



## INCOME TAX (AMENDMENT) BILL 2013

### EXPLANATORY NOTES

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Teare, MHK. They do not form part of the Bill.*

#### **INTRODUCTION**

The Income Tax (Amendment) Bill 2013 makes a number of amendments to the Income Tax Act 1970, the Income Tax (Instalment Payments) Act 1974, as well as minor amendments to the Interpretation Act 1976 and the Customs and Excise Management Act 1986. It introduces new powers for the Assessor in respect of personal service companies.

This Bill contains 14 clauses and a schedule.

#### **OVERVIEW OF CLAUSES**

##### **Part 1 – Introductory**

##### Clause 1- Short title

Clause 1 provides for the short title of the Act.

##### Clause 2 - Commencement

Clause 2 confirms the commencement of the Act.

##### Clause 3 – Expiry of Act

Clause 3 provides for the Act to expire on the day following its promulgation.

##### Clause 4 – Confirmation of temporary taxation orders

Clause 4 confirms the following temporary taxation orders-

1. Income Tax (Company Residence) (Temporary Taxation) Order 2012 (Statutory Document 0682/12). This Order substitutes section 2N of the 1970 Act and 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 certain conditions are met.

2. Articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013 (Statutory Document 0190/13) which amend the Income Tax (Exchange of Information) (Temporary Taxation) Order 2010 to broaden the scope of the Order and which also impose obligations on financial intermediaries to inform their clients about the disclosure facility provided by HM Revenue and Customs (“HMRC”) under a Memorandum of Understanding entered into between the Isle of Man Treasury and HMRC on 19<sup>th</sup> February 2013.
3. The Taxes (International Arrangements) Order 2013 (Statutory Document 0315/13) which introduces a new Part 9 into the Income Tax Act 1970. This Part consolidates the legislation conferring the power to give effect to international tax information exchange agreements currently contained in Part 3 of the Income Tax Act 2003, and the power to give effect to double taxation agreements in section 54 of the Income Tax Act 1970. In addition, it introduces the power for the Council of Ministers to ratify, by Order, the Convention on Mutual Administrative Assistance in Tax Matters, and similar agreements.

The Order also introduces powers for an officer appointed by the Assessor (an “authorised officer”) to inspect business premises if this is considered necessary to enable the Assessor to examine a person’s tax position. In addition, it introduces document-related powers to enable an authorised officer to copy or take extracts from a document and to remove and retain a document for a reasonable period. The inspection powers include enforcement measures which will allow the Assessor to impose a civil penalty on a person who fails to provide reasonable assistance requested by an authorised officer for an inspection that has been approved by the High Bailiff, or who deliberately obstructs such an inspection.

In addition, the Order inserts new definitions into the Income Tax Act 1970 to reflect the introduction of the new Part dealing with international matters, and makes a number of consequential amendments to that Act. It also includes a number of savings and transitional provisions addressing existing international agreements.

In addition, it requires insurers to provide the Assessor with specified information, on an annual basis, regarding policies held by Isle of Man resident policyholders.

The Order also amends the Assessor’s powers to call for documents when investigating the liability of a taxpayer. The amendments will allow the Assessor to also call for “information”, (which is defined), and to call for a document the whole of which is more than six years old if it is considered relevant to the period under investigation. This will assist the Assessor in carrying out an investigation and in complying with requests for information made in accordance with international tax information exchange agreements. The Order applies these changes to Schedule 2 to each Order ratifying an

international agreement already signed on behalf of the Island: this Schedule includes modifications to sections 105C to 105O of the Income Tax Act 1970 that are necessary to ensure those sections may be used by the Assessor to obtain information that is subject to information exchange under the agreement. It also updates that Schedule in the case of all but the two most recent of those Orders to reflect a change made to section 105D by the Income Tax Act 2013.

## **Part 2 – Income Tax Act 1970 amended**

### Clause 5 – Amendment of the Income Tax Act 1970

Clause 5 provides that Part 2 of the Bill amends the Income Tax Act 1970 (“the 1970 Act”).

### Clause 6 – Section 2 amended – income on which tax is payable

Clause 6 amends section 2 of the 1970 Act to insert two categories of remuneration on which income tax is payable.

