



## INCOME TAX ACT 1995

### INCOME TAX (INSTALMENT PAYMENTS) (TEMPORARY TAXATION) ORDER 2010

*Approved by Tynwald*                      16 February 2010  
*Coming into operation*                      19 February 2010

The Treasury makes this Order under section 15 of the Income Tax Act 1995<sup>1</sup>.

#### **1 Title**

This Order is the Income Tax (Instalment Payments) (Temporary Taxation) Order 2010.

#### **2 Commencement**

If approved by Tynwald<sup>2</sup>, this Order comes into operation on 19 February 2010 and shall have effect in respect of the income tax year commencing 6 April 2010 and subsequent years.

#### **3 Interpretation**

(1) In this Order –

“the ITIP Act” means the Income Tax (Instalment Payments) Act 1974<sup>3</sup>; and

“the ITIP Regulations” means the Income Tax (Modified ITIP) Regulations 1987<sup>4</sup>.

#### **4 Amendments to the ITIP Act**

(1) The ITIP Act is amended as follows.

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

<sup>2</sup> As required by section 15(2) of the Income Tax Act 1995

<sup>3</sup> 1974 c.7

<sup>4</sup> GC 92/87

£1.50

(2) After section 1(2A) insert –

“(2B) The regulations may provide that a person who contravenes them commits an offence and is liable on summary conviction to custody for up to 6 months or to a fine not exceeding £5,000, or to both.”.

(3) After section 1 insert –

**“1A Civil penalties**

(1) Without limiting section 1, the regulations may require a person to pay a penalty if the person –

(a) contravenes a provision of the regulations; or

(b) in purported compliance with the regulations, furnishes the Assessor with false, inaccurate or misleading information.

(2) If the regulations require a person to pay a penalty, they must specify the amount of the penalty.

(3) Where a penalty is payable, the Assessor must give written notice to the person required to pay it and the notice must state why the penalty is payable.

(4) A penalty under the regulations is recoverable as a civil debt due to the Crown or to any person on behalf of the Crown for the purposes of section 3 of the Preferential Payments Act 1908<sup>5</sup>.

(5) Where a person is liable to a penalty under the regulations, the Assessor or, on appeal, the Commissioners may reduce the penalty to such amount (including nil) as they think proper.

(6) In the case of a penalty reduced by the Assessor, the Commissioners, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Assessor.

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<sup>5</sup> VIII p.143

- (7) Subject to subsection (8), an employer may appeal to the Commissioners against –
    - (a) liability to a civil penalty under the regulations; or
    - (b) a decision of the Assessor under subsection (5).
  - (8) An appeal under subsection (7) may only be made on the grounds that the penalty is not payable or has been miscalculated.
  - (9) The timing and procedure for an appeal under subsection (7) are, with the necessary modifications, the same as for the contesting of an assessment under section 87 of the Income Tax Act 1970<sup>6</sup>.
  - (10) Any amount received as a penalty must be paid into and form part of the general revenue of the Island.”.
- (4) After section 2 insert –

**“2A Employer to notify Assessor before paying remuneration**

- (1) An employer may only pay remuneration to an employee if –
  - (a) the employer has notified the Assessor that the employer is to pay the remuneration to the employee; or
  - (b) the employer so notifies the Assessor within 14 days of paying the remuneration.
- (2) An employer who has already so notified the Assessor need not re-notify the Assessor if further subsequent remuneration is to be paid to that employee or to additional employees.
- (3) Notification must be made in writing to the Assessor and must be accompanied by any information or documentation required by the Assessor.
- (4) An employer who contravenes subsection (1) commits an offence.

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<sup>6</sup> XXI p.260

- (5) The regulations may make further provision for the better carrying out of this section.
- (6) An employer who has so notified the Assessor before this section comes into operation is not required to re-notify the Assessor when this section comes into operation."

## **5 Amendments to the ITIP Regulations**

- (1) The ITIP Regulations are amended as follows.
- (2) In regulation 22, in paragraphs (1) and (2), for "1 month" substitute "30 days".
- (3) After regulation 22(2) insert –
  - "(3) A person who ceases to be an employer before the end of a year must deliver to the Assessor, not later than 30 days after the employment of the last employee ceases, a return and deduction card in the form and manner required by paragraph (1)."
- (4) In regulation 23 –
  - (a) at the beginning insert "(1)"; and
  - (b) at the end insert –
    - "(2) A person who ceases to be an employer before the end of a year must deliver to the Assessor, not later than 30 days after the employment of the last employee ceases, a return or returns in the form and manner required by paragraph (1).
    - (3) For the avoidance of doubt, the remuneration and payments referred to in paragraph (1) include any benefits in kind referred to in sections 2G to 2K of the principal Act."
- (5) After regulation 24 insert –
  - "24A. Duty to preserve records**
    - (1) An employer must preserve the records and supporting documents needed to enable the employer to make and deliver returns under regulations 22 and 23.

