

PART C

**THE ISLE OF MAN
LEGISLATION**

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5. ISLE OF MAN FISCAL MEASURES RELATING TO TOURISM

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i) Introduction

5.1 This section sets out an account of the legislation which affected the Mount Murray taxation related issues which are discussed in this Part Two Report. This legislation is complicated and we have sought to set it out in as simple, chronological, comprehensible a form as is possible without losing the accuracy of some of its more detailed provisions. With some necessary exceptions, the relevant parts of the identified legislation are not, on grounds of bulk and to aid ease of reading, included within the report but are available for perusal from the Commission Library.¹

¹ Library Document 2

ii) **The Making of Legislation**

5.2 It is considered helpful to include in this Part Two Report a brief overall background of the way in which legislation is effected on the Island, bearing in mind the matters with which we are concerned mainly involve subordinate legislation.

5.3 Tynwald and its Branches (i.e. the House of Keys and the Legislative Council) legislate for the Isle of Man in all matters of domestic concern. The legislation is, for the most part, introduced in two forms, namely primary legislation in the form of draft Bills which become Acts of Tynwald at the completion of the legislative process in each case and subordinate legislation in the form of orders, regulations and resolutions which are made by government departments, by Statutory Boards or by Tynwald, as appropriate, in accordance with the provisions of the relevant Acts of Tynwald or relevant Acts of Parliament.²

5.4 Primary legislation on any particular topic is introduced to Tynwald in its draft form. The draft form of the legislation or measure in each case is known as a "Bill".³ It is unnecessary for us to say more on primary legislation than that it is, of course, debated in the Branches of Tynwald, and is either rejected or ultimately passed into law in the original Bill form or as amended by the Branches of Tynwald.

5.5 Many primary legislation Acts provide for the making of subordinate legislation in the form of orders, regulations or rules. Subordinate legislation in the Isle of Man can be divided into three basic classes. First, Orders in Council. They can perform a number of functions but usually it is to extend an Act of Parliament to the Isle of Man with relevant exceptions, adaptations and modifications. Second, standard subordinate legislation, the class with which we are concerned, which

² Government and Law in the Isle of Man page 281

is made under primary legislation Acts and explained above. Third, application orders - some Acts of Tynwald confer powers on departments to make orders applying United Kingdom legislation to the Isle of Man as part of Isle of Man law ("application orders").

- 5.6 Between 1989 and 1992 it was the duty of a legislative draftsman in the Attorney General's Chambers either to draft subordinate legislation or to audit drafts prepared in the first instance by departments. There were no rigid rules as to the cases in which a draft was to be prepared either by a draftsman or by a departmental officer and by a draftsman. It was common (and still is) for subordinate legislation to be drafted by departmental officers and audited by a draftsman before making.⁴
- 5.7 In the ordinary way, unless the enabling powers create a duty to consult, the legislative process for subordinate legislation may be as open or otherwise as the sponsoring department wishes to make it. An Order can be made entirely within a department, without consultation or external knowledge of it before it appears on the agenda for approval by Tynwald.⁵ In the absence of consultation with external interested parties, the process can be less than transparent and does not necessarily afford either its supporters or its critics an opportunity to make their representations to their elected representatives. There can however be consultation and this is not unusual.
- 5.8 The procedure for the subordinate legislation with which we are primarily concerned (see next following sub section) was standard subordinate legislation procedure in which the relevant department made and signed the Order, often through the department's minister, and Tynwald would then give approval to it a short time later, sometimes days, sometimes weeks. The Order would identify from

³ Tynwald Companion 2000 page 1.34

⁴ Mr Boyde Document Q55 page 4

⁵ Mr Boyde Document Q55 page 7

when it was operational, but it could not come into force until the Tynwald approval was given.

iii) **The Main Relevant Legislation**

5.9 The legislation which is most material to the matters in this Part Two Report is set out in simple form in the following paragraphs. This follows closely the written evidence of the Assessor dated 26th June 2002.⁶

5.10 On 10th April 1990, with the purpose of assisting investment within the tourist industry, Tynwald approved the Income Tax (Capital Relief) (Tourist Business) Order 1990.⁷ This replaced the system of capital expenditure reliefs relating to tourist business contained in section 30 of the Income Tax Act 1970. The Order increased the initial or first year allowance for expenditure on qualifying premises to 20% and the writing down allowance or annual allowance to 10% with effect from expenditure incurred on or after 6th April 1990. These allowances had previously been 15% and 2½% respectively.⁸

5.11 On 16th April 1991 Tynwald approved the Income Tax (Capital Relief Order) 1991.⁹ This increased the initial or first year allowance in respect of qualifying capital expenditure on qualifying premises, which included tourist premises, to 100%. This Order applied to expenditure incurred after 5th April 1991.

