

PART D

THE CIRCUMSTANCES OF THE LEGISLATIVE CHANGES AND THEIR OPERATION

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6. BACKGROUND AND INTRODUCTION OF THE NEW LEGISLATION

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i) Introduction

6.1 In section 5 of this report we have set out the legislative framework under which tourism operated on the Isle of Man in the period up to 1990, and described the new subordinate Income Tax legislation in the form of Orders which were introduced mainly between 1990 and 1992. We have also referred to the system of loans and grants and to the provisions for income tax relief for tourism which existed in the late 1980s and early 1990s. In this section we consider the circumstances and factual background to the introduction of the new legislation including the evolution of the thinking which preceded the changes, the actions of the Mount Murray developer and those within government. An understanding of these matters and their sequence is essential in explaining how and why the new Orders were made, what they consisted of, and who they benefited.

ii) **The 1980s and the Start of the Changes**

- 6.2 There is evidence that the use of income tax relief as an investment incentive was considered as early as the 1970s. Mr William Dawson, former Chief Financial Officer at the Treasury, brought this to our attention. He explained to us¹ that in the early 1970s there were requests from industrialists for government financial assistance. A review did take place and recommendations were made to government that consideration be given to an increase in the rates of capital allowances, that capital allowances should be calculated on the cost of assets without deduction of government grants, and that there be provision of more generous financial assistance. The Finance Board decided not to amend the capital allowances, which were linked to those in the United Kingdom.
- 6.3 Whether those early thoughts did play a part in the income tax reliefs which became the 1991 and 1992 Orders is unclear, but it was not until 1987 that consideration, with ultimate practical consequences, was given to this means of stimulating investment in tourism, an industry which, at that time, was, in various quarters, perceived to be in need of some stimulation. The system of grant and loan was generally directed to the assistance of small schemes, but neither this nor the scale of income tax relief then available, it was claimed by some,² afforded any real incentive to a tourist business to reinvest. Actual levels of spend on tourist premises by way of grants and/or loans from the General Development Fund were small, as noted in section 5, whilst the total amount of tax yield from profits on tourist accommodation in the year 1989/90, for example, amounted to only £150,000 for the whole of the Isle of Man.³ These limitations, including a perceived inequality of treatment in income tax terms with industrial and agricultural investment were recognised by the bodies representing the interests of tourism.
- 6.4 We see the start of a process of change in a letter which Mrs B Creevy, President of the Isle of Man Hotel and Guest House Association, wrote to the

¹ Letter from Mr Dawson 8.2.2004

² Mr Kelly Document Q18 Appendix 1 page 8 and Appendix 2 page 7

³ Mr Kelly Document Q18 Appendix 7 page 4

Department of Tourism on 20th January 1987. Thereafter matters progressed in a manner which we find quite unexceptionable and as a result of legitimate input from various sources until very shortly before the 1991 Tourist Business Incentive Allowance Order was agreed in principle early in 1991.

- 6.5 Mrs Creevy referred to what she described as an anomaly which was considered as a possible disincentive to hoteliers thinking of improving their properties. She pointed out that the right of allowance in relation to income tax was a 15% initial allowance and a 2½% annual allowance. This, she said, resulted in a period of 34 years to write off the cost for capital allowances against tax. She detailed disadvantages of this. She said that the cost to the Treasury of writing off the amounts over a considerably shorter period, perhaps 12 months, would not be excessive and the resultant good publicity would offset the cost. She requested that the issue be raised with Treasury.
- 6.6 The matter was given serious consideration within the Department of Tourism and on 21st April 1987 the Administrative Officer in that department wrote to the Chief Financial Officer of the Treasury. He pointed out the decline in the number of visitors to the Island, but thought that with the correct product and marketing strategy the Island should be able to capture a fair share of the generally increasing holiday market. To this end he said that substantial additional investment in the tourist sector was needed in order to improve standards, a particular aim being tourist accommodation. Appreciating that there was a limit to the amount of assistance (by loan and grant schemes) which could be given by increasing government expenditure, he did say that another way of encouraging the investment could therefore be by cutting tax liability on such investment. He noted the very low percentage allowances to which Mrs Creevy had drawn attention, made comparison with allowances in the agriculture and industrial sectors and asked that consideration be given to granting a 100% initial allowance for capital expenditure on tourist premises, the arrangement lasting over five years. As a fall back alternative it was suggested that capital allowances for expenditure on tourist premises should be not less than those applying to industrial buildings, that is 75% initial allowance and a 4% annual writing down.

- 6.7 This formal request to Treasury from the Department of Tourism had been preceded by consultation between the Department of Tourism's Administrative Officer and the Assessor in the Treasury. Almost immediately on its receipt Mrs Creevy's letter had been passed on to the Assessor who responded quickly, on 6th February 1987. Sympathy was expressed for Mrs Creevy's view and the opinion was given by the Assessor that the tourist premises allowances should be no less than those granted for industrial buildings, the amounts of which we have just set out.
- 6.8 Following the Department of Tourism's letter of 21st April 1987, there was again a quick response from the Assessor; he sent a memorandum to the Treasury on 29th April 1987 entitled "Income Tax Capital Allowances for Tourist Premises". This memorandum set out the history and legislation concerning income tax allowances. Concerning the representations which had come from Mrs Creevy and from the Department of Tourism, the Assessor expressed his belief that there was justification for granting tourist premises capital allowances at a rate equivalent to that for industrial buildings (see paragraph 6.6 above) for initial allowance and for annual writing down, or at least that for agricultural buildings, the rates of which respectively were 20% and 10% for initial allowance and for annual writing down. He also drew attention to the possibility of a uniform rate across the various economic sectors for all capital allowances on buildings. He indicated his intention to draft a set of capital allowance regulations in the near future and expressed his view that, assuming political acceptance, the capital allowance regulations due to be drafted later that year would include more favourable capital allowances for tourist premises than then currently provided. This comment should be noted because the point was later picked up by the Treasury Minister in his Budget Speech in April 1990. We come back to this at 6.14 below.
- 6.9 The next step took place a few days later when at a meeting of the Treasury on 6th May 1987 the issue was discussed, apparently sympathetically. The Treasury

approved the Department of Tourism's proposal in principle and requested the Assessor to submit a paper detailing appropriate allowances.⁴

6.10 We do not have a full documentary trail of what happened immediately after that meeting, and we have not had sight of any paper from the Assessor at that time detailing appropriate allowances. However the matter was continued some time in November or later in 1987 by Dr John Orme, a then member for Tourism. He produced a memorandum on the subject to the Department of Tourism. It is undated, but contains a letter from the then Deputy Assessor⁵ dated 30th October 1987, written to Dr Orme and headed "Tourist Premises Improvement Allowances". The letter gave technical advice as to how changes in the allowances system may fit into the appropriate legislation. It drew attention to impending alteration to the capital allowances legislation generally. Dr Orme had clearly been consulting with Treasury on these matters. As a matter of fact Dr Orme was taking forward the matters which had had a very encouraging start in the first half of 1987. The main difference in what he was suggesting was that there be a total allowance of 250% so that the government contributed 50% of the cost. It was the suggestion of an allowance in excess of 100% which was new. In oral evidence to us Dr Orme said that his focus had been on supporting tourism by whatever inventive means available without undue cost to government⁶ and claimed that his proposal was a low risk idea given that so little tax income came from tourism at that time.

6.11 Quite apart from the proposed increase in the extent of the allowances there are three points to be noted:

a) Although not referred to by Dr Orme, 50% contribution was not necessarily applicable to the whole cost of a scheme but to those parts of the expenditure which the Assessor accepted as qualifying for relief under the legislation. It was not just the rate which mattered but the elements to which it applied. This was to become a matter of importance at Mount Murray in respect of the 1992 Order

⁴ Letter Mr Kelly 20.1.2004 Minute attached

⁵ Mr Kelly Document Q18 Appendix 2 (Appendix C)

⁶ Evidence of Dr Orme Q63 Transcript Day 44 page 94

which widened the allowable elements to include plant and machinery, and the installation of sports and recreation facilities.

b) Dr Orme envisaged income tax relief being set against tourism profits and was therefore focussed on encouraging reinvestment in profitable businesses. This seems evident from the importance placed by Dr Orme on the ability of a company to carry forward and apply allowances in years when profits were made.⁷ There is no reference to group relief (or other income capable of offset), which was, and currently remains, provided for under the Income Tax Act 1980.⁸ As indicated in section 5, group relief allows the losses for the purposes of income tax incurred by one company to be set off against the profits liable to income tax of another company or companies in the same group. Dr Orme did not consider this factor and did not appear to know of its existence.⁹ However the income tax relief achieved by Mount Murray Country Club Limited and its (later) associated companies was to derive substantially from this facility. It is referred to below in greater detail.

c) Although Dr Orme had consulted with the Treasury as explained in paragraph 6.10 above, he told us¹⁰ that his proposal for 250% allowances resulted from his own thinking.

6.12 On 27th January 1988 the Treasury considered the memorandum prepared by Dr Orme.¹¹ The minutes of that meeting show that the Treasury did not support Dr Orme's proposals. The reason given was that help to the tourist industry should be by way of direct assistance and not through the income tax system. Treasury was agreeing that there should be help to the tourist industry, but not in the way put forward by Dr Orme. A suggestion was made that the existing aid schemes should be reviewed to see whether the proposals outlined in Dr Orme's paper could be incorporated into those schemes.

6.13 The existing aid schemes were in fact reviewed in the middle of 1990, but, before that, the issue of income tax capital allowances for tourist premises was taken a

⁷ Mr Kelly Document Q18 Appendix 2 page 3

⁸ Income Tax Act 1980 schedule 2: Library Document 2

⁹ Evidence of Dr Orme Q63 Transcript Day 44 page 95

¹⁰ Evidence of Dr Orme Q63 Transcript Day 44 page 88

¹¹ C91

step forward. This was in April 1990. Why there should have been such a delay between 1988 and 1990 is not clear from the papers which we have available to us, but no doubt the outright rejection in January 1988 was a material factor. There was certainly a marked contrast with the speed with which the 250% allowances were to come forward in the 1991 Order.

- 6.14 The step forward was the making by Treasury of the Income Tax (Capital Relief) (Tourist Business) Order 1990. This was made by Treasury on 2nd April 1990, and, as we have seen in section 5, made the modest increase of initial and annual allowances from 15% and 2½% respectively to 20% and 10% respectively. This was not necessarily inconsistent with the January 1988 rejection of Dr Orme's 250% proposal as these increases were much less than that, and accorded with earlier resolutions and statements from Treasury in 1987. It did accord with the Assessor's fall back suggestion which he made in 1987 and is noted at paragraph 6.8 above.
- 6.15 The Treasury Minister explained the proposal in his Budget Speech on 10th April 1990.¹² He introduced the proposals by saying that three years earlier it had been stated that Treasury wished to review the provisions relating to relief for capital allowances with the aim of simplifying the system. He said that Treasury remained committed to the necessity of such a review. He went on to say that he was conscious of the assurances given in 1987 that the tourist industry would not be overlooked in such a review. He therefore made the modest increases referred to. We have already made reference to the review of allowances generally (see paragraph 6.8 to 6.10 above). It is quite possible to identify a reference to the tourist industry not being overlooked in such a review when one looks at the Assessor's paper to Treasury dated 29th April 1987 where, in referring to the capital allowances regulations being redrafted later that year, one sees the words "could include more favourable capital allowances for tourist premises than currently provided"¹³ (see paragraph 6.8 above).

¹² Hansard T1394 10.4.1990

¹³ Mr Kelly Document Q18 Appendix 1

- 6.16 Although the increase in allowance was modest the Budget debate on that date, and the debate on the Order on that date, gave portents of the advances which were to follow. In the Budget debate Dr Orme said¹⁴ that this was a derisory measure and would have no effect whatsoever upon the likely investment in tourism in the near future. In the debate on the Order on the same date¹⁵ Dr Orme said that this provided no more incentive to invest in tourism than any other industry on the Island, that he was entirely dissatisfied with the proposal, and that he would be seeking at the first possible date to improve the proposition that had been put to the tourist industry by this Order.
- 6.17 However the next event which may have played its part in reviving the proposal was the Department of Tourism's tourist policy and strategy document, "Tourism and Reality". This was debated in Tynwald on 17th July 1990 and it was there stated by the Minister for Tourism, Mr Bell, that there was a need to upgrade the general tourism product and that to ensure achieving the maximum return for the taxpayer it was proposed to cease all then existing Schemes and establish the single tourism development fund.¹⁶ While this proposal was directed towards a Scheme as opposed to incentive tax allowances, it did indicate that the department was concerned with the improvement of the tourism product, and may have been indicative of the philosophy which led to the next step.
- 6.18 Then Dr Orme carried forward his promises of April 1990. In a meeting of the Department of Tourism on 15th October 1990¹⁷ he questioned the lack of progress on his proposals for capital allowances on tourism investments. It is noted in the minute that the Minister advised that Treasury had discussed the whole area of capital allowances but was unsure as to what stage had been reached. It was suggested that Mr Michael Ball and Mr Mitchell should contact the Treasury with a view to establishing the then present position. Mr Ball was Administrator in the department at that time. (Mr Mitchell's consultancy role and his direct relationship to the Minister, Mr Bell, have been referred to in the Part One Report, section 11 paragraphs 11.136 to 11.141.) It is also noted that Dr

¹⁴ Hansard T1428 10.4.1990

¹⁵ Hansard T1460 10.4.1990

¹⁶ Hansard T2245 17.7.1990

Orme agreed to furnish both Mr Ball and Mr Mitchell with copies of his proposals¹⁸ which were the proposals which he had produced at the end of 1987.¹⁹ Mr Ball, currently Director of Leisure at the Department of Tourism, told us²⁰ that he was indeed tasked by his department in mid 1990 to seek to progress with the Treasury the introduction of a tax incentive scheme for tourism. He explained that there was then a series of informal discussions between himself and Mr Mitchell on behalf of the department and the late Mr K Mathieson who was the Treasury accountant allocated to the department, and that these discussions culminated in the paper which he submitted to a departmental meeting on 14th November 1990²¹ which as we have seen was very shortly afterwards translated into legislation.

- 6.19 This paper was, in accordance with that Treasury minute, based upon Dr Orme's idea in relation to the extent of the allowances.
- 6.20 The paper took note of the "Tourism and Reality" departmental policy document and the need for government to prime private sector investment. It also envisaged a developing role for rural tourism based on the conversion of rural farm buildings. Central to its argument was that, although grant assistance would play a role in encouraging development, it had to be recognised that the size of the funds available would only be sufficient to "incentivise" a relatively small number of priority projects. These priority projects would be such items as fire safeguards and en suite provision.²² It was suggested that investment could be encouraged through taxation and a new system of capital allowances was proposed of up to 250% of capital cost over five years.
- 6.21 At that stage it was being proposed that the system be introduced on an experimental basis and only within the accommodation sector, which did not produce a great deal of government (tax) income, and so the proposal would not therefore represent a real risk to government income at that time; and

¹⁷ Dept of Tourism minute 8.9.1990 Capital Allowances on Tourism Investments

¹⁸ Evidence of Dr Orme Q63 Transcript Day 44 page 93

¹⁹ Mr Kelly Document Q18 Appendix 1

²⁰ Mr Ball Document Q59 page 2

²¹ Mr Kelly Document Q18 Appendix 6

furthermore, it could, within its limited area of impact, be monitored more closely. As to this last point, Dr Orme himself in a later departmental meeting on 20th May 1991 (after the Order was approved) said that there was a need to establish a proven track record before looking to expand the proposals.²³ Mr Ball's paper was submitted to Treasury and subsequently considered at a Treasury meeting on 27th February 1991 following a cautionary submission by the Assessor which was considered at that meeting. The events leading up to and beyond that meeting and moving on to the approval of the 1991 Order are considered later. Suffice it to say here that the submission of Mr Ball's paper to the Treasury appears to have been the first point at which Dr Orme's concept of 250% allowances was formally identified in inter-departmental terms since its original consideration within the Department of Tourism some two and a half years before. By comparison the rate at which it then progressed can only be described, in the Commission's view, as unusual.

