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## INCOME TAX (AMENDMENT) BILL 2013

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### Explanatory Memorandum

1. This Bill is promoted by Mr Teare on behalf of the Council of Ministers.
2. *Part 1* deals with preliminary matters, namely the citation, commencement and expiry of the resulting Act (*clauses 1, 2 and 3* respectively). The Act comes into operation on 6 April 2014 and expires on the day after its promulgation. *Clause 4* confirms as permanent orders the Income Tax (Company Residence) (Temporary Taxation) Order 2012, articles 5 and 6 of the Income Tax (International Agreements) (Temporary Taxation) Order 2013 (and articles 1 and 2 so far as relating to those articles) and the Taxes (International Arrangements) Order 2013.
3. *Part 2* amends the *Income Tax Act 1970* (“the 1970 Act”).
4. *Clause 5* introduces the amendments to the 1970 Act.
5. *Clause 6* extends the scope of the charge to income tax to include—
  - (a) income which arises from deemed employment by virtue of amendments made to the Income Tax (Instalment Payments) Act 1974 (“the 1974 Act”) by Part 3 of the Bill; and
  - (b) income which is the subject of a direction by the Assessor in a case where there is doubt as to its categorisation.
6. *Clause 7* replaces section 48 of the 1970 Act with a fresh section that gives the power to specify the benefits which are exempt from taxation. A transitional provision ensures that all benefits which are currently exempt will continue to be so until the making of the first order under the substituted section.
7. *Clause 8* inserts a new heading to Part 19 of the Bill (the other Parts are constituted by provisions in the Schedule) and inserts a new section 112K which creates an offence of fraudulent evasion of income tax, punishable with 7 years’ custody or a fine.
8. *Clause 9* inserts a definition of “administration” and makes a minor grammatical correction to section 115A.
9. *Part 3* amends the 1974 Act.
10. *Clause 10* introduces the amendments.
11. *Clause 11* constitutes a new Part 1.
12. *Clause 12* amends section 1 to insert definitions which are required for the purposes of the new Part 2 which is inserted by clause 13.
13. *Clause 13* inserts the new Part 2 dealing with circumstances in a person (“the worker”) provides services to another (“the client”) under a contractual

arrangement otherwise than as an employee but which are analogous to employment in other respects. It also includes a provision deeming payments made under the arrangements to be subject to income tax as if they arose from employment for the purposes of the 1970 Act. The clause also inserts a new Part 3 heading.

14. *Part 4* comprises *clause 14*. This gives effect to the Schedule which contains a series of minor and consequential amendments, mainly of a drafting nature (e.g. replacing italic cross-headings with Parts in the 1970 Act).
15. 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 (AMENDMENT) BILL 2013

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*Ellan Vannin*

## INCOME TAX (AMENDMENT) BILL 2013

1 **A BILL** to amend the law about income tax; 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:—

### 2 **PART 1 – INTRODUCTORY**

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

4 The short title of this Act is the Income Tax (Amendment) Act 2013.

#### 5 **2 Commencement**

6 This Act comes into operation on 6 April 2014.

#### 7 **3 Expiry of Act**

8 (1) This Act expires on the day following its promulgation.

9 (2) The expiry does not –

10 (a) revive any provision amended by this Act as the provision  
11 operated before the amendment commenced;

12 (b) revive anything not in operation or existing when the amendment  
13 took effect;

14 (c) affect the continuing operation of the amendment; or

15 (d) affect the continuing validity of any order confirmed by this Act.

#### 16 **4 Confirmation of temporary taxation orders**

17 (1) The Income Tax (Company Residence) (Temporary Taxation) Order 2012  
18 (which substitutes a new section 2N in the Income Tax Act 1970 for the  
19 tax year commencing 6 April 2012 and subsequent tax years) is  
20 confirmed and continues as a permanent order.

21 (2) Articles 5 and 6 of the Income Tax (International Agreements)  
22 (Temporary Taxation) Order 2013 (and articles 1 to 2 of that Order so far

as relating to articles 5 and 6) are confirmed and continue as a permanent order.

- (3) The Taxes (International Arrangements) Order 2013 (which enables effect to be given in the law of the Island to certain international arrangements) is confirmed and continues as a permanent order.

## PART 2 — INCOME TAX ACT 1970 AMENDED

### 5 Amendment of the Income Tax Act 1970

This Part amends the *Income Tax Act 1970*.

### 6 Section 2 amended – income on which tax is payable

After section 2(1)(e) insert —

- “(f) remuneration to which section 2AD (deeming for 1970 Act) of the *Income Tax (Instalment Payments) Act 1974* (the “1974 Act”) applies;
- (fa) payments directed under section 6 (Assessor’s powers in doubtful cases) of the 1974 Act to be remuneration for the purposes of that Act;”.

