) Act 1974. These insert part headings into the Act and introduce a number of new definitions. They also introduce a new part, consisting of six sections. The new part will address the use of personal service companies and will, in the appropriate circumstances, deem an individual to be employed by the client of a professional service company rather than by the personal service company itself. This will ensure that a personal service company cannot be used to defer or to avoid the payment of tax.

My intention to introduce this legislation was mentioned in my Budget speech last year. I want to ensure that our tax system is fair and that all employees are treated in the same way for Income Tax purposes. This new legislation will ensure that employees are treated in the same way, whether they work through a company or not. Although this legislation will only introduce new tax legislation, it is my intention to also introduce legislation that has the same effect for National Insurance purposes.

Part 4 of the Bill contains one clause, which gives effect to the schedule. The schedule itself makes a number of minor and consequential amendments to the Income Tax Act 1970 and to the Income Tax (Instalment Payments) Act 1974. It also inserts two definitions into the Interpretation Act 1976 and amends a reference to the collection of customs and excise in the Customs and Excise Management Act 1986.

Mr Speaker, I beg to move that the Income Tax (Amendment) Bill 2013 have its Second Reading.

The Speaker: Hon. Member for Middle.

Mr Quayle: Thank you, Mr Speaker.
I beg to second and reserve my comments.

The Speaker: Hon. Member for Michael.

Mr Cannan: Thank you, Mr Speaker.

I do have a couple of issues with this. I did, actually, earlier this morning, raise that with the Treasury Minister and I do apologise to him for not having brought this to his attention slightly earlier, but I have mentioned it before in here and that is the issue around part 2 in the document before us, the deemed employment and the issue around personal service companies.

I can see what the Treasury Minister is trying to do, but it is very common practice in the business sector to hire in individual contractors, for example, under a personal service company arrangement, whereby the contractor is using, say, a limited company for which to conduct its services, and those terms of employment are maybe for short-term periods – anything from, I suggest, a month to 12 months in practice. In practice, I have seen many occasions where, in fact, a company which may be conducting a major change process may have hired in multiple contractors on this type of basis – so, individuals who are actually providing their services through a personal service company.

Therefore, under this Act it would appear to me that the liability... or there is then a potential... what we are doing is putting a potential liability onto the client or the employer for the payment of employment National Insurance and Income Tax.

I am just concerned that what we are doing with this is we are providing a much broader web here to catch maybe a small number of infringers, i.e. people who are abusing this process and are being effectively held in continual employment by using a personal service company. So, I would like to ask the Treasury Minister if he would be prepared to give me a comment on that general point.

I think he has kindly offered to provide some more specific information as to exactly how much impact this will have and how many people he suspects are currently abusing the system, because I think it is important that we do not bring in an Act here or legislation that potentially might impact on other areas or create an additional burden for businesses who are genuinely trying to push through significant projects for the benefit of themselves and for the Island. So clarification would be welcomed.

Thank you, Mr Speaker.

The Speaker: Hon. Member for Douglas West, Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

Minister, I apologise if I missed a briefing in respect of this Bill.

Can the Minister advise this House whether he now thinks that it would have been better to bring what was covered in the Temporary Taxation Order we covered a couple of weeks ago to this Bill, given some of the issues that have been raised? I should say, though, I greatly appreciate his perception of the need for urgency and also his acknowledgement this morning that there is an issue that has been acknowledged about that.

A specific question arising from that: can I ask... in the context of my question and the points I made in another place a couple of weeks ago, can the Minister comment on why a new definition is needed in clause 9 and why there is a need to make a minor grammatical correction? Was it a question of more haste, less speed?

Also, can the Minister advise whether the taxation of Social Security benefits would be changed by the signing of this Act as currently drafted; and if so, how? Also, what is the need for changes to clause 7, given what might be happening in the forthcoming years?

Finally, given all the new responsibilities but also powers that the office has under what is now coming under Temporary Taxation Orders but previously under TIEAs and so on, would the Minister consider reintroducing the role of Inspector of Taxes, or something similar, through amending this legislation, or perhaps subsequent legislation, and can he remind us why I believe that role was removed in 2011 and what happens now? How is that role carried out now if there are errors being made or potential errors being made in the future?

The Speaker: Hon. Member for Onchan, Mr Karran.