6.22 In summary, financial support for tourism in the 1980s was confined very largely to a mix of grant and loan, potentially significant for smaller projects at the rates offered but limited in overall terms by budgetary constraints and perceived objectives. Support by income tax relief was more restricted because of the very low rates of allowance which prevailed up to April 1990 despite the expansive ideas of Dr Orme put forward three years before and known to the Treasury at that time. The rates introduced by the (Capital Relief) (Tourist Business) Order in April 1990 remained well below those advocated by Dr Orme, but the impetus to raise them and the elements to which they applied was to accelerate rapidly over the next two years. There is no indication of any evidence that the Mount Murray development had any part to play in the history of these allowances before the end of 1990. As seen in this sub-section the evidence is in fact quite to the contrary.

6.23 Before looking further at the influence of the Mount Murray developer on the history of the allowances we next consider briefly how and when the site was assembled and which companies were involved.

²² Evidence of Mr Ball Transcript Day 38 page 28

iii) **The Early Group Land Bank Building at Mount Murray**

6.24 At sub-section 11 (iii) of its Part One Report the Commission referred to the discussions with government which took place before the first application at Mount Murray was submitted in January 1991. Particular attention was drawn, in paragraph 11.21, to the meeting on or before 14th November 1990 between Sir Miles Walker, who was Chief Minister at the time, and Mr Spence acting as agent for the developer. The submitted statement by Sir Miles Walker,²⁴ confirmed during oral evidence, was to the effect that the availability of sites for a hotel and resort village, of which Mount Murray was only one, was discussed at that meeting. Another one identified by Sir Miles Walker was the Howstrake site.²⁵ He recalled that he had advised Mr Spence that it would be unlikely that the developer would secure permission for permanent residential accommodation on the Mount Murray site.

6.25 Notwithstanding the reference to other sites at that meeting, the Commission has not seen evidence of such alternatives ever being identified by the developer much less given any serious consideration, and it is beyond reasonable doubt that the developer was targeting Mount Murray as its proposed location to the exclusion of other possibilities at an early stage. This is consistent with the evidence of Mr Paul Moore in his capacity as former Director of Conrad Hotels (IOM) Limited, Radcon Village Resorts Limited, and then Mount Murray Country Club Limited, which evidence was also referred to in the Part One Report.²⁶ He accepted that Radcon, to which Conrad Hotels changed its name shortly after the submission of the outline application, had considered its strategy for this development at Mount Murray during 1990.²⁷ That strategy, we find, included the assembly of the eventual site at Mount Murray, the evidence for which is largely revealed in the land transfer details included in the evidence submitted to the

²³ Dept of Tourism minute 20.5.1991

²⁴ Sir Miles Walker Document Q16

²⁵ Sir Miles Walker Q16 Transcript Day 30 page 50

²⁶ Part One Report para 11.19

²⁷ Evidence of Mr P Moore Transcript Day 8 page 46

Commission by Mr P Karran²⁸ and in the deeds which the Commission has itself inspected at the Deeds Registry. In the paragraphs which follow, reference numbers are those derived from the Deeds Registry documents.

6.26 The sequence of transactions insofar as considered relevant, is set out in diagrams A and B (see Annex 8), the latter being concerned with the land for the golf course (excluding the 18th hole). It can be seen from Diagram A that sixteen and three quarter acres of land including the lodge and hotel then known as the Alex Inn were conveyed from Alex Inn Limited to Mount Murray Estates Limited in February 1970 (Deed No 192). This equates substantially to the 20 acres subsequently zoned for tourist accommodation in parkland in the Local Plan (paragraph 3.29 of the Part One Report). The same area of land was conveyed later in 1970 (Deed No 258) from Mount Murray Estates Limited to Mount Murray Motel Limited. Also in 1970, Mount Murray Estates Limited acquired 32 acres (Deed No 196) including 6 acres of land to the west of the C21 minor road (which later became part of the golf course). The 26 acres to the east of this road together with the 16³/₄ acres referred to above were then conveyed to Dollagh Limited in 1978. This area of some 26 acres was eventually to form the main development site at Mount Murray comprising the hotel and its facilities, the 175 houses and the 18th hole of the golf course. There is, however, no evidence either within the various deeds themselves or from the directorships and shareholders of the companies concerned to indicate that these early transactions were part of a strategy for Mount Murray by the Anglo International Group.

6.27 The 26 acres were then subject to a series of transactions, being transferred briefly to Summerhill Limited on 23rd July 1987 and shortly thereafter, on 3rd August 1987, from Summerhill Limited to Leigh Estates (UK) Limited. Again, none of these companies are shown to have had any identifiable links with the Anglo International Group. More significantly the same land as in these two transactions of 1987 was then conveyed from Leigh Estates (UK) Limited to Grandeur Limited on 16th August 1990, and on the same day was conveyed to

²⁸ Mr Karran Document P1 Part VI File I Appendices 3, 4 and 5, and Part I Appendix 4 and Registry of

Conrad Hotels (IOM) Limited. Mr Moore was a director of both these companies in 1990 having been appointed to the former in August 1989.²⁹ Additionally Mr Moore indicated in evidence³⁰ that the shareholders of Grandeur Limited, that is Claycroft Limited, Dalecroft Limited, Bala Limited and Ray Limited, were all nominee companies held to the order of the Anglo International Group. Mr Moore also confirmed that the land purchases at Mount Murray were funded by the Anglo International Group, at least partly. He could not recall whether it was 100% funded by the Anglo International Group and he did not have access to his records.³¹ The influence of the Anglo International Group at that stage is therefore readily apparent.

6.28 The Commission has already established, via the Companies Registry as referred to at paragraph 11.19 of the Part One Report, that Conrad Hotels (IOM) Limited was the true name of the applicant when the outline application (PA 90/1842) was submitted on 16th January 1991. (The formal name change to Radcon Village Resorts Limited was made on 28th January 1991 and the further change to Mount Murray Country Club Limited in June 1993). The Commission is therefore satisfied that the land on which the hotel and its facilities, the 175 dwellings, and the 18th hole of the golf course were subsequently to be constructed, had been assembled before the developer's agent, Mr Spence, made the first pre-application contact with Sir Miles Walker, and with the officials of the Departments of Tourism and Local Government and the Environment. The nature of the land assembly for the main Mount Murray site reinforces the Commission's doubt as to the seriousness of the developer's intent at any stage to look beyond that site for the hotel and resort village it proposed to construct. There is nothing exceptional in that nor is it a matter for criticism save to the extent that the position put to Sir Miles Walker by Mr Spence in about November 1990 covered up the true picture which was that a decision to develop at Mount Murray had already been taken.

Deeds reference in Annex 8

²⁹ Mr Karran Document P1 Part 1, A10

³⁰ Mr P Moore Document Q6 Supplementary Statement 15.12.2003 page 2

³¹ Mr P Moore Q6 Transcript Day 40 pages 57 & 59

- 6.29 So far as can be ascertained, Radcon Village Resorts Limited acquired the land for the bulk of the golf course in five separate transactions which took place between February and July 1992 as shown on Diagram B. We have referred in the Part One Report at sub-section 12 (iii) to the planning applications for the golf course which were: Initial approval 8th April 1992; detailed approval 22nd May 1992; extension to golf course (details) 22nd August 1992. These approvals are consistent with the land acquisitions shown in Diagram B save in one respect. All were submitted by Radcon Village Resorts Limited on the basis that the company was the owner of all the land. This does not appear to have been correct in respect of an area of 9.5 acres on the south side of the C21 minor road opposite the hotel. This land was not acquired until May 1992 and was not in the ownership of Radcon at the time of submission of the initial application. However, this may have been an administrative oversight and the Commission do not regard it as a matter of undue concern nor consider that it bears on the issues addressed in this Part Two Report.
- 6.30 It is a proper conclusion in the Commission's view, that the Anglo International Group performed a central co-ordinating role at Mount Murray in both the assembly of land as well as the securing of planning permissions. That is not in itself a reason for criticism. It is common practice for developers to secure a site in various parts, at various times, and through different agencies to avoid alerting the market and driving up land prices.³² However, while it is the fact that the nature and background of an applicant for planning permission is not in itself material as to whether or not that applicant should be given planning permission, the position is different in relation to tax matters.
- 6.31 If the developing company is in fact part of a group of companies, or controlled by that group, that can be a very material matter insofar as taxation benefits are concerned, and changes to the relationship a company has to a group can lead to that group becoming immediately a substantial beneficiary of changes in legislation. Furthermore it may be a reason for criticism if land, having been assembled is put into the "name" of an employee by the developing company

³² Mr Willers, during evidence of Mr Gubay Q1 Transcript Day 27 page 14

which claims at that point that it is not part of a group, legislation which is especially advantageous in a group situation or a widening of its advantages is then pressed for and the "employee's" company subsequently becomes part of a group. We consider the implications of this from the perspective of negotiations between the Mount Murray developer and the government in sub-section (iv) below (paragraphs 6.66 to 6.72).

6.32 In any event the stage had been set in 1990 for the applicant company to commence the planning approval process through 1991 and 1992. The legislative process which affected the scale of income tax relief available to the developer was contemporaneous with that process and it is the circumstances surrounding this legislation with which the remainder of this section and section 7 are concerned

iv) **Discussion and Negotiations between the Mount Murray Developer and Government**

6.33 Reference has already been made in paragraph 6.24 above to the pre-application meeting between Sir Miles Walker, the then Chief Minister, and Mr Spence as agent for the developer, held on or before 14th November 1990. This meeting is commented on in paragraph 11.21 of the Part One Report. Sir Miles Walker could not recollect³³ whether Mr Spence had explicitly indicated at that meeting that the intended development would not need a grant. However in a later letter to him dated 19th October 1994,³⁴ Mr Spence stated that the Notes of Presentation,³⁵ which were to accompany the initial planning application, were read out to, and left with, the Chief Minister at the time of the November 1990 meeting. It is clear from these Notes that a grant was not to be sought even though they indicate awareness of the availability of the grants referred to in section 5. In other words, Sir Miles Walker was presented with the position that government might secure a large tourist development at no expense to itself.

³³ Evidence of Sir Miles Walker Q16 Transcript Day 36 page 19

³⁴ File II pages 376 - 379 and evidence of Sir Miles Walker Q16 Transcript Day 36 page 20

³⁵ File A pages 27 - 32

- 6.34 Mr Spence on behalf of the applicant was to stress at question 12 of the planning application itself that "A government grant is not required if one adheres to the concept."³⁶ The same point was made in the letter accompanying the application and addressed to Mr M Watson (then Chief Architect and Planning Officer) which asked for it to be made clear to the Planning Committee that "if one strictly adheres to the design concept as contained in the brochures and especially the Buyer's Guide included with the application, no grant from the Isle of Man Government is required."³⁷
- 6.35 The Notes of Presentation explain why no grant was required for the holiday village, that is that the "investors" (not the owner company) put up the money for the houses which in turn are made available to the hotel to rent out as bedrooms which thus has financed for it, by others, the capital and interest cost of providing the hotel bedrooms. In addition, the Notes of Presentation refer to the motel and all its related facilities as works ("communal facilities") to be provided at the company's expense.³⁸ The Notes of Presentation do also refer³⁹ to the attraction for investors of the Island being a low tax area, and that, allied to the financial services available, they get an even better return on their investment than otherwise would be the case.⁴⁰ So the developer is here referring to advantage of both tax and no grant as two separate advantages.
- 6.36 There are two other relevant points about the Notes of Presentation. First, further explanation of the concept shows that some 10% of the houses would be residential and that profits generated from sale of houses is ploughed back into the facilities and this appears to provide half the investment cost.⁴¹ Second, when the Notes of Presentation were produced and lodged with the planning application, the capital allowances were still very small. The Commission considers there is little doubt that the former of these two points would be a significant factor in enabling Mr Spence to maintain that grant would not be needed as he did in his letter to the Planning Committee with the initial

³⁶ File A page 13

³⁷ File A pages 9 & 10

³⁸ File A pages 18 & 29

³⁹ File A pages 27 - 28

⁴⁰ File A page 30

application as we have noted in paragraph 6.34 above. This is a typical aspect of the important link between the irregularities in planning matters, and those relating to finance, with the latter being used to provide added persuasion on the merits of granting planning permission.

6.37 It is relevant also to draw attention to this initial stance taken by the developer with regard to funding because it did not then have the emphasis upon the claimed dependence on income tax relief which was subsequently put forward by the developer as the legislative changes to the income tax regime were to progress later in 1991 and 1992. In the letter referred to in paragraph 6.33 above, Mr Spence was by 19th October 1994 maintaining that both departments [Tourism and Treasury] were fully aware of the importance for the viability of the project of appropriate tax allowances being available for the whole of it.⁴² This clearly sought to emphasise the importance of the housing having tax allowances. However neither the documentary evidence of the time, nor the oral evidence given to the Commission suggest that income tax relief as a form of subsidy was so fully part of the developer's strategy in 1990 and early 1991 or that it was discussed with Ministers or officials with that emphasis in that period as Mr Spence might later appear to maintain.

6.38 The emphasis was primarily on grant and the absence of need for it as we have noted in paragraphs 6.34 to 6.35 above, and as is reinforced by a letter faxed by Mr Spence to Mr Mitchell of 23rd May 1991,⁴³ and by a later letter he sent to the Secretary of the Planning Committee on 8th May 1992.⁴⁴ There seems little doubt that this was used as an argument in the securing of planning permissions. Later claims were to be made⁴⁵ that the project was (always) tax driven. This was not consistent with the initial stance taken with regard to grant; we have seen no contemporary supporting evidence, at least in 1990 and early to mid 1991, and, as just explained, the contemporary emphasis does not support the claims.

⁴¹ File A page 31

⁴² File II pages 378

⁴³ File A page 63

⁴⁴ File A page 119

⁴⁵ File A page 133

6.39 Mr Moore in his evidence said that he did not think that tax relief was as crucial as Mr Spence did, and described it as very, very important but not crucial,⁴⁶ while Mr Willers said he did not really think the Mount Murray scheme was tax driven although it obviously played a significant part.⁴⁷ Mr Moore and Mr Willers were, or are, directors or officials of the developing companies and therefore do provide persuasive evidence on this issue, and whilst we have noted at paragraph 2.61 the acceptance by Mount Murray Country Club Limited as part of its Case to the Privy Council that the obtaining of capital allowances was a consideration in its decision to proceed, even to the extent that they might not have proceeded without it, and we will consider the implications of all the above in our conclusions, we nevertheless note here that tax did not figure with such emphasis in the developer's early submissions to government whilst flexibility in the use of the housing did. In the light of all the evidence there is every reason to conclude that Mount Murray would have proceeded without the new enhanced income tax reliefs.