### 7 Section 48 substituted — taxation treatment of social security benefits

For section 48 substitute —

#### 48 Social security benefits liable to tax

(1) Any payment of benefit under —

- (a) the Social Security Contributions and Benefits Act 1992 (of Parliament),
- (b) the Jobseekers Act 1995 (of Parliament), or
- (c) an order made or having effect as if made under section 1A of the Social Security Act 2000,

shall be charged to income tax as earned income for the year of assessment in which the benefit is paid.

This is subject to the following qualification.

- (2) Despite subsection (1), the Treasury may by order provide that any benefit, or any component or part of, or supplement to, a benefit (however described) is not to be treated as income for any purpose of the Income Tax Acts.

- 1 (3) An order under subsection (2) may make different provision for  
2 different cases, and may provide for exceptions from the  
3 treatment for which it provides.
- 4 (4) Until the coming into operation of the first order under subsection  
5 (2) a payment of any of the following social security benefits is not  
6 to be treated as income for any purpose of the Income Tax Acts —  
7 (a) attendance allowance;  
8 (b) bereavement payment;  
9 (c) the mobility component of a disability living allowance;  
10 (d) Christmas bonus;  
11 (e) a winter bonus;  
12 (f) incapacity benefit;  
13 (g) maternity allowance;  
14 (h) paternity allowance;  
15 (i) severe disablement allowance;  
16 (j) guardian's allowance;  
17 (k) so much of any benefit as is attributable to an increase in  
18 respect of a child; and  
19 (l) any payment of benefit to which the Extra-Statutory  
20 Concession issued by the Treasury on 5 December 2012  
21 and approved by Tynwald on 16 January 2013 relates, to  
22 the extent provided in the Concession.
- 23 (5) The Treasury may by order amend subsection (1) to add, remove  
24 or amend a reference to an enactment having effect in the Island.
- 25 (6) An order under this section must not come into operation until it  
26 is approved by Tynwald.
- 27 (7) A reference in subsection (1) to an Act of Parliament is to that Act  
28 as it has effect in the Island.
- 29 (8) In consequence of the provision made by subsection (4) the  
30 following are revoked —  
31 (a) the Income Tax (Social Security Benefits) (Exemption)  
32 Order 1995;  
33 (b) the Income Tax (Social Security Benefits) (Exemptions)  
34 Order 2001;  
35 (c) the Income Tax (Social Security Benefits) (Exemptions)  
36 Order 2002;  
37 (d) the Income Tax (Social Security Benefits) (Exemptions)  
38 Order 2009; and  
39 (e) the Extra Statutory Concession mentioned in subsection  
40 (4)(l).”

1 **8 Part 19 heading and section 112K inserted – offence of fraudulent**  
 2 **evasion**

3 After section 112J insert –

4 **“PART 19 – EVASION OFFENCE AND GENERAL**  
 5 **PROVISIONS ABOUT OFFENCES**

6 **112K Offence: fraudulent evasion of income tax**

- 7 (1) A person who fraudulently evades income tax commits an offence  
 8 and is liable –
- 9 (a) on conviction on information, to custody for a term not  
 10 exceeding 7 years, a fine or both; or
- 11 (b) on summary conviction –
- 12 (i) to custody for a term not exceeding 6 months,  
 13 (ii) a fine not exceeding £5,000 or three times the  
 14 amount of tax evaded, whichever is greater, or  
 15 (iii) both.
- 16 (2) A person fraudulently evades income tax if the person is  
 17 knowingly concerned in, or takes steps with a view to, fraudulent  
 18 evasion of income tax liability (whether the liability is that of the  
 19 person or anyone else).”

20 **9 Section 115A amended – temporary taxation orders**

- 21 (1) Section 115A (temporary taxation orders) is amended as follows.
- 22 (2) In subsection (14) –
- 23 (a) insert alphabetically –
- 24 ““administration”, of income tax, includes instalment payments,  
 25 deduction or repayment for income tax and any other matter for  
 26 which provision is made by the *Income Tax (Instalment Payments)*  
 27 *Act 1974*;” and
- 28 (b) in the definition of “**confirmatory Act**” for “means an Act only of  
 29 all or any provisions” substitute “means an Act containing only  
 30 provisions of all or any”.

31 **PART 3 – AMENDMENTS TO INCOME TAX (INSTALMENT**  
 32 **PAYMENTS) ACT 1974**

33 **10 Act amended**

34 This Part amends the *Income Tax (Instalment Payments) Act 1974*.



1 **11 New Part 1 heading**

2 After the long title, insert—

3 **“PART 1 –INTRODUCTORY”**

4 **12 Section 1 amended – definitions and regulations**

5 In section 1(1), insert the following alphabetically —

6 “**1970 Act**” means the *Income Tax Act 1970*;

7 “**arrangement**” means a written or oral agreement, contract or  
8 understanding, whether or not for consideration;

9 “**client**” has the meaning given in section 2AA(1)(a);

10 “**conditions for deeming**” has the meaning given in section 2AB;

11 “**third party**” has the meaning given in section 2AB(3); and

12 “**worker**” has the meaning given in section 2AA(1)(a).”

