



## INCOME TAX ACT 1995

### INCOME TAX (ATTRIBUTED PROFITS) (TEMPORARY TAXATION) ORDER 2007

*Approved by Tynwald*

*11<sup>th</sup> December 2007*

*Coming into operation in accordance with article 1 (2)*

In exercise of the powers conferred on the Treasury by section 15 of the Income Tax Act 1995<sup>1</sup>, and of all other enabling powers, the following Order is hereby made:—

#### **1. Citation and commencement**

(1) This Order may be cited as the Income Tax (Attributed Profits) (Temporary Taxation) Order 2007.

(2) Subject to section 15(2) of the Income Tax Act 1995, this Order comes into operation on 6 April 2008 but only has effect in accordance with paragraphs (3) to (5).

(3) Articles 3 to 9, 15 and 16 of this Order and regulations made under article 14 of this Order have effect—

- (a) in the case of a relevant company (as defined below), during each accounting period of the company commencing on or after 6 April 2008;
- (b) in the case of an individual member of a relevant company in respect of which this Order has effect, during each year of assessment of the individual commencing on the 6<sup>th</sup> April immediately preceding the date on which income accrues to the individual under article 7.

(4) Articles 15 and 16 of this Order have effect, in the case of a corporate taxpayer which is not a relevant company, during each accounting period of the corporate taxpayer commencing on or after 6 April 2008.

(5) The articles of this Order not referred to in paragraphs (3) or (4) have effect when this Order comes into operation.

(6) This Order is to be construed as one with the Income Tax Act 1970<sup>2</sup>.

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<sup>1</sup> 1995 c.12

<sup>2</sup> XXI p.260

## 2. Interpretation

(1) In this Order —

“the 1970 Act” means the Income Tax Act 1970;

“accounting period” has the same meaning as in section 81 of the 1970 Act;

“attributed profits” means, subject to article 4(6), the distributable profits of a corporate taxpayer which is a relevant company that would have been payable to an individual member if the corporate taxpayer had distributed them, calculated in accordance with article 4;

“certificate of attributed profits” means the certificate sent in accordance with article 5(1);

“contractual interest” includes, in respect of a corporate taxpayer, the interest of a person (“A”) under an agreement or arrangement where—

- (a) A is entitled or permitted to vote in respect of any share or stock of the corporate taxpayer;
- (b) the exercise of any of the rights of another person interested in the corporate taxpayer or its shares or stock requires A's consent; or
- (c) other persons interested in the corporate taxpayer can be required or are accustomed to exercise their rights in accordance with A's instructions;

“corporate taxpayer”—

- (a) has the meaning given by section 120 of the 1970 Act; and
- (b) includes a body corporate registered under Part XI of the Companies Act 1931<sup>3</sup>;

“distributable profits” means the distributable profits of the corporate taxpayer which are liable under the 1970 Act to be assessed to income tax in respect of an accounting period;

“distributable profits charge” has the same meaning as in section 13 of the 1970 Act;

“interest”, in respect of a corporate taxpayer, is to be construed in accordance with paragraphs (2) and (3);

“member” includes a shareholder, stockholder, member or associate and a person is to be treated as a member of a corporate taxpayer if that person has any legal, equitable or contractual interest in the corporate taxpayer or in any share or stock of the corporate taxpayer;

“relevant company” means a corporate taxpayer unless the corporate taxpayer is prescribed by order of the Treasury as not being a relevant company.

(2) In order to ascertain whether a person has an interest in a corporate taxpayer, the interest may be traced through any number of companies, partnerships, trusts, agreements or other arrangements of any description and, for that purpose, paragraph (3) applies (subject to the necessary modifications) in determining whether a person has an interest in each company, partnership, trust, agreement or arrangement through which the interest in the corporate taxpayer is traced.

