

**STUART SMALLEY & Co LLC**  
**SOLICITORS**

**THE ISLE OF MAN**

*briefing*

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## THE ISLE OF MAN

### **1. Introduction**

Over the last 25 years, the Isle of Man has developed into one of the world's leading financial centres. It has enjoyed a period of more than 25 years unbroken economic growth and even during a global recession expects to expand for the year 2009/10 by 2.5 per cent.

Income per head has grown from half the UK average in 1981 to more than 13 percent above and the population has grown to approximately 81,000, stemming net emigration that was a feature of life until the 1960's.

Before 1961, the economy of the Isle of Man had suffered a period of decline. This was reflected in a fall in its resident population by some 5% during the 1950's.

The Isle of Man Government adopted, as a solution to the difficulties, a policy of low direct taxation supplemented by incentives for new industries. In 1961, surtax was abolished and since that date the Island has continued a policy of low personal and corporate taxation, supplemented by the introduction of flat rate taxes for non-resident and exempt companies.

The Island is somewhat unusual amongst offshore financial centres in that the Government encourages both new residents and new businesses and has the space to accommodate both.

Film, space technology, E-Business and ship & aircraft management are just some of the sectors that have grown over the last five years. At the time of writing, the shipping register has 1,070 vessels registered with 10.1million of tonnage including 87 large luxury yachts. The aircraft registry which began in May 2007 already has 173 private aircraft registered. The Isle of Man brand, through the slogan "freedom to flourish" boasts the marketing of the Island as a leading international financial centre in which to do business.

As a result, the continued growth of the Isle of Man as a leading financial centre has attracted considerable external scrutiny. Recent reviews by the United Kingdom Government, the Michael Foot Report, the Financial Action Task Force ("FATF"),

the Organisation for Economic Co-operation and Development ("OECD") and the International Monetary Fund ("IMF") have found the Island to have a high level of compliance with FATF, OECD and IMF standards, and highlight the Island as one of the leading offshore financial centres.

On 1 December 2009, it was confirmed the Isle of Man has a robust financial position and it retained its AAA credit rating from Standard and Poor.

### **2. Background**

#### **2.1 Geography**

The Isle of Man covers an area of approximately 221 square miles and lies in the middle of the Irish Sea, almost equidistant from England, Ireland, Scotland and Wales.

The capital, Douglas, and its suburbs contain over one-third of the population.

#### **2.2 Climate**

The Island has a temperate climate and, due to the influence of the sea, rarely experiences extremes of either heat or cold. The monthly average of sunshine hours is 130. The sunniest months are April, May and June when the monthly average is 210 hours. Rainfall is variable, dependent upon locality, and frost and snowfall are relatively infrequent.

#### **2.3 Constitution and Government**

The official status of the Isle of Man is that of a Crown Dependency. It has an independent parliament, known as Tynwald, which legislates on all domestic matters including taxation. Tynwald consists of a lower house, the Keys, with 24 members elected for a five-year term by universal adult suffrage, and an upper house, the Legislative Council, comprising the Bishop and the Attorney General (the latter of whom may not vote) and eight members elected by the Keys for a five-year term. It is not permissible to be a member of both houses of Tynwald. The Queen as 'Lord of Mann' is ultimately responsible for the government of the Island and all Manx legislation must receive Royal Assent. A Lieutenant Governor represents the Crown on the Island. Since September 1981 power has been delegated to the Governor to grant Royal Assent on the Island for all domestic legislation. The

Isle of Man is not represented in the United Kingdom parliament and the legislation of that parliament does not therefore generally apply to it. Certain United Kingdom legislation is extended to cover the Island following consultation between the two Governments. The United Kingdom has responsibility for the Island's external relations. The Island is, however, excluded, by way of an amendment to the Treaty of Rome and protocol to the Treaty of Accession, from all aspects of the Treaty of Rome other than those which relate to free trade of industrial and agricultural products within the community. With the exception of certain levies on agricultural products and the Common External Tariff, the Island is permitted to decide upon the level of its own taxation. The effect of the status accorded to the Island is that, whilst being excluded from the requirements laid down in respect of the harmonisation of taxes, there is free movement of goods between the Isle of Man and the countries of the European Economic Community.

## **2.4 Economy**

The economy of the Isle of Man in the latter part of the nineteenth century and the early part of the twentieth was based largely upon tourism. However, this has been in decline continuously over the last half century. This has consistently led the Government to look for different and more diversified forms of economic activity. Manufacturing contributes some 10% of the Manx gross national product, although its relative importance has declined in the face of the growth of the financial sector. Whilst aiming at a broadly based economy, the Government actively supports and encourages the finance sector, recognising the important role that it played in the economy of the Island since the 1970's and also the fact that activity in this sector stimulates economic activity elsewhere.

