

4.1. Income Tax (Amendment) Bill 2013 – Clauses considered

The Speaker: Item 4, Bill for consideration of clauses: the Income Tax (Amendment) Bill.
I call on the mover, Mr Teare, to move the clauses.

Mr Teare: Thank you, Mr Speaker.

This Bill contains 14 clauses and one schedule. It confirms two Temporary Taxation Orders and part of a third, and makes amendments to the Income Tax Act 1970 and the Income Tax (Instalment Payments) Act 1974. It also introduces two definitions into the Interpretation Act 1976 and makes one consequential amendment to the Customs and Excise Management Act 1986.

Mr Speaker, turning to the Bill, clause 1 provides the short title of the Bill.

I beg to move that clause 1 do stand part of the Bill.

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

The Speaker: Hon. Members, the motion is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Teare.

Mr Teare: Clause 2 confirms that the Act will come into operation on 6th April 2014.

I beg to move that clause 2 do stand part of the Bill.

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

The Speaker: I put the question that clause 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 Teare.

Mr Teare: Clause 3 provides for the Act to expire on the day after its promulgation, by which time it will be spent. It also confirms that its expiry will not affect the provisions of the Act.

Mr Speaker, I beg to move that clause 3 do stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second and reserve my remarks, sir.

The Speaker: I put the question 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 Teare: Clause 4 confirms two Temporary Taxation Orders and part of a third.

The first of these is the Income Tax (Company Residence) (Temporary Taxation) Order 2013 [SD No 0682/12], which was approved by Tynwald in December 2012. This Temporary Taxation Order simplifies the Income Tax position of companies with dual residence.

It provides that if a company is incorporated in the Isle of Man but is managed and controlled in another country it will be accepted as only resident in that other country for Manx Income Tax purposes, provided that the following conditions are met: the company is tax resident in the other country under that country's law and the company is tax resident in the other country by virtue of a residence tie-breaker in a tax agreement; or the highest rate at which any part of a company's profits may be charged in tax to the country is at least 20%.

Any change to the residence of a company brought about by this Temporary Taxation Order will not affect the Assessor's powers to assess that company on Isle of Man source income.

Feedback from a consultation exercise proposing this change was positive and indicated that it should provide new business opportunities and potentially bring commercial advantage for the Island.

Clause 4 also confirms articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013 [SD No 0190/13], which was approved by Tynwald in July 2013.

Articles 1 and 2 of that Order are also confirmed insofar as they relate to articles 5 and 6.

Article 5 makes a small change to the Island's legislation concerning the European Union Savings Directive. It amends the Income Tax (Exchange of Information) (Temporary Taxation) Order 2010 to reflect the Isle of Man's move to automatic exchange of information in its application of the directive from 1st July 2011. As a result of this move, agreements between the Isle of Man and new members of the European Union will not include articles regarding retention tax, as that option is no longer available. Article 5 makes a minor amendment to the wording of the legislation in order to reflect this change.

Article 6 introduces an obligation for financial intermediaries to comply with the requirements of the disclosure facility between the Isle of Man Government and HM Revenue and Customs which came into operation in April of this year. Under the terms of the Memorandum of Understanding signed by both parties, the Government will require financial intermediaries to make relevant clients aware of the facility on two occasions: firstly, before 31st December 2013; and secondly, in the final six months of its operation in 2016.

The final Temporary Taxation Order to be confirmed by this clause is the Taxes (International Arrangements) Order 2013 [SD No 0315/13], which was approved by Tynwald last month. This Order inserts a new part into the Income Tax Act 1970 which consolidates international enabling legislation from section 54 of that Act and part 3 of the Income Tax Act 2003.

The new part also enables the Council of Ministers to ratify by order international agreements such as the Convention on Mutual Administrative Assistance in Tax Matters.

In addition, the Order allows the Assessor to appoint authorised officers and introduces powers for those officers to inspect business premises, if necessary, and to inspect, copy and retain documents, if required. The inspection powers also include enforcement measures. These amendments bring the Island's Income Tax powers more in line with those of other jurisdictions.

The Order introduces a requirement for insurers to provide the Assessor with specified information on an annual basis regarding policies held by Isle of Man policyholders. Insurance industry representatives had been consulted on this measure before it was introduced.

It also includes savings and transitional provisions and makes consequential amendments to the Income Tax Act 1970 to reflect the international changes.