(3) In this Order, “interest” includes an interest that arises under a trust, or may in future arise under a trust, as a result of—

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<sup>3</sup> XIII p.235

- (a) the exercise of a discretion by the trustees or other persons in accordance with the terms of the trust (whether or not with the consent of another); or
  - (b) the passage of time; or
  - (c) a change of residence.
- (4) The Treasury may by order—
- (a) amend the definition of “attributed profits”, “interest” or “member”;
  - (b) prescribe companies or classes of company which are not to be treated as relevant companies for the purposes of this Order.
- (5) An order under paragraph (4) must not come into operation unless it is approved by Tynwald.

### 3. Attributed profits to be taxed

- (1) Attributed profits are income in respect of which income tax is imposed by the 1970 Act.
- (2) An individual who—
- (a) is resident in the Island; and
  - (b) is a member (during an accounting period or any part of that period) of a corporate taxpayer which is a relevant company,
- must pay income tax on the attributed profits of that member.

### 4. Calculating attributed profits

(1) Unless regulations under paragraph (6) provide otherwise, the amount to be attributed under article 3(2) is the amount of distributable profits that would have been payable to the member if the corporate taxpayer had distributed them.

(2) Where an individual member of a relevant company is resident in the Island for only part of the accounting period of the relevant company, the proportion of distributable profits attributable to that member is to be determined in accordance with the formula—

$$\frac{X}{Y} \times Z$$

where—

“X” = the number of days during the accounting period when the individual was a member of the relevant company and was resident in the Island;

“Y” = the number of days in the accounting period;

“Z” = the amount of distributable profits that would have been attributed to the member in accordance with paragraph (1) had the member been resident in the Island for the whole of the relevant accounting period.

- (3) In determining a corporate taxpayer’s distributable profits for the purposes of calculating attributed profits under this article—
- (a) any relief or allowance permitted to be deducted or allowed under section 27A of the 1970 Act (reliefs and allowances for trading losses and capital expenditure);

- (b) any relief permitted to be allowed under section 29 of the 1970 Act (relief for capital expenditure);
- (c) group relief; and
- (d) such amount or proportion of the profits as is prescribed in an order made by the Treasury,

may be deducted or allowed against the amount of profits.

(4) For the purposes of paragraph (1), the Assessor may estimate, on reasonable grounds, the amount that is likely to be paid to the member if the profits were to be distributed.

(5) Without limiting section 87 of the 1970 Act, an estimate of the Assessor under paragraph (4) is final and conclusive.

(6) The Treasury may by regulations provide for the attributed profits of a relevant company to be calculated in accordance with the regulations.

(7) Without limiting paragraph (6), regulations under paragraph (6) may provide that no amount is to be attributed under article 3(2) in respect of such persons or in such circumstances as are specified in the regulations.

(8) An order under paragraph (3)(d) and regulations under paragraph (6) must not come into operation unless they are approved by Tynwald.

## **5. Certificate of attributed profits**

(1) A corporate taxpayer which is a relevant company must send a certificate of attributed profits to each individual member who is resident in the Island.

(2) The corporate taxpayer must—

(a) send a copy of the certificate referred to in paragraph (1) to the Assessor at the same time as it sends the certificate to the member; and

(b) retain a copy of the certificate.

(3) The certificate must be sent within 12 months from the end of the accounting period of the corporate taxpayer to which the attributed profits relate.

(4) The certificate must contain the information and be in the form which is prescribed by order of the Treasury.

(5) An order under paragraph (4) must not come into operation unless it is approved by Tynwald.

## **6. Further income tax not to be imposed on amounts distributed**

(1) Attributed profits are to be computed for the purposes of income tax without any reduction in respect of a distribution by a relevant company of its distributable profits.

(2) Where a relevant company distributes attributed profits to an individual member, further income tax is not to be imposed on the member in respect of the distribution.

(3) Paragraph (2) applies notwithstanding the provisions of the 1970 Act.

## **7. Assessment to income tax**

(1) Notwithstanding section 81A of the 1970 Act, for the purposes of assessing income the Assessor is to treat attributed profits as income accruing to the individual member on the earliest of the following—

- (a) the day expiring 12 months from the end of the accounting period of the relevant company to which the attributed profits relate;
- (b) the day on which the member dies;
- (c) the day on which the member ceases to be resident in the Island.