## **2.5 Population**

At the last census in 2006 the Island's population was 80,058, an increase of around 5% since 2001. The population density is approximately 324 people per square mile which compares favourably with all but the most rural areas of the United Kingdom.

## **2.6 Language**

The official language is English.

## **2.7 Currency**

The currency of the Isle of Man is sterling, although the Isle of Man issues its own bank notes and coins. These notes and coins circulate freely with those of the United Kingdom, and on the Island the two currencies are totally interchangeable.

## **2.8 Travel and communications**

### **(a) Travel**

The Isle of Man is served by Ronaldsway Airport in the south of the Island some eight miles from Douglas. There are regular services on at least a daily basis to London, Manchester, Dublin, Belfast, Blackpool, Liverpool, Leeds Bradford, Glasgow, and Edinburgh and also services on a less frequent basis to other cities in the United Kingdom. There are no direct international links.

The Island has some 500 miles of road, mostly maintained to a high standard, and main roads connect all the major centres of population. Rail services are seasonal and largely provided for tourist purposes.

The principal port is situated at Douglas and has deep water berths and facilities for handling passengers, vehicles and cargo. Douglas and Peel have marinas for luxury yachts.

### **(b) Communications**

Telephone, telefax and telex services are excellent and lines readily available. The postal services work in very close liaison with those in the United Kingdom and the service is of a high standard. International courier services are available with connections via Heathrow.

## **2.9 Setting up an office**

### **(a) Premises**

There are no restrictions on the ownership of real estate by foreign nationals.

Rented accommodation is available at prices varying from approximately £15 per square foot for offices in older converted premises to £25 per square foot in newly completed purpose-built office blocks.

(b) Employment

*Foreign nationals*

The immigration procedures of the Isle of Man are harmonised with those of the United Kingdom, and an individual who qualifies for residence under the United Kingdom rules will also qualify for residence in the Isle of Man. All 'non-Manx workers', however, are required to hold a work permit. The work permits are administered by the Isle of Man Department of Health and Social Security and it is necessary for an employer to satisfy the Department that no suitable Manx worker is available. In the current situation of minimal unemployment, there is normally no difficulty in obtaining a work permit in respect of qualified staff or senior personnel.

*Local staff*

The Isle of Man has effectively nil unemployment. The recruitment of local staff can be something of a premium.

(c) Residential accommodation, quality of life and cost of living

There is a good deal of residential accommodation available on the Isle of Man for purchase. Property available for rental is often of a lower standard. There are no restrictions on the purchase of property in the Isle of Man. The price of property available ranges from approximately £175,000 for a recently converted flat to £650,000 for a detached house in its own grounds, although there are many luxury properties extending in price up to £5 million. The quality of life in the Isle of Man is excellent and there is little serious crime. In common with most small islands, cultural activities at the highest level are absent.

The cost of living is a little higher than that in the United Kingdom because of the lack of economies of scale as well as the increased transport costs

**2.10 Immigration**

As already stated in 2.9(b) above, any individual who is entitled to settle in the United Kingdom is entitled to settle in the Isle of Man. There are no other restrictions on taking up residence in the Isle of Man except for the restrictions which relate to the taking up of employment or self-employment on the Island.

Free state education and health care will normally be available to any resident of the Isle of Man although restrictions may apply, in the case of new residents or their families, to the grant aid otherwise available for further education.

**2.11 Confidentiality**

There are no banking laws guaranteeing secrecy, although the banks will normally protect the confidentiality of their customers' affairs and decline to supply information outside their mandate.

The Isle of Man has three operational full double tax treaties; one with the United Kingdom another with Estonia and a further agreement with Malta. A double taxation agreement between the Isle of Man and Belgium is at the time of writing awaiting ratification. The agreements provide for a limited exchange of information between the Revenue authorities. There are also agreements with Australia, Denmark, the Faroe Islands, Finland, Greenland, Iceland, Ireland, the Netherlands, Norway, Sweden, United Kingdom and the USA for the exchange of information relating to taxes providing for the exchange of information that is foreseeably relevant to the administration and enforcement of the contracting parties concerning taxes which can include information that is relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Similar agreements have recently been signed with Germany, France and New Zealand and are awaiting ratification.

Limited treaties with the following countries also cover shipping/ aircraft profits:- Denmark, the Faroe Islands, Finland, Greenland, Iceland, the Netherlands, Norway, Sweden, and the USA. Agreements for Germany and France are awaiting ratification.

