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## **PRACTICE NOTE**

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**PN 65/96**

**Date: 4<sup>th</sup> November 1996**

### **LIMITED LIABILITY COMPANIES ACT 1996**

#### **Introduction**

1.1. The Limited Liability Companies Act 1996 established a new entity in Manx law called a limited liability company. The legislation came into force on 17th October, 1996 and is supported by the following Regulations:

- Statutory Document No. 554/96 - Limited Liability Companies (Forms) Regulations 1996;
- Statutory Document No. 555/96 - Limited Liability Companies (Income Tax) (General) Regulations 1996;
- Statutory Document No.556/96 - Limited Liability Companies (Registered Agents' Qualifications) Regulations 1996.
- 1.2. The company is a legal entity separate from its members and has a life of no more than 30 years.

1.3 The company may be either an international limited liability company or a resident limited liability company. The taxation treatment differs accordingly.

1.4. The fees payable at the General Registry in respect of limited liability companies are set out in Statutory Document No. 557/96 - Limited Liability Companies and Limited Partnerships (Fees and Duties) Order 1996.

#### **INTERNATIONAL LLC's (ILLC's)**

##### **2. Basic Requirements**

2.1. A member of an ILLC is not liable to income tax in respect of income arising from that company.

2.2. To qualify as an ILLC the company has to meet specific criteria. These include:-

- no member may be resident in the Island;
- no person resident in the Island may have an interest in the company, except:-
  - an exempt company

- an international company
- certain shareholders in public companies
- the company may not carry on any prescribed excluded activity;
- income must arise outside the Island from activities carried on outside the Island;
- a registered office must be maintained in the Island;
- a registered and qualified agent must be maintained in the Island;

2.3. Specific exemptions are provided within the legislation for interests held by trusts and income from named sources in the Island.

2.4. Application must be made annually and a fee of £300 is payable with each application. The application contains an undertaking that the company will comply with the specific criteria. A declaration must be submitted at each year end confirming that the undertaking has been adhered to.

## **Prescribed Excluded Activities for an ILLC**

3.1. An ILLC may not carry on any of the following prescribed excluded activities:-

- any business carried on by the holder of a banking licence;
- any business carried on by an exempt insurance company;
- any business carried on by the holder of an investment business licence;
- manufacturing in the Island;
- retail or wholesale activities in the Island;
- exploitation of natural resources including minerals, petroleum, fishing, and farming operations in the Island;
- livestock breeding, or any agricultural or horticultural operation undertaken in the Island;
- distribution or transportation activities in, to or from the Island;
- construction operations in the Island;
- land in the Island is developed, held as trading stock or acquired with the sole or main object of realising a gain from disposing of the land;
- the provision or offering in or from the Island or to persons in the Island of the following services:-
  - trustee services including acting as a trustee of a trust;
  - custodian services for any purpose of any property in the Island or for the benefit of any person resident in the Island;
  - corporate services including services relating to the promotion, formation, registration, management and administration of the affairs of bodies corporate
  - the provision of registered office, company secretary, share registration, underwriting, or nominee shareholder services;
  - legal or accountancy services.

Persons providing any of these services solely for companies within a group of exempt companies should contact the Division to determine whether they are treated as falling outside the prescribed activities (see Section 4)

## **Other Issues**

4.1. The "provision of services" category of excluded activities, (as with exempt companies) has been widely cast. The same degree of relaxation permitted for exempt companies will however be permitted for ILLC's by way of Treasury concession and by statutory provision. In particular this includes:-

- where the provision of services is associated solely with a trade carried on by an owner or charterer of ships which do not operate from or regularly use ports in the Island;
- where the provision of services is solely that of manager of an exempt restricted scheme;
- where the provision of services is to associated entities which are themselves exempt or international companies, ILLC's or international limited partnerships. In this context "associated" will be given a wide interpretation and will include joint enterprises;

in any other situation where the Assessor is satisfied that the provision of a service is incidental to the overall business activity which in itself is an acceptable exempt, international or other similar entity activity. The test is one of "acceptable activity" and not type of entities involved. Subject to there being no change in the business activity this clearance need only be obtained on the initial application.

4.2. In due course , once the "acceptable service activities" have been clearly defined amendments to the Regulations will be introduced.

## **5. Permitted Receipts**

For the purposes of determining that all receipts arise from outside the Island, no account will be taken of receipts and income arising from dealings with an insurance company which is granted exemption under Section 1 of the Exempt Insurance Companies Act 1981.

## **RESIDENT LLC's**

6. A resident LLC comes within the normal provisions of the Income Tax Acts and is treated as a partnership. This means that:-

- the LLC is not liable to pay income tax on its profits;
- each member is treated as a partner;
- the LLC must submit a return of income each year with details of the members and their share of profits;
- the share of profits of each member will be taxed in their hands in accordance with normal income tax principles as applicable to that person;
- the deductions, allowances and reliefs available to an LLC are those available to a partnership and therefore those specific to corporate entities do not apply to an LLC , e.g. dividends and group relief;

where the Assessor is not satisfied with a return submitted by an LLC the application of the provisions of Section 84 of the Income Tax Act 1970 (as amended) will be in respect of the assessments issued to the members.

## **Further Information**

7.1. Copies of the legislation can be obtained from the Central Reference Library, Government Office, Douglas, Isle of Man, IM1 3TX.

7.2. Supplies of the Application form for ILLC status (R5) and any further taxation information may be obtained from the Division or by telephoning the TEC Companies Officer on 685326 , to whom any enquiries relating to the completion of the new forms should be addressed.