(2) Without limiting section 87 of the 1970 Act, the decision of the Assessor as to the year of assessment in respect of which attributed profits are to be assessed under paragraph (1) is final and conclusive.

### **8. Payment on account of income tax**

- (1) Where—
  - (a) an individual member of a relevant company is liable to pay income tax on attributed profits; and
  - (b) the payment on account notice given under section 96B(4) of the 1970 Act does not specify an amount which includes the amount falling to be paid on account of tax on those attributed profits,

the Assessor may give a revised payment on account notice which includes the amount falling to be paid on account of tax on those attributed profits.

(2) The provisions of section 96B of the 1970 Act apply to a notice given under paragraph (1) in the same manner as they apply to a notice given under section 96B(4) of the 1970 Act.

### **9. Loans to participators**

Section A108 of the 1970 Act does not apply in respect of a relevant company if each of its individual members who is resident in the Island is required to pay, and does pay, income tax on the attributed profits of that member in accordance with the provisions of this Order.

### **10. Returns: additional information**

(1) The return of income of a corporate taxpayer which is delivered in accordance with the 1970 Act must also specify—

- (a) the distributable profits of the corporate taxpayer during the accounting period to which the return relates;
- (b) the amount of the distributable profits that would have been payable to each member if the corporate taxpayer had distributed the whole of its distributable profits during the accounting period;
- (c) the amount of distributable profits that has not been distributed among the members during the accounting period;
- (d) the amount of distributable profits actually distributed during the accounting period; and
- (e) the members of the corporate taxpayer, identifying those who are resident in the Island.

(2) The return of income of an individual taxpayer who—

- (a) is resident in the Island; and
- (b) is a member (during an accounting period or any part of that period) of a corporate taxpayer which is a relevant company,

which is delivered in accordance with the 1970 Act must also specify the amount of distributable profits of the corporate taxpayer that would have been payable to the member if the corporate taxpayer had distributed them.

## **11. Power to call for documents**

(1) The Assessor may by notice in writing require a person specified in paragraph (2) to deliver to the Assessor or, if so required by the Assessor, to make available for inspection by the Assessor documents which are in that person's possession or power and which (in the Assessor's reasonable opinion) contain, or may contain, information relevant to—

- (a) any interest that another person may have in a corporate taxpayer;
- (b) the residence status of that other person for the purposes of the 1970 Act.

(2) The persons specified for the purposes of paragraph (1) are—

- (a) a person licensed under section 3 of the Corporate Service Providers Act 2000<sup>4</sup>; and
- (b) a person, other than a person mentioned in paragraph (a), who is the secretary of a corporate taxpayer.

(3) Before a notice is given under paragraph (1), the person to whom the notice is to be given must have been given a reasonable opportunity to deliver or make available the documents in question.

(4) When the Assessor gives a notice under paragraph (1), the Assessor must also give to the person to whom the notice is given—

- (a) a copy of the notice; and
- (b) a written summary of the reasons for giving the notice.

(5) Paragraph (4) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which has been taken into account in deciding whether to give the notice.

(6) As an alternative to delivering documents to comply with a notice under paragraph (1), copies of documents may be delivered instead of the originals; but—

- (a) the copies must be in the form which the Assessor reasonably requires; and
- (b) if required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this paragraph counts as failure to comply with the notice.

(7) A person who fails to comply with a requirement of the Assessor under paragraph (1) commits an offence and is liable on summary conviction to custody for a period not exceeding 6 months or to a fine not exceeding £5,000.

## **12. Power to call for information relating to beneficial ownership**

(1) The powers conferred by this article may be used for the purpose of enquiring into the identity of members of a corporate taxpayer for the purposes of the proper attribution of distributable profits to individual members and collection of income tax from those members in respect of attributed profits.

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<sup>4</sup> 2000 c.13

(2) The Assessor may by notice in writing require any person whom the Assessor has reasonable cause to believe to have or to be able to obtain any information as to—

- (a) the present and past members of a corporate taxpayer;
- (b) the names and addresses of those members; or
- (c) any person who acts or has acted (in any capacity) on behalf of a member of a corporate taxpayer,

to give any such information to the Assessor.