5.12 On 15th October 1991 to provide additional incentive for the improvement of tourist premises Tynwald approved the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991.¹⁰ This Order provided additional relief by enabling an allowance of 50%

⁶ Mr Kelly Document Q18 26.6.2002

⁷ Government Circular No 124/90

⁸ Mr Kelly Document Q18 Appendix 1 page 1

⁹ Government Circular No 110/91

¹⁰ Government Circular No 337/91

of the qualifying capital expenditure, after deduction of any grant, for each of the three years of assessment (i.e. 150% in total) following the granting of the initial allowance of 100%. This Order applied to expenditure incurred after 5th April 1991. The overall effect of these Orders was to provide tax relief amounting in value to 50% of the total value of the qualifying capital expenditure.

5.13 On 20th January 1993 Tynwald approved the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992.¹¹ This Order extended, by amendment, the definition of qualifying capital expenditure for the purposes of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991 so as to include, amongst other things, the installation of sports and associated recreational facilities for use solely or mainly in connection with tourist business. This Order also provided that relief under the 1991 Order as now amended may only be allowed if the Department of Tourism has certified in writing that the giving of relief in respect of the tourist business to which the relief relates is in the interests of the economy of the Island, necessary for the purposes of establishing or developing a tourist business in the Island, and likely to provide additional employment in the Island. This Order applied in respect of expenditure incurred after 5th April 1992.

5.14 Following approval of these Orders persons conducting tourist business from tourist premises in the Isle of Man could make claims for relief under the Orders. Reliefs under the Orders were not available in respect of the development of residential properties for permanent occupation.

¹¹ Government Circular No 510/92

iv) Relevant Legislation pre 1990

5.15 The main legislative framework under which tourism operated on the Island was, and remains, the Tourist Act 1975, as amended, (the 1975 Act). It is described as being “An Act to consolidate and revise the law relating to tourism, and for connected purposes.”¹² Section 1 of the Act charges the Department of Tourism with the duty of carrying into effect the provisions of the Act and of any regulations made under the Act. Section 2 of the Act requires that the Department of Tourism maintain, encourage, develop, protect, promote and facilitate tourism in, to and from the Isle of Man to the best advantage of the Island and that the department may exercise any of the powers specified in schedule 1 to the Act. The schedule allows the department, amongst other things, to provide or assist financially (by way of grant, loan, guarantee or indemnity), or in any other way, various types of entertainments or facilities relating to tourism, and may assist, financially or otherwise, with such facilities or amenities as are likely to encourage or develop tourism.

5.16 The Tourist Premises (Provision and Improvement) Act 1977¹³ as amended (the 1977 Act), is described as being “An Act to provide financial assistance for the provision and improvement of tourist premises, the guaranteeing of loans made for the provision and improvement of such premises, and connected matters.”¹⁴ Section 1 of the Act enables the Department of Tourism, with the concurrence of the Treasury, to make schemes whereby financial assistance may be given for the provision of tourist premises by means of the construction of new tourist premises; the conversion of existing premises into tourist premises; the acquisition of premises adjoining existing tourist premises and the amalgamation of such premises into one tourist premises; the extension of existing tourist premises; and for the

¹² Long title of the 1975 Act

¹³ 1977 Chapter No 8: Library Document 2

¹⁴ Long Title of the 1977 Act

improvement of existing tourist premises. A scheme made under section 1 could not come into effect until approved by Tynwald.

