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**INCOME TAX LEGISLATION (AMENDMENT) BILL  
2019**

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**Explanatory Memorandum**

1. This Bill is promoted by Mr Alfred Cannan, MHK on behalf of the Treasury.
2. *Clause 1* deals with the Short Title of the resulting Act.
3. *Clause 2* confirms 3 temporary taxation orders; subject, in the case of 2 of them, to amendments specified in later clauses.
4. *Clause 3* specifies the amendments to one of the temporary taxation orders, referred to as “the pensions TTO”. Among the amendments are those that will have the effect of modifying the *Income Tax Act 1970* —
  - (a) to permit the payment of “relevant benefits”, on the death of an individual, to the individual’s surviving spouse or civil partner, surviving child or dependant, or personal representative; and
  - (b) to enable a member of a pension scheme to, during the member’s life, withdraw all the funds in the pension scheme to which the member is entitled. 40% of the amount withdrawn is to be exempt from income tax, and this applies whether the funds are withdrawn all in one go or in instalments.
5. *Clause 4* specifies the amendments to another of the temporary taxation orders, referred to as “the avoidance TTO”. Chief among them is the insertion of a provision setting out circumstances in which section 2PB (anti-avoidance) of the *Income Tax Act 1970* does not apply. These circumstances surround the sale of unquoted shares.
6. *Clause 5* makes amendments directly to the *Income Tax Act 1970*. Chief among the amendments is that imposing a requirement for a foreign company to nominate a “nominated officer” within 90 days of becoming resident in the Island for tax purposes. Failure to do so is an offence, as is the subsequent failure to do so within a further 90 days (on this occasion, calculated from the date of the conviction for the first-mentioned offence). Conviction of the second-mentioned offence carries a higher penalty than does conviction of the first-mentioned offence, and may be committed either by the foreign company itself or an officer of the foreign company in circumstances prescribed in section 54 of the *Interpretation Act 2015*.
7. This Bill is not expected to have any human resource implications that cannot be addressed using existing resources. Further, the Bill is not expected to require additional expenditure. On the contrary, the Bill is expected to result in the garnering of additional revenue by helping to ensure that profits are correctly

charged to income tax when they are extracted from a company. This anticipated effect is largely attributable to the Bill's proposed confirmation of the avoidance TTO.

8. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



*Ellan Vannin*

## INCOME TAX LEGISLATION (AMENDMENT) BILL 2019

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*Ellan Vannin*

## INCOME TAX LEGISLATION (AMENDMENT) BILL 2019

**1** A **BILL** to confirm certain temporary taxation orders; to amend the Income Tax  
**2** Act 1970; and for connected purposes.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

**3** **1 Short title**

**4** The short title of this Act is the Income Tax Legislation (Amendment) Act 2019.

**5** **2 Confirmation of temporary taxation orders**

**6** The following are confirmed as permanent orders —

- 7** (a) the Income Tax (Nursing Expenses)(Temporary Taxation) Order  
**8** 2018<sup>1</sup>;
- 9** (b) the Income Tax (Pensions)(Temporary Taxation) Order 2018<sup>2</sup> (“the  
**10** pensions TTO”), subject to the amendments to it that are specified  
**11** in section 3;
- 12** (c) the Income Tax (Non-Corporate Taxpayers)(Temporary Taxation)  
**13** Order 2018<sup>3</sup> (“the avoidance TTO”), subject to the amendments to  
**14** it that are specified in section 4.

**15** **3 Amendments to the pensions TTO**

**16** (1) The amendments subject to which the pensions TTO is confirmed by  
**17** section 2 are as specified in the remainder of this section.

**18** Those amendments are subject to subsection (3).

**19** (2) Amend article 3 of the pensions TTO —

- 20** (a) by substituting, for paragraph (b) of the therein contained section  
**21** 61H(4) of the *Income Tax Act 1970*, the following —

<sup>1</sup> SD 2017/0374

<sup>2</sup> SD 2017/0375

<sup>3</sup> SD 2017/0377



1 “(b) the purpose of which is the provision of relevant benefits  
2 for the individual and the individual’s —

- 3 (i) surviving spouse or surviving civil partner;  
4 (ii) surviving child;  
5 (iii) surviving dependant; or  
6 (iv) personal representative;”;

7 (b) by substituting, for paragraph (b) of the therein contained section  
8 61H(5) of the *Income Tax Act 1970*, the following —