**3. Business Entities**

The business entities available in the Isle of Man are:-

- (i) a company limited by shares, which may be either a public or a private company;
- (ii) a company limited by guarantee (either with or without share capital);
- (iii) Limited liability companies (LLC's) based upon the Delaware model;

- (iv) an unlimited company;
- (v) Protected Cell Companies (PCC's);
- (vi) The New Manx Vehicle created by the Isle of Man Companies Act 2006. (Further details are contained in our Companies Briefing);
- (vii) partnerships, both limited and unlimited; and
- (viii) branches.

Of these, the limited company is most commonly used by foreign investors, and in most cases the form of such a limited company will be the private company. Also in common use is the branch of an overseas company.

### 3.1 Companies limited by shares

#### (a) Authorisation required

No specific authorisation is required to incorporate a company in the Isle of Man, unless the proposed company will undertake a business which is subject to special regulatory requirements, such as banking or insurance.

There are no exchange controls in force in the Isle of Man, and accordingly no such consents are required.

#### (b) Name

Before granting approval for the use of a particular name, the Registrar will consider a number of issues. In the first instance, he will ensure that a company of the same name is not already registered. He will also consider the wider issue of the general desirability of a particular proposed name.

Amongst names that will be refused, unless they are justified, are those containing the words 'Building Society' or 'Co-operative'. Similarly 'Bank', 'Chamber of Commerce', 'Council', 'Corporation', 'Institute', 'Insurance', 'International', 'Investment Trust', 'Register', 'Trust', 'Unit Trust' and 'Tynwald' will only be permitted where circumstances justify their use.

Names are not ordinarily allowed which suggest any connection with the Crown, a government department, statutory undertakings, a local authority

or any Commonwealth or foreign government. Accordingly 'Imperial' and 'Commonwealth' will not normally be permitted.

The word 'British' is not allowed in a name unless the undertaking is British controlled and British owned, neither will it be allowed where the name of the company taken as a whole would give the impression that the company was pre-eminent in its particular field of activity.

The same considerations apply to the use of the expressions 'National', 'United Kingdom', 'Great Britain', 'Northern Ireland', 'Scotland', 'Isle of Man' and various derivatives of all of these names.

Finally the Registrar considers that the use of some words in a name requires both justification and a higher fully paid up share capital, for example 'International', 'Anglo', 'Manx', 'Global' and 'Worldwide' require detailed justification.

#### (c) Availability of companies

Companies are available 'off-the-shelf' and it is possible to change the name of a 'shelf' company by resolution of the members. Where a specific name is required at the outset, the period of time involved in the formation will normally be from three days although this may be expedited.

#### (d) The minimum costs of a company

The minimum formation cost of a company from a professional office is likely to be in the region of £850, exclusive of duties.

The minimum annual running costs incurred by a professional firm are likely to be in the region of:

basic annual administration and provision of nominee shareholders	£1500
provision of directors	£480

It should be stressed that these figures are based upon the minimum fees of a professional firm.

The minimum cost of liquidating a Manx company will be in the region of £1500, and in the case of a company with neither assets nor liabilities the cost of striking off is approximately £550.

e) Share capital

A company needs only one shareholder, so that the minimum issued share capital is £1. It is normal to authorise 2,000 shares, as this is the maximum number falling within the first tranche of duty. The share capital of a company may be denominated in any currency.

(f) Shares

Shares issued must have a par value, but may be issued nil paid or at a premium. It is possible to issue shares for consideration other than cash, in which case it is necessary to register a copy of the relevant contract at the Registry. Shares may be issued with special rights set out in the Articles of Association. The Articles often place the issue of shares and the terms of issue at the discretion of the directors.

(g) Increase in share capital

The share capital of a company may be increased by resolution of the members. The requisite forms must be filed with the Registry. Duty is charged at the rate of £16 per thousand of the increase in the capital to the maximum fee of £5,000.

(h) Reduction in share capital

A company may not purchase its own shares, unless they are issued as redeemable preference shares, or, subject to limited exceptions, provide financial assistance to anyone for the purchase of the company's shares. A private company may issue share warrants to bearer.

The share capital of a company may be reduced by special resolution of the company. In addition, it will be necessary to petition the Court for an order confirming the reduction. The average cost of making such an application would be in the region of £500, where it relates to a private company.

(i) Shareholders

The shareholders of a company may be bodies corporate. There are no restrictions relating to the nationality of the shareholders. Nominee shareholders are frequently used in order to maintain confidentiality.