5.17 In exercise of its powers under the 1977 Act, the former Isle of Man Tourist Board had constituted two Schemes under which financial assistance was made available to the tourist industry, namely the Tourist Premises Development Scheme 1986¹⁵ and the Tourist Premises Development (Fire Precautions) Scheme 1986.¹⁶ The Schemes came into operation on 1st November 1986. In addition, the Isle of Man Tourist Board operated a Tourism Development Fund, sometimes referred to as the General Development Fund, on a non-statutory basis.¹⁷ This provided limited aid from within the department's revenue vote to tourist developments and projects other than accommodation and which had difficulty in securing adequate funding. Treasury concurrence was also required for these grants to be made.¹⁸

5.18 The first of these two Schemes particularly included provision for financial assistance to encourage new accommodation of a high standard in both the serviced and self catering fields, and also an overall improvement in the general standard of facilities and levels of service in existing tourist premises. Financial assistance in the form of grants and loans in respect of developments which were to provide high standard additional accommodation containing not less than 30 standard bedroom units in a serviced accommodation development, or not less than 10 units providing a minimum of 20 letting bedrooms in a self-catering development, as well as other items such as en suites, modernisation, lifts, central heating, and like lesser projects were provided by the Department of Tourism. The financial assistance could be provided in the forms of a grant of varying specified amounts but not exceeding 40 per cent of the approved cost, or a loan not exceeding 30

¹⁵ Made 15.9.1986: Library Document 2

¹⁶ Letter Mr Ball Q59 6.2.2004: made 15.9.1986: Library Document 2

¹⁷ Letter Mr Ball Q59 6.2.2004

per cent of the approved cost for the high standard accommodation, but otherwise not exceeding 50% for grant or, subject to the nature of the works, up to 90% loans. The scheme also allowed for the provision of grants and loans in different proportions of the approved costs according to the different types of developments specified.

- 5.19 The second of the Schemes was enacted for a specified period of five years,¹⁹ and enabled financial assistance in respect of fire precautionary work carried out on the recommendation of the Chief Fire Officer as approved by the Tourist Board, later the Department of Tourism.
- 5.20 The scale of the financial assistance available to the tourist industry in the form of grants and loans needs to be seen in the light of the scale of funds from which the grant or loan could be drawn. The sums provided in the budgets and the actual amounts spent in the years from 1987/88 to 1994/95 were, with some exceptions, modest. The amounts are set out in Annex 4. The Department of Tourism maintained in 1990²⁰ that the Schemes were well taken up, but there seems little doubt that the limited scale of available financial support meant that the size of specific grants or loans actually made was modest and could not stand comparison with the measure of income tax relief which was later to be available to the Mount Murray development.
- 5.21 Prior to 6th April 1990, as indicated in paragraph 5.10 above, section 30 of the Income Tax Act 1970²¹ provided for an initial allowance of 15% and an annual allowance of 2½% in respect of qualifying capital expenditure on tourist premises.

¹⁸ Fund Guidance Notes Letter Mr Ball Q59 6.2.2004

¹⁹ Letter Mr Ball Q59 6.2.2004 made 15.9.1986

²⁰ Tourism and Reality June 1990 page 18

v) **Relevant Legislation Position in 1990**

5.22 The Schemes and Fund referred to in the preceding sub section remained in force during 1990 but section 30 of the Income Tax Act 1970 was repealed with effect from 6th April 1990.²² A new section 27A was added and enabled the Treasury, subject to the approval of Tynwald, to make Orders which provide for the deduction of reliefs and the making of allowances in respect of trading losses or capital expenditure, including allowances in relation to any business providing for the lodging of tourists or visitors. Under section 27A Treasury introduced the Income Tax (Capital Relief) (Tourist Business) Order 1990.²³

5.23 This Order, as identified in paragraph 5.10 above, was approved by Tynwald²⁴ on 10th April 1990 and increased the rates of the allowances from 15% to 20% in respect of the initial allowance and from 2½% to 10% in respect of the annual allowance. In his Budget Speech on that date, the Treasury Minister said that this was interim²⁵ and this was repeated in the accompanying Practice Note issued by the Assessor on 10th April 1990 which stated that "This is an interim measure pending a full review of the capital allowances legislation."²⁶

5.24 On 17th July 1990, Mr Allan Bell, MHK, Minister for Tourism, presented the policy and strategy document "Tourism and Reality: A Tourism Development Strategy for the Isle of Man"²⁷ produced by the Department of Tourism to Tynwald for approval.

