

INTERNATIONAL BUSINESS ACT 1994

(Chapter 3)

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Received Royal Assent: 17 May 1994

Passed: 17 May 1994

AN ACT

to make special provision for the assessment and charging of income tax in respect of international businesses; to change the law relating to limited partnerships; and for other purposes.

PART 1.INTERNATIONAL COMPANIES

1 Companies to which Part 1 applies

(1) This Part shall apply to a company which-

(a) does not carry on or transact any trade or business which is prescribed; and

(b) subject to subsection (2) is not-

(i) the holder of a banking licence under the Banking Act 1998; or

[Subpara (i) substituted by Banking Act 1998 Sch 1 with saving see Part I para 14.]

(ii) the holder of a licence under section 3 of the Investment Business Act 1991

(other than an exempt scheme); or

(iii) an insurance company within the meaning of the Income Tax (Exempt Insurance Companies) Act 1981; or

(iv) such other class of company as may be prescribed.

(2) Notwithstanding sub-paragraphs (i) to (iii) of subsection (1)(b), the Treasury may by regulations apply this Part, and any regulations under this Act which are made for the purposes of this Part, to any company or class of company which falls within those

sub-paragraphs, subject to such exceptions, adaptations and modifications as may be specified in the regulations.

2 Liability of international companies to income tax

(1) Notwithstanding the Income Tax Act 1970 (in this Act referred to as 'the 1970 Act') the Assessor shall, in accordance with this Part, assess the income of a resident company for liability to income tax under this Part for a year of assessment if the company satisfies the Assessor that-

(a) subject to subsection (4), the company will not carry on or transact its trade or business in the Island, unless that trade or business is such that all receipts and income arising from it arise-

(i) outside the Island; or

(ii) from dealings with-

(A) other international companies; or

(B) international limited partnerships,

and originate from persons who are not resident in the Island; and

(b) no person resident in the Island (other than an international company) will have, for so long as the company is an international company, any interest in such company, other than as a shareholder in or debenture holder of a body corporate which has an interest in such company and-

(i) is quoted on a Stock Exchange; or (ii) is a public company and complies with such conditions as are prescribed;

(c) in the case of a public company, it complies with such further conditions as are prescribed.

(2) On an application for assessment under this subsection, the income tax liability of a company which satisfies the requirements of subsection (1) shall be equal to the minimum tax charge (which shall be specified in the notice of assessment issued under section 3(3)), and no more, for the relevant year of assessment.

[Subs (2) not in force- ADO required.]

(3) In all other cases, the income tax liability of a company which satisfies the requirements of subsection (1) and such other requirements as are prescribed shall be assessed-

(a) in respect of the whole of the income of the company or such part of its income as is specified in the notice of assessment; and

(b) at such rate (not exceeding 35%) as is specified in the notice of assessment, but shall not in any event be less than the minimum tax charge paid under section 3(2)(ii).

(4) For the purposes of subsection (1)(a) no account shall be taken of-

(a) the holding of any authorised security issued by the Government under the Isle of Man Loans Act 1974;

(b) the keeping of bank accounts in the Island with the holder of a banking licence under the Banking Act 1998;

[Para (b) substituted by Banking Act 1998 Sch 1 with saving - see Part I para 14.]

(c) such other descriptions of receipts, income, trade, business or transactions as are prescribed.

(5) The income of a company shall not be assessed under this Part unless-

(a) at least one of the directors of the company; and

(b) either —

(i) the secretary of the company; or

(ii) in the case of a company incorporated outside the Island, a person appointed by the company to act as its secretary in the Island,

are resident (in the case of an individual) or incorporated (in the case of a corporate secretary) in the Island.

[Para (b) amended by Companies, etc. (Amendment) Act 2003 Sch 1 as of 1st March 2004]

(6) The persons referred to in subsection (5)(b) shall be either —

- (a) an advocate; or
- (b) a person qualified for appointment as the auditor of a company under section 14(1)(a) of the Companies Act 1982; or
- (c) a member of the Institute of Chartered Secretaries and Administrators; or
- (d) a fellow or associate member of the of the Institute of Bankers or the Chartered Institute of Bankers in Scotland;
- (e) a holder of a CSP licence or its nominee company (as such terms are defined in section 2(1) and paragraph 10A(2) of Schedule 2 respectively of the Corporate Service Providers Act 2000), and those persons described in section 3(3)(b), (c) and (d) of that Act; or
- (f) an individual who has satisfied the Financial Supervision Commission that —
 - (i) he has adequate knowledge and experience of the duties and responsibilities of a company secretary;
 - (ii) he is a proper person to hold such office, and is authorised by the Financial Supervision Commission to act as such.

