



INCOME TAX BILL 2015

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 Bill 2015 confirms two temporary taxation orders, makes a number of amendments to the Income Tax Act 1970 and also makes an amendment to the Income Tax Act 1989.

This Bill contains 12 clauses.

OVERVIEW OF CLAUSES

Part 1 – Introduction

Clause 1- Short title

Clause 1 provides for the short title of the resulting Act.

Clause 2 – Interpretation

Clause 2 provides the interpretation for the resulting Act.

Clause 3 - Expiry

Clause 3 provides for the expiry of the resulting Act on the day after its promulgation. This however does not apply to those provisions that are automatically repealed on that day by section 115A(10) of the Income Tax Act 1970.

Part 2 – Temporary taxation orders confirmed

Clause 4 – TTOs confirmed

Clause 4 confirms the following temporary taxation orders -

1. Income Tax (Resident Individuals) (Income Tax Cap) (Temporary Taxation) Order 2014. This Order revises the tax cap system that was introduced in 2006. Under the revised system, an individual or a jointly assessed married couple or civil

partners must elect for the tax cap to be applied and, if the election is approved, it will apply to them for a period of five consecutive tax years at the amount applicable for the first year of the election. The income tax cap amount can be set by Order of the Treasury and for the year of assessment commencing 6 April 2014 it is £120,000 for an individual and £240,000 for a jointly assessed married couple or civil partners. Apart from the 2014/2015 tax year, an election must be made before the start of the first tax year to which it is to apply. A person who commences residence in the Island can make an election for the part year in which they arrive and the four subsequent years providing the election is made within 60 days of commencing residence. An individual can apply to renew their tax cap election for a further five year period at any time providing the application is made before the start of the first tax year to which it would apply.

2. Income Tax (Disclosure of Information) (Temporary Taxation) Order 2014. This Order enables income tax data to be supplied to a person providing economic modelling services to the Treasury or the Assessor of Income Tax as long as the person to whom the information relates cannot be identified.

It also enables information to be passed to the Chief Secretary, or a person authorised by the Chief Secretary, for providing economic advice or statistical analysis or to assist in the production of Government statistics.

The Order makes it an offence for anyone to whom the information has been given to disclose it other than for the purpose for which it has been supplied. However, publication of anonymised data that has been provided for statistical analysis will be permitted such as in the publication of the national income report or the digest of economic and social statistics.

Part 3 – Amendment of the 1970 Act

Clause 5 – Amendment of the 1970 Act

Clause 5 introduces Part 3 of the Bill, which amends the Income Tax Act 1970 (“the 1970 Act”).

Clause 6 – Section 2ZA amended – election for tax cap to be applied

Clause 6 amends section 2ZA of the 1970 Act to ensure that a person who has elected for the five year tax cap to apply will not pay more income tax as a result of the election. Under the amendment, if a person can prove to the Assessor that the total sum of his or her income tax liability for all of the years of assessment to which the cap has applied is greater than it would have been without the cap, they can apply for those years to be re-assessed as if the cap had not applied. Their assessments for those years may then be amended.

Clause 7 – Part 9 amended – international arrangements

Clause 7 makes a number of amendments to Part 9 of the 1970 Act. In section 104B(1)(b) the words “necessary or” are omitted in order to more closely reflect the wording now used in the international arrangements to which it relates. The latter amendment is also made to section 104C(1)(a)(i), while section 104C(1)(b)(i) is

removed as a consequence of the introduction of a new Part 12A into the 1970 Act by clause 10 of the Bill.

Clause 7 also substitutes a new section 104G regarding the disclosure of information which has been provided under an international arrangement. The new subsection (1) simplifies the current wording and will help to ensure that it applies to all forms of international tax arrangement, while the new subsection (2) ensures that information that has been provided under an international arrangement may not be used in criminal proceedings against the person who provided it except proceedings for perjury or a similar offence.

A further amendment made by clause 7 is the substitution of section 104(H)(1) which has been made to improve its clarity. Clause 7 also substitutes section 104I(1) in order to make a grammatical correction by replacing the word “summonsed” with “summoned” and to replace an out-of-date cross-reference to “section 105P” with one to “section 104H”. The final amendment made by clause 7 is to update a cross-reference to “section 105P(1)” in 104I(2)(a)(i) with one to “section 104H(1)”.