²¹ 1970 Chapter 6: Library Document 2

²² s 4 (2) Income Tax (Amendment) Act 1986 (Appointed Day) (No 4) Order 1990 - 1986 Chapter 25 & Government Circular No 123/90: Library Document 2

²³ Government Circular No 124/90

²⁴ Hansard T1458 10.4.1990

²⁵ Hansard T1394 10.4.1990

²⁶ Practice Note No 29/90

²⁷ Letter Mr Ball Q59 28.11.2003

5.25 This policy and strategy document summarised the financial aid vehicles which are explained at paragraphs 5.17 to 5.19 above. It noted that the schemes had been in existence since 1986, but claimed that there had been fraudulent use of funds, the monies available had been viewed by many as an entitlement rather than discretionary and there was broad agreement that the Schemes no longer provided the stimulus for which they were designed.²⁸ The document proposed that the Schemes should be comprehensively revised and proposed guidelines for the grant of financial assistance.²⁹ It also proposed that the Treasury be encouraged to examine taxation structures to encourage reinvestment of generated profits.³⁰ After debate, Tynwald duly approved the document.³¹

vi) **Relevant Legislation in 1991**

5.26 A year after the Income Tax (Capital Relief) (Tourist Business) Order 1990 came into effect as from 6th April 1990, the initial allowance and the annual allowance were replaced by a first year allowance of 100% by means of the Income Tax (Capital Relief) Order 1991.³² This Order increased the initial relief on capital expenditure on certain buildings and structures (industrial and agricultural) to 100%. In addition it required that government and local authority grants would not affect relief for any capital expenditure. Of particular relevance is that it amended the Income Tax (Capital Relief) (Tourist Business) Order 1990 so that tourist premises would be subject to these same rules in relation to initial relief and grants.

5.27 Also in 1991 a further allowance of 150% spread over three years was introduced. In his Budget Speech on 16th April 1991,³³ Mr Donald Gelling MLC, the Treasury Minister, had announced his intention to

²⁸ Tourism and Reality June 1990 page 18

²⁹ Tourism and Reality June 1990 page 20

³⁰ Tourism and Reality June 1990 page 20

³¹ Hansard T2244 - T2287 17.7.1990

³² Government Circular No 110/91

introduce a new income tax incentive allowance which would enable a further allowance, to be known as the tourist business incentive allowance, to be given on approved expenditure on top of the 100% initial allowance already announced. This was introduced on 25th September 1991, when the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991³⁴ was made. The Order was approved by Tynwald on 15th October 1991, and took effect as from 6th April 1991. In addition, Mr Gelling stated that he would be seeking to extend the definition of tourist premises to encompass leisure and sports facilities.

5.28 The calculation to identify the amount of the tourist business incentive allowance was stated in article 3 (2) of the Order as being, and it still is, the portion of qualifying expenditure on which relief is given calculated by deducting the amount of any grant out of which the expenditure is made from the qualifying capital expenditure and dividing the difference by two³⁵ – that is to say “the qualifying capital expenditure” less “the amount of any grant” (i.e. 100%) divided by two (i.e. 50%). Article 3 (3) provides that “The relief shall be allowed in each of the 3 years of assessment next following the year of assessment in which an initial allowance is given in respect of the qualifying capital expenditure”³⁶ – thereby providing for the grant of 50% for three years (i.e. 150%).

5.29 Taken together, the initial allowance of 100% available under the Income Tax (Capital Relief) Order 1991,³⁷ as amended, and the tourist business incentive allowance (150%) available under the 1991 Order³⁸ amount in total to 250% of the qualifying capital expenditure.