9 “(b) the purpose of which is the provision of relevant benefits  
10 in respect of a person’s employment in the trade or  
11 undertaking, being benefits payable to —

- 12 (i) the employee;  
13 (ii) the employee’s surviving spouse or civil partner;  
14 (iii) the employee’s surviving child or dependant; or  
15 (iv) the employee’s personal representative;”;

16 (c) by omitting subsection (8) from the therein contained section 61H  
17 of the *Income Tax Act 1970*;

18 (d) by substituting the following for section 61L of the *Income Tax Act*  
19 *1970* —

20 “61L **Withdrawal of funds during life of member**

21 Subject to section 61H(4)(c), (5)(d) and (6), a member of  
22 a pension scheme approved under section 61H(2) may  
23 elect to receive —

24 (a) a single lump sum payment in commutation of  
25 all the funds in the pension scheme to which the  
26 member is entitled;

27 (b) payments consisting of —

28 (i) an initial single lump sum payment of not  
29 less than 40% of the value of all the funds  
30 in the pension scheme to which the  
31 member is entitled; and

32 (ii) subsequently, the remainder of the funds in  
33 such amounts and at such times as  
34 specified by the member until all the funds  
35 in the pension scheme to which the  
36 member is entitled have been extinguished;  
37 or

38 (c) payments of all the funds in the pension scheme  
39 to which the member is entitled in such amounts  
40 and at such times as specified by the member  
41 until those funds have been extinguished.”;

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- (e) by substituting, for subsection (1) of section 61N of the *Income Tax Act 1970*, the following –
- “(1) Subject to subsection (3) –
- (a) where a single lump sum payment is made under section 61L(a), 40% of the payment shall not be chargeable to income tax;
- (b) where an initial single lump sum payment of not less than 40% of all the funds in the pension scheme to which the member is entitled is made under section 61L(b)(i), an amount of that payment equal to 40% of all the funds in the pension scheme to which the member is entitled shall not be chargeable to income tax; or
- (c) 40% of each amount of the funds that is paid to the member under section 61L(c) shall not be chargeable to income tax.”;
- (f) in the therein contained section 61N(3) of the *Income Tax Act 1970*, by substituting “subsection (1)(a), (b) or (c)” for “subsection (1)(a) or (b)”;
- (g) by substituting, for subsection (4) of section 61N of the *Income Tax Act 1970*, the following –
- “(4) Where in accordance with this section, a single lump sum is paid under section 61L(a), an initial single lump sum is paid under section 61L(b) or the first payment is made under section 61L(c), the administrator must, within 30 days of the date on which the payment is made, give notice of the payment to the Assessor in such form and containing such information as the Assessor may require.”;
- (h) in the therein contained section 61P(1) of the *Income Tax Act 1970*, by substituting “under section 61L(b) or (c)” for “under section 61L(b)”;
- (i) by substituting, for subsection (2) of section 61P of the *Income Tax Act 1970*, the following –
- “(2) Where subsection (1) applies and –
- (a) the member does not have a surviving spouse or civil partner, or surviving children, or any other dependant or a personal representative, the member’s pension shall be commuted in full within 2 years of the date of death of the member;

(b) the member has a surviving spouse or civil partner, or surviving children, or any other dependant, or a personal representative —

(i) the member's pension may be commuted in full within 2 years of the date of the death of the member, in accordance with scheme rules; or

(ii) in the same manner in which the member would have been entitled to do if the member were alive, the spouse or civil partner, or children or dependants, or a personal representative, in accordance with the scheme rules, may claim, and on so claiming is entitled to receive, payments from what remains of the funds in the pension scheme to which the member is entitled.”;

(j) by inserting into the *Income Tax Act 1970*, immediately after section 61P of that Act, the following —

**“61PA Regulations regarding exit and transfer fees**

The Treasury may make regulations restricting the amount of exit and transfer fees that may be imposed by the trustees or administrators, as the case may be, of a pension scheme introduced under Part 5A.

Tynwald procedure – approval required”.

(3) Upon the coming into operation of the amendments specified in subsection (2), all schemes then already approved by the Assessor will continue to be so approved without the need for any re-approval consequent on the implementation of any measures attributable to such amendments.

(4) The amendments specified in subsection (2) are deemed to have come into operation at the same time at which the pensions TTO came into operation and to have been in operation continuously since then.

