

## **Income Tax (Amendment) Bill 2013 – Second Reading approved**

**The President:** So I call on the Hon. Member, Mr Braidwood, to take the Second Reading of the Income Tax (Amendment) Bill 2013.

**Mr Braidwood:** Thank you, Madam President, and can I thank Members of Council for allowing me to go ahead with the Second Reading by using the suspension of Standing Orders.

Madam President, this Bill confirms three temporary taxation orders and makes amendments to both the Income Tax Act 1970 and 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.

I will now give 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. The temporary taxation orders to be approved by this Bill are as follows.

The first is the Income Tax (Company Residence) (Temporary Taxation) Order 2012. This Order was approved by Tynwald in December 2012 and helps to simplify the income tax position for certain companies with dual residence.

The Bill also confirms articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013 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 Her Majesty's Revenue and Customs.

Clause 4 of the Bill also confirms the Taxes (International Arrangements) Order 2013. 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 the taxation of social security benefits and enables Treasury to exempt a benefit from taxation by means of secondary legislation. Another amendment introduces a new part heading and the 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 concern 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 employed by the client of the personal service company rather, than by the personal service company itself. This will ensure that a personal service company cannot be used to defer the payment of tax.

The Treasury Minister mentioned his intention to introduce this legislation in his Budget speech last year. The changes will help to ensure that our tax system is fair and that all employees are treated in the same way for income tax purposes, whether they work through a company or

not. Although this legislation will only introduce new income tax legislation, the intention is 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 two to the Income Tax (Instalment Payments) Act 1974. It also inserts two definitions into the Interpretation Act 1976 and amends a reference to the collector of Customs and Excise in the Customs and Excise Management Act 1986.

Madam President, I beg to move the Second Reading of the Income Tax (Amendment) Bill 2013.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks

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

### **Income Tax (Amendment) Bill 2013 – Clauses considered**

**The President:** We will move on to clauses, taking clauses 1 to 3 together.

**Mr Braidwood:** Thank you, Madam President.

Clause 1 provides the short title of the Act.

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

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.

Madam President, I beg to move that clauses 1, 2 and 3 stand part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clauses 1, 2 and 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 confirms two temporary taxation orders and part of a third.

The first of these is the Income Tax (Company Residence) (Temporary Taxation) Order 2012, which was approved by Tynwald in December 2012. This temporary taxation order simplifies the income tax position for 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 to tax in the other 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 new commercial advantages for the Island.

Clause 4 also confirms articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013, 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 Her Majesty's 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, which was approved by Tynwald in October 2013. 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 brings the Island's income tax powers more in line with those of other jurisdictions. The order introduces a requirement for insurers 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 to 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 to each order ratifying an international agreement already signed by the Island.

Madam President, an amendment was introduced into the Bill at the consideration of clauses, which addresses clause 4. The amendment makes a number of minor corrections to the third temporary taxation order confirmed by the clause. These largely correct references and confusions that have arisen in the amended text and make no material changes.

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

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** I thank the hon. mover and will be supporting this clause.

Just an interesting point is that the Assessor will now be able to call for documents the whole of which is more than six years old, if it is considered relevant to the period under investigation. I

think the Statute of Limitations makes people keep documentation for up to six years. (**A Member:** Correct.) If documents have been destroyed just in the normal course of business by shredding because of the Statute of Limitations, how will this affect the Assessor's powers? Will make it impossible to achieve, shall we say? That is the question.

**The President:** Does any other Member wish to speak? The mover to reply.

**Mr Braidwood:** Thank you, Madam President.

Mr Crowe is quite correct, such as VAT information is required to be kept for six years and then could be destroyed. Therefore, I think if a person got to six years and destroyed the documentation, there is not a lot that the Assessor would be able to do. In some companies, they do keep documents longer and if they were available the Assessor would be able to obtain those documents.

But Mr Crowe is quite correct that it is six years on the limitation.

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.

Clauses 5 and 6.