Clause 8 – Part 11 amended – obtaining information and evidence

Clause 8 makes a number of amendments to this Part. The first is to substitute the Part heading with “Information and evidence”. The clause also inserts a new section 105BB which enables the Treasury to make regulations regarding the keeping of accounting records. The new section specifies what such regulations can provide for, to whom they can apply, states their legislative power and also requires any such regulations to be approved by Tynwald before coming into operation. Importantly the regulations may make any provision, in relation to the keeping of records, which might be made by an Act of Tynwald.

Clause 8 also makes a number of minor amendments to section 105D. In subsection (3) it changes each use of the word “document” to “documents” and in subsection (6)(a) after “in such form” it inserts the words “and in such manner”. The latter amendment ensures that any copies of documents will be provided in an appropriate way. The clause also changes the marginal note to section 105D to “Power to call for documents or information relating to taxpayer”.

Clause 9 – Part 12 amended – court orders to deliver documents, etc

Clause 9 makes a number of amendments to Part 12 of the 1970 Act. It substitutes section 105K(2) and inserts new subsections (2A), (2B) and (2C). Under the new subsection (2), once a person has been advised that the Assessor intends to apply to the High Court for an order requiring them to provide the Assessor with documents or information relating to an investigation the person must not conceal, alter, etc any of those items before the latest of certain specified events. In addition, the person notified must not tell anyone other than his or her professional legal adviser or tax adviser anything before the abandonment of the application or the conclusion of the investigation that would prejudice the investigation. Subsection (2A) provides that the obligations introduced by (2) end if the Assessor gives the person a notice to that effect, while subsection (2C) specifies the circumstances in which a notice must be given. New subsection (2B) ensures that even if the Assessor issues a notice, the person must still comply with any record-keeping regulations requiring the continued

retention of any of the items in question. The changes extend the current protection in order to prevent actions that would frustrate an investigation. Clause 9 also removes the words “authorised for the purpose” from section 105K(3)(b) and it amends that subsection for the sake of consistency in references to the High Court.

Section 105L(2)(a) is amended for the same reason as in 105K(3)(b) above.

The final section to be amended by clause 9 is 105M. The clause substitutes subsection (1)(b) in order to make two grammatical amendments: removing the word “that” from its beginning and changing the word “information” to “application”. The amendment also changes the words “is to” to “may” in order to reflect the fact that it is something that the Assessor has reasonable ground for suspecting and is not something that the Assessor knows to be a certainty. Clause 9 makes a further grammatical correction to 105M in subsection (4) by changing the words “under this section the Assessor may”, which precede paragraph (a), to “under this section, the Assessor may”. Similarly, in paragraph (b) it changes “any thing” to “anything” and in paragraph (c) it changes “things” to “thing”. It also substitutes subsection (9) in order to change “any things” to “things” and it also takes the opportunity to update the language of the subsection.

Clause 10 – New Part 12A inserted – international arrangements: supplementary provisions

Clause 10 inserts a new Part entitled “International arrangements: supplementary provisions” which consists of three sections: 105OA, 105OB and 105OC. In order for the Government to fulfil its obligations to exchange information under an international arrangement, a number of amendments need to be made to Parts 11 and 12 of the 1970 Act. To date, these modifications have been included in each relevant ratification order. The new Part will set out the necessary amendments to those sections and will apply them to all current and future arrangements. This will remove the need for them to form part of a ratification order. It will ensure that there is consistency between agreements and also simplify the making of any future amendments that may prove necessary.

The modifications made by this Part provide for the legislation to apply to an international arrangement. These include the insertion of a number of definitions in section 105O of the 1970 Act which enable the legislation to apply to any tax to which the international arrangement relates and any laws of the Island or of the other country which relate to any of those taxes. They also expand the definitions of “information” and “liability to income tax”, with the latter to include the determination, administration, assessment and collection of income tax, the recovery and enforcement of tax claims and the investigation or prosecution of offences related to tax.

Section 105OA provides for Parts 11 and 12 to apply to an international arrangement subject to the modifications set out in sections 105OB and 105OC.

Section 105OB sets out the modifications that will apply to Part 11 for the purposes of an international arrangement while section 105OC sets out the modifications that will apply to Part 12.

Clause 11 – Section 120 amended – definitions

Clause 11 inserts a new definition of “record-keeping regulations” into section 120 of the 1970 Act.

Part 4 – Amendment of the Income Tax Act 1989

Clause 12 – Section 5A of the Income Tax Act 1989 amended – payment of trivial commutation lump sum

Clause 12 inserts a new subsection (3) into section 5A which will require any regulations made under that section to be approved by Tynwald before coming into operation.