6.40 A further factor for the developer in 1990 so far as any grant was concerned would have been its size and the procedures for getting it. Mr Spence was aware of the grant and loan regime as is clear from the Notes of Presentation accompanying the first planning application in January 1991 which refers to grants of up to 40% for hotel construction. He also referred to grant and loan in a letter to Mr Bell dated 29th April 1991, although he claimed then that "as is usual with tourist related developments, financial inducements of this nature are avoided if possible because of the 'red tape' which is usually attached to them."⁴⁸ We know that the "red tape" involved a very full disclosure of the affairs and finances of the developer,⁴⁹ which is contrary to the philosophy displayed by the Mount Murray developer.⁵⁰

⁴⁶ Evidence Mr Moore Q6 Transcript Day 40 pages 50 & 51

⁴⁷ Evidence of Mr Willers Q2 Transcript Day 37 page 80

⁴⁸ Mr Toohey Document Q10, letter Spence to Bell 19.4.1991 Letter to the Commission dated 18.9. 2003 from Mr Toohey, CEO Dept of Tourism Attachment No 2

⁴⁹ File C2 page 262 Scheme of regulations for grants and loans section 5

⁵⁰ Paras 6.66 to 6.68

6.41 He would equally likely have been aware of the limited budget which underpinned grants and loans which we have noted in section 5 above. It would certainly be surprising if the figurehead of such an experienced developer⁵¹ had not researched that grant budgets were very small and that even 40% of development costs would substantially exceed the whole of the Department of Tourism's budget.⁵² Mr Spence had already indicated in a letter dated 14th November 1990 to Mr Barry Vannan that the investment would be in the region of £20 million⁵³ and while it might have been technically feasible to consider grant funding even for such a large sum, this would have surely appeared both unrealistic and unappealing, because any application in excess of £50,000 required Treasury approval⁵⁴ and would in all likelihood have to go to Tynwald⁵⁵. It would also have required a business plan and other support documentation as the grant regime lays down.⁵⁶

6.42 Whether that realisation was a factor in the developer's later emphasis on income tax relief is not clear. Mr Spence's emphasis on no grant being required may or may not have been intended to leave the developer in a position where other forms of financial support could be freely considered without appearing to lessen the attraction to government but it would certainly have been an incentive to grant planning permission. It also has to be borne in mind that Mr Spence, as we have noted in paragraph 6.34, placed at least equal emphasis on maintaining the design concept underpinning the application which implied flexibility, which included permanent residential, in the use of the housing. That is evident from his letter to Mr Bell of 29th April 1991 which we have referred to above at paragraph 6.40 and in which he says that "without either a grant or the removal of the occupancy condition restriction, this scheme will not proceed."⁵⁷ This reinforces the Commission's conclusion that initially income tax relief was not critical to Mount Murray and that the large tax benefits from the 1991 Order were

⁵¹ Part One Report sub-section 17 (ii)

⁵² Evidence of Mr Ball Q59 Transcript Day 38 page 33

⁵³ File A page 185

⁵⁴ File C2 page 259 Scheme of regulations for grants and loans section 3

⁵⁵ Evidence of Mr Ball Q59 Transcript Day 38 page 33; Mr Cashen Q17 Transcript Day 33 pages 44 & 45; Mr Gelling Q23 Transcript Day 37 pages 56 & 57; Mr Kelly Q18 Transcript Day 42 page 21; Mr Toohey Q10 Transcript Day 44 page 45

⁵⁶ File C2 page 260 Scheme of regulations for grants and loans section 4

⁵⁷ Mr Toohey Document Q10 letter Spence to Bell 29.4.1991

a matter of later realisation, of which the developer, not surprisingly, took full advantage.

6.43 In any event, whether support is provided via income tax relief or a grant, the effect is much the same, in that the Isle of Man taxpayer either funds the grant or is required to make up for the tax which is not paid due to the allowances given. This point was put to Mr Bell,⁵⁸ the Minister for Tourism at the time, during his giving of evidence. He agreed that there was no real difference between grant and tax relief, just a different way of dealing with them, but he maintained that the tax relief contribution would only link in when the business itself made profits which would later bring financial benefit to the community and the exchequer.⁵⁹ In saying that, Mr Bell appeared to assume, erroneously as it turned out, that tax relief was dependent on profitability of the development project. Group relief he stated, was not discussed in 1991 and that, at that time, he did not understand it.⁶⁰ However he acknowledged that tax relief could be applied to any associate companies in a group situation and that these might be earning profits in a field which is not tourism.⁶¹ In his written submission to the Commission following the completion of oral evidence Mr Bell said that it was a misleading gross oversimplification to equate cash grant and tax relief. Under the latter there is only a loss if the taxable profit would have come to the Island irrespective of the tax relief available. If it would not have come to the Island without the tax relief incentive then there is no loss to the taxpayer, he said. We have concluded that the Mount Murray development would have come to the Island irrespective of the tax relief. However we deal with this issue in more detail in our conclusions at sub-section 8 (v) below.

6.44 We return to the fundamental significance of group relief later in this report. We consider here the relationship between the Mount Murray development and the changes to allowances for tax purposes which were made in 1990 and early 1991. We have noted in sub-section 6 (ii) above the circumstances leading to Treasury approval of the Income Tax (Capital Relief) (Tourist Business) Order

⁵⁸ Evidence of Mr Bell Q9 Transcript Day 36 pages 44

⁵⁹ Evidence of Mr Bell Q9 Transcript Day 36 page 44

⁶⁰ Evidence of Mr Bell Q9 Transcript Day 36 page 44

1990 on 2nd April 1990. The evidence of land assembly in sub-section 6 (iii) shows that the Mount Murray scheme, if not in existence, was in preparation during 1990, but the Order was approved some six months before Mount Murray became the subject of consultation with government, and it was not brought in for any other reason than to assist investment within the tourist industry as a whole.

- 6.45 The process leading to the next relevant change, the introduction of the Income Tax (Capital Relief) Order 1991 which had effect from 6th April of that year, was to become closely linked with steps taken by the Department of Tourism to revive the proposal for 250% capital allowances and to seek a reconsideration by Treasury of that proposal.
- 6.46 We have noted at paragraph 6.18 above that those steps involved informal discussions between Mr Ball and Mr Mitchell on behalf of the Department of Tourism, and Mr Mathieson, the then Treasury Accountant allocated to the department, and culminated in the paper considered initially on 14th November 1990 and forwarded to Treasury on the same day.⁶² The proposal was a representation of a system of capital allowances up to 250% of capital costs over five years as explained at paragraph 6.20 above. It was recommended as a low risk, low cost idea on an experimental basis and within the accommodation sector only where its impact could be monitored more closely⁶³ it being within a limited area of operation.
- 6.47 The Assessor's response was contained in a paper to Treasury on 18th February 1991.⁶⁴ The paper was negative in tone and referred to other options including an allowance of 100% for approved schemes on the line of enterprise zones in the United Kingdom. It also referred to the time which would be taken to introduce new regulations if relief was in excess of 100% and pointed out that this rate was the rate then granted in respect of plant and machinery. At a subsequent Treasury meeting on 27th February 1991 support was not given to the proposal but the Assessor was charged with researching an alternative

⁶¹ Evidence of Mr Bell Q9 Transcript Day 36 page 44

⁶² Mr Ball Document Q59 page 2

⁶³ Mr Ball Document Q59 Annex 1

option of 100% initial allowances (with the exclusion of grants). The research was not reported back to Treasury. Nevertheless, according to Mr Kelly's evidence,⁶⁵ the Budget Strategy Group had picked up the enhancement of the allowances for tourist premises as something to be promoted in the Budget. The amount was determined at 100% and this formed the substance of the Order referred to in paragraph 6.45 above. The Order therefore stems from that Budget process and may be seen as a further interim step in the sense that it derived from the continuing efforts in 1990 and early 1991 by the Department of Tourism to progress the capital allowances proposals and the reactions of the Assessor and Treasury.

6.48 Subsequently, and of significance to the development at Mount Murray, the consultations with the Department of Tourism instigated by the Treasury following its meeting on 27th February were overtaken by political intervention culminating in a meeting (without officers) between Mr Bell, Dr Orme, and the Treasury Minister, Mr Gelling, on 20th March 1991. The particular circumstances relating to this meeting are referred to in greater detail in sections 6 (vi) and 6 (vii) below which consider the Department of Tourism's overall involvement in the tax reliefs which were secured for Mount Murray, and its liaison with the Treasury. In this context we note again that the Assessor had not, before that meeting, reported back on his task of researching an alternative option. We also note that the resolution effectively rejecting the proposal by Treasury in January 1988⁶⁶ had not been rescinded. Notwithstanding the concerns of Treasury officials, the proposal for 250% allowances was adopted, and the intent to introduce it included in Mr Gelling's Budget Speech. The proposal was described as "unprecedented" by the Assessor, Mr Kelly,⁶⁷ and Mr Dawson, former Chief Financial Officer to the Treasury, in his evidence to us, described it as so unusual that he did not think that it would be acceptable to Treasury.⁶⁸ It was eventually to be incorporated into the Income Tax (Capital Relief) (Tourist Business

⁶⁴ Mr Kelly Document Q18 Appendix 7

⁶⁵ Evidence of Mr Kelly Q18 Transcript Day 32 pages 37 & 38

⁶⁶ Paragraph 6.12 above

⁶⁷ Evidence of Mr Kelly Q18 Transcript Day 42 page 28

⁶⁸ Evidence of Mr Dawson Q60 Transcript Day 40 page 9

Incentive Allowance) Order 1991 (the 1991 Order) approved by Tynwald on 15th October 1991.⁶⁹

- 6.49 The Commission finds the political decision taken on 20th March 1991 to be of material relevance to the scale of income tax relief which the developer at Mount Murray was eventually able to secure. The nature and scale of the Mount Murray scheme and its potential importance to the tourist industry on the Isle of Man were by then clearly apparent to both Mr Mitchell and Mr Bell and an outline approval had already been given on 22nd February 1991 (PA 90/1842). The Commission have been concerned therefore to establish the extent to which, if at all, the Mount Murray project influenced the decision on 20th March 1991, but has not found evidence of telephone calls, correspondence, or other documentation to indicate any direct influence or pressure being brought to bear by the developer on officers or Ministers either in the Treasury or at the Department of Tourism.
- 6.50 Mr Bell acknowledged in his evidence that “we were aware that the scheme [Mount Murray] would qualify [for tax allowances]”⁷⁰ and that if the scheme was approved in its entirety by the tax authorities for any particular proposal it would deliver up to 50% of the cost.⁷¹ He also accepted that “Yes, the Treasury Minister clearly took that decision that day”⁷² (the 20th March 1991). Dr Orme for his part said that he does not recall that he walked away from the meeting thinking that he had succeeded, but was unable to say that the decision was not made on that date.⁷³ Returning to Mr Bell, when asked whether Mount Murray was on his mind at the time of the meeting, he accepted that he was “aware of it” and knew that it was a substantial hotel development with some leisure facilities⁷⁴ but maintained that “a number of hotel developments on the Island over the subsequent years have benefited as well. It [the 250% allowance] was not just with Mount Murray in mind.”⁷⁵ Pressed as to why the scheme only appeared

⁶⁹ Mr Kelly Document Q18 para 14 and Appendix 18

⁷⁰ Evidence of Mr Bell Q9 Transcript Day 36 page 42

⁷¹ Evidence of Mr Bell Q9 Transcript Day 36 page 43

⁷² Evidence of Mr Bell Q9 Transcript Day 36 page 53

⁷³ Evidence of Dr Orme Transcript Day 44 page 101

⁷⁴ Evidence of Mr Bell Q9 Transcript Day 36 page 61

⁷⁵ Evidence of Mr Bell Q9 Transcript Day 36 page 58

finally to come forward when Mount Murray came into the picture, Mr Bell attributed this solely to the political delays inherent in taking a new scheme through the system.⁷⁶ We have already (at paragraph 6.13) noted that the Treasury rejection in January 1988 was likely to be material in the delay.

- 6.51 So far as the Treasury Minister was concerned, Mr Gelling agreed in evidence that the Department of Tourism would “certainly know” about Mount Murray, but maintained that it did not appear that he had been told himself. “I would not have known at the time who was in the frame as to what development might take place.”⁷⁷
- 6.52 The Commission comments further on the 20th March 1991 meeting in its conclusions, but it bears mentioning here that both Mr Mitchell, as Development Officer, and the Minister, Mr Bell, to whom he was directly answerable, were by then closely involved with the developer and with the planning officials. It is inconceivable that the Minister would have been unaware of the incentive that allowances of 250% would represent in tax terms at Mount Murray even though both plant and machinery and leisure facilities were not allowable elements at that point. Additionally no evidence was put before the Commission of any other major scheme being “in the frame” at that time. Mr Bell himself indicated that with regard to the amending Order Mount Murray “was a catalyst because it presented us with a specific scheme for the first time.”⁷⁸
- 6.53 Details of how the 1991 and 1992 Orders were to emerge, how they came to be drafted as legislation, and their progress through to Tynwald are dealt with in sub-section 6 (vii). We have noted the absence of any contemporaneous documentary link between the developer and the making of the first of these Orders. Nevertheless, as explained in paragraph 6.39 above, the issue of tax had been drawn to attention and it was clearly a matter of importance for the developer. Furthermore Mr Bell and Mr Mitchell had been aware of the Mount

⁷⁶ Evidence of Mr Bell Q9 Transcript Day 36 page 59

⁷⁷ Evidence of Mr Gelling Q23 Transcript Day 37 pages 27 & 28

⁷⁸ Evidence of Mr Bell Q9 Transcript Day 36 page 49

Murray proposals for some time⁷⁹ at the point when the decision was made on 20th March 1991 to raise capital allowances to 250%, but Mr Bell's evidence was that the 1991 Order was not introduced purely as a response to Mount Murray⁸⁰ but derived from Dr Orme's earlier ideas, from consultation within the industry, and from the eventual acceptance by the Treasury of the need for better incentives for the tourist industry as a whole.

- 6.54 By contrast the involvement of the developer in the evolution of the 1992 Order was direct. Mr Nugent of Pannell Kerr Forster was instructed in December 1991 by Mr Spence in his capacity as Director of Radcon Village Resorts Limited. Mr Nugent agreed in evidence that the developer's objectives for tax relief for development were "to obtain and maximise whatever legitimate tax reliefs were available".⁸¹ Mr Nugent was emphatic that he had no involvement in the promotion or lobbying or preparation of the Order made earlier in 1991 but he accepted that to a degree he was instrumental in bringing forward the provisions of the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992 (the 1992 Order).⁸²
- 6.55 Mr Nugent initially raised the matter of capital allowances for tourist premises with the Assessor, Mr Kelly, in a letter dated 6th January 1992.⁸³ In it he referred to a number of clients requesting information on this subject and agreed when giving evidence⁸⁴ that Radcon was one of these. Amongst the points he raised were the rate of allowance and whether it would apply over the whole period of expenditure, the categories of capital expenditure which would qualify, and whether any losses created using the 1991 Order would be available for loss and group relief in the normal way. From the reply to Mr Nugent's letter by Mr Kennaugh, the Deputy Assessor, dated 12th February 1992 it could be inferred that group relief was applicable,⁸⁵ an issue which Mr Nugent described as

⁷⁹ Part One Report para 11.140

⁸⁰ Evidence of Mr Bell Q9 Transcript Day 36 pages 58 & 59

⁸¹ Evidence of Mr Nugent Q25 Transcript Day 35 page 9

⁸² Evidence of Mr Nugent Q25 Transcript Day 35 pages 10

⁸³ File I page 29

⁸⁴ Evidence of Mr Nugent Q25 Transcript Day 35 page 20

⁸⁵ Evidence of Mr Nugent Q25 Transcript Day 35 page 21

“absolutely fundamental.”⁸⁶ Mr Kennaugh's reply also stated that categories of qualifying expenditure would be the same as laid down for industrial buildings in the United Kingdom.

6.56 Mr Nugent wrote to Mr Mitchell on 18th February 1992 following a meeting shortly before. His letter, in the context of income tax allowances, specifically refers to the "financial assistance" available to tourist operators as a substantial factor as to whether specific tourist operators would proceed. He also refers to points discussed with a view to obtaining clear guidance from the Tourist Board and the Assessor of Income Tax.⁸⁷ In the same letter Mr Nugent writes that it would be important for Mr Bell to be present at such a meeting. There is no other record of the preceding meeting and Mr Nugent in evidence stated that he tended to use the correspondence itself as a record of conversations.⁸⁸ Mr Nugent was to write further to Mr Mitchell basically referring to the same three matters on no less than six separate occasions up to 26th May 1992, this correspondence being notable in that at no stage does it appear to have been acknowledged, disputed or otherwise replied to by Mr Mitchell.