[Subs (6) amended by Companies, etc. (Amendment) Act 2003 Sch 1 as of 1st March 2004]

(7) Subsections (5) and (6) shall not apply to a company if-

- (a) it is in the course of being wound up; and
- (b) a liquidator is resident in the Island and has any of the qualifications specified in subsection (6).

(8) For the avoidance of doubt, an assessment under subsection (3) is an assessment of income tax for the purposes of the 1970 Act and, but without prejudice to the generality of section 20(l) of this Act (construction of this Act as one with the Income Tax Acts), the provisions of the 1970 Act relating to the payment of income tax, its collection, and the payment of interest on overdue tax apply in respect of an assessment under this subsection.

(9) Where income tax is assessed under subsection (3), the amount due under the assessment shall be reduced by the amount of the minimum tax charge paid under section 3(2)(ii).

(10) A company that is aggrieved by an assessment under subsection (3) may appeal to the Commissioners in respect of any aspect of that assessment except the rate of tax that has been specified in the notice of assessment.

3 Applications

(1) A company may make an application for assessment for liability to income tax under section 2(2) or (3) in respect of a year of assessment in the manner specified in this section.

[The expression '2 (2) or' not in force ADO required.]

(2) An application under this section shall be made-

- (a) not later than 5 April in that year; or
- (b) if a company first commences business in that year, not later than 30 days after the date on which the business commences,

whichever is the later, by submitting to the Assessor-

- (i) a completed application form; and (ii) the minimum tax charge; and
- (iii) a declaration and undertaking in the prescribed form, executed on behalf of the company by a director who is resident in the Island or, where the company is in the course of being wound up, by the liquidator referred to in section 2(7)(b); and
- (iv) where the company was an international company in any year before the year of assessment in respect of which the application is made, a declaration in the prescribed form by a director who is resident in the Island or, where the company is in the course of being wound up, by the liquidator referred to in section 2(7)(b).

(3) Where an application is made to the Assessor in accordance with this section he shall, if satisfied as required by this Part, issue to the company a notice of assessment.

(4) An international company or a company applying for assessment under this Part shall, when required by the Assessor, produce to him the balance sheet and the profit and loss account of the company for any year of assessment and such other accounting records and documents as he may specify.

(5) For the purposes of subsection (2)(b), a company which has not otherwise commenced business shall be treated as having commenced business on the date of its first accounting transaction which is required by section 1 of the Companies Act 1982 to be entered in the company's accounting records, and for this purpose, there shall be disregarded any transaction arising from the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum.

4 Assessment following breach of Part 1

(1) Subject to subsection (2), if the Assessor is satisfied that during any year of assessment-

(a) an international company has carried on or transacted any trade or business prescribed under section 1(a); or

(b) an international company has been or is a class of company specified in or prescribed under section 1(b); or

(c) an international company has not carried on or transacted its trade or business in accordance with section 2(l)(a); or

(d) a person resident in the Island has had an interest in an international company otherwise than as permitted by section 2(l)(b),

he may assess the income of the company for the whole of that year of assessment under the 1970 Act without reference to the provisions of this Part.

(2) If an international company is in receipt of income derived from a source within the Island but satisfies the Assessor that, taking into account the nature of the company's business and its turnover, the income is derived from an isolated and insignificant transaction, he may disregard that income for the purposes of subsection (1).

(3) A company which is aggrieved by any assessment made on it under subsection (1) or by any decision made under subsection (2), shall be entitled to appeal to the Commissioners..(4) In any appeal against an assessment under subsection (1)(d), the Commissioners may, in private and in the absence of the Assessor, require the disclosure to them of the identity of the beneficial owner of any interest in the company, and if such information is not given the appeal shall be dismissed.

(5) Any information received under subsection (4) shall not be communicated by the Commissioners to the Assessor.

(6) Where the income of a company is assessed in accordance with subsection (1), any amount of income tax assessed in respect of the year of assessment shall be additional to any minimum tax charge paid to the Assessor.

5 Dividends, profits etc

(1) Section 71 of the 1970 Act shall not apply to dividends, interest, share of profits or remuneration of directors paid by an international company except where the company is assessed under section 2(3) and otherwise elects.

(2) Where section 71 does not apply, the Assessor shall not pursue the liability to income tax of non-resident persons in receipt of such dividends, interest, share of profits or remuneration.