(3) A person who fails to give information required under this paragraph, or who in giving such information makes any statement which that person knows to be false in a material particular, commits an offence and is liable on summary conviction to custody for a period not exceeding 6 months or to a fine not exceeding £5,000.

### **13. Falsification, etc of documents**

(1) Subject to paragraph (2), it is an offence for a person intentionally to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, a document which that person—

- (a) has been required by a notice under article 11; or
- (b) has been given an opportunity in accordance with article 11(3),

to deliver, or to deliver or make available for inspection.

(2) A person does not commit an offence under paragraph (1) if that person acts—

- (a) with the written permission of the Assessor authorised for the purpose;
  - (b) after the document has been delivered or inspected in accordance with article 11(1); or
  - (c) after a copy has been delivered in accordance with article 11(6) and the original has been inspected.
- (3) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding £5,000;
  - (b) on conviction on indictment, to custody for a term not exceeding 2 years or to a fine or to both.

### **14. Groups**

(1) The Treasury may by regulations make provision for the application and operation of this Order in respect of companies which are members of a group of companies.

(2) Without limiting paragraph (1), regulations under paragraph (1) may provide—

- (a) that the individual members of one company in a group of companies are to be liable for the payment of income tax in respect of the distributable profits of all the companies in the group and the circumstances in which and the conditions on which those members are so liable;
- (b) for the aggregation of the distributable profits of all the companies in the group for the purpose of determining attributed profits in relation to an individual member of one company within the group;

- (c) for the necessary adjustments to be made in respect of the treatment of each company within the group;
- (d) for the prevention of the avoidance of income tax and the protection of the revenue;
- (e) for any incidental or consequential matters which the Treasury considers necessary;
- (f) for the modification of the provisions of this Order in their application to a group of companies;
- (g) for the definition of “group”, “holding company” and “subsidiary” for the purposes of this article and regulations made under it.

(3) Regulations under paragraph (1) must not come into operation unless they are approved by Tynwald.

## **15. Modifications**

Subject to article 16, the 1970 Act is to operate as if modified as follows—

- (a) sections 12 to 13K cease to have effect;
- (b) section 25A(4) ceases to have effect;
- (c) in section 97 the words “and the distributable profits charge” cease to have effect;
- (d) in section 99(1) and (2) the words “or the distributable profits charge” cease to have effect;
- (e) in section 99(3) the words “or distributable profits charge” cease to have effect;
- (f) in section 99(5) the words “or the distributable profits charge” cease to have effect;
- (g) in section 100(1) the words “or distributable profits charge” and the words “or charge” (on each occasion they appear) cease to have effect;
- (h) in section 112C(3)(a) the words “, any amount due in respect of distributable profits charge” cease to have effect.

## **16. Saving and transitional provisions**

(1) The provisions of the 1970 Act referred to in article 15 continue to have effect to the extent necessary to allow the distributable profits charge to be calculated, charged and collected in accordance with those provisions in respect of corporate taxpayers for accounting periods—

- (a) ending before 6 April 2008;
- (b) beginning before 6 April 2008 and ending on or after 6 April 2008.

(2) Where a corporate taxpayer —


- (a) has paid the distributable profits charge in a year of assessment; and
- (b) subsequently has paid or pays a distribution to a member in relation to those distributable profits,

the unused balance appearing on the distribution credit voucher (or which would have appeared on the voucher had it been issued) is to be refunded to the recipient of the distribution credit (or the member who is resident in the Island who would have been the recipient, had the voucher been issued).



(3) This article has effect notwithstanding article 15.

Made this 9<sup>th</sup> day of November 2007

  
Minister for the Treasury

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

The effect of this Order is to replace the distributable profits charge (levied in accordance with sections 12 to 13K of the Income Tax Act 1970) with an income tax charge to be levied on individuals resident in the Island who are members of corporate taxpayers which are relevant companies.

Every corporate taxpayer is a relevant company unless the Treasury by order prescribes otherwise.

The Order is not expected to increase the expenditure of Government or to reduce its income.