6.57 In the letter to Mr Mitchell of 18th February 1992, it is stated that a copy was sent to the Income Tax Division, although no such copy exists on the Assessor's files. Mr Nugent also wrote directly to the Income Tax Division on 4th March 1992⁸⁹ as a further follow up to his letter of 6th January 1992 raising the question of the applicability of group relief in circumstances of rental. He also made several indications in the correspondence of his assumption that the Treasury would be aware of what he was seeking, and on 22nd and 26th May 1992 stated that he was copying the letters of those dates to the Treasury. Nevertheless it is the Assessor's evidence that it was not until May 1992 that he, the Assessor, became properly aware of the tax negotiations which were being conducted by the Department of Tourism. This awareness followed an internal meeting which Mr Kennaugh had with Mr Mitchell,⁹⁰ and a meeting which Mr Kennaugh

⁸⁶ Evidence of Mr Nugent Q25 Transcript Day 35 page 21

⁸⁷ File I page 35

⁸⁸ Evidence of Mr Nugent Q25 Transcript Day 35 page 26

⁸⁹ File I page 102

⁹⁰ File I pages 119 - 122

apparently had with Mr Nugent on 26th May 1992.⁹¹ We return to the implications of this below.

6.58 Asked by the Commission why, as a professional tax expert, Mr Nugent had chosen to spend several months discussing such matters with a department having little competence or responsibility in this field, he stated that given that it seemed to be a Tourist Board initiative, and given that it would first of all, before they got the allowances, require the input of the Department of Tourism, he thought it was appropriate at that stage initially to make contact with the Department of Tourism.⁹² Mr Nugent later in evidence stated that "... having the Department of Tourism onside, as it were, was a useful exercise but I had assumed there would be proper liaison with the tax office"⁹³ and he agreed that he was hoping that the Department of Tourism "would persuade the Income Tax people" to his point of view.⁹⁴ For these discussions to take place as they did was improper. Nonetheless we do not consider it appropriate to attach blame to Mr Nugent for engaging in them. There is evidence of early discussion with the Income Tax Division a consequence of which may well have been that Mr Nugent believed that contact by him with the Department of Tourism was anticipated by the Treasury. This could have been a misunderstanding on Mr Nugent's part, as we accept the evidence of Mr Kennaugh that he, Mr Kennaugh, had intended that any contact with the Department of Tourism at that stage should have a very limited objective relating to registration of qualifying premises, but we do not find on the evidence available that this can truly lead to any questioning of Mr Nugent's belief to which we have just referred. On the other hand we do find, quite positively, that the matters which were discussed did amount to technical interpretation of whether items were, or were not, allowable for tax reliefs and that this was a matter for the Assessor and not for the Department of Tourism. Nevertheless, if Mr Nugent believed that he had been invited by the Treasury to discuss matters with the Department of Tourism, if he believed that the Income Tax Division was being kept informed as to the nature of the discussions (and we find that there are reasonable grounds which could

⁹¹ File I page 131

⁹² Evidence of Mr Nugent Q25 Transcript Day 35 page 27

⁹³ Evidence of Mr Nugent Q25 Transcript Day 35 page 67

lead to each of these beliefs), and given that the Department of Tourism did freely discuss matters with Mr Nugent in some detail, then the Commission would not wish to lay blame upon him for engaging in these discussions. Mr Nugent did however say that he saw it as an "error of judgement" on his part in pressing matters too far with the Department of Tourism.⁹⁵

6.59 It is also accepted by the Commission that in approaching the Department of Tourism Mr Nugent was not looking to create tension between the Department of Tourism and the Treasury. The Commission do find that the Treasury were not fully or properly informed as to the detail/nature of negotiations which followed this approach and were therefore compromised, but that is not a matter for which Mr Nugent should be blamed, as it appears that he was seeking to keep the Treasury informed and that he had a reasonable expectation that there would be effective liaison between government departments on these matters. And it should be noted that in his letter to the Commission dated 24th April 2004⁹⁶ the Assessor does say that he feels that his position was compromised by the events in question. We return to this point in our conclusions.

6.60 Returning to Mr Nugent's continuing correspondence with Mr Mitchell, it is clear that the Department of Tourism was rapidly made aware that the purpose of negotiations was to support the Radcon Mount Murray development. In evidence Mr Nugent referred to the negotiations as being "very quickly turned into a specific issue with regard to Radcon" and, when asked if it was important in his mind from the beginning agreed "Absolutely. I make no pretence about that."⁹⁷ Confirmation of this position was also evident from the schedule which Mr Nugent attached to his letter of 24th February 1992 to Mr Mitchell (an update of an earlier version) headed "Review of Typical Items included in a Hotel or Holiday Village Development."⁹⁸ No other such development was being contemplated at the time as Mr Mitchell and Mr Bell would have been well aware. Equally significant in the schedule was the final column headed "Relief for

⁹⁴ Evidence of Mr Nugent Q25 Transcript Day 35 page 67

⁹⁵ Evidence of Mr Nugent Q25 Transcript Day 35 page 43

⁹⁶ See Annex 9

⁹⁷ Evidence of Mr Nugent Q25 Transcript Day 35 page 27

⁹⁸ File I pages 41 to 51

TBA/TBIA as agreed at the 21.2.92 meeting". This included numerous detailed items of plant and machinery as well as a range of leisure facilities, none of which were ever contemporaneously challenged by Mr Mitchell or anyone else as not being agreed at the meeting. This absence of comment was later to prompt the then Assessor, Mr Kelly, in an internal meeting on 30th July 1992 to say that "absence of an opposing response can sometimes in law be interpreted as agreement."⁹⁹ At the same meeting he warned firmly against allowing one department to be played off against another in this matter.

6.61 It is of significance, and indicative of the pressure which Mr Nugent placed on the Department of Tourism that the meeting of 21st February 1992 included Mr Bell, the Minister. This was the meeting which, as described at paragraph 6.56 above, Mr Nugent had requested with Mr Bell before he (Mr Bell) went away, saying that it was important that Mr Bell be present. Mr Nugent said¹⁰⁰ that the meeting reviewed the matters referred to in his letter of 18th February including the schedule. These of course were the matters encapsulated by Mr Nugent as being "financial assistance" which was a substantial factor in whether tourist projects went ahead (see paragraph 6.56 above). He felt it was "a fair assumption" that Mr Bell understood what the meeting was about and he (Mr Nugent) assumed there was agreement to what he set out in his subsequent letter.¹⁰¹ He added that he could only assume that he wanted everyone, including the Minister, to be aware of what he felt the decisions to be before the Minister went away. He further added that the decisions¹⁰² were items agreed at that meeting as items which should qualify for allowances, that is tax relief. He said it was inconceivable that Mr Bell did not know that the scheme was tax driven following this meeting.¹⁰³

6.62 The letter of 18th February 1992 is also relevant to Mr Bell's knowledge. This was the letter to Mr Mitchell which stressed the importance of Mr Bell's presence at the imminent meeting. The letter carefully set out the important matters which

⁹⁹ File I page 235

¹⁰⁰ Evidence of Mr Nugent Q25 Transcript Day 35 page 37

¹⁰¹ Evidence of Mr Nugent Q25 Transcript Day 35 pages 37 – 39

¹⁰² Evidence of Mr Nugent Q25 Transcript Day 35 page 39

¹⁰³ Evidence of Mr Nugent Q25 Transcript Day 35 page 86

Mr Nugent wished to discuss at the meeting and given its clarity in setting out what Mr Nugent was seeking to achieve at the requested meeting, and the close working relationship¹⁰⁴ at that time between Mr Mitchell and Mr Bell, it would be illogical for it not to be shown to Mr Bell, and for Mr Bell not to have read it. Mr Bell would therefore have been well aware that a substantial factor in the decision making process [with regard to whether or not tourism projects would proceed] was the financial assistance available; because this was written in the first paragraph of Mr Nugent's letter. Financial assistance was then clearly identified in this letter as the tourist business tax allowances and tax incentive allowances,¹⁰⁵ and Mr Bell accepted in evidence that the developer and his agent (Mr Nugent) saw such allowances as financial assistance.¹⁰⁶ We comment later on the wisdom or otherwise of the Minister's direct involvement in a meeting where matters of technical detail which were outside the remit of his department, were not only discussed but also agreed according to a subsequent letter¹⁰⁷ which was not disputed.

6.63 As we have noted above (paragraph 6.57) Mr Nugent's letter of 18th February 1992 to Mr Mitchell had been said to be copied to the Income Tax Division but it also referred to an earlier meeting with Mr Kennaugh. However, it was not until 18th May 1992 when Mr Mitchell spoke to Mr Kennaugh about the matters he had been discussing with Mr Nugent,¹⁰⁸ that the Assessor became properly aware of the degree of detail which these discussions had covered. Thereafter, as we have also noted in paragraph 6.57 Mr Nugent copied to Mr Kennaugh two further letters he had written to Mr Mitchell dated 22nd and 26th May 1992, the latter being preceded by a meeting with Mr Kennaugh.¹⁰⁹

6.64 The liaison or lack of it between the two departments is considered in sub-section 6 (vi). However Mr Kelly, in his written statement did refer to the serious concerns he had as to the extent of the correspondence between the Department of Tourism and Pannell Kerr Forster in relation to detailed taxation matters to

¹⁰⁴ Part One Report paras 11.136 - 11.141

¹⁰⁵ File I page 35

¹⁰⁶ Evidence of Mr Bell Q9 Transcript Day 36 page 88

¹⁰⁷ File I page 41

¹⁰⁸ File I pages 119 - 122

which the Income Tax Division had not been party.¹¹⁰ The Commission considers that this comment reflects quite clearly why such issues are important and why they need to be set out in detail in our report.

6.65 Mr Mitchell later wrote to Mr Nugent on 2nd June 1992 indicating, amongst other things, that his department would enter into negotiation within government to explore an extension of allowances on a selective basis.¹¹¹ Mr Mitchell also wrote to Mr Kelly on 7th August 1992 after internal discussions at board level requesting that consideration be given to a widening of eligible areas to at least include the golf course and, if possible, plant fixtures and fittings within the curtilage of the hotel and facilities building.¹¹² Mr Nugent's efforts on behalf of Radcon had not secured agreement on all the matters identified when discussions began in January 1992 (see paragraph 6.55 above), in particular concerning the period over which prevailing rates would apply. This was as a result of the Assessor's interventions. However Mr Nugent did specifically secure consideration of a widening of the categories for capital expenditure, and after a meeting on 27th August 1992 between the Assessor, Mr Nugent and Mr Spence, Mr Kelly said he would approach Treasury and seek their view on extending the incentive allowance in the manner requested.¹¹³

6.66 We have at paragraph 6.31 noted the significance of a developer company being part of a group of companies so far as tax advantage is concerned, and how criticism can be levelled if land is assembled, put in the "name" of an employee, and that is changed to a group company situation after pressing for a change in legislation. Relating this to the circumstances at Mount Murray, Mr Moore in a supplemental statement¹¹⁴ referred to an agreement dated 1st June 1992 between Radcon Village Resorts Limited, Gary Spence and Anglo International Holdings. This agreement identifies Mr Spence as the beneficial owner of Radcon, that Radcon was the owner of the land at Mount Murray, and that Radcon would receive substantial tax allowances in relation to part of the

¹⁰⁹ File I page 131

¹¹⁰ Mr Kelly Document Q18 para 28

¹¹¹ File I page 143

¹¹² File I page 240

¹¹³ File I pages 246 & 247

development works, but also indicates that he (Mr Spence) was required to guarantee payment of the construction contract by Fairport (a company owned by the Anglo International Group). Mr Spence agreed to charge all his shares in Radcon to Anglo International Holdings in support of this guarantee. Mr Spence was subsequently unable to meet that obligation and Anglo International Holdings took over his shares in October 1992 effectively bringing Radcon (and the Mount Murray land and the tax allowances) into the group.

- 6.67 However, the Commission is aware from a memorandum written by Mr Willers¹¹⁵ on 8th September 1991 that Mr Spence was an employee of Anglo International Holdings at that time and by inference for a period prior to that, including late 1990 and the whole of 1991, and remained a director of Radcon (later Mount Murray Country Club Limited) until 1997. Mr Nugent argued to the Commission that the taking of Radcon into the Anglo International Group in October 1992 was not preplanned and was a normal commercial transaction. However, whatever Mr Nugent's understanding of the position, it is difficult not to come to the view that it was preplanned, in the light of the highly curious agreement described by Mr Moore.
- 6.68 The note of the meeting of 27th August 1992 however records Mr Spence and Mr Nugent as stating that there were no associated companies (with Radcon) at that time (although this was to be checked). This may have been technically correct but Mr Spence would have been aware at that meeting of the 250% allowances recently approved by the Treasury and shortly to be approved by Tynwald, and the agreement referred to in paragraph 6.66 above, effectively confirms that. The meeting also records that it was stated that all the shareholders of Radcon lived in Carolina and had no other links with the Isle of Man. This is quite inconsistent with the agreement referred to in paragraph 6.66 and to the memorandum of 8th September 1992 referred to in paragraph 6.67. These, respectively, indicated that Mr Spence was the beneficial owner of Radcon and that he was an employee of Anglo International Holdings, a well known Isle of Man company. There clearly was a link with the Isle of Man and Mr Spence did

¹¹⁴ Mr P Moore Document Q6 15.12.2003

not appear to be spending very much time living in Carolina. The very considerable tax advantages which such allowances would give to a large group such as Anglo International were Radcon to become part of it would also have been evident. Mr Kelly on 27th August 1992 was given the understanding that he would be pressing for an Amendment Order relating to a single company, and he would be unaware of the agreement referred to in paragraph 6.66 above and which dated from 1st June 1992. In the Commission's view, Mr Kelly, if not misled, was left with an incomplete picture of Radcon's affairs. However, this was part of the lobbying process and not part of any actual claim for allowances.

6.69 On the basis of the above and on the pattern of land assembly, the Anglo International Group did not just have a co-ordinating role at Mount Murray but were the driving force behind the development throughout.

6.70 Mr Nugent subsequently wrote to Mr Kelly on 3rd September 1992 seeking, amongst other things, agreement of his understanding that "the allowances will be granted as if the expenditure is incurred on the first day of trading and that any resulting loss will then be fully available for use in accordance with the Taxes Acts",¹¹⁶ in other words, group relief would apply. The Treasury did agree on 9th September 1992 to extend the provisions of the 1991 Order but subject to limiting the application of group relief.¹¹⁷ Although the Treasury later concluded that it was not possible to do this as part of subordinate legislation, it continued in pursuit of limitations to be introduced alternatively as part of the next Income Tax Bill. The same Treasury meeting authorised the Assessor to communicate this decision which was subject to Tynwald approval to Radcon Village Resorts Limited.¹¹⁸

6.71 Unusually Mr Nugent sought and was given an opportunity to comment on the draft Amendment Order itself. When asked about this he could not recall a previous situation where he had received a draft direct from government.¹¹⁹

¹¹⁵ C88

¹¹⁶ File I page 248

¹¹⁷ Mr Kelly Document Q18 Appendix 33

¹¹⁸ Mr Kelly Document Q18 Appendix 33

¹¹⁹ Evidence of Mr Nugent Q25 Transcript Day 35 page 97

There is no evidence of anyone else outside government being thus consulted which, as the Commission see it, demonstrates again the specific tailoring of the Amendment Order to Radcon and Mount Murray. Indeed on 22nd December 1992 the Assessor wrote to Mr Mitchell saying "I have enclosed a copy of the proposed amendment which should satisfy Radcon".¹²⁰ The Treasury approved and signed the Order on 23rd December 1992 and it was approved by Tynwald on 20th January 1993.

