

## Tax Talk: 1. Company Taxation

Written by PAG

Saturday, 23 September 2017 17:16

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In the past PAG has published various articles about the taxation regime in the Isle of Man. We continue this with a couple of more contributions. The first, below, questions the impact of the zero rate of company tax on IOM residents and on the General Revenue Account of the IOM Government. Later, the second will question the quality of some of the enabling IOM legislation.

### 1. IS IOM COMPANY TAX FAIR?

Individuals residing in the Isle of Man can own and operate companies for a variety of perfectly good and lawful reasons, including good house-keeping, limited liability for shareholders and, where certain assets in the United Kingdom are held, the avoidance of United Kingdom inheritance tax. This has been the case for well nigh 60 years and, for most of that time, companies, like individuals, were liable to Manx income tax in respect of their respective taxable incomes calculated at the standard rate of 21.25% and then the standard rate of 20%.

With the advent of the zero rate of income tax for companies and the repeal of the Attribution Regime for Individuals ('ARI') in 2012, everything changed. The income of companies residing in the Isle of Man, including those owned or partially owned by individual persons residing in the Island, is, in effect, no longer charged to Manx income tax by reason of the operation of the zero rate of company tax and the repeal of the ARI.

As a direct consequence, an individual person residing in the Isle of Man pays no Manx resident income tax in respect of any income which he or she beneficially owns if he or she arranges for such income to arise or accrue to a company or companies residing in the Isle of Man which he or she beneficially owns.

In the year ended 31

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March, 2013, there were 7,638 companies which were owned or partly owned by individual persons residing in the Isle of Man. These companies enjoyed taxable incomes (i.e. total incomes, less dividends paid) of £644million. Stating the obvious, income tax calculated at the zero rate results in NO Manx income tax having to be paid by these companies, whereas income tax calculated at the rate of 20% (albeit before tweaking for Manx rental income and foreign taxed income) would surely have resulted in these companies having to pay Manx income tax amounting to some £129million.

In the year ended 31

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March, 2014, there were 8028 companies which were owned or partly owned by individual persons residing in the Isle of Man. These companies enjoyed taxable incomes (i.e. total incomes, less dividends paid) of £907million. Stating the obvious, income tax calculated at the zero rate results in NO Manx income tax having to be paid by these companies, whereas income tax calculated at the rate of 20% (albeit before tweaking for Manx rental income and foreign taxed income) would surely have resulted in these companies having to pay Manx

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income tax amounting to some £181million.

In the year ended 31

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March, 2015, there were 8029 companies which were owned or partly owned by individual persons residing in the Isle of Man. These companies enjoyed taxable incomes (i.e. total incomes, less dividends paid) of £1,227million. Stating the obvious, income tax calculated at the zero rate results in NO Manx income tax having to be paid by these companies, whereas income tax calculated at the rate of 20% (albeit before tweaking for Manx rental income and foreign taxed income) would surely have resulted in these companies having to pay Manx income tax amounting to some £245million.

In the year ended 31

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March, 2016, there were 8048 companies which were owned or partly owned by individual persons residing in the Isle of Man. These companies enjoyed taxable incomes (i.e. total incomes, less dividends paid) of £871million. Stating the obvious, income tax calculated at the zero rate results in a NO Manx income tax having to be paid by these companies, whereas income tax calculated at the rate of 20% (albeit before tweaking for Manx rental income and foreign taxed income) would surely have resulted in these companies having to pay Manx income tax amounting to some £174million.

In general terms, therefore, for every £5,000 of income which arises or accrues to a company residing in the Isle of Man which is owned or partly owned by an individual person or individual persons residing in the Island, £1,000 of Manx resident income tax is effectively 'lost' to the General Revenue Account of the Isle of Man Government.

The figures for the year ended 31

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March, 2017, will not be available before June, 2018. Nevertheless, it looks as if something of the order of £200million each year is now being 'lost' to the General Revenue Account of the Isle of Man Government by courtesy of the zero rate of Manx income tax 'charged' on the taxable incomes of companies residing in the Isle of Man which are owned or partly owned by individual persons residing in the Island.

In any event, it is surely NOT the fault of any individual person who lawfully:

- resides in the Isle of Man;
- incorporates a private investment company which resides in the Isle of Man for Manx income tax purposes;

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- advances say £100million on loan to the company;
- sells his or her investments worth say £100million to the company for £100million;
- is paid £100million by the company for his or her investments; and
- sees the company's investments thereafter produce an annual income of, say, £5million which is retained in the company,

...with the result that the company has NO LIABILITY to Manx resident income tax each year due to the operation of the zero rate of company income tax (i.e. by courtesy of legislation 'enacted' by Tynwald).

In all likelihood, however, such an individual person who owns, manages and controls such a company is likely to meet his or her living expenses out of:

- repayments of his or her loan to the company (i.e. capital repayments); and/or
- distributions of income made or remuneration paid by the company; and/or
- any 'other' income to which he or she may be entitled and which cannot easily be moved into the company.

Indeed, he or she may well find himself or herself paying a modest amount of Manx resident income tax, if only in respect of any such:

- distributions of income made or remuneration paid by the company; and/or
- any 'other' income to which he or she may be entitled.

But is it fair? Surely not. After all, such individual persons who are so entitled to pay little or no Manx resident income tax are still surely entitled to rely on public services in the Island: entitled, for example, to expect the police to attend their houses if they are burgled, to use the public roads and to be treated at Noble's Hospital if they should fall ill. Neither can the utilisation of companies by individual persons residing in the Isle of Man be called 'Manx tax avoidance' or 'avoidance of Manx tax' in the strictest sense under present Manx law. Rather, it must surely be regarded as the blameless utilisation of a facility which has been knowingly granted by Tynwald to individual persons residing in the Isle of Man who, as a result, are able to accumulate part or all of their respective incomes in their companies for the most part free from Manx resident income tax. Accordingly, it is surely reasonable that the facility be known as the Island's 'Tax Free Facility', as distinct from the Island's 'Tax Cap'.

The fact that 'ordinary' employees and pensioners residing in the Isle of Man continue to have to pay Manx resident income tax on the full amounts of their total incomes, less personal allowances, (i.e. taxable incomes) calculated at 10% and 20% does not appear to have troubled successive Treasury Ministers in spite of the fact that they too claimed to be seeking to establish a fair system of income tax. They seem to have been only too happy to discuss the Tax Cap, but were in denial over the Tax Free Facility.

It is not as if the General Revenue Account of the Isle of Man Government does not need the

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money. Who knows how long it will be before the Treasury will be looking to raise the rate of personal income tax charged on employees and pensioners residing in the Isle of Man from the current 20% to 21%, 22%, 23%, 24% or, even, 25% to meet the Isle of Man Government's necessary expenditures?