**Mr Braidwood:** Thank you, Madam President.

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

Clause 6 amends section 2 of the Income Tax Act 1970 to ensure that income which arises in respect of deem employment under Part 3 of this Bill, and in respect of directed remuneration under section 6 of the Income Tax (Instalment Payments) Act 1974, is income chargeable to income tax.

Madam President, I beg to move that clauses 5 and 6 stand part of the Bill.

**The President:** Hon. Member, Mr Downie

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clauses 5 and 6 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 7.

**Mr Braidwood:** Thank you Madam President.

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 remove a benefit from liability to income tax. This will allow Treasury to bring into secondary legislation a recent concession which was approved by Tynwald on 16th January 2013.

Madam President, I would like to make it 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.

Madam President, I beg to move that clause 7 stand part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Can I thank the hon. mover for just clarifying that point, the issue I raised at the First Reading.

Thank you.

**The President:** Mover to reply.

**Mr Braidwood:** I just thank Mr Crowe for his observations, Madam President.

**The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 8.

**Mr Braidwood:** Thank you, Madam President.

Clause 8 inserts a new section 112K into the Income Tax Act 1970. This new section introduces a criminal offence of 'fraudulent evasion of income tax'.

Currently, the Island does not have an offence of tax evasion. However, as we have a very favourable income tax regime, it is even more important that everyone pays their fair share. Therefore the fraudulent evasion of income tax should be dealt with seriously, and quite correctly, as a criminal matter.

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

Madam President, I beg to move that clause 8 stand part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Crowe.

**Mr Crowe:** Again, just an observation. I think when we all fill our income tax form in, we sign a declaration that we have declared all our worldwide income and income that we enjoy the benefit of. I think if income is under-declared, the Assessor currently has powers to levy penalties and extra taxation under the current regime. But I think this is now making it a criminal offence for evasion.

That was the only comment I wanted to add.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Just briefly comment, Madam President, it is amazing that there has been no such power prior to this – I had always imagined there had been. And I presume they actually deal with it, as Mr Crowe has just said, by negotiation and by financial penalty rather than any other sanction. I am quite surprised that I did not know this, that this is the first time this has been in being.

**The President:** The 'Bluff Act'!

**Mr Butt:** Yes the 'Bluff Act' has been repealed!

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

Just for a point of clarification from the hon. mover. So presumably, if the amount of tax evaded was £10,000, the fine would be £30,000.

**A Member:** It doesn't say that.

**Mr Wild:** Just trying to understand the impact of that...

**The President:** Yes, whichever is the greater, yes – so it could be.

**Mr Wild:** It would be, right.

**Mr Braidwood:** Three times, yes... Sorry, Madam President, I will wait until everybody...

**The President:** Does anyone else wish to comment?  
Mover to reply.

**Mr Braidwood:** Thank you Madam President, and I thank Mr Crowe, Mr Butt and Mr Wild.

Yes, I think because we are a low tax jurisdiction and anybody who has been evading income tax, as Mr Butt and Mr Crowe have said, this was generally with the income tax authorities where they would have to pay a charge, they would have to pay that tax and then there would be penalties. This is putting it down in statute that it is a criminal offence to evade Income Tax and also it would be the three times.

If we look at the Bill itself on the 112K Fraudulent Evasion of Income Tax, under subsection (1)(b):

'... on summary conviction –

(i) to custody for a term not exceeding 6 months,

(ii) a fine not exceeding £5,000, or three times the amount of tax evaded, whichever is greater...'

So, in actual fact even if it was £10,000 or £20,000, it could be £60,000, three times. (**Mr Wild:** Thank you.)

I beg to move, Madam President, that clause 8 stands part of the Bill.

**The President:** The motion s that clause 8 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 9.

**Mr Braidwood** Thank you Madam President.

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. This clause also amends the definition of 'confirmatory Act' in the temporary taxation order section, which is required for clarity.

Madam President, I beg to move that clause 9 stand part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Madam President, can I just refer to the previous clause, very briefly.

