



**Isle of Man  
Government**

*Reilhtys Ellan Vannin*

# The Treasury *Yn Tashtey*

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## **INCOME TAX DIVISION**

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## **PRACTICE NOTE**

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**PN 75/99**

**Date:**

### **Income Tax- Moratorium On The Formation Of Non-Resident Duty Companies**

#### **Introduction**

The Isle of Man Government has now set out its response to the Review of Financial Regulation in the Crown Dependencies ("The Edwards Review") published by the Home Secretary in November 1998. The response, prepared by the Council of Ministers was debated and approved by Tynwald on Wednesday 21st April 1999. One of the aspects covered by The Edwards Review was the existence of non-resident duty companies. Whilst the Isle of Man Government cannot support the comments made it is clearly the case that the non-resident duty company is a vehicle which presently has a question mark hanging over it. As a consequence, it has been decided that there should be an immediate moratorium on the creation of companies of this type and that their future within the corporate structures of the Isle of Man will be determined in the light of legislation being progressed to regulate corporate service providers and a rationalisation of the taxation provisions for exempt and international companies.

#### **Moratorium**

Tynwald on 21st April 1999 approved the Income Tax (Companies Residence) (Temporary Taxation) Order 1999. A copy of the Order is attached. This Order replaces Sections 2D and 2E of the Income Tax Act 1970 and with effect from 6th April 1999 imposes a moratorium on the creation of Manx incorporated non-resident companies by deeming the following companies to be resident for the purposes of the Income Tax Acts:

- a company incorporated on or after 6th April 1999.
- any company incorporated before 6th April 1999 in respect of which a non-resident declaration under section 2 of the Non-Resident Company Duty Act 1986 was not in force on 5th April 1999.

Legislation confirming the amendments to the Income Tax Act 1970 will be included in an Income Tax Bill to be published later this year.

#### **Existing Non-Resident Duty Companies**

Pending the corporate service providers legislation and the rationalisation of the taxation provisions for exempt and international companies referred to above, companies which had

a non-resident declaration in force on 5 April 1999 will continue to be non-resident for income tax purposes unless;

the non-resident status is challenged by the Assessor, or a rescission of the non-resident declaration is delivered to the Registrar.

## **Transitional Delays Arising Following The Filing Of A Rescission.**

It is recognised that where a non-resident duty company delivers a rescission, circumstances beyond the control of the company may lead to a short delay in changing the officers to permit the company to for example elect for exempt status under the Income Tax (Exempt Companies) Act 1984. By concession the Income Tax Division will not pursue any liability to resident tax arising in such a transition period providing that that period does not exceed 14 days.

## **Appendix 1**

Statutory Document No. 149/99

INCOME TAX ACT 1995

INCOME TAX (COMPANIES RESIDENCE) (TEMPORARY TAXATION) ORDER 1999

Approved by Tynwald 21st April 1999

Coming into operation in accordance with article 1(1)

In exercise of the powers conferred on the Treasury by section 15 of the Income Tax Act 1995(a), and of all other powers enabling it in that behalf, the following Order is hereby made: -

## **Citation And Commencement**

This Order may be cited as the Income Tax (Companies Residence) (Temporary Taxation) Order 1999.

This Order shall come into operation on the day on which it is approved by Tynwald.

## **Interpretation**

In this Order -

appointed day" means 6 April 1999.

company" has the meaning given by section 341 (1) of the Companies Act 1931 (b);

non-resident company" means a company in respect of which, a non-resident declaration under section 2 of the Non-Resident Company Duty Act 1986 (c) was in force immediately before the appointed day.

## **Deemed Residence Of Companies**

1. A company to which this article applies is deemed to be resident in the Island for the purposes of the Income Tax Acts.
2. This article applies to a company -
  - which is incorporated on or after the appointed day, or
  - which was incorporated before the appointed day and, immediately before that day, was not a non-resident company.

## **Actual Residence**

1. The Assessor of Income Tax may, in respect of any year of assessment, assess the income of any non-resident company if he is satisfied that -
  - the company is in fact resident in the Island; or
  - income arises or accrues to the company and is derived from the annual profits or gains of or in respect of or from any kind of property whatsoever in the Island, or derived from the annual profits or gains of or in respect of or from any profession, trade, employment, or vocation carried on in the Island.
2. A company shall not be treated as being resident in the Island by reason only of the fact that a person who is resident in the Island is appointed as the liquidator of the company.
3. Where a company pays non-resident company duty under the Non-Resident Company Duty Act 1986, the amount of duty paid by that company in any year of assessment shall, except in the case of a company to which article 5(1) applies, be set against or refunded from any income tax payable or paid by the company for that year.

## **Companies changing residence**

1. Where in any year of assessment a non-resident company ceases to be such, the company shall not be assessed to income tax (except as provided by paragraph 4(1)) in respect of income which arises or accrues to it for that part of the year in which it is a non-resident company.
2. For the purposes of the Income Tax Acts a company to which paragraph (1) applies shall be treated as if it had become resident in the Island on the date on which a notice is delivered to the registrar of companies under section 2(2) of the Non-Resident Company Duty Act 1986 (rescission of non-resident declaration).

## **Repeal**

Sections 2D and 2E of the Income Tax Act 1970 are repealed.

MADE 30th March 1999. Minister for the Treasury.

EXPLANATORY NOTE This Note is not part of the Order This Order is made under the Income Tax Act 1995. The effect of the Order is to treat as resident in the Isle of Man for tax purposes \* all companies incorporated on or after 6 April 1999; and \* any tax resident company incorporated before that date. The Order replaces provisions in the Income Tax Act 1970