³³ Hansard T1409 16.4.1991

³⁴ Mr Kelly Document Q18 Appendix 20

³⁵ Mr Kelly Document Q18 Appendix 20

³⁶ Mr Kelly Document Q18 Appendix 20

³⁷ Mr Kelly Document Q18 Appendix 12

³⁸ Mr Kelly Document Q18 Appendix 20

- 5.30 The Explanatory Note which accompanies the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991³⁹ states that the Order is intended to operate as an additional incentive to the improvement of tourist premises. It goes on to say that the maximum relief available under the Order would, when taken with government grants, be 50% of gross expenditure. In fact, the maximum relief available under the Order is 50% of net (not gross) expenditure, that is to say gross expenditure less any government grants. In the event that a government grant is made, the maximum financial assistance in the forms of grant and income tax relief will exceed 50% of the gross expenditure.
- 5.31 Thus, in the year following 5th April 1990, the capital allowances available in respect of qualifying capital expenditure on essentially tourist premises were increased from the initial allowance of 15% and an annual allowance of 2½% to a total of 250% (available over four years) in respect of qualifying capital expenditure (i.e. equivalent to one half of the capital cost of such qualifying capital expenditure).
- 5.32 The Tourist Premises Development Scheme 1986 (see paragraph 5.17 above) was revoked on 30th May 1991.⁴⁰
- 5.33 On 30th May 1991 the Tourist Development Fund Scheme 1991⁴¹ was consequently made under the 1977 Act, and came into effect on 1st August 1991. The Scheme specified the classes of project eligible for financial assistance.⁴²
- 5.34 The Tourist Premises Development (Fire Precautions) Scheme 1986 expired on 31st October 1991 (see paragraph 5.19 above).

³⁹ Mr Kelly Document Q18 Appendix 20

⁴⁰ Tourist Premises (Revocation) Scheme 1991 Government Circular No 440/91: Library Document 2

⁴¹ Government Circular No 441/91: Library Document 2

⁴² Government Circular No 441/91 Appendix 1: Library Document 2

5.35 By these Schemes the Department of Tourism was able to provide financial assistance by way of grants up to a maximum of 50% of the cost of the project. The projects proposed for benefit appear generally to have been of a comparatively minor character as is indicated by many of the types of projects identified, the limited funds budgeted and taken up (see Annex 4) and the requirement that in the event that the total assistance under the scheme in respect of any project was to exceed £50,000 in any period of 2 years ending on 31st March in any year, the department was required to obtain Treasury concurrence.⁴³

vii) Relevant Legislation in 1992

5.36 On 23rd December, 1992, the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992⁴⁴ was made. Tynwald approved the Order on 20th January, 1993. This amended the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991⁴⁵ with effect from 6th April 1992.

5.37 On 26th January 1993, the Assessor issued a Practice Note⁴⁶ which purported to explain the effect of this 1992 Amendment Order.⁴⁷

5.38 The Practice Note states that the Amendment Order extends tourist business incentive allowance to two new areas of expenditure. The first area is plant and machinery which is for use in a qualifying building and which is an integral part of the structure of the tourist premises. An example of the expenditure is given as the cost of installing a lift. The second area is the installation of sports and associated recreational facilities for use in that business. An example of the qualifying expenditure is given as tennis courts. The relief is to be given even though the sports facility is independent of the main hotel complex. It

⁴³ Tourist Development Fund Scheme paragraph 3 (3): Library Document 2

⁴⁴ Mr Kelly Document Q18 Appendix 43

⁴⁵ Mr Kelly Document Q18 Appendix 20

⁴⁶ Mr Kelly Document Q18 Appendix 43 PN 42/93

⁴⁷ Mr Kelly Document Q18 Appendix 43

is then explained that such facilities are essential to any modern tourist business and that the Treasury considered it appropriate to extend the incentive allowance to include the expenditure on such items.

- 5.39 More technically article 2 of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991⁴⁸ as now amended defines “qualifying capital expenditure” for the purposes of the Order. The definition was added by article 2(c) of the 1992 Amendment Order⁴⁹ with effect from 6th April 1992, and provides that “qualifying capital expenditure’ means qualifying expenditure incurred by a tourist business in respect of -
- (a) tourist premises;
 - (b) plant and machinery which is for use in that business and which is or will be an integral part of the structure of the tourist premises; and
 - (c) without prejudice to the generality of paragraphs (a) and (b), the installation of sports and associated recreational facilities for use wholly or mainly in connection with that business,
- but does not include furniture (whether fixed or otherwise)”.

- 5.40 Certification is required by article 6(3) of the 1991 Order⁵⁰ which was added by the 1992 Amendment Order with effect from 6th April 1992. It requires that relief may only be allowed under the Order if the Department of Tourism has certified in writing that the giving of relief in respect of the tourist business to which the relief relates is:-
- (a) in the interests of the economy of the Island; and
 - (b) necessary for the purpose of establishing or developing a tourist business in the Island; and
 - (c) likely to provide additional employment in the Island.”

