

# Isle of Man Customs and Excise Compliance Checks – Third Party Information Notices

We have given you this factsheet because:

- we have given you a third party information notice, or
- we intend to ask the independent VAT and Duties Tribunal that deals with tax to approve our request to give you a third party information notice.

The powers to issue such notices are found in Schedule 36 to the Finance Act 2008 (as applied in the Island).

## **What is a third party information notice**

A third party information notice is a document that legally requires a person to give us certain information and/or documents to help us check another person's indirect tax position.

We refer to the person whose tax position we are checking as the 'first party' and we refer to the person we want information and/or documents from as the 'third party'. So, in respect of this factsheet and our third party information notice, you are the third party.

## **When we use third party information notices**

Sometimes, when we are checking a person's tax position (the first party), we may need information from a third party. This could be because:

- the first party has not been able to give us information that we need or has refused to, or
- we need to independently check business or financial transactions that have taken place.

We may ask for the information we need to be sent to us voluntarily, or we may use an information notice if we need to, or if the third party prefers us to.

## **When we need permission to use a third party notice**

When we need information and/or documents from a third party, we will usually ask the first party to agree to us sending an information notice to a third party. Sometimes we will ask the independent VAT and Duties Tribunal to approve the issue of a third party notice.

If we intend to ask the independent tribunal to approve the issue of a third party notice, we will normally give both the first party and the third party the opportunity to tell us about any problem the third party may have in giving us the information and/or documents we intend to request. For example, we will give both parties the opportunity to tell us if they believe that it would be unduly onerous to comply with a requirement in the notice. If either party expresses any concerns, we will bring them to the attention of the tribunal so that they can take them into consideration when deciding whether to approve the issue of the notice.

When a third party information notice asks for business records that the third party is required by tax law to keep, we do not need the agreement of the first party, or approval from the tribunal, before issuing a third party information notice for them.

## **What the third party information notice will tell you**

If we send you a third party information notice, it will tell you:

- the name of the person to whom it relates (unless the tribunal has decided it does not need to)
- which documents and/or information you must give us
- how and when to give us what we need
- about any appeal rights

## **What information and documents we can ask for in a third party information notice**

We can ask for information and/or documents if we believe they are relevant to our check of the first party's tax position, and that it is reasonable to ask for them.

## **What information and documents we cannot ask for in an information notice**

We cannot use an information notice to ask a third party to give us information or documents:

- that are not in their possession and they cannot get the documents, or copies from whoever holds them
- that relate to the tax position of a person who died more than 4 years before the notice is issued
- that have been created as part of the preparation for a tax appeal
- that are concerned exclusively with a person's physical, mental, spiritual or personal welfare
- that are privileged communications between lawyers and clients for the purpose of getting or giving legal advice
- if the third party is an auditor, tax adviser or journalist and the information or documents have been created for the purposes of their profession
- if the third party is the subject of journalistic material and the information or documents have been created by a journalist for the purposes of their profession

The rules about what information and documents fall into these categories, especially personal or privileged communications, can be complicated. If you think that anything we have asked for may fall into 1 or more of these categories, please discuss this with the officer who gave you this factsheet.

## **What happens before we ask an independent tribunal to approve our request to issue a third party notice**

We only need to ask the tribunal to approve a third party information notice when:

- the information or documents we need are not statutory records that relate to the supply of services or the acquisition of goods and services, and
- the person whose tax position we are checking has not given us permission to give the third party an information notice.

Before we ask the independent tribunal to approve a notice, we will normally give both the first party and the third party the opportunity to make representations to the tribunal about the information or documents we intend to request. The first party or the third party cannot however attend the tribunal hearing.

If we have written to you to tell you that we intend to ask the tribunal to approve our request to give you a third party notice, we will have sent you a copy of this factsheet. If you want to make representations, for example because you believe that it would be unduly onerous to comply with a requirement in the notice, please let us have your reasons by the date in our letter. If however it is more convenient for you to provide us with the information and/or documents on a voluntary basis before we ask the tribunal to approve the information notice, please send the information and/or documents we need to the officer who wrote to you.

## **What to do if you disagree with a third party information notice**

If we send you an information notice and you think that the request is unreasonable, and we do not agree, you may be able to appeal to the VAT and Duties Tribunal. We will tell you how to do this when we give you the notice.

You cannot appeal against a third party information notice that has either been approved by the independent tribunal or is a request for statutory records that relate to any of the following:

- the supply of goods or services
- the acquisition of goods from another member state
- the importation of goods from a place outside the member states in the course of carrying on a business

You can only appeal against a third party information notice that has been approved by the first party when it would be unduly onerous to comply with the notice or a requirement in the notice.

## **What happens if you fail to comply with a third party information notice**

To comply with the notice, you must give us everything that the notice asks for, by the date stated in the notice – or by a later date if we have agreed one with you. If you do not comply with the notice, we may charge you a penalty of £300. If you have still not complied with the notice by the time we have charged you the £300 penalty, we may then charge you daily penalties of up to £60 a day for each day that you do not comply.

Any information you give us must be correct as far as you know. If you give us information or documents that you know are wrong without telling us what is wrong, then you may have to pay a penalty up to a maximum of £3,000.

If you conceal, destroy or otherwise dispose of any document we have asked for in a tribunal approved notice, or arrange for it to be concealed, destroyed or disposed of, you may have to pay a penalty or you may be prosecuted. If we charge you a penalty it will be a penalty of £300. We will then charge you daily penalties of up to £60 a day for each day you fail to comply with the notice by concealing a document.

For the most serious cases the independent tribunal can also impose a further penalty based on the tax that is put at risk by the failure to comply with the notice, concealment, disposal or destruction of the document.

If we agree that you have a reasonable excuse for not giving us information or documents, we will not charge you a penalty but we will still ask you for the information, documents (or replacement documents) to be provided within an agreed amount of time.

A reasonable excuse is normally an unexpected or unusual event that is either unforeseeable or beyond your control. What is or is not a reasonable excuse depends on an individual's abilities and circumstances. Those abilities and circumstances may mean that what is a reasonable excuse for 1 person may not be a reasonable excuse for someone else. If you think you have a reasonable excuse please tell us. Examples of reasonable excuse may include, when:

- you have been seriously ill
- someone close to you has died
- you have lost the documents in a fire or flood.

In the most serious cases of non-compliance, prosecution may lead to a fine or custody for a term not exceeding 2 years, or both (paragraph 55 of Schedule 36 refers).

## **Other types of third party information notices**

### **Third party information notices when the identity of the first party is unknown**

This type of notice requires a third party to provide us with information and/or documents about:

- a person whose identity is not known to us, or
- a class of persons whose individual identities are not known to us.

Normally, this type of notice can only be considered where there are reasonable grounds for believing that failure by a person or persons unknown to comply with the tax law may seriously prejudice the assessment or collection of tax. There are a few exceptions to this rule that relate to, pension matters, subsidiaries, partners, and involved third parties. If these do apply we will tell you and explain what the exceptions mean.

This type of notice must be approved by the VAT and Duties Tribunal.

## **Your principal rights and obligations**

You have:

- the right to be represented – you can appoint anyone to act on your behalf, including professional advisers, friends or relatives;
- the right to consult your adviser – we will allow a reasonable amount of time for you to do so;
- an obligation to take care to get things right – if you have an adviser, you must still take reasonable care to make sure that any returns, documents or details they send us on your behalf are correct.

**This factsheet relates to compliance checks into any of the following:**

Machine Games Duty

VAT

For the full list of factsheets in the Compliance Checks series, go to <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/public-notice/visits-by-customs-and-excise-officers/>