- (2) The records under paragraph (1) must be preserved for 3 years after the end of the year to which the return relates.
  - (3) The records required to be preserved under paragraph (1) are those records and supporting documents which are necessary for making a true, correct and complete return.
  - (4) An employer must also preserve any records which may be required to be produced under regulation 24(1).
  - (5) The records under paragraph (4) must be preserved for 3 years after the end of the year to which the records relate.
  - (6) The records required to be preserved under paragraph (4) are those records and supporting documents as are necessary to secure compliance with regulation 24(1).
  - (7) In this regulation, "supporting documents" includes accounts, books, deeds, contracts, vouchers and receipts."
- (6) After Part V insert –

**"PART VI  
CIVIL PENALTIES**

**31. Penalty for initial default in payment of tax**

- (1) An employer who fails to comply with regulation 19(1) is liable to pay a civil penalty.
- (2) The penalty is 5 per cent of the amount which the employer is liable to pay under regulation 19(1).

**32. Penalty for extended default in payment of tax**

- (1) An employer is liable to pay a further civil penalty if either of the amounts referred to in paragraph (2) are not paid in full within 6 months of the end of the income tax month to which they relate.
- (2) The amounts are –
  - (a) the amount due under regulation 19(1) which led to the imposition of the civil penalty under regulation 31(1); and
  - (b) the amount of that civil penalty.

(3) The further penalty is 5 per cent of the unpaid balance of the aggregate of the amounts referred in paragraph (2).

**33. Default payment penalties: supplementary**

An employer is not liable to pay a penalty under regulation 31 or 32 where the amount of the penalty payable is less than £25.

**34. Penalty for default in making returns**

(1) An employer who fails to comply with regulation 22(1) or (3) or 23(1) or (2) is liable to pay a civil penalty.

(2) The penalty is £250.

(3) Where an employer is liable to pay a penalty under paragraph (1), the employer is liable to pay an additional civil penalty of £50 for each day that the employer fails to comply with regulation 22(1) or (3) or 23(1) or (2) (as the case may be), commencing on the day after the day on which the penalty under paragraph (1) is imposed.

(4) An employer who remains in breach of regulation 22(1) or (3) or 23(1) or (2) for a continuous period of 6 months commits an offence and is liable on summary conviction to custody for up to 6 months or to a fine not exceeding £5,000, or to both.

**35. Penalty for failure to comply**

(1) Paragraph (2) only applies in circumstances where no other penalty applies in respect of a failure to comply with a provision specified in that paragraph.

(2) An employer is liable to pay a civil penalty if the employer fails for a continuous period of 14 days to comply with a provision of –

(a) these Regulations;

(b) the Income Tax (Instalment Payments) Act 1974.

(3) The penalty is £250.”.

**6 Assessor’s powers in doubtful cases**

(1) Paragraph (2) applies where the Assessor has made a direction under section 6 of the ITIP Act (assessor’s powers in doubtful cases) that for the purposes of the Act –

- (a) a payment is to be remuneration;
  - (b) the person making the payment is to be the employer; and
  - (c) the person who the Assessor considers ought to be the employee is to be the employee.
- (2) The amendments made by articles 4 and 5 apply to an employer referred to in paragraph (1)(b) in the same manner that they apply to other employers under the ITIP Act.
  - (3) Without limiting paragraphs (1) and (2), the amendments made by articles 4 and 5 apply to a contractor in relation to a payment made to a sub-contractor where the payment is one to which paragraph 2 of the Direction applies.
  - (4) In paragraph (3), "the Direction" means the direction made by the Assessor which took effect on 6 July 1988.

MADE

21st January 2010



Minister for the Treasury

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#### EXPLANATORY NOTE

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

This Order amends the Income Tax (Instalment Payments) Act 1974 ("the Act") and the Income Tax (Modified ITIP) Regulations 1987 ("the Regulations").

The Act is amended as follows –

- an enabling power is inserted to allow regulations to impose criminal penalties on summary conviction for contravention of the regulations (see article 4(2));
- an enabling power is inserted to allow regulations to require people to pay civil penalties for contravention of the regulations (see article 4(3)); and

- a provision is inserted to require employers to register for ITIP before paying remuneration to their employees (see article 4(4)).

The Regulations are amended as follows –

- a provision is inserted to require an ex-employer to submit a return and deduction card where the last employee leaves during a year of assessment (see article 5(3));
- similar provisions are inserted in respect of benefits in kind (non-cash remuneration) (see article 5(4));
- a provision is inserted requiring employees to preserve records required to enable them to make returns under the Regulations for 3 years (see article 5(5)); and
- provisions are inserted imposing civil penalties for failing to comply with certain regulations (see article 5(6)).

The amendments in articles 4 and 5 are also expressed to apply where the Assessor has made a direction under section 6 of the Act (Assessor's powers in doubtful cases) (see article 6).

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