The mover mentioned the six months imprisonment: I think it is important for the public record to say that, on information, they can be dealt with, (**Mr Braidwood:** Seven years.) get seven years' imprisonment. So that message needs to go out quite clearly, I think, that on indictment they could get seven years.

Thank you.

**The President:** Well, (*Laughter*) a little jump back, Mr Butt, but there we go! I do not think you need to reply to that, but you may do.

**Mr Braidwood:** I do thank... I was only reading out actually the section which was summary conviction, which Mr Wild had mentioned, Madam President.

**The President:** Perhaps even more significant is you could be fined both, £5,000 and –

**Mr Braidwood:** It could be that, term not exceeding three times or it is both on summary conviction, where they could have six months.

But in actual fact, referring back to clause 8, Madam President, Mr Butt was quite right: a person who fraudulently evades income tax commits an offence and is liable on conviction on information, to custody for a term not exceeding seven years, a fine or both. Just for *Hansard* –

**The President:** We are now dealing with clause 9.

**Mr Braidwood:** I know, but clause 9 – I would just like the clause to stand part of the Bill, Madam President.

**The President:** The motion is that clause 9 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clauses 10 and 11.

**Mr Braidwood:** Thank you Madam President.

Before I provide the details of clause 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, and the individual is paid a salary and that 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 Treasury each month. 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 avoid the National Insurance that would normally be charged on the salary.

This planning is very simple in some cases and can be lucrative for both the employee and employer. A client contracts a 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 Income Tax on the recipient when it is paid.

The amendments to the Income Tax (Instalment Payments) Act 1974 by clauses 10 to 13 of this Bill, together with the amendment of 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, the intention is to ensure that their National Insurance planning in this area is also stopped and an order having similar effect for National Insurance will be introduced if this Bill receives your support. This will help 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 employees to categorise any working relationship. This is still the case.

The Assessor will also ensure clear guidance on the matter of categorisation of employment status, and publicly raise awareness of this matter.

Madam President, I am sorry for that long introduction but I think it gives a clarification to these clauses why we are introducing it.

I would now like to turn to clauses 10 and 11 of the Bill. Clause 10 confirms that Part 3 amends the Income Tax (Instalment Payments) Act 1974, and clause 11 inserts a new Part 1 heading into the Income Tax (Instalment Payments) Act 1974.

Madam President, I beg to move that clauses 10 and 11 stand part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

I am not sure if this applies yet but, from the introduction the mover gave to these two clauses, does that mean that people can no longer use company structures to lower their income to gain access to, say, education maintenance grants, to student loan grants, child benefit etc?

Is this a way of stopping them from using their company structures to avoid these incomes, which would prevent them from getting the grants?

**The President:** Not under those two clauses...

**Mr Butt:** Not under those two clauses, no, the introduction.

**The President:** The Hon. Member, Mr Turner

**Mr Turner:** It was to do really with the opening comments by the mover.

Is this the same sort of practice that was well publicised with the Jimmy Carr case in another jurisdiction, and if...?

**The President:** We might be coming to that under 'deemed employment', so perhaps we could just hold your comments until we –

**Mr Turner:** I will. He knows it is coming now anyway, so there we go – I will hold.

**The President:** The Hon. Member to reply.

**Mr Braidwood:** Thank you, Madam President.

And turning to the point which was raised by Mr Butt, on personal service companies. I know of when he has mentioned about grants for students, I know of cases a few years ago where one

individual who had a company and only paid him a certain amount, and then the amount he was getting from his company, he submitted to such as the Department of Education and was able to achieve full grant student awards for his child.

The other party then paid himself a dividend from the company which would get round... instead of it being fully paid as a salary. And this is one of the reasons which... and this was quite well known, quite common practice quite a few years ago.

This, on this personal service company, is slightly different because it is not where he has his own company and is paying himself a dividend; this one is when the person is employed by another company, as such, and is basically an employee of that company and he has now got a personal service company.