#### 4 Amendments to the avoidance TTO

(1) The amendments subject to which the avoidance TTO is confirmed by section 2 are as specified in the remainder of this section.

(2) In article 4 insert, immediately after subsection (1) of the therein contained section 2PB of the *Income Tax Act 1970*, the following —

“(1A) This section does not apply where the Assessor is satisfied, on the basis of evidence presented to the Assessor, that —

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- (a) the sale of unquoted shares has taken place via a share for share exchange only, with no resulting payments or debt being owed to the participator;
  - (b) the sale of unquoted shares does not create an untaxed extraction of undistributed profits either at the time of sale or at any time in the future; or
  - (c) on the sale of unquoted shares, any payments made or debt owed to the participator from that sale directly correspond with the amount of consideration paid by an unconnected third party.”.
- 12 (3) The amendments specified in subsection (2) are deemed to have come  
13 into operation at the same time at which the avoidance TTO came into  
14 operation and to have been in operation continuously since then.

15 **5 Amendments to the Income Tax Act 1970**

- 16 (1) The *Income Tax Act 1970* is amended as follows.
- 17 (2) In section 88(2), for paragraph (c) substitute the following —
- 18 “(c) eight other commissioners, also appointed by the  
19 Appointments Commission, at least one of whom must be  
20 a barrister, advocate or solicitor (in each case, of not less  
21 than 7 years’ standing).”.
- 22 (3) In section 120, in the definition of “tax position” —
- 23 (a) omit “and” from immediately after the semicolon at the end of  
24 paragraph (f);
- 25 (b) for the full stop at the end of paragraph (g), substitute “; and”;  
26 and
- 27 (c) insert the following immediately after paragraph (g) —
- 28 “(h) compliance with the standard for automatic exchange of  
29 financial account information in tax matters and its  
30 commentaries, developed by the Organisation for  
31 Economic Co-Operation and Development (“the  
32 OECD”);”.
- 33 (4) Immediately after section 63C, insert the following—
- 34 “63CA **Requirement to have a nominated officer**
- 35 (1) This section applies to companies which —
- 36 (a) are resident in the Island for income tax  
37 purposes; and
- 38 (b) are incorporated in a jurisdiction other  
39 than the Island.

- 1 A company meeting those criteria is referred to  
2 in this section as “a foreign company”.
- 3 (2) Every foreign company must nominate an  
4 individual, referred to as “a nominated officer”,  
5 who —
- 6 (a) meets the criterion specified in subsection  
7 (6); and
- 8 (b) whose duty it is to perform the functions  
9 specified in subsection (7).
- 10 (3) A foreign company that fails to nominate a  
11 nominated officer within 90 days of becoming  
12 resident in the Island for tax purposes commits  
13 an offence and is liable on summary conviction  
14 to a fine not exceeding level 1 on the standard  
15 scale.
- 16 (4) If a foreign company convicted under  
17 subsection (3) fails to nominate a nominated  
18 officer within 90 days of that conviction, the  
19 foreign company commits an offence and is  
20 liable on summary conviction to a fine not  
21 exceeding level 5 on the standard scale.
- 22 (5) If —
- 23 (a) a foreign company commits an offence  
24 under subsection (4); and
- 25 (b) section 54 of the *Interpretation Act 2015*  
26 applies,  
27 the maximum penalty for which an individual  
28 would be liable on conviction of the offence is  
29 custody for 6 months.
- 30 (6) In order to be qualified to be a nominated  
31 officer, a person must be resident in the Island  
32 for income tax purposes.
- 33 (7) The functions of a nominated officer are —
- 34 (a) to hold information on the legal owners  
35 of the foreign company; and
- 36 (b) in a timely manner, to furnish that  
37 information (or any part of it) to the  
38 Assessor on the Assessor’s request.
- 39 (8) A nominated officer who fails to comply with  
40 subsection (7)(a) or (b) commits an offence and  
41 is liable on summary conviction to a fine not  
42 exceeding level 5 on the standard scale.”.



IN THE KEYS

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**INCOME TAX LEGISLATION (AMENDMENT) BILL  
2019**

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A **BILL** to confirm certain temporary taxation orders; to amend the Income Tax Act 1970; and for connected purposes.

Leave to introduce given by the Council on 13 December 2018.

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MR CANNAN

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22 JANUARY 2019