In addition, the Order amends the Assessor's powers to call for documents when investigating a taxpayer. The amendments will allow the Assessor to call for information, as well as documents, and to request a document, the whole of which is more than six years old, if the Assessor believes it to be relevant to the investigation. These changes are also applied in each Order ratifying an international agreement already signed by the Order.

Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

The Speaker: Mr Anderson.

Mr Anderson: Thank you, Mr Speaker.

I beg to second and reserve my remarks.

The Speaker: Mr Watterson.

Mr Watterson: Mr Speaker, as the hon. mover of the Bill has explained, this amendment makes a number of minor corrections to one of the Temporary Taxation Orders thus confirmed by the Bill. The amendments largely correct references and confusions that have arisen in the amended text and make no material changes.

I beg to move the amendment standing in my name:

Page 6, line 5 at the end insert —

‘subject to the following provisions of this section.

(4) In article 9—

(a) in paragraph (3)(b) (amendment of section 105D(3)), in the substituted subsection (3), for “taxpayer” substitute “person”;

(b) in paragraph (8) (amendment of section 105K(2)) —

(i) for “105K(a)” substitute “105K(2)(a)”; and

(ii) for “, or to conceal” substitute “or conceal”;

(c) for paragraph (9)(c)(ii) (amendment of section 105L(2)(b)) substitute —

“(ii) for paragraph (b) substitute —

“(b) after —

(i) the document has been delivered;

(ii) the information has been provided; or

(iii) in a case within section 105C, the document has been inspected; or”.

(5) In article 11(2) for “Articles 12(2) to 12(11)” substitute “article 9(2) to (11)”.

(6) The amendments made by subsections (4) and (5) are to be treated as having always had effect.’

The Speaker: Mr Quirk.

Mr Quirk: I second, sir, and reserve my remarks.

The Speaker: I put the question. First of all, the amendment in the name of Mr Watterson: those in favour of the amendment, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, as amended: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, please, Mr Teare.

Mr Teare: Thank you, Mr Speaker.

Clause 5 confirms that part 2 of the Bill amends the Income Tax Act 1970.

I beg to move that clause 5 do stand part of the Bill.

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

The Speaker: I put the question that clause 5 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 6.

Mr Teare: Clause 6 amends section 2 of the Income Tax Act 1970 to ensure that income which arises in respect of deemed employment under part 3 of this Bill in respect of directed remuneration under section 6 of the Income Tax (Instalment Payments) Act 1974 is income chargeable to Income Tax.

Mr Speaker, I beg to move that clause 6 do stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: I put the question that clause 6 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Teare: Clause 7 substitutes a new section 48 into the Income Tax Act 1970. This clause has two functions: (1) it ensures that all benefits are chargeable to Income Tax; and (2) it then lists those benefits that are not to be charged to Income Tax.

It also allows Treasury, by an Order that is to be approved by Tynwald, to either make a benefit chargeable to Income Tax or to remove the benefit from liability to Income Tax. This will allow Treasury to bring into secondary legislation the recent concession which was approved by Tynwald on 16th January 2013.

I would like to make it abundantly clear that the substitution of section 48 is purely a housekeeping exercise to bring this section up to date. It does not change the actual Income Tax position of any benefits.

Mr Speaker, I beg to move that clause 7 do stand part of this Bill.

The Speaker: Mr Watterson.

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

The Speaker: I put the question that clause 7 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 8.

Mr Teare: Clause 8 inserts a new section 112K into the Income Tax Act 1970. This section introduces a criminal offence of fraudulent evasion of Income Tax.

Currently, the Island does not have an offence of tax evasion. However, I would like it known that we have a very favourable Income Tax regime – it is more important that everybody pays their fair share. Therefore, the fraudulent evasion of Income Tax should be dealt with seriously and, quite correctly, as a criminal matter.

I would like to stress that this will only be for the most serious of cases but will, of course, act as a deterrent.

Mr Speaker, I beg to move that clause 8 do stand part of this Bill.

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

The Speaker: Clause 8: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

Mr Teare: Clause 9 amends the temporary taxation power in section 115A of the Income Tax Act 1970.

It introduces a definition of 'administration' of Income Tax which clarifies that this includes instalment payments, the deduction or repayment of Income Tax and any other matter for which provision is made by the Income Tax (Instalment Payments) Act 1974.

The clause also amends the definition of 'confirmatory Act' of a Temporary Taxation Order section which is required for parity.

Mr Speaker, I beg to move that clause 9 do stand part of this Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir, and reserve my remarks.

The Speaker: Clause 9: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 10.

Mr Teare: Mr Speaker, before I provide the detail of clauses 10 to 13, I would like to explain why these changes are being introduced.

