



## INCOME TAX ACT 1995

### INCOME TAX (FAROES) (TEMPORARY TAXATION) ORDER 2008

*Approved by Tynwald : 12<sup>th</sup> March 2008*  
*Coming into operation in accordance with article 1(2)*

In exercise of the powers conferred on the Treasury by section 15 of the Income Tax Act 1995<sup>1</sup>, and of all other enabling powers, the following Order is hereby made: -

#### **Citation and commencement**

1. (1) This Order may be cited as the Income Tax (Faroes) (Temporary Taxation) Order 2008.
- (2) This Order shall come into operation on the date on which it is approved by Tynwald.

#### **Interpretation and construction**

2. (1) In this Order –  

“applicable arrangement” means the arrangements on the access to mutual agreement procedures in connection with the adjustment of profits of associated enterprises in an agreement between the Government and the Government of the Faroes signed in Oslo on 30 October 2007 (the “Agreement”) and set out in the Schedule;

“contracting country” means the Faroes.
- (2) This Order shall be construed so as to give effect to the Agreement and expressions used in this Order shall be construed accordingly.

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

### **Adjustment of profits of associated enterprises**

3. (1) The applicable arrangement has been made with the contracting country with a view to the adjustment of profits of associated enterprises in relation to income tax and the tax of a similar character imposed by the laws of the contracting country and it is expedient that this arrangement shall have effect.

(2) This arrangement shall have effect notwithstanding anything in any enactment.

**AGREEMENT BETWEEN  
THE ISLE OF MAN AND THE FAROES  
ON THE ACCESS TO MUTUAL AGREEMENT PROCEDURES  
IN CONNECTION WITH THE ADJUSTMENT OF PROFITS  
OF ASSOCIATED ENTERPRISES**

The Government of the Isle of Man and the Government of the Faroes,

- desiring to conclude an agreement on the access to mutual agreement procedures in connection with the adjustment of profits of associated enterprises,
- considering that the Government of the Faroes concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on the Conclusion of Agreements under International Law by the Government of the Faroes,

have agreed as follows:

**ARTICLE 1**  
**TAXES COVERED**

This Agreement shall apply to taxes on income and profits.

## **ARTICLE 2**

### **DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "Party" means the Isle of Man or the Faroes as the context requires; the term "Parties" means the Isle of Man and the Faroes;
  - b) the term "the Faroes" means the landmass of the Faroes and their territorial waters and any area outside the territorial waters where the Faroes according to Faroese legislation and in accordance with international law, may exercise rights with respect to the seabed and subsoil and their natural resources;
  - c) the term Isle of Man means the island of the Isle of Man;
  - d) the term "competent authority" means
    - i) in the case of the Faroes, the Minister of Finance or his authorised representative or the authority which is designated as a competent authority for the purpose of this Agreement;
    - ii) in the case of the Isle of Man, the Assessor of Income Tax or his delegate.
  
2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, for the purposes of the taxes to which the agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

**ARTICLE 3**  
**PRINCIPLES APPLYING TO THE ADJUSTMENT OF PROFITS OF**  
**ASSOCIATED ENTERPRISES**

1. Where:

- a) an enterprise of a Party participates directly or indirectly in the management, control or capital of an enterprise of the other Party, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Party includes in the profits of an enterprise of that Party – and taxes accordingly – profits on which an enterprise of the other Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment

to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

**ARTICLE 4**  
**GENERAL PROVISION**

Where a Party intends to adjust the profits of an enterprise in accordance with the principles set out in Article 3, it shall in accordance with its laws inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Party. However, the Party providing such information shall not be prevented from making the proposed adjustment.



## **ARTICLE 5**

### **MUTUAL AGREEMENT PROCEDURES**

1. Where an enterprise considers that, in any case to which this Agreement applies, the actions of one or both of the Parties result or will result for it in double taxation, it may, irrespective of the remedies provided by the domestic law of the Party concerned, present its case to the competent authority of the Party of which it is a resident. The competent authority shall then without delay notify the competent authority of the other Party.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraph.

**ARTICLE 6**  
**ENTRY INTO FORCE**

1. This Agreement shall enter into force on the thirtieth day after the later of the dates on which each of the Parties has notified the other in writing that the procedures required by its law have been complied with. The Agreement shall have effect on taxes chargeable for any tax year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

2. Notwithstanding paragraph 1 of this Article, the Agreement shall only be applicable when the Agreement signed on 30 October 2007 between the Isle of Man and the Faroes for the exchange of information relating to tax matters shall have effect.

## **ARTICLE 7**

### **TERMINATION**

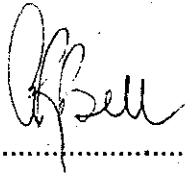
1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect on taxes chargeable for any tax year beginning on or after the first day of January of the calendar year next following the end of the six months period.

2. Notwithstanding paragraph 1 of this Article, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on 30 October 2007 between the Isle of Man and the Faroes for the exchange of information relating to tax matters.

In witness whereof the undersigned being duly authorised thereto have signed this Agreement.

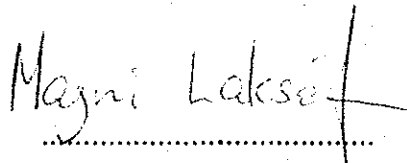
Done at Oslo, this Thirtieth day of October 2007, in duplicate in the English language

**FOR THE GOVERNMENT  
OF THE ISLE OF MAN:**



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**FOR THE GOVERNMENT OF  
THE FAROES:**



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Made this 6<sup>th</sup> February 2008

  
Treasury Minister

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**EXPLANATORY NOTE**

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

This Order is made under section 15 the Income Tax Act 1995. It implements arrangements negotiated between the Government of the Isle of Man and the Government of the Faroes relating to the adjustment of profits of associated enterprises.