13 **13 New Part 2 and Part 3 heading – deemed employment**

14 After section 2 (but before section 2A) insert —

15 **“PART 2 – DEEMED EMPLOYMENT**

16 **2AA Application of Part**

17 | (1) This Part applies if —

18 | (a) an individual (the “**worker**”) has provided, or is under a  
19 | contractual or other obligation to provide, services which  
20 | are provided for the ultimate benefit of another (“**the**  
21 | **client**”) in connection with a business carried on by the  
22 | client; and

23 | (b) the conditions in section 2AB (the “**conditions for**  
24 | **deeming**”) are satisfied.

25 | (2) To avoid any doubt, this Part applies —

26 | (a) whether the client is an individual, body corporate,  
27 | unincorporated body, Department, local authority or other  
28 | public authority in the Island; and

29 | (b) even if the services are provided to the client —

30 | | (i) as a trustee of a trust; or

(ii) under any other arrangement under which the client is carrying on the business for someone else's benefit.

(3) But this Part does not apply where –

(a) the third party is –

(i) an agency or business to which the *Employment Agencies Act 1975* (“the 1975 Act”) does not apply by virtue of section 11 of the 1975 Act; or

(ii) an employment agency or employment business registered under the 1975 Act; and

(b) the Assessor grants the agency or business exemption from this Part.

(4) In this section, “business” includes a Department, Statutory Board, or other public authority in the Island and any undertaking (whether conducted with a view to profit or not).

## **2AB Conditions for deeming**

(1) The conditions for deeming are as follows.

(2) The client –

(a) is resident in the Island for the purposes of income tax; or

(b) has a place of business in the Island.

(3) The services are provided not under a contract between the worker and the client, but under an arrangement involving another party (a “**third party**”).

To avoid any doubt, there may be more than one third party involved in the arrangements.

(4) Assuming the services were provided, or were to be provided, under a contract directly between the worker and the client, the worker would have been an employee of the client.

## **2AC Client deemed to be worker's employer**

For the purposes of this Act –

(a) the worker is taken to be an employee of the client and not of a third party;

(b) the client, and not a third party, is the worker's employer; and

(c) the worker's earnings are taken to have passed, or to pass, directly from the client to the worker and not through the hands of a third party.

**2AD Deeming for 1970 Act**

- (1) For the purposes of the 1970 Act any sum which a third party receives for providing the services is taken to be remuneration of the worker.
- (2) But if the third party charges a fee and is —
- (a) an agency or business to which the *Employment Agencies Act 1975* (“the 1975 Act”) does not apply by virtue of section 11 of the 1975 Act; or
  - (b) an employment agency or employment business registered under the 1975 Act;
- the fee is chargeable to income tax in the hands of that agency or business and not those of the worker.

**2AE Objections**

- (1) The objection provisions apply to a person notified of a decision that this Part applies to that person —
- (a) as if a reference in those provisions —
    - (i) to an assessment were a reference to the decision; and
    - (ii) to a notice of assessment were a reference to the notice informing the person of the decision; and
  - (b) with other necessary changes.
- (2) The Commissioners’ powers under the objection provisions as applied under subsection (1) include the power to confirm, vary or reverse a decision to which an objection has been raised.
- (3) In this section, “the objection provisions” means sections 87 to 91 of the 1970 Act.

**2AF Relationship of charges to tax**

- (1) Nothing in this Part requires a sum to be charged to income tax more than once (whether by virtue of this Part or otherwise).
- (2) For the purposes of computing any person’s liability for value added tax nothing in this Part affects the treatment of —
- (a) supplies made to the client, or
  - (b) payments made by the client to the third party.
- (3) Any remuneration or dividends paid, and any other distributions made, by a third party to the worker are not chargeable to income tax if (and to the extent that) they have already been charged to income tax as earnings of a deemed employment by virtue of this Part.

- 1 (4) Any sum (other than a fee falling within section 2AD(2)) received  
2 by a third party in consideration for, or in connection with, the  
3 provision of the worker's services is to be left out of account in  
4 computing the third party's liability for income tax.
- 5 (5) Part 16 (differential tax rates: anti-avoidance) of the 1970 Act does  
6 not apply to the remuneration which is taken to be that of the  
7 worker under section 2AD.