Mr Karran: Eaghtyrane, I think the point that concerns me, as far as the whole issue of this Bill and the tax policy, is that we have ended up with a tax policy that is quite perverse in the fact that we find out... we heard the Minister, in Question Time, saying to us that the people who earn it should pay it. The reality is that the present Income Tax policy is not the case; it is... *[Inaudible]* that there are those who do not earn the real amounts... are not paying under the present system; and I am disappointed to see, in this Income Tax (Amendment) Bill 2013, no recognition of trying to go back to the days where it was that, proportionately, those who were richer paid more than those who had not got the income in the first place.

I would also say that I am concerned about the Second Reading of this Bill. The problem we have at the moment is I think... there is not one of us, on clause 8, who would not agree that the evasion offence, as far as general provisions about offences for fraudulent evasion of Income Tax, should be a criminal matter. My concern is, allowing for the fact that if you have got a tax cap... it is not relevant as far as that is concerned, and my concern is the fact that small businesses are increasingly having to do the Treasury's job. I had somebody in... I believe there has been a response from one of my constituents the other day about this issue – that they have concerns about it. I am just concerned that this is being brought in, being used as a stick against the smaller businesses that are struggling at the present time, trying to cope, and I would just be interested in the issues, as far as the standard of proof is concerned and the problems that we have with equality of arms. If you are a small business entity and you have the likes of the Isle of Man Government to stand up to, you have got little or no chance of being able to stand up. What assurances can we see that this will be used on the basis of not just attacking small business – people who cannot fight back?

Vainstyr Loayreyder, I know that the Minister will almost certainly twist what I say and try and misrepresent me, but I do feel that no-one in this House is against the offence of fraudulent evasion of Income Tax. What I am concerned about is we give more sweeping powers and do we have some way of putting some sort of structure in so that people can have some sort of balance, as far as them

taking them on, as far as making sure that this is not used just to try and get people to say, 'Oh, take what you want. I cannot afford to take you on.'? I want some assurances as far as that is concerned.

The Speaker: I call on the Minister to reply.

Mr Teare: Thank you very much, Mr Speaker and I would just like to thank my seconder once again.

The Hon. Member for Michael, Mr Cannan, has raised a very good point about personal service companies. It is not the intention of Treasury to catch short-term contracts. We do not regard those as being an issue; we regard those as being quite genuine. What we are looking for, really, is a longer-term commitment, and as I have said privately to the Hon. Member – I will now repeat for the benefit of this Hon. House – Treasury will give a full briefing on this Bill before we proceed to the clauses stage.

I would like to also mention to Hon. Members that, over the last 12 to 18 months, our Income Tax department has been taking a closer interest in those who claim to be self-employed but are still working for one company. This really has helped us to collect more National Health Insurance contributions and to improve the income coming in to Government, to ensure that it is fair and that people pay where there is a liability due.

The Hon. Member for West Douglas, Mr Thomas, said that he thought it was better to defer a Temporary Taxation Order until the Bill was moved. With respect to him, I would say that in this matter we had to give an undertaking to the OECD in respect of the convention on mutual assessment of tax matters and we could not do it until we had the authorisation from another place.

He then went on to suggest that it was a case of more haste, less speed with the amendment to clause 9. Inevitably, with the best will in the world, even with legislation that has been considered over a long period of time, unfortunate drafting errors or problems will creep in. He asked why we had not continued the 'Inspector of Taxes' title. The previous incumbent unfortunately passed away, so that role, I understand, is dealt with by Internal Audit, and External Audit as well, so there is a function there which would replicate the role undertaken by the former inspector.

The Hon. Member for Onchan, Mr Karran, has said that the policy was perverse. I feel that it is not perverse. We are trying to ensure that the tax net is widened and is exercised in a fair way. This goes back to the first Budget that I delivered, which was based on the principle of fairness.

He asked about clause 8 criminality. What I would say is that with the concept of criminality the burden of proof is much higher in a criminal case than it is in a civil case.

He felt that small businesses were having to do the Treasury's job. No, that is not the case and I do not regard it as disproportionate use. There has to be, on the part of the prosecution... they have to prove that there was a clear intention to commit fraud. I would repeat that: it has to be a clear intention, not just an accidental failure to comply with the legislation; it has to be a criminal act.

With that, Mr Speaker, I beg to move that the Second Reading of this Bill do take place.

The Speaker: I put the motion that the Income Tax (Amendment) Bill 2013 be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.