So what he would do would put an invoice to the company on the work he has done say in one month, he would then be paid that amount – the personal service company would pay that amount of the invoice – and then the person who has the company would probably receive only a small remuneration from that, because again he would be able to take the money as a dividend. But that dividend would be taxable, later on, when it came out of the personal service company.

I hope I am clear on that, Madam President.

**Mr Butt:** So these clauses do not specifically cover that, the issue I raised as yet.

**Mr Braidwood:** If he is using... that does not come under a personal service company; that would come under a limited company which the person himself would own.

I beg to move, Madam President, that clauses 10 and 11 stand part of the Bill.

**The President:** Clauses 10 and 11 are dealing only with the fact that this applies to the Income Tax (Instalment Payments) Act 1974 and introduces an element to the long title.

So the motion is, Hon. Members, that clauses 10 and 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 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.

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

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**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:** I think this is the nub of the whole Bill, Madam President.

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 that 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 and the 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 will 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 with 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. This section also inserts a new Part 3 heading into the Act.

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

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** Hon. Member, Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

I thank Mr Braidwood for making the position very clear. I think currently, if you were the employer and I had a service company, I would invoice you monthly with an amount and you would pay me gross, I would put that into my company and distribute a certain amount of income to myself as the individual employee of my own company, shall we say.

What you are saying now is that the contract would continue with the company, a personal service company with the employer, but the employer would now deduct tax rate of, shall we say, 20% at source to that management company, and the individual would declare his tax. Return at the end of the year would show income from the service company, less the tax credit which the 'employer' would make as a deduction and then the employer would have to pay the 20% over to the Treasury as a credit in advance of the annual taxation of that individual who is employed by the service company.

That is the way it appears to work, so the employer has the responsibility to deduct the tax at source, rather than the employee of the service company declaring an amount at the end of the year and paying tax on an assessed basis. And I think, from what you are saying, this would take effect from 5th April 2014, so it would be the year ending 2015 where the first assessment of this would apply.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I mentioned before, there, about some of the high profile cases in the media, the likes of the Jimmy Carr case, which I think was in one of the Channel Islands –

**Mr Braidwood:** Jersey, I think it was Jersey.

**Mr Turner:** The mover thinks it was Jersey.

I felt at the time that there was a lot of criticism given to some of these stars that had structured their tax affairs. But of course... some of that really was a bit of a media witch-hunt, because if the legislation is correct and these people were operating within the law, then it is up to legislators to change the legislation. I do not think people should be lambasted if they are actually complying with the law, and clearly it has become an issue now that the fairness element has been identified and now the law is being changed. But I think it is important that until such time as the law is changed then sometimes I think people can be criticised – they always use it as what they morally should be paying and obviously this is a step to change that.

I just wondered then with these provisions coming in, what... if the mover could maybe outline the remaining benefits of people having a personal service company – there was obviously some still associated with being set up as a limited company for example – maybe he could outline that.

Has there been any study done as to whether this new provision here will actually result in any business going to jurisdictions that maybe do not have these provisions, and will there be any loss in revenue? Has there been a calculation of any potential loss of revenue from maybe persons who are currently paying the various company registry fees that would say, 'Well, in these cases we are no better off by doing that,' so therefore they are no longer going to do it?

But as I said, I am happy to support these provisions, but do feel it is important that people if they are acting within the law should not be criticised if we have not got the law quite right, and it is our job to actually put that law right, in which case then the picture is quite different.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** I fully support the clause. In my view, this is about bringing in a level playing field and equality and I think this legislation effectively does that.