(3) The amount of any tax deducted from any dividend, interest or share of profits under section 71 of the 1970 Act which is accounted for and paid over to the Assessor by an international company in accordance with subsection (6) of that section shall be a payment made by the company on account of tax charged or chargeable on the profits and gains of the company assessable to tax for the year of assessment in which the payment is made and where the income tax liability is less than the amount of tax so remitted the appropriate repayment shall be made to the company by the Assessor.

(4) Where subsection (3) applies, section 25 and subsections (2) and (3) of section 71 of the 1970 Act shall not apply.

6 Applications for re-assessment

(1) Notwithstanding the issue of a notice of assessment to a company in respect of any

year of assessment, the Assessor may, at the request of the company and upon receipt of a completed return of income in accordance with sections 62 and 66 of the 1970 Act before 30 June in the year following, issue a supplemental assessment in respect of the income of the company for the whole of the year of assessment under the 1970 Act without reference to the provisions of this Part.

(2) Notwithstanding the issue of a notice of assessment under this Part in respect of any year of assessment, the Assessor may, at the request of the company and upon receipt of a completed application before 5 April in that year, issue a supplemental assessment with effect from such date as may be specified in the application and assess the whole of the income of the company for the remainder of that year under the 1970 Act without reference to the provisions of this Part.

(3) A company to which subsection (2) applies shall, for the purposes of the supplemental assessment referred to in that subsection, be treated as commencing business on the date specified in the application under subsection (2)..(4) Where a supplemental assessment is issued in the manner referred to in this section, any amount of income tax assessed in respect of the year of assessment or any part of that year shall be additional to any previous minimum tax charge paid to the Assessor.

(5) A company which has been assessed in respect of a year of assessment under section 2(3) cannot subsequently apply-

(a) to be assessed under section 2(2) in respect of the same year;

(b) to vary that assessment.

[Subs (5)(b) in force- remainder of s 6 not in force ADO required.]

PART 2

INTERNATIONAL LIMITED PARTNERSHIPS

7 Partnerships in respect of which Part 2 applies

(1) This Part shall apply in respect of a limited partnership-

(a) which is registered under Part II of the Partnership Act 1909; and

(b) in which all the limited partners (other than limited partners which are international companies) are resident outside the Island; and

(c) which does not carry on or transact any trade or business which is prescribed; and

(d) in which the general partner is a company which-

(i) is resident in the Island and has a place of business there; and

(ii) complies with the requirements of section 2(5) to (7) to the same extent as an international company; and

(iii) complies with such further requirements as may be prescribed; and

(iv) is not such class of company as may be prescribed; and

(e) which is not, nor is any limited partner in it,-

(i) the holder of a banking licence under the Banking Act 1998;

[Subpara (i) substituted by Banking Act 1998 Sch 1 with saving (see Part I para 14).]

(ii) the holder of a licence under section 3 of the Investment Business Act 1991; or

(iii) such other class of person as may be prescribed; and

(f) which satisfies the Assessor that-

(i) subject to subsection (2), the partnership will not carry on or transact its trade or business in the Island, unless that trade or business is such that all receipts and income arising from it arise either-

(a) outside the Island; or

(b) from dealings with other international limited partnerships or with international companies, and originate from persons who are not resident in the Island; and

(ii) no person resident in the Island, (other than the general partner or an international company) will have, for so long as the partnership is an international limited partnership, any interest in such partnership, other than as a shareholder in or debenture-holder of a company which has an interest in such international limited partnership and-

- (a) is quoted on a Stock Exchange; or
 - (b) is a public company and complies with such conditions as are prescribed.
- (2) For the purposes of subsection (1)(f)(i), no account shall be taken of-
- (a) the holding of any authorised security issued by the Government under the Isle of Man Loans Act 1974;
 - (b) the keeping of bank accounts in the Island with the holder of a banking licence under the Banking Act 1998;
- [Para (b) substituted by Banking Act 1998 Sch I with saving (see Part I para 14).]**
- (c) such other descriptions of receipts, income, trade, business or transactions as are prescribed.
- (3) A limited partnership to which this Part applies and in respect of which a certificate of status has been issued by the Assessor under section 9 is referred to in this Act as an 'international limited partnership'.

8 Liability of limited partners to income tax

Notwithstanding the 1970 Act, and subject to this Part, a limited partner in an international limited partnership shall not be liable to pay income tax in respect of income received from that partnership.