6.72 By that time Mount Murray Country Club Limited (formerly Radcon) had become part of the Anglo International Group.¹²¹ Mr Nugent claimed¹²² that there was no pre-planned intention for Radcon to go within a group structure, as far as he was aware and it was not part of his tax planning for the project. However, as noted in paragraph 2.61 above, Mount Murray Country Club Limited acknowledged in their Case to the Privy Council that trading losses were to a large extent surrendered by way of group relief and it is difficult to see how this advantage would not have been apparent at an early stage and the Commission consider this matter further in its conclusions. What is clear at this point is that an Amendment Order was secured specially targeted at Mount Murray which, on the basis of the costs given by Mr Nugent,¹²³ meant, as then understood, that a tax saving of £1.9 million could be achieved. In fact when the Mount Murray Country Club Limited became part of the Anglo International Group it was a change of significance.

6.73 Mr Spence maintained through this process that Mount Murray was a tax driven project, as for example in a letter he wrote to Mr Mitchell dated 21st July 1992 claiming that the project only proceeded on the basis that the whole of the expenditure would be allowable.¹²⁴ However we have referred earlier, in paragraph 6.42, to the degree to which the development at Mount Murray was dependent on income tax relief to the extent that it would not otherwise have

¹²⁰ File I page 285

¹²¹ Evidence of Mr Moore Q6 Transcript Day 40 page 56

¹²² Evidence of Mr Nugent Q25 Transcript Day 35 page 100

¹²³ File I page 250

¹²⁴ File I page 166

proceeded, and have noted that the evidence does not support such a view. We return to the implications of this in the next sub-section and in our conclusions.

v) **The Involvement of the Department of Tourism**

6.74 Mr Ball, at the material time Administrator in the department, told us that the main suggestion for the increased use of tax as an incentive to tourism investment came from Dr Orme. We have discussed Dr Orme's involvement in sub-section 6 (ii) above. We have also set out in paragraphs 6.18 and 6.21 above how Mr Ball progressed his department's paper on improved incentives and what that paper argued. The Commission found Mr Ball's evidence on these matters to be clear and consistent, indicating that Mr Ball himself was not influenced by the developer at Mount Murray and that Dr Orme's proposal, at least up until the end of 1990, was not progressed other than as a genuine attempt to encourage the reinvestment of profits for the benefit of the tourism industry as a whole. Mr Ball's involvement ended in June 1991.¹²⁵

6.75 The position in respect of Mr Mitchell is different. He was appointed as Development Consultant in 1988 and we have identified in the Part One Report¹²⁶ both his direct line of contact with the Minister, Mr Bell, and his involvement, in that capacity, with the early Mount Murray planning application discussions with Mr Spence in November 1990. At the time of Mr Ball's paper Mr Mitchell and, through him, Mr Bell, would have been aware of the potential significance for the tourist industry of what Mr Spence was describing, and the relevance to it of very significantly increased tax allowances, even though Mr Spence placed the emphasis mainly on the proposal being independent of grant.

6.76 The paper prepared by the Assessor in response to that of Mr Ball was considered by Treasury on 27th February 1991, and as already noted Mr Kelly was asked at that meeting to research an alternative of 100% initial allowance options.¹²⁷ He sought a meeting with officers of the Department of Tourism to

¹²⁵ Mr Ball Document Q59

¹²⁶ Part One Report Section 11 paras 11.136 - 11.141

¹²⁷ Mr Kelly Document Q18 para 10

that end, but this was to be overtaken by the political meeting held on 20th March 1991 which we will discuss further. The evidence does not show that Mr Mitchell had any part in the decision to change the nature of this meeting.

6.77 Mr Mitchell's involvement with Mr Nugent in the events leading to the 1992 Order, and referred to in sub-section 6 (iv) above, is, by comparison with the 1991 Order, well recorded, at least by Mr Nugent. Mr Mitchell allowed himself to participate in the consideration of detailed income tax matters which were not the responsibility of his department without notifying the Assessor or taking his advice or, on the basis of Mr Toohey's evidence, reporting back to Department of Tourism meetings.¹²⁸ A situation was allowed to develop whereby Mr Nugent not unreasonably presumed agreement by Mr Mitchell on particular matters including elements specifically noted as agreed in a detailed schedule, by reason of Mr Mitchell's continued failure over several months to challenge any of the material in Mr Nugent's many lengthy letters. In acting in this way, the Commission consider that Mr Mitchell not only compromised his own department but inevitably created difficulties and a degree of embarrassment for another department. Mr Kennaugh in evidence construed it as one department being played off against another.¹²⁹ Mr Kelly had warned against it as we have noted (see paragraph 6.60). The degree of awareness on the part of the Minister and the Chief Executive, Mr Toohey, of what was occurring are commented on below. As things turned out, the Assessor was able to step in and retrieve the situation and the 1992 Order as ultimately approved by Tynwald in January 1993 generally followed proper procedures, subject to the issue of consultation with the developer to which we return.¹³⁰

6.78 The position of Mr Toohey in all of this as Chief Executive of the department was a little complicated by the terms of engagement of Mr Mitchell's consultancy appointment. Mr Mitchell's job description (as a consultant) did state that he was responsible to the Chief Executive and specifically required him to assist the Chief Executive in the formulation and implementation of policy and strategy. It

¹²⁸ Evidence of Mr Toohey Q10 Transcript Day 34 page 45

¹²⁹ Evidence of Mr Kennaugh Q54 Transcript Day 39 page 89

¹³⁰ Sub-section (vii) and Section 8

also charged him, at clause 3, with providing sound and impartial advice to the Minister on all matters pertaining to development. This contractual situation should not, under firm leadership, have led to communication difficulties, but there were difficulties because Mr Mitchell effectively reported to the Minister rather than to his Chief Executive. Clause 3 was later altered, in May 1993, changing the reference to Minister to reference to the Chief Executive,¹³¹ although that had little impact on the problem of communication within the department. Mr Mitchell's role in the department is set out in more detail in paragraphs 11.136 to 11.141 of the Part One Report. Mr Toohey's typical concern was that when he specifically asked a question he was given an abridged version on many occasions.¹³² Mr Alex Downie MHK, departmental Member at the time, was equally concerned, having on one occasion asked Mr Mitchell certain questions which, according to Mr Toohey he refused to answer on the basis that he reported to the Minister.¹³³ Mr Toohey also stated in evidence to the Commission that he knew Mr Nugent had contact with the Department of Tourism specifically Mr Mitchell, but he had seen none of the correspondence between January and May 1992.¹³⁴

6.79 Mr Toohey's concern at the absence of communication was to reach the point where he required¹³⁵ Mr Mitchell to produce a two page signed and witnessed statement, effectively an unsworn affidavit, setting out the position that Mr Mitchell had reached in relation to Mount Murray. This is dated 6th May 1992 which is at the same time as Mr Nugent was still writing to Mr Mitchell about tax. Mr Toohey further stated to the Commission in evidence that while Mr Mitchell was not reporting to him, he was aware that he was reporting regularly to the Minister.¹³⁶

6.80 Mr Toohey's view of the Mount Murray development as the originator of the 1992 Order was, not surprisingly in view of his peripheral position on the matter, ambivalent. He agreed that it appeared that it was the originator, but also

¹³¹ Letter Toohey 19.9.03 attachment letter dated 3.5.94

¹³² Evidence of Mr Toohey Q10 Transcript Day 34 page 35

¹³³ Evidence of Mr Toohey Q10 Transcript Day 34 page 39

¹³⁴ Evidence of Mr Toohey Q10 Transcript Day 34 pages 27 & 28

¹³⁵ File I pages 116 & 117

claimed that the whole tax credit scheme really was aimed at boosting tourism investment in the Isle of Man and that it had been formulated to target small schemes.¹³⁷ When, on 30th July 1992, Mr Kelly and his deputy, Mr Kennaugh, met Mr Toohey and Mr Mitchell “to establish a complete picture”, the minute of this meeting (not later corrected or disputed although Messrs Toohey and Mitchell were invited to do so) states the “first response” of Mr Toohey and Mr Mitchell as being that they had given no undertakings whatsoever.¹³⁸ The minute indicates that they did not change from this response during the meeting. The Commission find this to be very misleading on the part of Mr Mitchell bearing in mind the absence of response by him to any of Mr Nugent’s letters, and ill advised on the part of Mr Toohey who had not been briefed and had apparently never seen Mr Nugent’s letters before giving evidence to the Commission, and certainly appears not to have been sufficiently aware of events to have been able to provide any information as to whether or not undertakings had been given.

6.81 This meeting on 30th July 1992 referred to in the preceding paragraph was also notable for two other reasons. First, as can be seen from the minute, The Assessor made it clear that normal loss and group relief could be claimed (when utilising allowances) and that this was “very unhealthy from a tax budgeting point of view”.¹³⁹ Mr Toohey in evidence indicated he was not aware of this concern.¹⁴⁰ Second, the Assessor, also as recorded in the minutes, and as we have seen, at this meeting gave his warning against allowing departments to be played off against each other.¹⁴¹ Mr Toohey maintained in evidence that he was later at pains to liaise with the Assessor but referred to a great deal of pressure being applied at that time.¹⁴²

6.82 Mr Toohey did have a more direct involvement in the discussion about tax allowances in the form of a meeting with Mr Nugent on 3rd June 1992,¹⁴³ referred

¹³⁶ Evidence of Mr Toohey Q10 Transcript Day 34 page 41

¹³⁷ Evidence of Mr Toohey Q10 Transcript Day 34 pages 48 & 49

¹³⁸ File I page 234

¹³⁹ File I page 235

¹⁴⁰ Evidence of Mr Toohey Q10 Transcript Day 34 page 60

¹⁴¹ File I page 235

¹⁴² Evidence of Mr Toohey Q10 Transcript Day 34 pages 59 & 60

¹⁴³ File I page 157

to in a letter he received the following day from Mr Nugent. The meeting and letter were related to an application by Pannell Kerr Forster to the Department of Tourism for registration of the proposed hotel and holiday village under the Tourist Act 1975 and Mr Nugent's awareness of the Department of Tourism's view that it was not legally possible under the Act for a development to be registered at proposal stage.¹⁴⁴ This issue was resolved by the Department of Tourism's confirmation to the Assessor that the proposed development would, on completion qualify for registration,¹⁴⁵ and the Assessor's agreement¹⁴⁶ that provided that all contracts became unconditional before 5th April 1993 qualifying expenditure would ultimately attract tourist business and business incentive Allowances at the rate of 250%.

6.83 We return to these issues in sub-section 6 (vi) but they are mentioned here because, in the Commission's view, they demonstrate that Mr Toohey did have involvement in early June 1992 concerning assurances about tax and that, by the time the internal meeting took place on 30th July 1992 (see paragraph 6.80) he was aware of the difficulties created for his Department by Mr Mitchell but, notwithstanding the requirement for Mr Mitchell's 6th May 1992 witnessed statement, he did not otherwise step in to try and resolve them or take control of the situation.

6.84 It is the Commission's view that Mr Toohey allowed himself to be sidelined within his own department, and whilst the "affidavit" from Mr Mitchell represented an attempt to require Mr Mitchell to improve communications, by Mr Toohey's own admission, things more or less stepped back into the situation which prevailed before.¹⁴⁷ Mr Toohey undoubtedly was placed in an invidious position by Mr Mitchell's relationship to his Minister and felt excluded by the Minister from the affairs of the department. Part at least of the reason why he allowed himself to be marginalised appears to have been concern for his own position had he confronted Mr Mitchell, which he maintained would have been jeopardised to the

¹⁴⁴ File I page 154

¹⁴⁵ File I page 154

¹⁴⁶ File I page 158

¹⁴⁷ Evidence of Mr Toohey Q10 Transcript Day 34 page 35

point where he thought the loss of his job was a possibility.¹⁴⁸ Nevertheless, after regaining some control when Mr Mitchell's terms of reference were adjusted in May 1993 (see paragraph 6.78), he did in 1994 have difficulties with the process of certification of the achievement of the economic criteria which was a statutory prerequisite of the 1992 Amendment Order before the incentive allowance could be given. This is an issue we consider in more detail in section 7.

- 6.85 Turning to the politicians in the Department of Tourism, we have set out in subsection 6 (ii) the emergence of the proposals for allowances of 250% and the arguments Dr Orme advanced in support of this. In the internal memorandum which explains the scheme, he indicated that he had consulted with Treasury but that was on the basis of an earlier initial submission he had made to his own department which, by an example set out, showed quite clearly that it was intended that tax savings would finance half of the improvements.¹⁴⁹ Dr Orme does not refer to the use of the tax system as being in any way equivalent to the provision of grants, although he agreed that it was contributing 50% of the cost.¹⁵⁰
- 6.86 Dr Orme put the proposal forward on the basis of it being a powerful incentive for businesses to reinvest their profits, and his initial submission actually stated that the operation must be making profits. The possibility of a loss of tax revenue in a group or investment income situation is not referred to in his memorandum and therefore was not apparently mentioned by the Treasury in consultation. It was certainly not mentioned in the Deputy Assessor's letter to him of 30th October 1987.¹⁵¹ The reality was confirmed by Dr Orme in oral evidence¹⁵² when he said that he did not know about group relief. So the issue of group relief was not considered by him when he put his proposal forward. That does not, in the Commission's view, imply that Dr Orme did not consider at all the potential for tax loss but rather that, in the operation of this proposal, he considered that it would

¹⁴⁸ Evidence of Mr Toohey Q10 Transcript Day 34 pages 88 & 89

¹⁴⁹ Mr Kelly Document Q18 Appendix 2 (Appendix B)

¹⁵⁰ Mr Kelly Document Q18 Appendix 2 (memo page 3)

¹⁵¹ Mr Kelly Document Q18 Appendix 2 (Appendix C)

¹⁵² Evidence of Dr Orme Transcript Day 44 page 95

not arise. In oral evidence, Dr Orme stated that he saw his proposals as being of low risk because the Treasury was getting so little tax income from tourism at the time.¹⁵³

6.87 As we have seen in sub-section 6 (ii), the proposals did not receive any further Treasury consideration until 1990 when the 250% concept was re-promoted, to Treasury, in Mr Ball's paper (paragraphs 6.18 to 6.21). We have noted the negative response by the Treasury at that time and the decision to ask the Assessor to look at an alternate option of a 100% initial allowance only (paragraph 6.47). Consultations on that option were overtaken by the political meeting on 20th March 1991 in which Dr Orme took part.

6.88 Dr Orme's reaction to the Treasury response to his proposals was one of dismay, as recorded in the departmental meeting on 18th March 1991.¹⁵⁴ He believed that resistance was not on financial grounds but on the fear of creating a precedent and it was agreed that Mr Ball should arrange a meeting between the department and the Treasury Minister. For its part the Treasury, at its meeting on 13th March 1991¹⁵⁵ had determined that the meeting should be at officer level and the Treasury Minister should not attend. This seemed partly because Treasury were aware that the Department of Tourism wanted Dr Orme to attend the meeting and would be pressing for 250% but they did not feel a political discussion was needed because they were content to go with 100%.¹⁵⁶

6.89 We consider below the role of the Minister, Mr Bell, at this time. It needs to be noted here however that, in an internal memorandum to the Treasury Minister, dated 19th March 1991, Mr Kelly indicated that "He [Mr Bell] is clearly not content with a meeting of officials".¹⁵⁷ Mr Bell on the other hand claimed that it was Dr Orme who was pressing for the meeting and that it was purely for procedural

¹⁵³ Evidence of Dr Orme Q63 Transcript Day 44 page 98

¹⁵⁴ Document C69 page 157 Dept of Tourism minutes

¹⁵⁵ Mr Kelly Document Q18 Appendix 9

¹⁵⁶ Evidence of Mr Kelly Q18 Transcript Day 32 pages 31 & 32

¹⁵⁷ Mr Kelly Document Q18 Appendix 10

reasons that he attended as Minister.¹⁵⁸ (See further paragraphs 6.91 and following).