(j) Meetings

Every company must hold an annual general meeting at least once every calendar year, and not more than 15 months may elapse between the dates of such meetings. There are no restrictions as to the territory in which such meetings may be held.

Likewise, there are no restrictions as to where directors' meetings are to be held, except in the case of a non-resident company.

(k) Directors, secretary and officers

The minimum number of directors required is two. They must be individuals. There are no restrictions regarding the nationality of directors. Nominees are widely used in practice.

A public company is required to have a suitably qualified person to act as company secretary.

(l) Registered office

Every company incorporated in the Isle of Man must have a registered office situated there. This is normally located at the offices of the company's professional advisers.

The Isle of Man has introduced licensing for corporate and trust service providers who must comply with the Financial Services Act 2008. Where administration and corporate or trust services are provided by a corporate or trust service provider in the Isle of Man the corporate or trust service provider must hold the requisite licence to carry out those services.

(m) Objects clause

Since 1 June 1988, companies governed by the provisions of Section 2(1) in Part 1 of the Companies Act 1986 have the capacity, and, subject to the Act, the rights, powers and privileges, of an individual and do not have an objects clause in their Memorandum of Association. Section 2(2) of that Act provides that such a company may:-

- (i) issue and allot fully or partly-paid shares in the company;
- (ii) issue debentures of the company;
- (iii) distribute any of the property of the company among the members, in kind or otherwise;
- (iv) give security by charging uncalled capital;

- (v) grant a floating charge on the undertaking or property of the company;
- (vi) procure the company to be registered or recognised as a body corporate in any place outside the Island;
- (vii) make provision in connection with the cessation of the whole or part of the business of the company, for the benefit of employees or former employees of the company, or of a subsidiary of the company, or for the dependants of such employees or former employees; and
- (viii) do any other act that it is authorised to do by any statutory provision or rule of law.

Such a company may insert regulations in its Memorandum of Association limiting Section 2(2) rights, powers and privileges, but may not otherwise affect its capacity in its Memorandum of Association.

(n) Audit

The directors of a resident company are required to keep proper books of account and lay a balance sheet and profit and loss account, which is required to be consolidated in the case of a group, before each annual general meeting. The accounting period may not, in normal circumstances, exceed 18 months. To constitute proper books and records, they must give a true and fair view of the company's affairs and explain its transactions. The audit requirement may be dispensed with by unanimous resolution of the members. An auditor if appointed must be a professionally qualified person.

The Companies Act 1992 introduced provisions to enable regulations to be passed to deregulate the affairs of private companies. The accounting requirements remain. The regulations contain provisions to protect the interests of dissident members.

(o) Information on public record

The information placed on public record at the Registry consists of the names and addresses of directors and shareholders. Charges registered against the company will also be recorded. As has been mentioned above nominee shareholders are acceptable and no permissions are required to appoint nominees as shareholders. There is no requirement to reveal on the Register of Companies the identity of the beneficial owner of a Manx

company. However companies licensed by the Financial Supervision Commission do have to reveal beneficial ownership.

### 3.2 Branch of a foreign company

(a) Authorisation and procedure

There is no requirement for a company incorporated outside the Isle of Man to make an advance application in order to establish a branch or place of business in the Island. An overseas company with such a place of business or branch on the Island must file with the Registry the information as detailed below.

(b) Information on public record

The information placed on public record is as follows:-

- (i) a certified copy of the Charter, Statutes or Memorandum and Articles of Association of the company, or other instrument constituting or defining the constitution of the company. If the instrument is not written in English, a certified translation must be provided;
- (ii) a list of directors and secretaries of the company containing such particulars as would be required in the case of a Manx company;
- (iii) the name and address of one or more persons resident in the Isle of Man authorised to accept, on behalf of the company, service of process and any other notices required to be served on the company.
- (iv) a designated officer, who may also be the nominated official in (iii) above, who is responsible for delivering and registering documents on behalf of a company

## 4. Recognition of Trusts

The Isle of Man is a common law jurisdiction and the trust concept has been established for many years. The sources of trust law are judicial precedent and statute. With certain, sometimes important, exceptions the law is similar to that of England and Wales.

The principal Manx trust statutes are the Trustee Act 1961, the Variation of Trusts Act 1961, the Perpetuities and Accumulations Act 1968 the Recognition of Trusts Act 1988, and the Trustee Act 2001. The Isle of Man has no statute corresponding to the United Kingdom Trustee Investments Act 1961 but the powers conferred on the trustees by the Trustee Act 2001 include the power for a trustee to 'make any kind of investment that he could make if he were absolutely entitled to the assets of the trust'. As a result of the Trustee Act 2001 the perpetuity period for a trust in the Isle of Man can be up to 150 years.