9 Applications for certificate of status

- (1) A limited partnership may make an application for a certificate of status as an international limited partnership in respect of a year of assessment in the manner specified in this section.
- (2) An application under this section shall be made-
 - (a) not later than 30 June in the year of assessment; or
 - (b) if the partnership first commences business that year, not later than 30 days after the date on which the business commences, whichever is the later, by submitting to the Assessor-
 - (i) a completed application form; and
 - (ii) £430 or such other sum as may be prescribed; and. **[Para (ii) amended by SD151/02.]**
 - (iii) a declaration and undertaking in the prescribed form, executed on behalf of the general partner by a director who is resident in the Island; and
 - (iv) where the limited partnership was an international limited partnership in any year before the year of assessment in respect of which the application is made, a declaration in the prescribed form executed on behalf of the general partner by a director who is resident in the Island.

(3) In a case to which subsection (2)(b) applies, the fee shall be calculated by deducting from the amount of the fee under subsection (2)(ii) the result of the following formula-

$$F \frac{M - 1}{12}$$

where: F = the amount of the fee under subsection (2)(ii), and
 M = the number of complete tax months that have elapsed since the beginning of the year of assessment as at the date on which the partnership commenced business.

- (4) If for any reason a partnership ceases to be an international limited partnership, the Assessor shall not be required to make a refund of the whole or any part of a fee paid by the partnership under this section.
- (5) Where an application is made to the Assessor in accordance with this section he shall, if satisfied as required by this Part, issue to the international limited partnership a certificate of status in the prescribed form.
- (6) An international limited partnership or a limited partnership making an application under this section shall, when required by the Assessor, produce to him the balance sheet and the profit and loss account of the limited partnership for any year of assessment and such other

accounting records and documents as he may specify.

10 Assessment following breach of Part 2

(1) Subject to subsection (2), if the Assessor is satisfied that during any year of assessment an international limited partnership has contravened any of the requirements of this Part, he may assess the income of the limited partners of that partnership for the whole of that year of assessment under the 1970 Act without reference to the provisions of this Part.

(2) Subsections (2) to (6) of section 4 shall apply, with the necessary modifications, for the purposes of this section as they apply for the purposes of that section.

PART 3

MISCELLANEOUS AND SUPPLEMENTAL

11 Amendments relating to limited partnerships. The enactments specified in Schedule I are amended in accordance with that Schedule.

12 Offences

(1) A person who, without reasonable excuse, fails to comply with a requirement under section 3(4) or 9(6) shall be guilty of an offence.

(2) A person who knowingly acts in breach of an undertaking given under section 3(2)(iii) or 9(2)(iii) shall be guilty of an offence.

(3) Where an offence by a company was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the company, or any person who was purporting to act as any such officer, that director, manager, secretary, other officer or person shall also be guilty of the like offence as the body corporate and shall be punishable accordingly.

(4) Where the affairs of a company are managed by the members subsection (3) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

13 Regulations

(1) Subject to subsection (2), the Treasury may make all such regulations as are necessary to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the power provided by subsection (1), regulations may include-

(a) provision for the assessment and charging of, and the period by reference to which, income tax is to be charged;

(b) special provision for transitional treatment in respect of the year of assessment in which a company becomes, or ceases to be, an international company;

(c) special provision for cases where section 2(3) applies including provision for the charging of income tax at a rate or rates not exceeding 35%;

(d) provisions modifying the provisions of the 1970 Act in its application to international companies,

and provisions which are matters incidental or supplementary to paragraphs (a) to (d).

(3) If any regulation under subsection (2) conflicts with any provision of the Income Tax Acts, that regulation shall prevail, but no regulation shall-

(a) subject to section 6(4) and subsection (2)(c) of this section, impose upon any person a liability to income tax greater than would ultimately be the case by the mere operation of those Acts;

(b) prejudice any right of appeal under those Acts.

(4) Regulations under this Act shall not come into operation unless they are approved by Tynwald..

14 Interpretation

In this Act-

'1970 Act' has the meaning given by section 2;

'company' means a body corporate whether incorporated in the Island or not;

'exempt scheme' means a company which is an authorised scheme or a recognised

scheme within the meaning of section 31 of the Financial Supervision Act 1988, or a company which is a restricted scheme within the meaning of subsection (5) of section 11 of that Act and is not exempted by or under subsections (7) to (11) of that section;

'**interest**' means any interest (whether such interest is equitable, legal or contractual) and whether such interest is a contingent interest or is direct, or through or partly through, a body corporate or a trust, or bodies corporate or trusts, and a person shall be deemed to have an interest in an international company or as the case may be, international limited partnership if he has any right to acquire or dispose of-

(a) any interest in such a partnership; or

(b) any share or debenture in such a company or any interest therein,

or to vote in respect thereof, or if his consent is necessary for the exercise of any of the rights of other persons interested therein, or if other persons interested therein can be required or are accustomed to exercise their rights in accordance with his instructions, and, for the purposes of this definition-

