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## **PRACTICE NOTE**

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**PN 192/16**

**Date: 16 February 2016**

### **LAND DEVELOPMENT TAX HOLIDAY**

#### **INTRODUCTION**

In his statement in July Tynwald, the Chief Minister announced the introduction of a tax holiday for certain land developments that are carried out in the interests of the economy of the Island. This Practice Note provides details of how the holiday will work in practice and the developments to which it will apply.

The legislation providing for the tax holiday is contained within section 2A Income Tax Act 1970.

#### **QUALIFYING CONDITIONS**

The conditions for the application of the holiday are:

- i. it is in the interests of the economy of the Island; and
- ii. it is necessary for the purpose of establishing or developing any "eligible business" in the Island; and
- iii. it will enable the business to provide additional productive employment in the Island.

The Assessor will consider the development of commercial property to be "in the interests of the economy of the Island".

The definition of an "eligible business" is contained in the Enterprise Act 2008 (Eligible Businesses) Regulations 2014. Where the company applying for the holiday is not itself an "eligible business", it will be treated as an eligible business provided its customer i.e. the tenant or purchaser of the property is establishing or has established an "eligible business" in that property. The Assessor will consult with the Department of Economic Development to determine whether a company meets this condition.

The Assessor will require a company applying for the holiday to provide evidence in its application (see below) that it will enable the provision of additional productive employment in the Island.

#### **EFFECT OF THE HOLIDAY**

The holiday will provide an exemption from income tax for any relevant income or profits of a company for up to five years (60 months).

Relevant income or profits which will be exempt under the holiday are:

- the profit made on any new commercial development, or improvement to an existing commercial development which will provide additional productive employment in the Island; and/or
- rental income received on a new commercial development, or improvement to an existing commercial development which will provide additional productive employment in the Island.

The tax holiday will apply to income that commences after 16 February 2016. It will begin on the first date income is earned from the development and will continue for a period of up to five years.

### ***Commercial Property Development***

Where the company is constructing a new commercial development for sale, or improving an existing commercial development for sale, the income eligible for the holiday will be the proceeds of sale. In those cases the holiday will cease in the year of sale, as there will be no other relevant income or profits.

If the company is undertaking more than one commercial development for sale, it is possible that on certain developments income from sale could be staggered, and in these cases the Assessor should be contacted in order to determine the start date for the holiday.

### ***Commercial Property Letting***

Where the company is constructing a new commercial development for letting, or improving an existing commercial development for letting, the holiday will start on the date on which the first rental income is received, after which the exemption will continue for a period of up to five years.

It is possible that one company could receive an exemption from tax on the profit from the sale of a new development while another could receive an exemption for the rental income from the same development for up to five years.

The tax holiday will not be available for:

- the development of residential property; or
- any business that is beneficially owned by an individual who has elected for the tax cap.

## **APPLICATION OF THE TAX HOLIDAY IN THE COMPANY ASSESSMENT**

The relevant income or profits of a company which is subject to the tax holiday will not be charged to the 20% company rate applicable to income from land and property in the Isle of Man. Whilst this is referred to in the legislation as a temporary exemption, the company must still make a return of that income to the Assessor as this information is required for national statistical purposes. Companies which have been granted the tax holiday will therefore continue to be required to declare all of their taxable income on their income tax returns for the duration of the holiday.

The application of the holiday will appear on a company's income tax assessment as a "tax holiday" deduction equal to the taxable income that is subject to the tax holiday.

Where the company only has a single source of income, the application of the holiday in the assessment will be relatively straightforward, and income tax computations for the duration of the holiday should be prepared in the normal manner.

Where a company has multiple sources of income, only some of which are subject to the holiday, the income tax computation will need to be split.

- Expenses that relate specifically to the income source subject to the holiday can be claimed only against that income source.
- Expenses that relate to all income sources can be claimed against all income sources, but should be pro-rated in the ratio of the income sources.

Companies will remain able to claim capital allowances for qualifying expenditure on plant and machinery, or on specific buildings which qualify as industrial buildings, agricultural buildings or tourist premises, in a tax efficient manner.

For companies with multiple sources of income, only some of which are subject to the holiday, the capital allowances claimed will need to be split between income sources.

- If the capital asset is used solely in relation to the income source subject to the holiday, capital allowances can be claimed only against that income source.
- However, if the capital assets are used in relation to all the income sources, they can be claimed against all income sources, but pro-rated in the ratio of the income sources.
- If the actual use of the asset is different, the Assessor may agree a different ratio based on the actual use of the asset in relation to each income source.

## **DISTRIBUTIONS**

Income or profits that have benefited from the holiday will, on distribution to shareholders, be treated in the same way as a distribution of income from a company subject to the zero rate of tax.

## **REVOCAION IN CASES OF ABUSE**

If the Assessor is of the opinion that the holiday is being used to avoid or reduce the liability to income tax of any person resident in the Island, other than that of the "eligible business", she may rescind the exemption.

The exemption will also be rescinded if, within six years of the granting of the holiday, a commercial development becomes residential. This would include the change of use from tourist accommodation to letting of rooms for residential or long stay purpose.

Any person who does not agree with the Assessor's decision to rescind an exemption, shall be entitled to appeal to the Income Tax Commissioners on the ground that the exemption was not being used to avoid or reduce the liability to income tax of any other person and the Commissioners may reverse, vary or confirm any such decision.

## **APPLICATION FOR THE HOLIDAY**

An application for the tax holiday should be made in writing to the Assessor of Income Tax in respect of new commercial property development or improvement income that commenced after the date of this Practice Note.

The application should include evidence that the development meets the qualifying conditions and should also provide full details of the development and the beneficial ownership of the company.

If the Assessor is satisfied that the development meets the qualifying conditions, she will consult with the Department of Economic Development and, if the criteria for an eligible business are met, the Assessor will grant an income tax exemption for a period of up to five years.

The tax holiday will apply only to the proportion of taxable profit relating to the development or improvement commencing after 16 February 2016.

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This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.