The taxation of the remuneration of an employee is very straightforward. The individual is paid a salary and their salary, being income, is liable to Income Tax. In addition, the employer deducts an amount of ITIP and National Insurance from that salary, which is paid, together with the employer's National Insurance contribution, into the Treasury each month.

Hon. Members, as you will appreciate, this monthly ITIP and National Insurance is extremely important for Treasury's cashflow. However, although the taxation of an employee's remuneration is very straightforward, the Assessor has seen evidence in recent years of planning to delay the payment of Income Tax and to reduce the National Insurance that would normally be charged on a salary.

This planning is very simple in some cases and can be lucrative for both the employee and the employer. A client contracts the company to provide a service. That company is usually beneficially owned by an individual who will themselves provide the service to the client. As the service is provided through a company, the payment for the service is made to the company and is not considered to be remuneration of the individual. Therefore it is not subject to ITIP, employee's or employer's National Insurance. The payment made by the client to the company is chargeable as income, but will be liable to the general corporate rate of zero. Any distribution subsequently made by the company to the individual will, of course, be liable to Income Tax on the recipient when it is paid.

The amendments made to the Income Tax (Instalment Payments) Act 1974 by clauses 10 to 13 of this Bill, together with the amendment in clause 6, will stop this planning being effective. In essence, if a client employs an individual, it will not matter whether their services are provided through a company, a trust or any other structure. The amount paid for the services will be treated as remuneration of the individual and subject to Income Tax with an ITIP deduction.

As this is an Income Tax Bill, it does not include any new provisions for National Insurance. However, I do intend to ensure that the National Insurance planning in this area is also stopped and I will introduce an order to have similar effect for National Insurance if this Bill receives your support. Hon. Members, I want to ensure that our Income Tax and National Insurance systems are fair and that everyone pays their fair share.

In the response to the public consultation on this matter, Treasury agreed that the Assessor would introduce a clearance procedure for employers to categorise any work relationship. This is still the case. The Assessor will also issue clear guidance on the matter of categorisation of employment status and publicly raise awareness of this matter.

Mr Speaker, I would now like to turn to clause 10 of the Bill. Clause 10 confirms that part 3 amends the Income Tax (Instalment Payments) Act 1974.

I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Watterson.

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

The Speaker: Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

After today's sitting, I just wonder whether the Treasury Minister could reaffirm that those who are in the Island do pay their fair share of tax and National Insurance contributions? *[Inaudible]*

The Speaker: The mover to reply. Mr Teare.

Mr Teare: Thank you, Mr Speaker.

I am pleased to confirm that I am following up on the theme of my first Budget, which was fairness. I think it is only right that those who benefit from the services which are provided by the taxpayer should make a contribution to the tax base of the Island.

Mr Quirk: Hear, hear.

The Speaker: I put the question that clause 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 Teare: Clause 11 inserts a new part 1 heading into the Income Tax (Instalment Payments) Act 1974.

I beg to move that clause 11 do stand part of the Bill.

The Speaker: Mr Watterson.

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

The Speaker: I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12.

Mr Teare: Clause 12 inserts a number of new definitions into the Income Tax (Instalment Payments) Act 1974 that are required for the amendments introduced by clause 13 of this Bill.

Mr Speaker, I beg to move that clause 12 stand part of this Bill.

Mr Watterson: I beg to second, sir.

The Speaker: I put the question that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

Mr Teare: Clause 13 introduces a new part 2 into the Income Tax (Instalment Payments) Act 1974. The new part consists of six sections, 2AA to 2AF inclusive.

Section 2AA clarifies the circumstances in which the new part will be applied. The circumstances require an individual to provide or be under a contractual obligation to provide services to a client in connection with a business carried on by that client. They also require the conditions in section 2AB to be satisfied. In addition, section 2AA clarifies the range of entities that would qualify as a client for the purposes of the part. The section also clarifies that the part will not apply where the third party, which is defined in 2AB, is a genuine employment agency.

Section 2AB sets out the conditions that must be satisfied in order for the new part to apply. These require the client to be resident in the Island for Income Tax purposes or to have a place of business in the Island. The services themselves must be provided under an arrangement involving one or more third parties, rather than directly through the individual client. The final condition to be

satisfied is that if the services were assumed to be provided under a contract directly between the individual and the client, then the individual would have been an employee of that client.

Section 2AC sets out the treatment of the individual, the client and the individual's earnings for the services in those cases where the conditions required by the new part are satisfied. It specifies that the individual be taken to be an employee of the client. The client will be the individual's employer and the individual's earnings are treated as passing from the client directly to the individual.