⁴⁸ Mr Kelly Document Q18 Appendix 20

⁴⁹ Mr Kelly Document Q18 Appendix 43

⁵⁰ Government Circular No 337/91

5.41 The Practice Note of 26th January 1993 issued by the Assessor also observes⁵¹ that, “In view of the high level of support now being given by way of tax relief, the Treasury Minister announced his intention to consider restricting the manner in which any unrelieved incentive allowances may be utilised. In particular, consideration is being given to restricting group relief claims for 1994/95 and subsequent years.” Unfortunately the Minister had not made the announcement referred to, notwithstanding that it was set out in his brief.

5.42 With effect from 1st December 1992 the Tourist Development Fund Scheme 1991 was amended by the Tourist Development Fund (Amendment) Scheme 1992⁵² but only to add two further classes of eligible projects.

viii) Relevant Legislation post 1992

5.43 The amended Tourist Development Fund Scheme 1991 was suspended in February 1996 to allow the department to provide a different emphasis for tourism.

5.44 The Income Tax Act 1995 enabled⁵³ the Treasury by Order to restrict eligibility for group relief. As yet, no action has been taken to restrict such group relief claims.

ix) Tourism Taxation Mechanisms

5.45 It is appropriate now to explain the workings of income tax allowances.

Manx income tax is “raised, levied, collected, and paid”⁵⁴ in respect of relevant income. The Income Tax Act 1970⁵⁵ is the principal Act (‘the

⁵¹ Mr Kelly Document Q18 Appendix 43

⁵² Letter Mr Ball Q59 6.2.2004 Government Circular No 522/92

⁵³ Mr Kelly Document Q18 Appendix 47

⁵⁴ s 1 Income Tax Act 1970: 1970 Chapter 6: Library Document 2

⁵⁵ 1970 Chapter 6: Library Document 2

1970 Act'). It is described⁵⁶ as being "An Act to consolidate the Income Tax Acts". Over the years, the Income Tax Act 1970 either has been amended or added to by a further series of Income Tax Acts, the most recent of which is the Income Tax Act 2003.⁵⁷ Except as otherwise indicated references to it in this report refer to it in its amended form at material times.

5.47 The Income Tax Acts authorise the making of subordinate legislation in aid of the provisions of those Acts. For example, section 29 of the Income Tax Act 1970 authorises the Treasury by Order, made with the approval of Tynwald, to modify the amount or conditions of the allowances or charges in respect of qualifying capital expenditure. In addition, as a result of amendment by the Income Tax Act 1995, the Treasury may by Order, made with the approval of Tynwald, as we have seen, modify the Income Tax Act 1980 to restrict group relief. Section 27A of the Income Tax Act 1970 also authorises the making of subordinate legislation.

5.48 The meaning of the word "income" is not itself defined in the Income Tax Acts 1970 to 2001. However, it has been described as including the profits or gains from professions, trades, vocations, employments, pensions and income from property such as rents, dividends and interests.⁵⁸

5.49 Persons who carry on a tourist business are liable to income tax in respect of the profits which arise or accrue from the business, that is to say their "assessable trading profit". The form of the computation of the amount of the "assessable trading profit"⁵⁹ of a tourist business is, as with other businesses, envisaged by the Income Tax Acts to be gross trading receipts, i.e. income receipts, less disbursements or expenses.

⁵⁶ Long title 1970 Act

⁵⁷ 2003 Chapter 11: Library Document 2

⁵⁸ Taxation of Companies in the Isle of Man page 191

- 5.50 The “disbursements or expenses wholly and exclusively laid out or expended in acquiring the gross trading receipts” are essentially items of revenue expenditure which are properly deductible from revenue in the form of “gross trading receipts” (i.e. income receipts) in order to arrive at the amount of assessable trading profit, that is to say net revenue. Their deduction from the “gross trading receipts” is authorised by section 31 of the 1970 Act.⁶⁰
- 5.51 At first sight, capital receipts and capital costs have no place in the computation of the amount of the “assessable trading profit” for Manx income tax purposes. Only “disbursements or expenses ... being money wholly and exclusively laid out or expended in acquiring the income upon which income tax is payable” are allowable as deductions from that income in the form of “gross trading receipts”.
- 5.52 However and notwithstanding section 31 of the 1970 Act,⁶¹ the proprietors of a profession, trade or vocation which incur qualifying capital expenditure in the course of carrying on their business are entitled to deductions in respect of such qualifying capital expenditure from the amount of the assessable trading profits which arise or accrue from the carrying on of their business profession, trade or vocation. These deductions are known as capital allowances.⁶² They are accounted for separately from assessable trading profits and, indeed, from allowable trading losses.⁶³
- 5.53 The primary legislation in respect of capital allowances for the purposes of Manx income tax is set out in sections 27A and 29 of the 1970 Act.⁶⁴ Section 27A is explained in paragraph 5.22 above. Section 29, in effect, imports the system of capital allowances which applies in the United Kingdom in respect of industrial buildings and

