

Statutory Document No. 2017/0377



Income Tax Act 1970

INCOME TAX (NON-CORPORATE TAXPAYERS) (TEMPORARY TAXATION) ORDER 2018

Approved by Tynwald: 20th February 2018

Coming into Operation in accordance with article 2

The Treasury makes the following Order under section 115A of the Income Tax Act 1970.

1 Title

This Order is the Income Tax (Non-Corporate Taxpayers) (Temporary Taxation) Order 2018.

2 Commencement

If approved by Tynwald¹, this Order comes into operation on the day it is approved and shall have effect immediately.

3 Amendment of section 2PA of the Income Tax Act 1970

- (1) Section 2PA of the Income Tax Act 1970 (meaning of distribution) is amended as follows.
- (2) In subsection (1), for “Income arising or accruing to any person residing in the Island and derived from any income distribution” substitute **“(v) Any income distribution received by a person resident in the Island that is (v).”**
- (3) In subsection (5)(b) after subparagraph (iv) insert —
“(v) payment made on winding up, liquidation, cessation or dissolution of a corporate taxpayer, (v).”

4 Insertion of section 2PB into the Income Tax Act 1970

After section 2PA of the Income Tax Act 1970, insert —

¹ Tynwald approval is required by section 115A(2) of the Income Tax Act 1970

2PB Anti-avoidance

- (1) This section applies where there has been —
- (a) a sale of unquoted shares to a resident corporate taxpayer by a participator; or
 - (b) a sale of goodwill to a resident corporate taxpayer by a participator,
- after 6 April 2011 but before 20 February 2018 which has resulted in a debt from the corporate taxpayer owed to the participator.
- (2) If this section applies, any repayment of that debt or any part of that debt, made on or after 20 February 2018 constitutes a dividend liable to income tax first, to the level of the undistributed taxable profits of the corporate taxpayer to the lesser of —
- (a) the amount of that debt; and
 - (b) the total level of the debt at 20 February 2018.
- (3) This section also applies where there has been a sale to a resident corporate taxpayer by a participator of unquoted shares or goodwill on or after 20 February 2018. Such a sale also constitutes a dividend chargeable on the participator, on the lesser of —
- (a) the total sale price; and
 - (b) the amount of undistributed taxable profits of the corporate taxpayer at the end of the accounting period in which the sale took place.
- (4) If in subsection (3) the amount of the undistributed taxable profits at the end of the accounting period in which the sale took place is less than the total sale price then any future repayments of that debt shall be chargeable as a dividend on the difference, up to the level of future taxable profits.
- (5) Any dividend under this section is chargeable to income tax as if it were paid on the last day of the accounting period in which the repayment or sale was made.
- (6) Where a resident corporate taxpayer makes repayments of debts chargeable under subsection (2),(3) or (4) to a number of persons during the accounting period and the total of the debts repaid exceeds the undistributed taxable profits the charge to tax under this section will be pro-rated using the calculation —
- $$A \times \frac{B}{C}$$
- where —
- A is the total repayment of the debt made to the participator in the accounting period;
- B is the total undistributed taxable profit; and

- C is the total repayment of all relevant debts made in the accounting period.
- (7) Where an individual receives a repayment before 20 February 2018 that would be liable to income tax under section 2PB had it been received on or after that date, then the Assessor may charge that repayment to tax under section 2PB if he or she is not satisfied that the repayment physically took place before 20 February 2018.
- (8) If the Assessor is of the opinion that a person has taken measures to avoid income tax under this Order, whether by a loan between persons, changing of the corporate taxpayer's accounting period or any other means, the Assessor may make an assessment or additional assessment on that person in accordance with Schedule 1 to the Income Tax Act 1980.
- (9) In this section –
- (a) “control” has the same meaning as in section 119A;
 - (b) “participator” means an individual having a share or interest in the capital or income of the corporate taxpayer and, without prejudice to the generality of the foregoing, includes –
 - (i) any person who possesses, or is entitled to acquire, share capital or voting rights in the corporate taxpayer;
 - (ii) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the corporate taxpayer or any amounts payable by the corporate taxpayer (in cash or in kind) to loan creditors by means of premium on redemption; and
 - (iii) any person who is entitled to secure that income or assets (whether present or future) of the corporate taxpayer will be applied directly or indirectly for such person's benefit;
 - (c) references to being entitled to do anything apply where a person is entitled to do it at a future date or will at a future date be entitled to do it.
- (10) The reference to a resident corporate taxpayer's undistributed taxable profits in subsection (2), (3) and (4) shall also include any undistributed taxable profits which are available for distribution from any other resident company which is controlled by the corporate taxpayer. **22**.

5 Amendment of section 105AA of the Income Tax Act 1970

- (1) Section 105AA (authorised officers: appointment) is amended as follows.
- (2) In subsection (2) –
- (a) for “is a civil servant” substitute **23** is an employee of the Public Services Commission **22**;
 - (b) at the end add **24** and any of the Assessor's functions delegated under subsection (2A). **22**.

- (3) After subsection (2) insert —
- █(2A) The Assessor may by instrument in writing (whether specific or general) delegate any of the Assessor’s functions to a person holding an appointment under subsection (2) and whom the Assessor is satisfied is competent to perform them. █.
- (4) For subsection (3) substitute —
- █(3) An authorised officer holds that office subject to any conditions —
- (a) prescribed in or under regulations made by the Treasury;
or
 - (b) contained in the officer’s notice of appointment or a notice in writing to the officer from the Assessor. █.
- (5) In subsection (4) for “The conditions” substitute █Conditions under subsection (3) █.
- (6) After subsection (4) insert —
- █(5) Nothing in this section affects any previous practice of the Assessor in relation to the Assessor’s delegation of powers. █.

MADE 16TH FEBRUARY 2018

A L CANNAN
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 115A of the Income Tax Act 1970. It amends section 2PA of that Act to clarify that the meaning of “distribution” in that section also includes a payment made on winding up, liquidation, cessation or dissolution of a corporate taxpayer. It also inserts a new section 2PB into that Act. Where a participator has sold goodwill or unquoted shares to a company and that has resulted in a debt owed to the participator, then repayment of that loan will be chargeable to income tax as a dividend up to the level of taxable profits available in the company for distribution.

Finally, the Order updates section 105AA of the Income Tax Act 1970 to clarify the provision regarding the appointment of authorised officers by the Assessor and their powers.