The Recognition of Trusts Act 1988 which came into force on 1 July 1989 brings into effect the Hague Convention on Trusts. It clarifies the circumstances in which Manx law will recognise a trust. A clear choice of law clause should be effective to have trusts recognised in the Isle of Man under the Act. Where there is no clear choice of law clause or where the law chosen does not provide for trusts then a trust shall be governed by the law with which it is most closely connected.

The differences between the Isle of Man and the United Kingdom statutory regimes arise largely from the fact that the Isle of Man has not adopted certain of the provisions contained in the United Kingdom Law of Property Act 1925. In particular the restrictions on accumulation of income contained in Section 164 of that Act have no Isle of Man equivalent. Thus it is possible to accumulate the income from trusts for the whole of the perpetuity period.

There is no requirement for a Manx trust to be registered and accordingly no information in respect of a Manx trust is placed on public record.

#### **4.1 Taxation of trusts**

In the case of a trust administered in the Isle of Man and with no resident beneficiaries, neither the trustees nor the beneficiaries are liable to Manx tax on income from a non-Isle of Man source (and by extra-statutory concession this rule is extended to certain approved sources of income arising in the Isle of Man). These rules apply whether or not the income is distributed.

## **5. Taxation**

### **5.1 Introduction**

Since 1961, the Isle of Man has adopted a policy of low direct taxation for individuals and businesses, with specific flat rate taxes applied to certain types of company.

### **5.2 Direct taxes**

There are, in effect, two direct taxes: income tax (personal and corporate, as there is no separate corporation tax); and national insurance contributions. The former is imposed by the Income Tax Act 1970 as subsequently amended, the latter by the Social Security Act 1982. In each case the tax year currently runs from 6 April to 5 April. There are no capital gains or gift taxes and no estate, death or stamp duties.

#### **(a) Individuals**

An individual resident in the Isle of Man is subject to income tax on his worldwide income. The Income Tax Acts 1970 to 2009 set out rules for quantifying the assessable income from each source. The total taxable income for the year of assessment is then reduced by any annual charges, such as interest paid. Relief for personal circumstances is granted by way of personal allowances. A single person is entitled to a personal allowance of £9,300 on a lower income limit and a married couple to approximately £18,600. The allowances are fully transferable between husband and wife.

The first £10,500 of a single person's taxable income and the first £21,000 of the income of a married couple is taxed at 10%. Single persons may have incomes of £19,800 and married couples £39,600 before paying tax at the higher rate of 20%.

A non-resident is subject to Manx non-resident income tax in respect of his Manx source income. A non-resident is not entitled to any personal allowances.

#### **(b) Corporations**

The 2006 Isle of Man budget implemented a new taxation strategy for companies resident in the Isle of Man. With effect from the 6<sup>th</sup> April 2006 the

general rate of income tax for a company is 0%. A higher rate of 10% will apply only to income arising from:-

- (i) Banking business carried on by banks licensed under the Isle of Man banking Act 1998,
- (ii) Property or land in the Isle of Man from which rental income and profits derive, and also all income derived from developing land on the Island.

The Isle of Man has repealed the tax exempt company status. Previously, if a company met all of the relevant criteria, they could apply to the Assessor of Income Tax for income tax exempt status if an annual fee was paid. From 6<sup>th</sup> April 2007 all companies incorporated on the Isle of Man will be treated as being resident in the Isle of Man for tax purposes and are subject to the new taxation strategy.

As from 6<sup>th</sup> April 2006 a new Distributable Profits Charge applies to all companies. This coincided with the 0% tax regime and has the effect of discouraging companies from rolling up profits using the new regime. The charge is payable by a company only for profits that are attributable to but have not been distributed to owners of the company. This charge is not payable by companies resident outside the Isle of Man, only companies that are resident.

A new requirement of the taxation strategy after 5<sup>th</sup> April 2007 is that all companies now have to file tax returns including previously exempt companies.

Companies who meet certain criteria can apply for audit exempt status by provision of the Isle of Man Companies Act 1931. This allows a company to elect to be exempt from the requirements set out for the audit of accounts.

The 2006 Isle of Man budget also introduced a new 'corporate charge' for companies. This is £250 payable annually by all corporate taxpayers except those that have been exempted or companies that have already paid a fee.