⁵⁹ Taxation of Companies in the Isle of Man page 328

⁶⁰ 1970 Chapter 6: Library Document 2

⁶¹ 1970 Chapter 6: Library Document 2

⁶² Taxation of Companies in the Isle of Man page 340

⁶³ Taxation of Companies in the Isle of Man page 340

structures, machinery, plant, agricultural land and buildings, and other similar matters, subject to certain modifications which are made by Order of the relevant authorities in the Island.

- 5.54 In effect, section 27A of the 1970 Act enables the Treasury at any material time, by Order, to make such provision as it thinks fit for the deduction of reliefs and the making of allowances in respect of trading losses and capital expenditures. Such Order may permit reliefs and allowances to be carried forward, or back, from one year of assessment to another, and allows special provisions to be made with respect to allowances for a business providing lodging for tourists or visitors.
- 5.55 In the ordinary course, capital allowances in respect of qualifying capital expenditure are deducted from assessable trading profits and the resulting adjusted trading profit is assessed to income tax.
- 5.56 In the event that the amount of the capital allowances exceeds the amount of the assessable trading profit, the unrelieved balance of capital allowances ranks for relief for the purposes of income tax in accordance with the provisions of the Income Tax (Loss Relief) Regulations 1987.⁶⁵ These Regulations provide for the grant of relief in respect of allowable trading losses and unrelieved capital allowances.
- 5.57 Or, in the event that there is an allowable trading loss and unrelieved capital allowances, the amounts of the allowable trading loss and the unrelieved capital allowances rank for relief for the purposes of Manx income tax in accordance with the provisions of the Income Tax (Loss Relief) Regulations 1987.⁶⁶

⁶⁴ 1970 Chapter 6: Library Document 2

⁶⁵ Government Circular No 357/87: Library Document 2

⁶⁶ Government Circular No 357/87: Library Document 2

5.58 Alternatively, in the events that either the unrelieved balance of capital allowances, or the amount of the allowable trading loss and the amount of the unrelieved capital allowances, belongs to a company which is part of a group of companies, and there are companies in the group which are trading profitably for Manx income tax purposes, the unrelieved balance of capital allowances and/or the amount of the allowable trading loss may qualify for group relief.

5.59 Group relief is a form of income tax relief which may be afforded to a group of companies which are in common ownership. A company which is part of a group of companies and which incurs an allowable trading loss, with or without unrelieved capital allowances, may surrender part or all of its allowable trading loss and any unrelieved capital allowances in favour of a company or companies in the group which have assessable trading profits of sufficient magnitude to absorb either part or all of the allowable trading loss and unrelieved capital allowances, if any. The effect of a grant of group relief is that a group of companies which is, by definition, in common ownership is not faced with a situation whereby one or more companies in the group is or are incurring trading losses and acquiring unrelieved capital allowances while other companies in the group are paying tax on their profits and income.

x) Cash Grants and Loans

5.60 We turn to an explanation as to how cash grants and loans operated in practice at the material times.

5.61 Each year the Department of Tourism estimated the amounts which it expected to spend in respect of its various schemes for the ensuing year ending 31st March.⁶⁷ These estimates were included in its Budget for the year as presented to Tynwald for approval on Budget Day. In

⁶⁷ See Annex 4

the ordinary course, the Department of Tourism was able to disburse properly approved financial assistance without further authorisation, but with the exception, in certain circumstances, that it would be required to obtain Treasury concurrence. Procedures for application and approval had to be followed and, provided that the individual financial assistance approved by the department was within its Budget,⁶⁸ there was not public disclosure of the individual financial assistance approved and given by the department. If the financial assistance which the department wished to approve in a year exceeded the amount available in its Budget, the department would be obliged to go to Tynwald for the authorisation of such further funds as are required.⁶⁹