Section 2AD sets out the treatment of any sum received by the third party for the services when the conditions for the part are satisfied. It specifies that the sum will be treated as remuneration of the individual and also clarifies the treatment of any fee charged by the third party and which forms part of the sum received by them.

Under section 2AE, if an individual is notified of a decision made under the new part, they can lodge an objection to the decision of the Income Tax Commissioners.

Section 2AF, the final section of the new part, clarifies that where the part applies it has no effect on any VAT charge that would be incurred if the part did not apply. It also ensures that any distribution made by a third party to the individual or any sum received by the third party that is charged as remuneration of the individual will not be taxed twice. The section also inserts a new part 3 heading into the Act.

Mr Speaker, I beg to move that clause 13 stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: I beg to second, sir.

The Speaker: Hon. Member for Michael.

Mr Cannan: Thank you, Mr Speaker.

First of all, for the House's benefit, I must declare a potential conflict of interest in that I am a director of an employment agency.

Just speaking in broader terms... The Treasury Minister has already given me these reassurances anyway, but just for the benefit of *Hansard*, basically will he give me the reassurance that those going about their legitimate business – either as interim managers or IT consultants, or providing consultancy on a short-term basis to companies – can carry on without fear of this legislation; also that businesses themselves can be assured that, providing that they are legitimately hiring consultants and short-term employees via these personnel services companies, there is no danger that somehow they are going to get caught up in this?

Of course, this legislation is specifically really intended to catch those who are abusing the system and will carry my full support in doing so.

The Speaker: Mr Teare to reply.

Mr Teare: Sorry if I was a bit presumptive there, sir.

I am pleased to confirm to the Hon. Member who has just resumed his seat that this is not intended to catch those businesses which hire consultants on a short-term basis who are, in effect, hired to undertake a short-term role or function and then they move on to another assignment. I was going to say 'employer', but that is not correct; it should be another assignment. What we are looking at, really, is those long-term arrangements where, if you took the company out of the structure, it would be an employee and employer arrangement.

As I did say in my opening comments, the Assessor of Income Tax is more than happy to discuss individual circumstances with individual potential employers and their clients and, in effect, hold hands.

The final point that the Hon. Member has made is that this is intended to catch an emerging incidence of abuse that we have become aware of.

So, with that, sir, I beg to move that clause 13 stand part of the Bill.

The Speaker: I put the question that clause 13 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 14.

Mr Teare: Clause 14 confirms that the schedule has effect. The schedule makes minor and consequential amendments and consists of four paragraphs.

The first paragraph amends the Income Tax Act 1970 by replacing certain cross-headings with part headings and inserting a new part 14 heading and a part 15 heading. It also renumbers section 106F as A106, relocated immediately under the new part 14 heading, and makes minor amendments to it. In section F108 to J108 it replaces the wording 'sections A108 to J108' with 'this Part'. Section 112 is renumbered as 112L and relocated after section 112K. Finally, the paragraph removes the definition of 'Assessor' from section 120 to reflect a change made by paragraph 3.

Paragraph 2 of the schedule amends the Income Tax (Instalment Payments) Act 1974 by removing the word 'written' from section 1A(3) in order to allow for the possibility of a notice being given by the Assessor in an electronic form.

Paragraph 3 amends the Interpretation Act 1976 by inserting two definitions: one for the Assessor of Income Tax and another for the Collector of Customs and Excise to be defined as 'Assessor' and 'Collector' respectively. References to these posts appear in many different Acts and it is therefore considered appropriate for the Interpretation Act to include a definition of both.

Finally, paragraph 4 amends the Customs and Excise Management Act 1986 by replacing 'the Collector of customs and excise' – in this Act referred to as 'the Collector' – with 'the Collector' to reflect the amendments made by the previous paragraph.

Mr Speaker, before I move that clause 14 stand part of the Bill, I would like to thank the seconder and also my colleague who moved an amendment to clause 4 as well. It is very much appreciated.

With that, I beg to move that clause 14 do stand part of the Bill.

The Speaker: Mr Watterson.

Mr Watterson: Thanking the Minister, I beg to second.

The Speaker: I put the question that clause 14, the schedule, do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business of the House today.

The Minister for Health has asked me to remind you of a presentation taking place in the Barrool Suite at one o'clock sharp, at lunchtime today.

The House will now stand adjourned until the next sitting, which will take place at 10 o'clock on 19th November in Tynwald Court.