#### (c) Deductions and other adjustments

As a general rule, the following are allowable as deductions from the profits of a company:-

- (i) disbursements or expenses wholly or exclusively laid out or expended in acquiring the income (as under the United Kingdom Schedule D rules, except that a reasonable level of entertaining expenses is normally allowable);
- (ii) capital allowances, which are granted under rules similar to those applying in the United Kingdom prior to the Finance Act 1984. In particular, first-year allowances continue at 100% in respect of plant and machinery;
- (iii) so much of its income as is distributed to its shareholders or stockholders by way of dividend, bonus, interest, or share of profits. If payments under any of these categories are made to non-residents, they will normally be subject to withholding tax of 18%.

#### (d) Withholding taxes

A Manx resident company paying dividends, interest or royalties to a non-resident will normally be required to account for Manx non-resident tax. The current rate of non-resident tax is 18%.

In the case of salaries it will not normally be necessary to withhold tax where the salaries are paid for duties performed outside the Isle of Man.

No withholding taxes apply to dividends, interest, royalties or salaries paid by either a company liable to NRCDC or an exempt company.

#### e) European Savings Directive

Pursuant to the European Savings Directive, Stuart Smalley & Co LLC offers our individual clients, during the transition period, the choice of either our accounting to the Isle of Man Government for 20% of the interest accrued or disclosing the individual client's details to enable an exchange of information to take place. Our accounts department will complete the appropriate return. In 2011 the rate of retention tax payable under the Directive will increase to 35%.

Where payment of interest to a non-resident individual is not covered by extra statutory concessions, withholding tax at the rate of 18% must be made unless the individual concerned is a resident in an EU Member State, in which case the European Savings Directive will apply.

f) Double tax treaties

The Isle of Man has three comprehensive Double tax treaties one with the United Kingdom, another with Estonia and a further agreement with Malta. The double taxation treaty with the United Kingdom is not in OECD form and does not provide for reductions of withholding taxes on either side. Tax paid in or withheld in one territory is allowed as a credit against tax in the other. However, this does not apply in the case of dividends or debenture interest payable by a company resident in the United Kingdom to an Isle of Man company.

There are also agreements with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Ireland, the Netherlands, Norway, Sweden, United Kingdom and the USA for the exchange of information relating to taxes providing for the exchange of information that is foreseeably relevant to the administration and enforcement of the contracting parties concerning taxes which can include information that is relevant to the determination, assessment and collection of taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Similar agreements have recently been signed with Australia, Germany, France and New Zealand and are awaiting ratification.

There are also limited treaties with the following countries which also cover shipping/aircraft profits:- Denmark, the Faroe Islands, Finland, Greenland, Iceland, the Netherlands, Norway, Sweden, and the USA. Agreements for Germany and France are awaiting ratification.

(g) Special treaty provisions

A most important provision is that an enterprise of one country will not be liable to tax in the other unless it is trading through a permanent establishment there.

(h) Anti-avoidance legislation

Amendments to the Income Tax Act 1980 introduced in the Income Tax Act 1989 granted the Assessor extremely wide powers in terms of anti-avoidance. The act as amended provides:-

If the Assessor is of the opinion that the main purpose, or one of the main purposes, of any transaction is the avoidance or reduction of the liability of any person to income tax, the Assessor

may, subject to various provisions, make such assessment or additional assessment on that person as the Assessor considers appropriate to counteract the avoidance or reduction of liability.

The Assessor will not invoke the powers if it can be shown to his satisfaction:-

- (i) that the reduction or avoidance of liability to income tax was not the main purpose or one of the main purposes for which the transaction was effected; or
- (ii) that the transaction was a bona fide commercial transaction and was not designed for the purpose of avoiding or reducing liability to income tax.

(i) Credit for overseas taxes

Unilateral relief will be granted for foreign taxes paid at the lower of the actual rate of tax suffered and the foreign effective rate, which is expressed as a percentage and is calculated as follows:-

$$\frac{\text{Amount of foreign tax}}{\text{Gross amount of foreign income}} \times 100$$

The rate at which relief for foreign tax is granted can never exceed the standard rate of income tax, currently 20%.

### 5.3 Estate duty, inheritance and gift taxes

There is no estate duty, and no inheritance or gift taxes are levied, in the Isle of Man.

### 5.4 Indirect taxes

(a) Duties and value added tax (VAT)

Since 1 April 1980 the Isle of Man has been totally independent from the United Kingdom for the purposes of Customs and Excise administration. Duties are currently at the same level in both countries, with minor exceptions, and as a consequence, goods and passengers may travel between the two without customs formalities. In addition, all value added tax requirements, duties and responsibilities with regard to registration and the making of returns apply in the Isle of Man under similar terms and conditions to those imposed in the United Kingdom. As in the United Kingdom, there are only two rates of VAT, the zero rate and the standard rate, which is currently 15% (returning to 17.5% in January 2010). Returns and payments are made locally to the Manx Treasury.