- 5.62 The amounts of financial assistance which were disbursed each year in the form of grants and loans for tourist projects are disclosed in the annual financial accounts of the Isle of Man Government. In the ordinary course, the amounts were not great and details of the recipients are not disclosed. In the event that an uncharacteristically large sum were to be brought forward for approval by Tynwald, it would likely be the subject of some scrutiny and possibly even debate.
- 5.63 The type of detailed statutory investigation which was required in respect of grants and loans is explained in section 7 below, especially paragraph 7.8.
- 5.64 An example of the procedures which would likely apply when a particularly large grant was required is provided by the circumstances when, on 21st February 1989, Mr Bell, Minister for Tourism moved in Tynwald “That Tynwald authorises the Department of Tourism and Transport to provide financial assistance towards the cost of building a 100 bedroom hotel at Ronaldsway airport by way of a conditional grant

⁶⁸ Evidence of Mr Bell Q9 Transcript Day 42 page 107

⁶⁹ Evidence of Mr Bell Q9 Transcript Day 42 page 106

not exceeding 35 per cent. of the approved cost of the project or £1,560,000, whichever is the lesser.”⁷⁰

5.65 Mr Bell’s motion was debated at length in February 1989 and there was much discussion about the proposed beneficiaries of the financial assistance. After an adjournment in March 1989, the motion failed to carry.⁷¹

xi) A Comparison of Cash Grants and Loans and Income Tax Allowances

5.66 A general comparison of the characteristics of, on the one hand, cash grants and loans, and on the other, income tax allowances follows.

5.67 Cash grants and loans to a tourist business by the Isle of Man Government represent an immediate benefit to the business and an immediate cost to the Isle of Man Government. The benefit goes to the tourist business and its proprietors regardless of whether or not the tourist business is profitable. In the case of a grant, the proprietors of the tourist business are relieved of the burden of raising the amount of the grant from their own resources. In the case of a loan, the proprietors of the tourist business are relieved of the burden of raising the amount of the loan from their own resources, but must meet the terms of the loan in respect of the payment of interest, if any, and repayments of the loan on the due dates. The effect is of course immediate upon receipt of the grant or loan. The Isle of Man Government bears the risk of the failure of the tourist business and the consequent inability of the proprietors to repay any loan or to meet the terms of the loan in respect of the payment of interest, if any, and repayments of the loan on the due dates. And, of course, a grant in such circumstances would not have provided public value.

⁷⁰ Hansard T880 21.2.1989

5.68 By comparison income tax allowances granted in respect of qualifying capital expenditure to a tourist business are, in respect of a sole business, a deferred benefit to the business. The benefit is stated to be deferred because the business must make this expenditure and the relief comes in due course as a deduction from income assessable to income tax. So the benefit for the company or developer is a reduced liability to income tax rather than direct cash receipts.

5.69 Income tax allowances granted in respect of qualifying capital expenditure are deductible from assessable trading profits. Accordingly, for income tax allowances to have an immediate or early monetary value, the tourist business must be sufficiently profitable for the profits to be able to absorb the available income tax allowances; or the proprietor(s) of the tourist business must have other eligible sources of income from which the available income tax allowances may be deducted; or the proprietor of the tourist business is a company which is a part of a group of companies and the available income tax allowances may be surrendered to another company or companies in the group which have income from which the available income tax allowances may be deducted.⁷² While the absence of or limitation in such eligible income would mean that there would not be an immediate or early tax benefit, it was believed that it would provide a major incentive to improve the tourist businesses by capital expenditure so as to produce future profits or increased profits so as to be able to utilise the allowances in the shorter, medium or long term.⁷³ This was the philosophy of the introduction of future significantly increased capital allowances.

5.70 In the ordinary course, the grant of allowances under the income tax system is secret and confidential.⁷⁴ Details of the application for and the grant of such allowances for the purposes of income tax are

⁷¹ Hansard T1172 21.3.1989

⁷² Schedule 2 Income Tax Act 1980 Chapter No 16: Library Document 2

⁷³ Mr Kelly Document Q18 Appendix 2

matters which are known only to the Assessor, the taxpayer and his agent, if any. Exceptionally the Department of Tourism will be aware of the making of a claim for tourist business incentive allowance because such a claim does require to be supported by a certificate from the department.

END OF SECTION 5

⁷⁴ s 106 Income Tax Act 1970 as amended. 1970 Chapter 6: Library Document 2

