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PRACTICE NOTE

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INCOME TAX - LEGISLATIVE PROGRAMME

Introduction

This Practice Note is being issued to inform practitioners about the legislative programme which the Treasury intends to promote through the Branches of the Legislature.

Most of the legislation is proposed in order to progress the Island's Modified Tax Strategy which includes the move to a zero rate for corporate entities, the simplification of the income tax system where possible, changes to make the administration of income tax more efficient and provision for the implementation and administration of international agreements.

A series of Bills are planned, the first of which has already completed its passage. The Income Tax Act 2003 was passed on 22 October 2003. It introduced Personal Allowance Credit and made other amendments as detailed at appendix 1 to this Practice Note.

The current proposals for Bills within the legislative programme are as follows:-

Income Tax (Amendment) Bill 2004

Details of this Bill which is currently passing through the Branches of the Legislature can be found in Practice Note 102/04. It is intended to draft guidance notes on some of the provisions within the Bill and Practice Note 102/04 starts this consultation process by seeking views in order to develop the guidance.

Other Proposed Income Tax Bills

It is also proposed to draft further Bills and Regulations to achieve the following objectives:-

- To provide for an accounts basis of assessment for non-corporate taxpayers.
- To update the income tax legislation in relation to husband and wife to reflect any change in Treasury policy and to improve the legislation in relation to Human Rights issues.
- To allow the Island to fulfil its obligations in relation to the EU savings Directive.

- To allow a charge to income tax where persons profit from speculative land transactions.
- To provide for an appropriate policy on distributions and for the treatment of undistributed income.
- To introduce a new Manx Corporate Tax with an accounting period basis of assessment.
- To provide for the removal of harmful tax regimes in accordance with the Island's International obligations and in line with the introduction of zero rate tax.

Many of the subjects above have already or will be the subject of consultation papers and details will need to be referred to the Treasury for detailed policy decisions to be made. The Division will endeavour to keep you informed as the details emerge.

The above proposals and the ambitious legislative timetable are proving demanding for the Division's limited resources, however we are committed to improving the service we provide, particularly in relation to information we make available. This Practice Note will be followed by further documents which will provide a more comprehensive explanation of the issues surrounding certain topics and seek views from practitioners and taxpayers where appropriate.

I Q Kelly

Assessor of Income Tax

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.

INCOME TAX ACT 2003

The Income Tax Act 2003 was passed on 22 October 2003. It is arranged in four parts and introduces both new legislation and also makes amendments to existing sections of the Income Tax Act 1970. Some of the changes apply from specific dates within the legislation, however the remaining sections will need to be enacted by an appointed day order as detailed in section 31.

The following is a summary of the contents of the Income Tax Act 2003:

PART 1

Personal Allowance Credits

This is new legislation, which provides for annual payments to be made by the Income Tax Division to certain residents with low income. Payments will be made for the tax year commencing 6 April 2003 based on income assessed in the year ending 5th April 2003.

A detailed public guide (GN29) has also been published. Copies of the guide can be obtained in person from the Income Tax Division enquiries counter, or by telephone or written request.

PART 2

Protection of Information

The existing Section 106 of the Income Tax Act 1970 is replaced by an updated Section 106; and new Sections 106C, 106D and 106E and 106F are added.

Updated Section 106

The updated Section 106 defines the duties of confidentiality in relation to all information and documentation obtained by a person having official duty under or in respect of the Income Tax Acts.

The duty of confidentiality has been extended to include persons holding such documents or information on behalf of a person having such official duty.

The list of persons to whom disclosure of confidential information is authorised has been extended.

Section 106C

This section permits the Assessor of Income Tax, or any officer authorised by the Assessor, to disclose information to the Department of Health and Social Security for the purpose of assisting the performance of its duties.

Section 106D

This section permits the Assessor and any person having official duty in respect of Income Tax to disclose information to the Financial Supervision Commission, Insurance and Pensions Authority or an enforcing authority to assist them in the discharge of their functions.

This section does not authorise the disclosure of any information prohibited by the provisions of the Data Protection Act 2002.

The enforcing authorities are listed in **Section 106F** as:

- The Isle of Man Office of Fair Trading
- The Isle of Man Gambling Control Commissioners
- The Chief Constable and members of the Police Force
- Any person who is prescribed for the purpose of this definition by an order made by the Treasury, subject to Tynwald approval.

Section 106E

This section permits the disclosure of information by the Manx Electricity Authority or an enforcing authority to the Treasury or the Assessor to assist in the discharge of duties under the Income Tax Acts.