The Manx Government has agreed to notify the United Kingdom Government of any change in the rates of customs duties or value added tax and to obtain its prior agreement to such changes, as this would involve the United Kingdom in setting up customs posts at designated ports of entry from the Isle of Man.

(b) **Capital duty**

The Isle of Man imposes capital duty upon the incorporation of an Isle of Man company. The duty is calculated by reference to the authorised share capital of the company. Capital duty is at the rate of £130 in respect of the first £2,000 of share capital with each subsequent tranche of £1,000 authorised capital incurring a charge of £16 (i.e. 1.6%), subject to a maximum fee payable of £5,000.

The Isle of Man does not impose stamp duties; a duty usually levied on transactions by reference to their value.

## **5.5 Social security**

The Isle of Man operates a comprehensive social security system.

The National Insurance contributions and benefits of the Isle of Man resemble closely those of the United Kingdom. Laws and regulations relating to United Kingdom contributions are normally imported into the Isle of Man legislation by order of Tynwald with little or no amendment by virtue of the provisions of the Social Security Act 1982. In addition, the two countries have entered into a reciprocal agreement.

## **5.6 Other taxes/business licences**

There are no significant other taxes.

## **6. Exchange Control**

Prior to the suspension of exchange controls in 1979, the Island was part of the sterling area. However, the United Kingdom Exchange Control Act 1947 was finally repealed by the Finance Act 1987, and the Isle of Man Government has no intention of imposing any form of exchange control regulations of its own.

## **7. Special Categories of Company**

### **7.1 Insurance Companies**

The Manx Government is particularly keen to encourage insurance business to the Isle of Man, and has declared itself to be fully committed to the development of such business. To this end, it has granted exemption from Manx income tax in respect of both the underwriting and the investment income of insurance companies which trade outside the Island. Control of the insurance industry is exercised by the Insurance and Pensions Authority, which is responsible under the Insurance Act 2008 for the administration of the Act and its supporting regulations. Section 3 of the Insurance Act 1986 states that no-one may carry on an insurance business in or from the Isle of Man, No Manx company may carry on an insurance business outside the Island, unless they are:-

- (i) authorised by the Insurance Supervisor;
- (ii) permitted to do so by virtue of being a non-Isle of Man insurance company licensed to operate there; or
- (iii) exempted by regulation.

This latter class includes:-

- (i) industrial assurance business carried on by a friendly society;
- (ii) restricted business carried on by a trade union; and
- (iii) restricted internal business carried on in the course of a banking business.

The provisions of the Insurance Act 1986, the supporting regulations and the supervisory powers of the Insurance and Pensions Authority extend to captive insurance companies.

Any application for an insurance licence should be made to the Insurance Supervisor, who will then seek to satisfy himself that the provisions will be met. A registration fee of £1,500, and an initial business fee calculated on a pro rata basis from the date of authorisation to the following 5 April, is payable on notification that authorisation has been granted. The annual business fee payable on or before 6 April in each year is £12,500, which is inclusive of the fee payable to the Assessor of Income Tax for tax exemption. If such exemption is not sought the annual business fee is reduced to £3,250. There are, at the time of writing, 25

registered insurance managers on the Island and approximately 137 registered insurance managers.

## 7.2 Open-Ended Investment Companies

Unlike unit trusts, such companies have limited liability. Under the Financial Supervision Act 1988, they are required to have a trustee and a manager, who must be independent of each other. The share capital of such a company is normally divided into the following categories:-

- (i) shares held by the managers from the outset, normally referred to as 'founder's shares', carrying no right to dividend. They exist in order that the preference shares referred to at (ii) below have a class of share over which they take preference;
- (ii) a large number of participating redeemable preference shares which are the medium by which the public invests in the fund. They are normally of low par value but issued at a premium, minimising capital duty. The shares are issued and redeemed on request; and
- (iii) secondary preference shares which may be subscribed for by the managers to enable the redemption of the preference shares to be made out of the proceeds of a fresh share issue.

The Isle of Man Government specifically introduced provisions in the Companies Act 1981 to enable and indeed encourage the establishment of such funds. Their administration is supervised by the Financial Supervision Commission. In 1988, the Financial Supervision Act was introduced to enable the Isle of Man to obtain for such collective investment schemes designated country status under the United Kingdom Financial Services Act 1986. With effect from April 2006 there is a 0% rate of tax for managers of collective investment schemes if the fund and the manager are in the Isle of Man.

