



PRACTICE NOTE

PN 53/94

Date: 12 September 1994

Income Tax [Exempt Companies] Act 1984

Introduction

The Income Tax [Exempt Companies] Act 1984 enables companies which are resident for taxation purposes in the Isle of Man to be exempt from income tax on the whole of their income. To qualify for exemption the company has to meet specific criteria.

These include:-

- no person resident in the Island having an interest in the company;
- the company carrying, on a permitted activity;
- income arising outside the Island from activities carried on outside the Island; having a resident director;
- having a resident and qualified company secretary.

Specific exemptions are provided within the legislation for interests held by trusts and income from named sources in the Island.

Application has to be made each year and an annual fee is payable. The application contains an undertaking that the company will comply with the specific criteria. At the year end a declaration has to be sent in confirming that the undertaking has been adhered to.

A recent Order - Statutory Document No. 257/94 - has amended the range of activities which a company cannot carry on.

Legislation

Income Tax (Exempt Companies) Act 1984 (as amended)

Income Tax (Exempt Companies) (Prescribed Exclusions) Regulations 1989 - GC 276/89

Income Tax (Exempt Companies) (Amendment) Regulations 1994 - SD 257/94

Permitted Activities

- An exempt company may carry on any activity other than one which is excluded by the 1984 Act or prescribed by Regulations. Those not permitted by the Act are any business carried on by:-
 - a public company
 - a holder of a banking licence
 - an exempt insurance company

- an investment business licence holder

An exception to the general exclusion of public companies is provided for Authorised, Recognised and Restricted Collective Investment Schemes (which are defined as "exempt schemes"). Collective Investment Schemes which are defined as Exempt Restricted Schemes can, if constituted as private companies, qualify for income tax exempt status under the normal rules for private companies.

Those which are prescribed by Regulations are:-

- manufacturing in the Island
- retail or wholesale activities in the Island
- exploitation of natural resources including land, fishing and farming operations in the Island
- distribution or transportation activities in, to or from the Island

In addition, following the amendments set out in Statutory Document 257/94, the prescribed exclusions have been extended to include:-

- provision of trustee services
- acting as a custodian
- provision of corporate services
- provision of legal or accountancy services

Full details of the extended exclusions are set out in Appendix 1.

Provision Of Services

The provision of services exclusion has been widely cast but some relaxation will be permitted both by way of Treasury concession and by statutory provision. In particular:-

- where the provision of services is associated solely with a trade carried on by an owner or charterer of ships which do not operate from or regularly use ports in the Island;
- where the provision of services is solely that of manager of an exempt restricted scheme;
- where the provision of services is to associated companies which are exempt or international companies. In this context "associated" will be given a wide interpretation and will include joint enterprises;
- in any other situation where the Assessor is satisfied that the provision of a service is incidental to the overall business activity which in itself is an acceptable exempt or international company activity. The test is one of "acceptable activity" and not the type of entities involved. Subject to there being no change in the business activity this clearance need only be obtained on the initial application.

To some extent the above activities are already permitted by way of interpretation of the existing Regulations. To provide certainty, amendments to the Regulations will be introduced as soon as the acceptable service activities have been clearly identified.

Applications For 1994/95

To prevent any inconsistency of treatment and uncertainty over the implementation of the amended prescribed exclusions the Treasury has agreed to the introduction of the following concession:

the amendments contained in Statutory Document No.257/94 will be deemed to have come into operation on 1 July 1994 and will only apply to applications received on or after that date;

applications for exempt company status received before 1 July 1994 will be determined on the basis of the unamended regulations set out in Government Circular 276/89;

declarations at the year end will need to be made according to the prescribed exclusions regulation applying to the application.

Further Developments

In addition to clarifying the way in which the amended exclusions will operate the Treasury will be bringing into operation Section 12 of the Income Tax Act 1991.

This Section brings into force an amendment to Section 2 of the 1984 Act which: -

- extends the range of receipts which may be received by an exempt company from sources within the Island;
- clarifies that an exempt company is treated as non-resident only for certain specified purposes of the 1984 Act.

At present the extension of the range of permitted receipts is only being considered for income from exempt insurance companies and international limited partnerships. Anyone wishing to have other sources considered should contact the Deputy Assessor (Technical) at the Income Tax Division.

Views are also invited on the benefit of removing the need for an annual application for exemption and for permitting an exempt company to be a general partner in an international limited partnership.

Further Information

Any person wishing further information about exempt companies should write to the

Deputy Assessor (Technical)

Income Tax Division

The Treasury

Government Offices

Bucks Road

DOUGLAS

Isle of Man IM I 3TX

Appendix 1

AMENDED REGULATIONS - EXEMPT COMPANIES

Amendment of GC 276/89

In the Income Tax (Exempt Companies) (Prescribed Exclusions) Regulations 1989 -

in regulations 2, after paragraph (i) insert -

"(J) it provides or offers trustee services (including acting as a trustee of a trust) in or from the Island or to persons in the Island;

(k) it acts as custodian for any purpose of any property in the Island or for the benefit of any person who is resident in the Island;

(l) It provides or offers corporate services in or from the Island or to persons in the Island.";

(m) it provides or offers legal or accountancy services in or from the Island or to persons in the Island.";

in regulation 3 insert the following new definition "'corporate services" means -

services relating to the promotion, formation, registration, management and administration of the affairs of bodies corporate;

- the provision of registered office services;
- the provision of company secretary services;
- the provision of share registration services;
- the provision of underwriting services; or
- the provision of nominee shareholder services;'

A copy of the actual Regulations is available from the Central Reference Library at Central Government Offices, price 20p.