6.90 Dr Orme also explained in oral evidence¹⁵⁹ that the impetus for a meeting came from him and that he was pressing for an opportunity to explain his scheme face to face. As to the extent to which Mount Murray had by then become a factor in the pressure for a political meeting, and as to whether Dr Orme may have been briefed informally by Mr Mitchell or Mr Bell who were heavily involved in the promotion of Mount Murray by March 1991 (as we have identified at sub-section 11 (ix) of the Part One Report), he had no recollection of this,¹⁶⁰ and there are no relevant recorded departmental meetings where Mount Murray was raised. Given the philosophical basis on which the Department of Tourism proposals had been founded, that is, related to profitable companies without reference to group relief, the Commission consider that the motivation of Dr Orme at the 20th March 1991 meeting related to his genuine concern to provide improved conditions for the tourism industry as a whole.

6.91 We turn finally in this sub-section to the role of the Minister, Mr Bell. We have already identified the close and direct relationship between Mr Mitchell and Mr Bell¹⁶¹ and the former's early links with the Mount Murray applicant including pre-application discussions with Mr Spence on behalf of the Minister¹⁶² in about November 1990. We have also noted the key importance of Mount Murray to the struggling tourist industry as Mr Bell saw it, and his acknowledgement that it would qualify for tax allowances at the rate advocated by Dr Orme, thereby defraying the allowable elements of Mount Murray by 50% (paragraph 6.50 above). But, in his evidence, Mr Bell maintained that the impetus for the political meeting on 20th March 1991 came entirely from Dr Orme, and that he (Mr Bell) would have been no more than "aware" of the Mount Murray proposals.¹⁶³

¹⁵⁸ Evidence of Mr Bell Q9 Transcript Day 36 page 55

¹⁵⁹ Evidence of Dr Orme Q63 Transcript Day 44 page 97

¹⁶⁰ Evidence of Dr Orme Q63 Transcript Day 44 pages 99 & 100

¹⁶¹ Part One Report paras 11.136 - 11.141

¹⁶² Part One Report para 11.140

¹⁶³ Evidence of Mr Bell Q9 Transcript Day 36 pages 57 & 58

- 6.92 Given the history of the 250% tax allowance proposal and the continuing reluctance by the Treasury officials to take it forward, the Commission does not doubt that Mr Bell saw a political input as essential. However his particular position in the meeting on the basis of being no more than “aware” of Mount Murray and his denial that the scheme was “in his mind”¹⁶⁴ seems hardly credible. Mr Bell had a meeting with Mr Spence concerning significant matters related to the planning application on that same day as he and Dr Orme met the Treasury Minister, that is the 20th March. The significant planning matters were the grounds for review of the planning permission condition which restricted the area which could be developed,¹⁶⁵ and Mr Bell's continuing support to the developer in the project. Mr Bell viewed this as coincidental and that the Treasury meeting was dictated by the budget process.
- 6.93 However it would have already been clear from Mr Mitchell's involvement with Mr Spence beginning in November 1990 that Mr Spence's proposal was of potentially great significance to the Island's tourist industry. We accept that Dr Orme's proposals originated well before discussions on the planning applications at Mount Murray began¹⁶⁶ and it may be technically correct for Mr Bell to maintain it “was not developed for Mount Murray”,¹⁶⁷ but to maintain nonetheless that it would have had hardly any bearing on the 20th March 1991 meeting when it was the only major tourist development in prospect, and which he knew to be substantial,¹⁶⁸ must be open to very considerable doubt particularly having regard to the meeting to which we have just referred which Mr Bell had with Mr Spence also on 20th March 1991, and to the influence which the Department of Tourism was already having on the planning aspects of the development.¹⁶⁹ Mr Spence's letter to Mr Bell the day after his meeting on 20th March 1991 makes it clear that this was not the first meeting and that the matters discussed pertaining to the review of the initial planning application were¹⁷⁰ self evidently of

¹⁶⁴ Evidence of Mr Bell Q9 Transcript Day 36 pages 60 & 61

¹⁶⁵ File A page 50

¹⁶⁶ Evidence of Mr Bell Q9 Transcript Day 36 page 59

¹⁶⁷ Evidence of Mr Bell Q9 Transcript Day 36 page 62

¹⁶⁸ Evidence of Mr Bell Q9 Transcript Day 36 page 61

¹⁶⁹ Part One Report para 11.37

¹⁷⁰ File A page 50

considerable importance, as, relevantly, was the continued support for the project from Mr Bell referred to in that letter.

- 6.94 As we have noted earlier, the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) Order 1991, which incorporated the agreement reached on 20th March 1991 for 250% allowances, was made by the Treasury on 25th September 1991 and approved by Tynwald on 15th October 1991. Mr Bell contended in evidence that “we were aware that Mount Murray would probably benefit from it. But that’s what we were hoping the scheme would do in the first place”¹⁷¹ and he disputed that the Order was made with Mount Murray in mind.
- 6.95 He further argued that the benefit under the allowance “was not far adrift from what the overall benefit would have been generated for that company by way of the grant and loan scheme”.¹⁷² However this is inconsistent with the evidence available to the Commission. Mr Bell would have been aware of the scale of Mount Murray in capital cost terms. The application of 250% allowances would have generated income tax relief at a level far in excess of even the total grant and loan budgets which government set at that time, as the figures in Annex 4 fully demonstrate. He would also be aware of the difficulties for a developer in going to Tynwald for approval of such grant, as would be necessary. He had himself complained to Tynwald of this process. In referring to a rejection by Tynwald of a grant application by Novotel in 1989, he said that they were “slagged off from pillar to post” in Tynwald. He said that most Isle of Man investors had to be treated with an air of complete confidentiality. He added that if all items of assistance had to be discussed on the floor of the House all grant applications would be drying up immediately.¹⁷³
- 6.96 With regard to the events of 1992 and the emergence of the 1992 Order, Mr Bell participated in a meeting with Mr Nugent (acting on behalf of Radcon) and Mr Mitchell on 21st February 1992 which, as we have noted in sub-section 6 (iv), discussed matters of technical detail including an extensive schedule of possible

¹⁷¹ Evidence of Mr Bell Q9 Transcript Day 36 page 69

¹⁷² Evidence of Mr Bell Q9 Transcript Day 36 page 69

¹⁷³ Hansard T320 right hand column, 14.4.1992

qualifying elements for an “hotel or holiday village”. Mr Bell’s recollection was that this was “an exploratory meeting” and that he “was under the impression that the Income Tax Division was involved”.¹⁷⁴ Mr Bell could not explain why Mr Mitchell had never written to Mr Nugent disputing or otherwise the agreements which Mr Nugent claimed had been reached, but when asked whether such a letter should have gone back if things were not agreed, he replied “Absolutely: I don’t disagree with that.”¹⁷⁵

6.97 Mr Spence, for the developer, was in no doubt about the agreements. He wrote to Mr Mitchell on 21st July 1992 saying that “you will recall... at the beginning of the year, when in discussions with yourself and the Minister (Mr Bell) I was promised that significant allowances would be available to my development at Mount Murray”. Mr Spence goes on to say that “The project only proceeded on the basis that the whole of the expenditure laid out on the hotel, the facilities building, the golf course and leisure activities would be allowable.”¹⁷⁶ Mr Nugent himself wrote to Mr Mitchell on 22nd July referring to “important verbal assurances ... on which the underlying feasibility of the project was based!”¹⁷⁷ and on the same day wrote to Mr Kennaugh¹⁷⁸ referring to the model (schedule) enclosed with his letter to Mr Mitchell of 24th February 1992. As we have seen above the last column of this schedule was headed “Relief for TBA and TBIA as agreed at 21.2.92 meeting”. Mr Bell stated that no significant allowances were promised in this way but agreed that the developer would claim they were in the absence of any denial and did not disagree that Mr Spence, in a later meeting with the Assessor on 27th August 1992, used the earlier correspondence as pressure to get his way. He also accepted, when asked if one department had been played off against another, that “I think that’s probably a fair statement.”¹⁷⁹

6.98 The final point the Commission feels should be made here concerns the structure and operation of Mr Bell’s department. As the Commission see it, it is a matter of concern that internal arrangements denied the Chief Executive a proper role and

¹⁷⁴ Evidence of Mr Bell Q9 Transcript Day 36 pages 74 & 75

¹⁷⁵ Evidence of Mr Bell Q9 Transcript Day 36 page 83

¹⁷⁶ File I page 166

¹⁷⁷ File I page 169

¹⁷⁸ File I page 170

compromised communications, whilst inter-departmental contact was almost non-existent for several crucial months, a circumstance which Mr Toohey might have been able to prevent had he been in a position to do so. This is not to suggest that this disarray was responsible for the ultimate content of the 1992 Order but it unquestionably made the task of the Assessor and the Treasury, in seeking to retrieve the situation, that much more difficult.

vi) Liaison between the Department of Tourism and the Treasury

6.99 The Commission consider that the extent of liaison, adequate or otherwise, between the Department of Tourism and the Treasury during the period when the four main tax related Orders evolved and certificates were sought is an issue of considerable significance. This is particularly the case for the period from February to May 1992 when, as we have set out in sub-section 6 (v), Mr Mitchell's failure to report back to the Treasury and seek its views on his discussions regarding tax matters with Mr Nugent created awkward and potentially damaging circumstances for the Assessor to deal with. However, it is relevant to look at liaison during the whole of the relevant period if lessons are to be drawn from it and any recommendations put forward.

6.100 We know from Dr Orme's own internal memorandum in late 1987 describing his proposal for 250% allowances that, following an initial shorter paper (also internal), he had consulted with the Treasury before preparing his memorandum and he confirmed this in oral evidence.¹⁸⁰ The point of contact appears to have been with Mr Kelly, then Deputy Assessor and on the evidence would not appear to have been part of any formal system, although it was no doubt regarded by Dr Orme as common sense if his department was to make progress with his ideas.

6.101 In his statement to the Commission, Mr Ball, the then Administrator in the Department of Tourism, records his efforts in 1990 to seek progress with the Treasury on the introduction of a tax incentive scheme for tourism. He refers to a series of discussions at that time involving himself and Mr Mitchell with Mr

¹⁷⁹ Evidence of Mr Bell Q9 Transcript Day 36 page 92

Mathieson who was described as “the Treasury accountant allocated to the department”.¹⁸¹ These discussions are described as informal but it is evident that “allocation” implies some formality of arrangement at least to the extent that operational departments would know clearly who was their Treasury point of contact. Mr Ball sensibly appears to have used that established liaison both to inform his own paper and to ensure that Treasury were fully aware of the tourist interests. The “allocation” would still have left it for officers to judge on what matters Treasury liaison was appropriate but it at least promoted awareness that a channel for communication existed. Since Mr Mitchell participated in these arrangements at that time it is all the more concerning that he chose to ignore them later in 1992 when Mr Mathieson still appeared as a representative of the Treasury.

6.102 The response by the Treasury to Mr Ball’s paper was considered by the Department of Tourism on 18th March 1991, with the department’s comments passed back to the Treasury shortly afterwards. That exchange of views at officer level would have continued but for the political intervention we have already noted in the form of the meeting on 20th March 1991. Such inter-departmental consultation, whilst not, so far as the Commission is aware, resulting from formal procedures, was sound, effective and well recorded. The political meeting on 20th March stemmed from perceived officer reluctance on the part of the Treasury. On this occasion both Ministers took part. Mr Bell maintained¹⁸² initially that he was present and civil servants were absent only because protocol demanded it when a minister of another department was to be present. He later said¹⁸³ that Mr Gelling could have had a civil servant present had he wished to do so.

6.103 The Commission find, in terms of liaison, the above to have been a normal process between the two departments associated in 1991 with the progressing of either of the two main income tax Orders. However, there is a qualification to this in that the Assessor does not appear to have been made aware by the

¹⁸⁰ Evidence of Dr Orme Q63 Transcript Day 44 page 95

¹⁸¹ Mr Ball Document Q59 page 2

¹⁸² Evidence of Mr Bell Q9 Transcript Day 36 page 55

Department of Tourism of the emergence and significance of the Mount Murray scheme or to have any knowledge of the planning applications proceeding through the Department of Local Government and the Environment at the same time as the pivotal meeting on 20th March 1991. In other words, the basis on which liaison was taking place was partial. Asked in evidence if he had any awareness of Mount Murray, Mr Kelly replied “perhaps, through a newspaper” but not through any government involvement.¹⁸⁴ The Commission consider that had Mr Kelly better understood the scale of the Mount Murray scheme and the costs involved, this insight might at least have enabled him to brief his minister, Mr Gelling, more effectively as to the possible financial consequences of allowances at 250%. The decision leading to the 1991 Order was quite clearly political and Mr Gelling, as we note in sub-section 6 (vii) was not minded to heed cautionary advice, but that is not a reason to make that advice any less than comprehensive. Had it been more comprehensive it might have been more persuasive. It is noted here that Mr Bell disagreed with the matters set out in this paragraph as explained at paragraph 8.144 (c) below.

6.104 We have proposed, in our Part One Report at recommendation 14, that criteria should be established for identifying to the Council of Ministers planning applications which are of more than minor significance. Such a recommendation seems equally relevant to the circumstances identified in this Part Two Report and would at least ensure improved awareness at minister and Chief Minister level and establish a better basis for good liaison than was the case in 1991.

6.105 In the case of the 1992 Order, the Commission considers that liaison between the two departments did break down due, ostensibly, to the fact that Mr Mitchell failed to advise, let alone liaise with, the Assessor in detailed discussions he and the minister, Mr Bell, were having with the tax agent/advisor acting on behalf of specific clients. This situation was compounded by the peripheral position of Mr Toohey who might otherwise have been able to intervene and by the direct involvement of Mr Bell who might have been expected to liaise with his counterpart minister in the Treasury. In the event, and as we have seen, the

¹⁸³ Evidence of Mr Bell Q9 Transcript Day 42 page 71

absence of liaison prevailed throughout the period February to May of 1992. The actions of Mr Mitchell are considered in sub-section 6 (v) and Mr Nugent, the tax consultant in sub-section 6 (iv). It bears repeating here however that Mr Mitchell and Mr Bell should not have been involved unilaterally on the part of government in discussions on detailed matters which were more properly for consideration by the Assessor on behalf of the Treasury. Mr Kelly referred in his statement to the serious concerns he had on becoming aware of the extent of the correspondence (and agreement presumed by Mr Nugent) on detailed tax matters to which his Division had not been party.¹⁸⁵ Mr Toohey in evidence¹⁸⁶ also made it clear that for an officer of the Department of Tourism to give undertakings and make promises about income tax was a serious matter. He said that “It was totally beyond our area of activity.”

6.106 The Commission’s concern with this is understanding how it happened and how to safeguard against it recurring. Mr Mitchell, by reason of his direct relationship with the minister, was, in effect, outside the control of the department and the Chief Executive. The minister for his part was aware of the discussions Mr Mitchell was having with Mr Nugent, not least because he participated in one of them on 21st February, but apparently saw no impropriety in Mr Mitchell’s actions. The Commission regards this at lowest as an error of judgement. There are inherent dangers in a senior official having significant additional discussions with a private party when no other person was present.¹⁸⁷

6.107 The difficulties which can arise from this last point are familiar to those dealing with planning applications and the need to avoid participation in any attempt made to secure a favourable opinion prior to determination. This is normally dealt with by appropriate requirements set out in Standing Orders or, as is the case with the Department of Local Government and the Environment, in the Development Control Handbook. This makes it quite clear that more than one officer must always attend a meeting with an agent (or applicant) and a complete record of what is discussed, or what advice is given, made and retained on file.