This section does not authorise the disclosure of any information prohibited by the provisions of the Data Protection Act 2002.

PART 3

International Obligations

This is a new piece of legislation relating to information exchange agreements with the government of any other country. The exchange of information can only be carried out providing that "applicable arrangements" have been made with the government of the other country.

The legislation provides for restrictions on the disclosure and use of incoming and outgoing information as follows:

Incoming Information must only be used for:

- The purposes of Income Tax;
- The facilitation of legal proceedings for failure to observe the income tax laws of the Island; or
- As otherwise permitted under the arrangements

Outgoing information must only be disclosed:

- If the Assessor is satisfied that the competent authorities of the other country are bound by rules of confidentiality not less strict than those applicable in the Island, or have undertaken to observe such rules.
- For the purposes of taxes to which the arrangements relate, or to facilitate legal proceedings for failure to observe the laws of the other country relating to those taxes.

PART 4

Miscellaneous Amendments and General

Trading Profits

The Income Tax (Temporary Taxation Order)(Standard Rate of Tax)(Companies) Order 2002 is confirmed.

Paragraphs (a) and (b) of Section 1A(1) Income Tax Act 1970 are substituted by paragraphs (a)(i) and (ii) and (b), which have the following effect:

- Trading profits up to and including £500,000* are to be taxed at a rate of 10%
- Trading profits in excess of £500,000* will be taxed at 15%
- Profits from any other source will be taxed at 18%

*This limit has now been amended by resolution of Tynwald to £100,000,000 for 2003/2004 and future years.

For the purposes of this section, investment income may be included as trading profits as follows:

Investment Income of Trading Companies

Investment income received by any trading company will be treated as part of that trading income and, as such, will be subject to tax at the rates of 10% and 15%.

However, dividends and foreign income received by trading companies will be treated as "income from any other source" for this purpose and will be subject to tax at the higher rate of 18%.

Investment Income of Non-Trading Companies

Investment income received by non-trading companies is not trading income and, therefore, will continue to be subject to tax at the higher rate of 18%.

Benefits in Kind

Section 2H of the Income Tax Act 1970 is amended by the insertion of subsection (2A), which changes the way in which benefits are calculated in respect of the transfer of assets that have not depreciated and subsections (4) or (5) do not apply.

In respect of the year of assessment commencing 6 April 2003, and subsequent years, the cost of benefit of any asset transferred will be the **greater** of market value at the time of transfer, or the cost of the asset to the transferor.

Married Couples – Assessment and Allowances

Section 35 of the Income Tax Act 1970 is amended by the insertion of subsection (2A), and Section 64 Income Tax Act 1970 is amended by the addition of subsection (4).

The effect of these amendments is to change the way a husband and wife are treated for tax purposes in their year of marriage or separation. The change is effective in respect of marriages and separations taking place in the year of assessment commencing 6 April 2003, onwards.

From 6 April 2003 a husband and wife will continue to be assessed as single persons for the year of assessment in which their marriage takes place; they will only qualify for joint assessment for the first full year of assessment following the year of marriage and all subsequent years during which they continue to live together as man and wife. Joint assessment will cease in the full year of assessment immediately preceding the year in which the separation occurs and they will both be assessed as single persons for the full year of assessment during which a separation occurs.

The Income Tax Division will concessionally permit the transfer of unutilised personal allowances between spouses in the year of marriage, even though they are being assessed as single individuals. Such transfer will be carried out automatically by the Division, so there is no need for a claim to be made.

The transfer of unutilised allowances between spouses relates to the Personal Allowance only. Other unutilised allowances and deductions cannot be transferred between spouses in the year of marriage. No transfer of unutilised allowances is available in the year of separation.

Unlawful Assumption of Character of an Officer

Section 105A is inserted into Income Tax Act 1970, to include provisions to make it an offence for any person to assume the name, designation or character of the Assessor or person authorised by the Assessor.

Bribery and Collusion

Section 105B is inserted into Income Tax Act 1970, to include provisions to make it an offence for the Assessor or person authorised by the Assessor to ask for or take payment or reward that he is not lawfully entitled to receive in return for carrying out, or not carrying out a particular action under the Income Tax Acts.

These provisions also make it an offence for any person to offer such payment or reward to the Assessor or person authorised by the Assessor in return for carrying out, or not carrying out a particular action.

Power to Pay Rewards

Section 119D is inserted into Income Tax Act 1970 to include provisions for the Treasury to pay rewards for any service rendered by any person in relation to any matter under the Income Tax Acts that appears to merit such reward.