8 **PART 3 – INSTALMENT PAYMENTS REGIME”.**

9 **PART 4 – CLOSING PROVISION**

10 **14 Schedule**

11 The Schedule (which contains minor and consequential amendments) has effect.  
12

## SCHEDULE

[Section 14]

## MINOR AND CONSEQUENTIAL AMENDMENTS

**1 Income Tax Act 1970**

- (1) The *Income Tax Act 1970* is amended as follows.
- (2) Replace the cross-headings set out in column 1 of the following table with the headings shown opposite them in column 2.

<i>Existing cross heading</i>	<i>New Part heading</i>
Liability to Income Tax	<b>“PART 1 – LIABILITY TO INCOME TAX”</b>
Exemptions, Allowances and Relief	<b>“PART 2 – EXEMPTIONS, ALLOWANCES AND RELIEF”</b>
Relief etc. for international personal and occupational pension schemes	<b>“PART 3 – RELIEF ETC FOR INTERNATIONAL PERSONAL AND OCCUPATIONAL PENSION SCHEMES”</b>
Continuation of Exemptions, Allowances and Relief	<b>“PART 4 – CONTINUATION OF EXEMPTIONS, ALLOWANCES AND RELIEF”</b>
Charities	<b>“PART 5 – CHARITIES”</b>
Returns, etc.	<b>“PART 6 – RETURNS ETC”</b>
Assessment of income	<b>“PART 7 – ASSESSMENT OF INCOME”</b>
Payment of tax	<b>“PART 8 – PAYMENT OF TAX”</b>
Administration	<b>“PART 10 – ADMINISTRATION”</b>
Delivery of documents, etc.	<b>“PART 11 – OBTAINING INFORMATION OR EVIDENCE”</b>
Court orders to deliver documents, etc.	<b>“PART 12 – COURT ORDERS TO DELIVER DOCUMENTS, ETC”</b>
Differential tax rates: anti-avoidance	<b>“PART 16 – DIFFERENTIAL TAX RATES: ANTI-AVOIDANCE</b> DIVISION 1 – ANTI-AVOIDANCE PROVISIONS”
Definitions	<b>“DIVISION 2 – DEFINITIONS FOR PART”</b>

Penalties	<b>“PART 17 – PENALTIES”</b>
Tax return defaulters - civil penalties	<b>“PART 18 – TAX RETURN DEFAULTERS: CIVIL PENALTIES</b> DIVISION 1 – NON-CORPORATE TAXPAYERS”
Corporate taxpayers - civil penalties	<b>“DIVISION 2 – CORPORATE TAXPAYERS”</b>
Temporary taxation orders	<b>“PART 20 – TEMPORARY TAXATION ORDERS”</b>
Miscellaneous	<b>“PART 21 – MISCELLANEOUS”.</b>

- 1 (3) Before section 106, insert –
- 2 **“PART 14 – CONFIDENTIALITY AND DISCLOSURE OF**
- 3 **INFORMATION”.**
- 4 (4) Section 106F is amended as follows –
- 5 (a) for the heading substitute **“A106 Definitions for this Part”;**
- 6 (b) in subsection (1) for “In sections 106C to 106E –” substitute “In
- 7 this Part –”;
- 8 In consequence of the amendments made by this sub-paragraph, relocate
- 9 the section immediately after the Part heading for Part 14.
- 10 (5) Before section 107, insert **“PART 15 – REPAYMENTS”.**
- 11 (6) In section F108 to J108, for “sections A108 to J108” (wherever occurring)
- 12 substitute “this Part”.
- 13 (7) Renumber section 112 as section 112L and relocate after section 112K as
- 14 inserted under this Act.
- 15 (8) In section 120 omit the definition of **“Assessor”.**

16 **2 Income Tax (Instalment Payments) Act 1974**

- 17 The Income Tax (Instalment Payments) Act 1974 is amended as follows –
- 18 (a) in section 1A(3) omit “written”; and
- 19 (b) before section 8, insert **“PART 4 – GENERAL”.**

20 **3 Interpretation Act 1976 amended**

- 21 In section 3(1) of the *Interpretation Act 1976* at the appropriate points in the
- 22 alphabetical list insert –
- 23 **““Assessor” means the Assessor of Income Tax for the time being appointed**
- 24 **under section 105 of the *Income Tax Act 1970*;“ and**



1 “**Collector**” means the Collector of Customs and Excise for the time being  
2 appointed under section 1 of the *Customs and Excise Management Act*  
3 *1986*;

4 **4 Customs and Excise Management Act 1986 amended**

5 In section 1(1) of the *Customs and Excise Management Act 1986* for “the Collector  
6 of customs and excise (in this Act referred to as “the Collector”)” substitute “the  
7 Collector”.

IN THE KEYS

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**INCOME TAX (AMENDMENT) BILL 2013**

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A **BILL** to amend the law about  
income tax; and for connected  
purposes.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR TEARE

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OCTOBER 2013