¹⁸⁴ Evidence of Mr Kelly Q18 Transcript Day 32 page 30

¹⁸⁵ Mr Kelly Document Q18 page 5

¹⁸⁶ Evidence of Mr Toohey Q10 Transcript Day 34 page 58

The Commission see this as having relevance in all departments including Tourism when contact with private interests is a day to day occurrence. We consider this further in Part F of the report under recommendations where we also examine the appointment of consultants within departments and the appropriate means by which they are managed.

6.108 In the period after the introduction of the 1992 Amendment Order, attention was to focus on the issue of certificates by the Department of Tourism to the Treasury, a requirement of the Order and a necessary precursor to the claiming of allowances from the Assessor. The circumstances relating to the issue, or otherwise, of such certificates for the hotel, the hotel extension/sports facility, and the housing are set out in section 7 of this report. The legislative requirements for certificates leave the responsibility for their issue with the Department of Tourism, and those relating to the hotel and its facilities were not the subject of consultation with the Assessor who received them in December 1992 and March 1993 respectively. However, certification does not necessarily remove the right of the Assessor to consider whether what is being certified should actually receive relief under the Order. Concern on that point was indeed expressed by the Income Tax Division in respect of a purported certificate for housing in September 1994.¹⁸⁸ The appropriateness or otherwise of issuing such a certificate and whether it was a draft or not is examined in section 7 below, but from the point of view of liaison, although Mr Toohey had at that stage regained a measure of control in his department, it was the issue of this purported certificate which did trigger a liaison meeting in October 1994. As we see in section 7 a letter, which was compliant with the advice of Treasury, was sent out by Mr Toohey to the developer shortly after that meeting. Soon after that Mr Toohey was subject to significant pressure, and to ensure that he did not make mistakes¹⁸⁹ he sought advice from the Attorney General. This involved liaison with the Income Tax Division but advice from Treasury, as illustrated in the letter just referred to, was quite overlooked in the issue of a formal certificate in April

¹⁸⁷ See paras 9.23 to 9.25 below

¹⁸⁸ Mr Kelly Document Q18 page 9 paras 47 & 48

¹⁸⁹ See paragraphs 7.51 to 7.53 below

1995. We discuss these matters further in section 7, but we do find here that Mr Toohey did, in difficult circumstances, attempt to liaise appropriately.

6.109 The Commission is unable to see any reason why pre-certification consultation was not an automatic requirement bearing in mind that determination of whether or not the overall criteria for relief (but not for the issue of the certificates) have been satisfied is a matter for the Treasury. The Commission considers this point further in section 7 and its recommendations.

6.110 We turn to the matter of ministerial liaison during the period from the emergence of the tax incentive allowance proposals through to the approval of the 1991 and 1992 Orders and the subsequent consideration of certificates. Liaison at a formal level was achieved at that time as it is now, through the Council of Ministers and we have set out in our Part One Report, at paragraphs 7.51 and 7.52, our observations on the inter-relationship between ministers when issues overlap. We noted there that the Council considered that issues and disputes should largely be resolved by ad hoc inter-departmental discussions rather than by cabinet style committees.

6.111 The Commission has, by enquiry as to the contents of Council of Ministers minutes, considered the extent to which the Council of Ministers was made aware of or discussed the implications for the Island's tax take of a rate of allowance of 250% for tourism projects (the 1991 Order). The minutes revealed no discussion of this.¹⁹⁰ We have recorded, at paragraph 7.52 of our Part One Report, that on the basis of the minutes of the Council of Ministers' meetings of the period, which we have seen, whilst some Mount Murray matters did go to the Council of Ministers, these were never those which exercised the Commission. Part One of our report was concerned with planning issues but we consider our finding to be equally applicable to matters of taxation, probably involving a virtually unique measure of relief,¹⁹¹ and the extent to which Mount Murray might benefit. Paragraph 7.52 reported our finding that the absence of formal reports of progress of the Mount Murray development by the Minister for Local

¹⁹⁰ Letter Chief Secretary's Office 8.3.2004

Government and the Environment was perverse given the stated especial importance of the development for tourism in the Isle of Man.

6.112 Such liaison as was exercised was at an informal level and took place, so far as it did, to the extent that either the Minister for Tourism or the Treasury Minister felt it necessary to progress matters from their point of view. During the period from 1987 up to and including 1990, communication between the two departments regarding tax incentives for tourism was largely conducted at officer level as required and was unexceptional. Political contact first occurred as we have seen in sub-section 6 (iv) with the meeting between Mr Bell, Dr Orme and Mr Gelling on 20th March 1991. Mr Bell has stated to the Commission that it was Dr Orme who was pressing for this meeting,¹⁹² but there seems little doubt that both Mr Bell and Dr Orme saw the meeting as necessary to short circuit officer objection and discussion on the 100% rate of tax allowance which the Treasury had asked Mr Kelly to research and which was apparently regarded by the politicians in the Department of Tourism as inadequate¹⁹³ as an incentive to the tourist industry.

6.113 This informal meeting of 20th March 1991, although arranged at comparatively short notice, appears to be consistent with the general approach to such matters preferred by the Council of Ministers. Mr Bell stated to the Commission that his involvement was largely a matter of procedure or protocol once he became aware that the Treasury Minister would be present.¹⁹⁴ The Commission entirely accepts that ministers are entitled to take decisions which may not be (as was, so far as the Treasury Minister was concerned, the case on 20th March 1991) consistent with the advice of their officials. However it should also be a matter of basic protocol that if a minister is seeking to persuade a political colleague to take action contrary to the advice of the latter's officers, the colleague should be fully informed of adverse factors which were known; in the present case, as the Minister of Tourism then knew that there was a multi million pound tourism development proposal (Mount Murray) which had started procedures for

¹⁹¹ Para 6.48 above

¹⁹² See paragraph 6.89 above

¹⁹³ See para 6.121 below

approval, and which, on the 50% basis of government assistance, could on its face take many millions of pounds from General Revenue. The Treasury Minister says he was not informed of this.¹⁹⁵

6.114 As things subsequently turned out, the evidence indicates there was no further recorded ministerial contact on the matter during the period up to January 1993 when the 1992 Order was approved by Tynwald. That is not in principle in itself a matter of concern but we have noted that Mr Bell participated in February 1992 in a meeting on detailed tax matters with Mr Nugent as agent acting for the developer at Mount Murray in the absence of anyone from Treasury and without Treasury's knowledge and in so doing also condoned the involvement of his own official (Mr Mitchell), as well as himself, purporting to make decisions on matters outside his department's remit or authority. Had Mr Bell sought to liaise with the Treasury Minister at that time, this would have ensured the Assessor's early awareness of tax discussions by another department with developers thereby avoiding much of the later departmental difficulties which arose. (This matter has been considered in more detail in sub-section 6 (v) above.)

6.115 When and where liaison should occur must be a matter for the judgement on the part of ministers concerned in circumstances where the Council of Ministers and the advice to ministers seems to favour informality. That would be satisfactory were it the case that the Council of Ministers itself in the early 1990s alerted ministers to matters of Island-wide or inter-departmental concern, or both. As with the planning aspects of Mount Murray, the Commission finds the absence of any reporting to the Council of Ministers of the significance of the 1991 and 1992 Orders in the context of Mount Murray difficult to understand. The approval of the incentive allowance in the 1991 Order which raised the allowances to 250% was an unprecedented change of great importance and when allied to the apparent significance of Mount Murray to the tourism fortunes of the Island, the fact that the Council of Ministers were not informed even for noting only seems as perverse as in the case of planning. It was also perverse of the Minister for Tourism not to inform the Treasury Minister that there was a multi million pound

¹⁹⁴ Evidence of Mr Bell Q9 Transcript Day 36 page 55 and Transcript Day 42 page 71

development proposal under way which would self evidently take very substantial (multi million pound) benefit from the new tax incentives proposals.

vii) **Drafting of the Legislation and passage through Tynwald and into operation, including Ministerial Statements**

6.116 The technical and procedural processes related to the preparation and adaption of legislation at the time the Mount Murray development emerged in the early 1990s have been outlined in section 5 where account has been taken of the evidence of Mr Michael Boyde in his capacity as legislative draftsman.

6.117 In the case of the Income Tax (Capital Relief) Order 1991, which gave 100% initial allowance on expenditure by a tourist business, we have already noted at paragraph 6.47 above that this was part of Budget process for 1991/92. The Treasury Minister, Mr Gelling, referred to the new Order in Tynwald on 16th April 1991 when he said that, for the Tourist Industry, in two years the relief has gone from 15 per cent to 100 per cent.¹⁹⁶ In the same speech the Minister also referred to his intent to introduce from 1992 a new income tax incentive allowance which would enable a further 50% to be given for three consecutive years; thus affording a total relief of 250%. It is the circumstances leading up to this latter announcement, the progress of the (1991) Order through to Tynwald and the steps associated with the Amendment (1992) Order with which this part of the report is concerned.

6.118 Immediately following the political meeting on 20th March 1991 between Mr Bell, Dr Orme and Mr Gelling, the Assessor, Mr Kelly, sent a memorandum to Mr Gelling reiterating his doubts about the effectiveness of the proposal and about the creation of a distortion in relation to other businesses. If nevertheless the Minister still wished to progress the concept he said that "it may be possible to activate it by way of an 'incentive allowance'... [which] would enable regulations to be drawn up limiting its use under loss relief provisions."¹⁹⁷ Mr Kelly, it may be

¹⁹⁵ Evidence of Mr Gelling Q23 Transcript Day 37 page 27

¹⁹⁶ Mr Kelly Document Q18 Appendix 13

¹⁹⁷ Mr Kelly Document Q18 Appendix 11

noted, was aware at that stage of the implication of the intended allowances of 250% in terms of group relief as his internal Treasury memorandum of 18th February 1991 makes clear.¹⁹⁸ In oral evidence¹⁹⁹ Mr Kelly said the purpose of his memorandum had been so that he fully understood the position. He accepted it was clear from the 20th March meeting that the Treasury Minister was persuaded on the merits of the Department of Tourism proposal but said it would still have required the matter to have gone to Treasury for formal consideration.²⁰⁰ The view of Mr Bell was that the Treasury Minister clearly took the decision that day.²⁰¹ On this same point, Mr Gelling in his written statement to us said that he was persuaded that their [Tourism's] proposal was in principle a proper way forward, although in evidence he maintained that Treasury itself had got to agree and that it might prove impossible on a practical level actually to implement the proposal.²⁰²

6.119 In point of fact, there is no recorded evidence before the Commission to indicate that the agreement in principle for allowances of 250% ever went to a meeting of Treasury or the Council of Ministers before the Minister announced his intent to introduce it by means of an incentive Order in his Budget Speech of 16th April 1991. Indeed Mr Kelly specifically said that he did not think that there had been such a meeting and agreement by Treasury.²⁰³ Both Mr Kelly and Mr Gelling believed²⁰⁴ that the matter became part of ongoing Budget discussions after 20th March and Mr Kelly believed that the proposal was agreed at a Treasury (Budget) meeting on 25th March 1991. The minutes do not record this, but Mr Kelly maintained this was to preserve Budget confidentiality. However Mr Corlett in his final address to the Commission of Inquiry, effectively on behalf of Treasury, accepted²⁰⁵ that the proposal eventually contained in the 1991 Order was agreed in principle on 20th March 1991, and stated, as was the case, that Mr Gelling and Mr Kelly had given evidence to this effect. Once the minister had

¹⁹⁸ Mr Kelly Document Q18 Appendix 7 para 3.3

¹⁹⁹ Evidence of Mr Kelly Q18 Transcript Day 32 page 35

²⁰⁰ Evidence of Mr Kelly Q18 Transcript Day 32 pages 35 & 36

²⁰¹ Evidence of Mr Bell Q9 Transcript Day 36 page 53

²⁰² Mr Gelling Document Q23 para 14 and Evidence of Mr Gelling Q23 Transcript Day 37 pages 12 & 13

²⁰³ Evidence of Mr Gelling Q27 Transcript Day 37 pages 13 - 15 and evidence of Mr Kelly Q18 Transcript Day 32 pages 39 & 40

²⁰⁴ Evidence of Mr Kelly Q18 Transcript Day 32 page 39

²⁰⁵ Mr Corlett Transcript Day 45 page 20

made his mind up in principle that would, in reality, be what mattered, and what determined the formal decision.

6.120 As was customary, the Assessor prepared a Brief for the minister to read on Budget Day. This referred to the provisions of the Order being approved (for 100% initial allowance) and noted that over two years, the period over which the total cost of approval expenditure could be set off for tax purposes had been reduced from 34 years to 1 year.²⁰⁶ The Brief made only limited reference to the proposed incentive allowance of a further 150%, in contrast to the minister's actual remarks to Tynwald where it figured prominently. Mr Kelly's Brief also referred to the cost of the proposed changes which in the first year would be in excess of £500,000.²⁰⁷ He explained²⁰⁸ the difference between this figure and the £150,000 referred to in the internal memorandum of 20th June 1991 on the basis that the latter was income tax collected on all tourist premises in 1989/90 whilst the former was the value of relief (not tax) claimed by five companies he considered likely to benefit from the introduction of the incentive allowance.

6.121 The minister chose not to use that part of the Brief, and whilst the Commission accept that the Treasury Minister's Budget Speech was his own, it is surprising that the only evaluation at this time of the actual financial implications of the changes being introduced was not referred to. Mr Gelling told the Commission that he could not point to any specific facts to demonstrate the feasibility or sustainability of 250% but said that "we were convinced that 100% was not going to work."²⁰⁹ We have seen no reasons which would justify that statement. It was something Mr Kelly was tasked with researching but had not yet reported upon. Mr Kelly for his part, having expressed his reservations to the Treasury before 20th March and to the minister afterwards, seems never to have been asked to quantify those concerns and this is a matter to which we return in our conclusions.

²⁰⁶ Mr Kelly Document Q18 Appendix 14

²⁰⁷ Mr Kelly Document Q18 Appendix 14

²⁰⁸ Evidence of Mr Kelly Q18 Transcript Day 33 page 104

²⁰⁹ Evidence of Mr Gelling Q23 Transcript Day 37 pages 18 - 20

6.122 Mr Kelly produced a Practice Note (PN 31/91)²¹⁰ on 16th April 1991 regarding the Income Tax proposals in the 1991 Budget, a procedure which the Commission was advised is standard. This included only a brief outline of the incentive allowance, full details of which were to be published later in the year. Mr Ball, (by then the Director of Administration at the Department of Tourism) sought to accelerate the process in a letter to Mr Kelly of 17th June 1991 which referred to "key investment decisions" which the tourist industry would be making and reiterating the view that "my Department strongly supports the principle that a multi-discipline business should be allowed to utilise its tax allowances against profits generated other than tourism."²¹¹ Mr Kelly initially commented that this phrase was not so specific as to say group relief was being supported but accepted that this was a point of concern as there were no restrictions at that time at all in relation to group relief.²¹²

6.123 That concern was to reflect itself in the subsequent memorandum which Mr Kelly sent to the Treasury on 20th June 1991.²¹³ It is clear that Mr Kelly by this stage accepted that the new proposed allowance would become Treasury policy, but he noted in his memorandum that any new or expanding business would find it difficult to make use of the additional incentive allowance and a "loss" would therefore arise. Such a loss was, under existing legislation, available to be set off against other income, and this "would bring forward the tax relief and could well distort tax reliefs". However Mr Kelly did not recall this as being discussed in the context of the Mount Murray proposal, which was then proceeding through the planning process, and to the best of his knowledge he could not recall the Department of Tourism drawing his attention to it.²¹⁴

6.124 The Treasury minutes of 3rd July 1991 record approval of the Incentive Allowance. The minutes stated that there was to be no restriction on excess allowances being set off against other income within the company.²¹⁵ Mr Kelly

²¹⁰ Mr Kelly Document Q18 Appendix 15

²¹¹ Mr Kelly Document Q18 Appendix 16

²¹² Evidence of Mr Kelly Q18 Transcript Day 32 page 51 seq

²¹³ Mr Kelly Document Q18 Appendix 17

²¹⁴ Evidence of Mr Kelly Q18 Transcript Day 32 pages 55 & 57

²¹⁵ Mr Kelly Document Q18 Appendix 18

accepted²¹⁶ that the minute should be interpreted as referring to other income of the taxpayer rather than group relief. No reference was made to group relief. The Order itself was presented to Tynwald on 15th October 1991, the last meeting before the General Election in November 1991, and a Briefing Note²¹⁷ prepared for the Treasury Minister by the Assessor, also dated 15th October. The Briefing Note was not apparently used by the minister because this item went through without debate.²¹⁸ The note set out quite clearly that overall, the minimum government support would not be less than one half or 50% of the actual expenditure incurred, and it noted that the benefit in certain circumstances could go up to 70%. It was also accepted that a tourist business included one which was only a part business. The Order was backdated to expenditure incurred after 5th April 1991 but Mr Kelly could not give any particular reason why this was so²¹⁹ other than the fact that the Order was made in 1991 which enabled back dating to take place if desired.