(a) a loan to a company or a loan to a partnership shall, subject to regulations under section 2(4)(c) or 7(2)(c), be treated as if the loan were an interest in the company or, as the case may be, partnership;

(b) the following shall not be treated as an interest in a company or partnership-

(i) an interest as a bare nominee or as a bare trustee;

(ii) an interest as the trustee or protector of a discretionary trust if the trust deed or the document constituting the trust expressly excludes the vesting of any beneficial interest in a person resident in the Island;

(iii) any other interest as the trustee of a trust (other than a discretionary trust) if the trust does not permit (whether by express provision in the trust deed or the document constituting the trust, or by operation of law or otherwise) the vesting of a beneficial interest in the trustee nor the payment of any sums to the trustee other than as expenses or as fees for professional services;

'**international company**' means a company, in respect of which a notice of assessment has been issued by the Assessor under section 3(3);

'**international limited partnership**' has the meaning given in section 7(3);

'**limited partnership**', '**limited partner**' and '**general partner**' shall be construed in accordance with Part II of the Partnership Act 1909; '**minimum tax charge**' means-

(a) £250, if an application under section 3 is made not later than 5 August in the year of assessment to which it relates or if section 3(2)(b) applies;

(b) £500, if the application is made not later than 5 December in that year;

(c) £1,000 if the application is made not later than 5 April in that year,

or such other sums as may be prescribed;

'**Stock Exchange**' means the London Stock Exchange and any other investment exchange which is prescribed.

15

[S 15 repealed by International Business (Amendment) Act 1994 s 1.]

16 (1) [Amends section 6 of the Companies Act 1992.]

(2) (a) and (b) [Amend sections 2 and 99 respectively of the Companies Act 1931.]

17 Receipts

Any money received by the Assessor under this Act shall form part of the General Revenue of the Island.

18 Savings

(1) This Act shall not prejudice the operation of the Income Tax Acts 1970 to 1991 as those Acts have effect apart from this Act.

(2) Nothing in this Act shall be construed as affecting the liability of a company to deduct and account for income tax under the Income Tax (Instalment Payments) Act 1974.

19 Repeals

The enactments referred to in Schedule 2 are repealed to the extent specified in that Schedule.

[S 19 not in force- ADO required.]

20 Short title, construction and commencement

(1) This Act may be cited as the International Business Act 1994 and (with the exception of sections 11 and 16, and Schedule 1) shall be construed as one with the Income Tax Acts 1970 to 1991, and those Acts and this Act may together be cited as the Income Tax Acts 1970 to 1994.

(2) This Act shall come into operation on such day as the Treasury may by order appoint.

[Subs (2) substituted by International Business (Amendment) Act 1994 s 2.]

(3) An order under subsection (2) may appoint different days for different provisions and for different purposes.

[Subs (3) substituted by International Business (Amendment) Act 1994 s 2.]

(4) An order under subsection (2) may-

(a) operate retrospectively so as to bring any provision of this Act into operation in respect of the income tax year commencing on 6 April 1993; and

(b) contain such transitional and saving provisions as the Treasury thinks appropriate.

[Subs (4) amended by International Business (Amendment) Act 1994 s 2.]

[ADO (ss 1, 2 (except 2(2)), 3, (except 3(1) in part), 4, 5, 6(5)(b), 7 to 10, 14, 18, 20) income tax year commencing 6/4/1993 and subsequent years (SD255/94); (ss 12, 13, 16, 17) 25/5/1994 (SD255/94); (s 11, Sch 1 (except amendments to ss 48A and 51 of Partnership Act 1909) 1/10/1994 (SD413/94); (rest of Sch 1) 1/1/1995 (SD413/94).]

Schedule 1

Amendments Relating to Limited Partnerships

[Sch 1 amends the following Acts-

Partnership Act 1909 q.v.

Registration of Business Names Act 1918 q.v.

Fines Act 1986 q.v.]

Schedule 2

Repeal of Enactments

[Sch 2 not in force.]

Chapter number Short title Extent of repeal

1984 c.10 Income Tax (Exempt Companies) Act 1984.

The whole Act.

1985 c.25 Treasury Act 1985. In Schedule 2, entry 370 and the cross-heading relating to that entry.

1986 c.25 Income Tax (Amendment) Act 1986. Section 19.

1989 C.10 Income Tax Act 1989. In Schedule 4, entry 7 and the cross-heading relating to that entry.

1991 c.17 Income Tax Act 1991. Section 12.