### Clause 7 – Section 48 substituted – taxation treatment of social security benefits

Clause 7 replaces the existing section 48 of the 1970 Act to consolidate legislation regarding the taxation of social security benefits and to allow Treasury to provide, by means of secondary legislation, for a benefit not to be treated as income for the purposes of the Income Tax Acts.

### Clause 8 – Part 19 heading and section 112K inserted – offence of fraudulent evasion

Clause 8 inserts a new part 19 heading of “Evasion offence and general provisions about offences”. It also inserts section 112K which introduces a new criminal offence of fraudulent evasion of income tax. The section sets out the liability of a person who has committed the offence and also describes what is meant by the offence.

### Clause 9 – Section 115A amended – temporary taxation orders

Clause 9 amends section 115A of the 1970 Act to insert a definition of “administration” of income tax for the purposes of temporary taxation orders. It also amends the definition of “confirmatory Act”.

## **Part 3 – Amendments to Income Tax (Instalment Payments) Act 1974**

### Clause 10 – Act amended

Clause 10 provides that Part 3 of the Bill amends the Income Tax (Instalment Payments) Act 1974 (“the 1974 Act”).

### Clause 11 – New Part 1 heading

Clause 11 inserts a new Part 1 heading into the 1974 Act.

### Clause 12 – Section 1 amended – definitions and regulations

Clause 12 inserts a number of new definitions into section 1 of the 1974 Act that are required by the amendments made by clause 13.

### Clause 13 – New Part 2 and Part 3 heading – deemed employment

Clause 13 inserts a new Part 2 into the 1974 Act. This consists of six sections (2AA to 2AF) to address the use of one or more third parties as conduits for remuneration (including personal service companies). The new Part is being introduced in order to ensure that the structure cannot be used as a way to defer the payment of income tax.

Section 2AA provides that the new Part applies when a worker provides services for the ultimate benefit of a client and the conditions in section 2AB apply. The section also specifies some situations in which the Part does (or does not) apply.

Section 2AA(3) ensures that genuine employment agencies will not be caught by the new legislation.

Section 2AB sets out the conditions which need to be satisfied in order for the new Part to apply.

For the purposes of the 1974 Act, section 2AC deems the worker to be an employee of the client and the client to be the worker's employer. In addition, the worker's earnings are treated as passing directly from the client to the worker rather than through the hands of a third party.

Section 2AD provides that, for the purposes of the 1970 Act, any sum received by a third party for providing the services is taken to be remuneration of the worker except, in certain circumstances, a fee charged by the third party which is an employment agency or employment business.

Under section 2AE, any person who is given a decision under Part 2 can appeal to the Income Tax Commissioners against the decision.

Section 2AF provides that, where Part 2 applies, it has no effect on any VAT charge that would have been incurred if Part 2 had not applied. It also provides that a distribution, such as a dividend payment, made by a third party to the worker will not be charged to income tax to the extent that it has already been charged to income tax as remuneration of the worker. It further provides that any sum received by a third party that has been charged as remuneration of the worker as a result of the application of Part 2, will not be taken into consideration when calculating the third party's liability to income tax.

Lastly, clause 13 inserts a new heading creating Part 3 of the 1974 Act, entitled "Instalment Payments Regime".

## **Part 4 – Closing provision**

### Clause 14 – Schedule

Clause 14 gives effect to the Schedule.

### Schedule

The Schedule makes a number of consequential and minor amendments to the 1970 Act.

Paragraph 1:

- divides the 1970 Act into parts;
- inserts a Part 14 heading;
- amends section 106F, including renumbering it as A106, and moves it to the beginning of Part 14;
- inserts a Part 15 heading;
- amends sections F108 to J108 to replace “sections A108 to J108” with “this Part”;
- renumbers section 112 as 112L and inserts it after 112K;
- amends section 120 to omit the definition of “Assessor” (which is being moved into the Interpretation Act 1976, which applies to all Acts of Tynwald).

Paragraph 2 makes further amendments to the Income Tax (Instalment Payments) Act 1974, deleting the word “written” from section 1A(3) and inserting a Part 4 heading of “General”.

Paragraph 3 amends the Interpretation Act 1976 to insert a definition of “Assessor” and another of “Collector”.

Finally, paragraph 4 amends the Customs and Excise Management Act 1986 in order to replace “the Collector of customs and excise (in this Act referred to as “the Collector”)” with “the Collector”. This is connected with the amendment mentioned in the last bullet point relating to paragraph 1, and the amendment in paragraph 3.