**The President:** The Hon. Member, Mr Crowe

**Mr Crowe:** Can I just clarify... there are service companies, if for instance I was a chartered surveyor with a business and I had an office and I was one-man band, I can still work as a company on the legitimate basis that the contract with a third party will be gross to me. So this is really targeting people who use a service company solely as a ruse – well no, not necessarily a ruse – but in a way of short-circuiting the employer-employee relationship. They interpose a company... they may not have a premise or an office, they may be actually in the building where the employer works. So I think what we are trying to do it is a narrow point –

**Mr Braidwood:** It is a distinction.

**Mr Crowe:** It is a distinction, but for the ordinary person in the street, the one-man band, the one-man business, who use a company legitimately –

**Mr Braidwood:** It won't affect.

**Mr Crowe:** – and they have limited liability. So the great advantage of the company is to get limited liability, which gives them protection for them and their families. So I think there is... this is an area which is dealing with a narrow problem, I do not know what the extent of the problem

is, but it is making sure the Assessor, and he will be fully aware of this, that it is targeting a small part of the people who use this type of structure.

**The President:** In the interest of gender balance, I think we should say that 'she' will be aware of this. *(Laughter)*

**Mr Crowe:** My apologies, Madam President. **(Mr Braidwood:** Gender neutral... ) The Assessor, Ms Nicola Guffogg, of course, yes.

**The President:** The Hon Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

Can I thank Mr Crowe for his examples, they have actually helped clarify to me what this is all about. Clearly my previous comment about the company structures to avoid... to obtain benefits is not relevant to this Act, to this Bill. So thank you, Mr Crowe, for that.

Can I ask the mover, then, the Treasury Minister did say he would bring in legislation to try to counteract those devices that were being used. I presume that is coming in the future.

**Mr Braidwood:** National Insurance.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President

I fully support this clause and at the briefing session that I attended, much emphasis was placed on the avoidance of National Insurance by these personal companies, as opposed to taxation. And with everyone... with the social benefits that we get I think we need to Hoover up just about as much National Insurance as we possibly can.

So I therefore fully support this clause.

**The President:** The mover to reply.

**Mr Braidwood:** Madam President, following on from Mr Crowe. He mentioned such as a chartered surveyor. If that chartered surveyor had a personal service company that only worked for one client, then he would fall under the jurisdiction of this personal service company.

If he is a chartered surveyor, but did work for Mr Corkish, Mr Wild, yourself, Mr Downie, the Bishop, the President, then that is completely different because he is working for variety of clients, and therefore the personal service company would be fine – he would not fall under this legislation.

It is only where basically you are working for one client... actually more personal service companies have been formed since the attribution regime for individuals was lost as such, the legislation for that was taken away. It means that people who have a personal service company could roll up the amount of money and then pay themselves as a dividend which would be above the tax cap, so they would only be liable for the amount of the tax cap, and anything over that they would be able to receive.

So that is one way we can stop individuals rolling up in a company with the dividends, so that they only have to pay a tax cap amount and they receive the rest.

On Mr Turner, I think the Jimmy Carr case is slightly different on that. I am afraid we have at the moment... we did go out for consultation, we did not get any adverse comments, in actual fact, they were all positive comments that individuals, if they are working, should pay the right... everybody should be on a level playing field and should pay the right tax.

And that is why we will be looking now at the National Insurance and the evasion of the National Insurance, as Mr Coleman said – they are receiving all the benefits of what National Insurance gives us, our medical, other benefits – and Treasury will be looking at that.

I do thank Mr Wild for his support and I think the clarification for the questions or queries Mr Butt has put, particularly on previously when I tried to explain and also what Mr Crowe has explained as well, Madam President, and therefore I would like to move that clause 13 stand part of the Bill.

**The President** The motion is 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.

Clause 14, introducing the schedule.

**Mr Braidwood:** Thank you, Madam President

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 Part 15 heading.

It renumbers section 106F as A106, relocates it immediately under the new Part 14 heading and makes minor amendments to it.

In sections F108 to J108 it replaces the wording ‘sections A108 to J108’ with ‘this Part’.

Section 112 is renumbered as 112L and relocated under 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 of 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. Reference 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 amendment made by the previous paragraph.

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

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 14 stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Hon. Members, that concludes our extended Order Paper for today. Council will now adjourn and we shall meet again in this Chamber on 17th December – of course, we have our Tynwald sitting before that.

*The Council adjourned at 12.19 p.m.*