## 7.3 Shipping Companies

It has been possible to register a ship in the Isle of Man for 200 years, but it is only since the introduction of the Merchant Shipping (Registration) Act 1984 that a Manx Ship Register has been established, following consultation with the United Kingdom Government. This has led to the establishment of the Isle of Man as a full maritime convention country. The International Convention on Load Lines 1966 and the International

Convention on Tonnage Measurement 1969 were extended to the Isle of Man on 19 October 1984 and the International Safety of Life at Sea Convention 1974 and its 1978 protocol, the Standards of Training Certification and Watchkeeping for Seafarers Convention 1978 and the International Labour Organisation Convention 1976 No 147 on Seafarers Minimum Standards were extended to the Isle of Man from 1 July 1985. The Department of Highways, Ports and Properties is now charged with the administration of these various conventions in place of the United Kingdom Department of Trade and Industry. The requirements of the Island Ship Register are similar to those of the United Kingdom, and surveys are conducted to United Kingdom standards. Ships registered in the Isle of Man (Manx ships) are still British ships but they form part of a separate register and they are under the jurisdiction of a separate administration. The procedure for registration varies according to whether it is a first registration, being a new ship or previously under a foreign flag, or a transfer from a British port. The first registration or transfer fee is based upon the tonnage of the vessel but thereafter there is no annual fee based thereon. A ship-owning or ship management company may qualify for exempt status and as such will not be liable to income tax on its profits.

## 7.4 Trust Companies

It is possible to form a trust company in the Isle of Man and a corporate trustee acquires the status of 'trust corporation' if approved under the Financial Services Act 2008, which enables it to act as executor of a Manx estate and, in certain circumstances, to give receipts for capital money where otherwise two trustees would be required. A trust corporation may also accept appointment as a sole trustee of an existing trust, if the proper law of the trust is Manx law.

The major requirement in respect of such a company is that it must have a fully paid-up share capital of not less than £25,000.

## 7.5 Hybrid Companies

The Manx Hybrid gains its name from the fact that it combines two forms of limited liability company, those limited by share and by guarantee being a company limited by guarantee and having a share capital.

The origin of this form of company dates back to the Company Act 1865 and its traditional use has been in respect of clubs and associations where membership has needed to be kept distinct from shareholding. A shareholding member normally has the right to income and to the assets in a winding up in proportion to his capital contributed. A guarantee member, who is not required to contribute capital, is required to contribute a pre-determined amount in the event of a winding up.

Hybrid Companies are finding favour with international tax planners not only in the field of timeshare to which they are particularly well suited but also in the fields of Capital Gains Tax planning, financial services, US tax planning and as a substitute for trusts in civil code jurisdictions.

#### **7.6 Limited Liability Companies (LLC's)**

Under the Limited Liability companies Act 1996 as amended an LLC on the Isle of Man can be characterised as follows. Although it is a corporate entity, an LLC has no directors or shareholders. It is owned and managed by its members, whose liability is limited to the extent of their contributions to the capital of the entity. Members interests are transferable.

LLC's can therefore be regarded as a form of incorporated limited liability partnership, however, unlike a limited partnership there is no requirement for any party (the "general" partner in a limited partnership) to retain unlimited liability for the debts and obligations of the entity.

LLC's are treated as partnerships for the purposes of Manx taxation and therefore do not have a liability to tax, rather it is the members who are taxed on the income as if they were partners.

#### **7.7 International Limited Partnerships**

Whilst not specifically a corporate structure these may be conveniently dealt with under this general heading.

An international limited partnership is a partnership which satisfies certain conditions and in respect of which the Assessor has issued a certificate of status. The partnership must be registered under the Partnership Act 1909. All the limited partners other

than International Companies must be non-resident and its activities must not fall into the categories forbidden to Exempt or International companies.

The General Partner must have a director who is resident in the Isle of Man and the General Partner must have an appropriately qualified Manx resident individual acting as its secretary.

A company which is resident in the Island and has a place of business there and must comply with the ownership rules relating to an International company. An application must be made accompanied by a fee of £475. The application must be made not later than 30th June in the year of assessment, or not later than 30 days from the commencement of the partnership's business, whichever is the later. No part of the fee is refundable on cessation.

If the Assessor is satisfied with the application he must issue a certificate but he can require the production to him of accounts for any specified year. If the requirements of the act are contravened the Assessor can assess the whole of the income of the partnership to tax as appropriate under the Income Tax Acts.

*The contents of this briefing first appeared as a contribution to Tolley's Tax Havens published by Butterworth Tolley.*

*Please contact Alison Riley, Martine Fleming or Richard Costain for further information on The Isle of Man or about Stuart Smalley & Co LLC's services in the Isle of Man*

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