6.125 The position had therefore been reached in October 1991 where half the costs of qualifying capital expenditure could be claimed from government in the form of tax relief which was not restricted either in terms of group relief or other income. Moreover, apart from the two broad statements of first year's effects referred to in paragraph 6.120 above, no financial evaluation of the possible costs of the new measure had been undertaken and neither the Assessor nor the minister appears to have been made aware by the Department of Tourism of the Mount Murray development (by then approved in detail) or of its cost and the likely implications for the Assessor's total income tax revenue. We consider this further in our conclusions.

6.126 Shortly thereafter, in December 1991, as we have noted in sub-section (iv), Mr Spence on behalf of the developer instructed Mr Nugent of Pannell Kerr Forster to open discussions with government with a view to maximising tax benefits for his client. This was to culminate in the 1992 Order and we consider the steps in that process below. It is noted here that the Treasury Minister in his Budget

²¹⁶ Evidence of Mr Kelly Q18 Transcript Day 42 page 8

²¹⁷ Mr Kelly Document Q18 Appendix 21

²¹⁸ Mr Gelling Document Q23 Appendix 25: Hansard T2492 15.10.1991

Speech to Tynwald on 16th April 1991²²⁰ had said that he would be seeking the extension of the tax holiday concept to encompass leisure and sports facilities. However, this was not a matter included in the Assessor's Briefing Note and Mr Kelly explained in oral evidence that it related to tax holidays for industrial undertakings under section 2(A) of the Income Tax Act 1970 and was not the same as the tax relief envisaged in the 1991 Order, nor of course in its 1992 amendment. So Mr Kelly agreed that there was no intimation in the Budget Speech of 16th April 1991 of what was later to come in the 1992 Order.²²¹ Again this is a matter we return to in our conclusions.

6.127 Mr Nugent, as we set out in sub-section (iv), initially focussed his discussions on the Department of Tourism and at paragraph 6.58 we refer to his explanation for doing so, and in the preceding paragraph to his assumptions that the Department of Tourism would have liaised with the Assessor. In paragraphs 6.58 and 6.59 we enlarge on the principle and character of these discussions. In a letter to the Deputy Assessor of 29th May 1992 Mr Nugent eventually stated that he did not think he (Mr Kennaugh) or Mr Kelly had been kept in the picture by the Department of Tourism (specifically Mr Mitchell).²²² Mr Kelly indicated in evidence that this was the first point at which it became clear, so far as he was concerned, that the negotiations which Mr Nugent was having with Mr Mitchell were specific to Mount Murray.²²³ Mr Kelly also stated that if Treasury had been consulted in the first place, it would have been willing to contemplate the application of the incentive allowance to the golf course and ancillary buildings. However he conceded he may not have been right on this point,²²⁴ and it was the Department of Tourism's view that the definition of tourist premises prevented the inclusion of such allowances as it stood. Mr Kelly said that was one of the reasons why the Amendment Order was taken forward.²²⁵

²¹⁹ Evidence of Mr Kelly Q18 Transcript Day 32 page 59

²²⁰ Mr Kelly Document Q18 Appendix 13

²²¹ Evidence of Mr Kelly Q18 Transcript Day 42 pages 18 & 19

²²² File I page 132

²²³ Evidence of Mr Kelly Q18 Transcript Day 32 pages 80 & 81

²²⁴ Evidence of Mr Kelly Q18 Transcript Day 32 pages 84 & 85

²²⁵ Evidence of Mr Kelly Q18 Transcript Day 32 page 86

6.128 Mr Kennaugh prepared a memorandum for the Treasury dated 25th June 1992 under the heading of "Extending/Broadening and applying greater selectivity to the application of the Tourist Business Incentive Allowance (TBIA)".²²⁶ In that memorandum Mr Kennaugh saw one of the bonuses of the tourist business incentive allowance as reducing the risk of financial loss to the government by way of offering the opportunity of displacing direct financial support with support which only falls to be afforded as and when profit is generated by the business, is spread over three years, and even then only arises as financial outlay is gradually recouped and exceeded. However he indicated that "situations do exist (e.g. loss offset and group relief) where immediate advantage can be taken and this we must always seek to protect against". He concluded that a broadening of the application of the incentive allowance was justified but only if coupled with greater selectivity to drive development in the right direction and to protect the Island's tax take. The principle of that approach was approved by the Treasury at its meeting on 1st July 1992.²²⁷ The Treasury Minister said in evidence that he was by then aware that prior to Mr Kennaugh's memorandum in that there had been activity in the form of discussions between accountants for the Mount Murray developer and government.²²⁸

6.129 Mr Nugent wrote to Mr Kennaugh on 22nd July 1992²²⁹ seeking assurances that "efforts are being made to find a way to formally give them [Radcon] the allowances and reliefs which the Tourist Board said would be available for the project."²³⁰ He raised what he said were then the key issues; these were the expenditure which would qualify for allowances and the period over which they would continue to be available at current rates. He copied this to Mr Bell and Mr Gelling as well as to Sir Miles Walker.

6.130 A meeting was subsequently held on 30th July 1992 between the Assessor and Deputy Assessor, Mr Mitchell and Mr Toohey. We have referred to this meeting in paragraphs 6.80 and 6.81 above but recall here that the Assessor told the

²²⁶ File I page 162

²²⁷ Mr Gelling Document Q23 Appendix 15

²²⁸ Evidence of Mr Gelling Q23 Transcript Day 37 page 36

²²⁹ File I page 170

²³⁰ File 1 page 172

Department of Tourism executives that normal loss relief and group relief could be claimed as part of the utilisation of the allowances which was very unhealthy from a tax point of view.²³¹ Mr Kelly said in evidence that the meeting was a consequence of a letter from Mr Tim Craine, Secretary to the Council of Ministers, and a meeting that he [Mr Kelly] had with Mr Craine on 24th July 1992.²³² Mr Kelly was not clear what precipitated the involvement of the Council of Ministers but speculated that this arose from the serious concerns which the Treasury had over the extent of separate correspondence between Mr Nugent and Mr Mitchell but Mr Craine said in evidence it was a result of concern by the Chief Minister, Sir Miles Walker, over the contents of Mr Nugent's letter of 22nd July 1992, a copy of which had been sent to him.²³³

6.131 The Department of Tourism had further internal discussions at Board level as recorded in a letter from Mr Mitchell to the Assessor on 7th August 1992.²³⁴ This sought the widening of the scheme and requested consideration be given to at least the inclusion of the golf course and, if possible, plant, fixtures and fittings within the curtilage of the hotel and facilities building. Shortly thereafter, on 11th August 1992, Mr Kelly responded to Mr Nugent's earlier letter of 22nd July 1992 confirming that the Treasury could not commit to maintaining current rates over the period for which the allowances were available.²³⁵ However he was prepared to discuss the matter of expenditure qualifying for allowances and a meeting to that end took place on 27th August and included both Mr Nugent and Mr Spence.

6.132 Mr Kelly's note of this meeting²³⁶ is important for two reasons. First, it shows that Radcon were, at that stage, pursuing income tax relief, not on housing, but only on Phase I of the development (the total cost of which was described as likely to be in the region of £12 to £13 million) with reference to certain fitting out costs and the golf course. The Treasury could not extend the allowances without knowing the likely cost of additional relief and this was to be provided. Second, it was stated that Radcon was the developer and site owner and that it had no

²³¹ Mr Kelly Document Q18 Appendix 27

²³² Evidence of Mr Kelly Q18 Transcript Day 32 pages 104 & 105

²³³ Mr Craine Document Q62

²³⁴ Mr Kelly Document Q18 Appendix 29 pages 2 & 3

²³⁵ Mr Kelly Document Q18 Appendix 30

associated companies in the Island. (It was not, in other words, part of a group structure.) In the light of the information given, Mr Kelly agreed to approach Treasury and seek their views on extending the incentive allowance as requested.

6.133 It is noted here that both Mr Spence at this meeting and Mr Nugent in a follow up letter of 3rd September 1992 continued to claim that what they were asking for was no more than the Department of Tourism had already promised or advised. Mr Nugent, in the same letter, as requested by Treasury (see preceding paragraph) gave the estimated capital expenditure on the additional items sought as being £3.8 million.²³⁷

6.134 The Treasury minute of 9th September 1992²³⁸ records that agreement was given in principle to extend the provisions of the 1991 Order in the manner requested and the Assessor was authorised to communicate this decision to Radcon. Importantly, the minute specifically required that a restriction on group relief was to be included in the revised Order, but Mr Kelly acknowledged in evidence that the legal practicality of this was based on a wrong assumption, later pointed out to him by the legislative draftsman, Mr Boyde.²³⁹ Mr Kelly accepted that it was unusual to write to one company and the reason he requested agreement at the Treasury meeting to do this was because it was that company which had been pressing for the change.²⁴⁰ Mr Gelling in evidence also accepted that it was Radcon who were seeking the amended legislation.²⁴¹

6.135 Continued efforts were made by Mr Kelly with the assistance of Mr Boyde, as the drafting process got under way, to find a way to restrict group relief, but it was accepted in December that this was not possible by subordinate legislation, and that such a restriction could only be achieved by primary legislation, in this case a new Income Tax Bill which might come into force in 1993.²⁴² In the meantime

²³⁶ Mr Kelly Document Q18 Appendix 31

²³⁷ File 1 page 250

²³⁸ Mr Kelly Document Q18 Appendix 33

²³⁹ Evidence of Mr Kelly Q18 Transcript Day 32 page 113

²⁴⁰ Evidence of Mr Kelly Q18 Transcript Day 32 pages 114 & 115

²⁴¹ Evidence of Mr Gelling Q23 Transcript Day 37 page 41

²⁴² File I page 261

Mr Nugent, in a letter of 9th October to Mr Kelly, had said his understanding was that a copy of the draft Order was to be passed to him for comment. Mr Kelly was not clear about any such understanding and did not think a draft was provided for purposes of comment. However he did not have a problem in forwarding a draft which he considered to be at Mr Nugent's request and he believed he had the authority of the Treasury to do so even though the minutes of the meeting on 9th September did not say this.²⁴³

6.136 Mr Kelly advised the Treasury in a memorandum²⁴⁴ dated 23rd December 1992 that legislation with a view to restricting group relief, if enacted, could be backdated provided prior notice of the restriction was given. The Treasury meeting minutes of the same day²⁴⁵ record the making and signing of what was defined as the Income Tax (Capital Relief) (Tourist Business Incentive Allowance) (Amendment) Order 1992. This amended the 1991 Order by extending relief to include:

- plant and machinery which is an integral part of the structure of the tourist premises.
- sports and associated recreational facilities for use wholly or mainly in connection with that business.²⁴⁶

The decision by the Treasury on 23rd December 1992 was therefore taken in the full understanding of the position on group relief as explained to it by Mr Kelly. As Mr Kelly was also aware of the probable costs of the additional elements at Mount Murray now allowable under the Order as advised by Mr Nugent (paragraph 6.133) he would have been aware that the potential income tax relief from the Amendment Order alone was advised as being in the region of £1.9 million.

6.137 The Order was approved by Tynwald on 20th January 1993 and Mr Kelly prepared a Briefing Note for the Treasury Minister on that day.²⁴⁷ In it he wrote that measures would be introduced in the next Income Tax Bill preventing any

²⁴³ Evidence of Mr Kelly Q18 Transcript Day 32 pages 120 & 121

²⁴⁴ Mr Kelly Document Q18 Appendix 40 page 1

²⁴⁵ Mr Kelly Document Q18 Appendix 40 page 2

²⁴⁶ Mr Kelly Document Q18 Appendix 40 page 1

²⁴⁷ Mr Kelly Document Q18 Appendix 42

group relief set off for incentive allowances awarded in 1994/5 and subsequent years. Supplementary information was also provided which referred to Mount Murray as one of only two known projects which would qualify. It is evident from Hansard²⁴⁸ however that the minister made no reference to the position on group relief i.e. that it would continue to apply for at least two years, or to Mount Murray as a possible beneficiary, an omission which he accepted in hindsight was an unfortunate error.²⁴⁹ Mr Kelly then produced a practice note (PN 42/93) on 26th January 1993 in which it was stated that "...the Treasury Minister announced his intention to consider restricting the manner in which any unrelieved incentive allowances may be utilised".²⁵⁰ Mr Kelly acknowledged in evidence that the minister had not in fact made that announcement, indicating that he (Mr Kelly) should have held back the advice note until the statement had been made.²⁵¹ The Department of Tourism (Mr Mitchell) had in the meantime been sent by Mr Kelly on 22nd December a copy of the proposed Amendment Order.²⁵² Mr Kelly's covering letter stated that this "should satisfy the requirements of Radcon" thereby further making it quite clear where the impetus for the Order had actually come. Mr Mitchell telephoned the following day to say that as far as they [Department of Tourism] were concerned everything was in order.²⁵³

6.138 The drafting of an Income Tax Bill commenced in 1993 and continued into 1994. The Bill was ultimately enacted by Tynwald in early 1995 and gave, among other things, at section 2, powers to limit group relief.²⁵⁴ Mr Kelly accepted in evidence that this power had never been exercised in the context of tourism. We examine in section 8 the implications of that in terms of the income tax relief and offset which the developer at Mount Murray was able to claim.

6.139 The Amendment Order of course also added the requirement that relief may only be allowed if the Department of Tourism certified that the business satisfied three defined economic criteria. This was not a feature of the 1991 Order before

²⁴⁸ Document C62

²⁴⁹ Evidence of Mr Gelling Q23 Transcript Day 37 page 51

²⁵⁰ Mr Kelly Document Q18 Appendix 43

²⁵¹ Evidence of Mr Kelly Q18 Transcript Day 33 page 78

²⁵² File I page 285

²⁵³ File I page 294

²⁵⁴ Evidence of Mr Kelly Document Q18 Appendix 47

amendment. The circumstances relating to the bringing forward of certificates in accordance with the Order in respect of Mount Murray are set out in section 7 which follows.

6.140 Importantly the position is seen here that by early 1993 a further Order had been approved following substantial pressure from the agent to the developer which gave significant expansions to the qualifying elements for tax relief purposes. The evidence before the Commission leaves little doubt that this 1992 Order was tailored to the needs of the Mount Murray developer and that in the process the agent to the developer was given advantageous (and unusual) treatment in being personally advised of decisions and provided with an opportunity to comment on the draft Order. Taken together with the 1991 Order, the effect was to enable the developer to secure substantial income tax relief facilitated not only by the Orders themselves but by the failure to secure any restrictions over group relief. This matter is discussed further in section 8.

END OF SECTION 6

