



**Isle of Man
Government**

Reiltys Ellan Vannin

INCOME TAX

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Written Determinations and the Right to Appeal

Guidance Note – GN 56

PLEASE NOTE:

This guidance has no binding force and does not affect your right of appeal on points concerning your liability to tax.

The information in this booklet can be provided in large print on request.

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Introduction

An employer is required by Regulation 19 of the Income Tax (Modified ITIP) Regulations 1987 and paragraph 10 of schedule 4 of the Social Security (Contributions) Regulations 2001 (as applied to the Isle of Man), to pay Income Tax Instalment Payment (ITIP) deductions and earnings-related (Class 1 National Insurance) contributions by the due date.

Failure to make these payments by the due date is an offence under Section 1(2B) of the Income Tax (Instalment Payments) Act 1974 and section 114(1) of the Social Security Administration Act 1992, as applied to the Isle of Man ("the Act").

Regulation 32A of the Income Tax (Modified ITIP) Regulations 1987, states that if a prosecution of a body corporate is successfully brought, each of the directors can be held jointly and severally liable and personally pursued for the unpaid ITIP deductions and National Insurance Contributions.

A person appointed by the Assessor of Income Tax, referred to as an 'Authorised Officer', can make a formal determination that you, as a director, knew or could reasonably be expected to have known of a failure to pay the ITIP deductions and National Insurance Contributions in respect of a company of which you are/were a director. This is known as a Written Determination.

This document concerns the procedures relating to Written Determinations about the failure to pay ITIP deductions and National Insurance Contributions (NICs) and how a determination can be appealed.

Written Determination

Throughout the period of failed payment, we will issue notices, reminders and certificates until payment is received or the matter is referred to H.M. Attorney General. We are available to discuss with you your circumstances and other relevant facts and from the information we will consider how the law applies to your case and explain that to you.

Once we have decided that you, as a director, knew or could reasonably be expected to have known of a failure to pay the ITIP deductions and NICs in respect of a company of which you are/were a director, we will send you a Written Determination.

If you receive a Written Determination and need more information or would like to discuss the matter, please contact the Income Tax Division at the address or telephone number shown on the determination, and quote the reference number at the top of the document.

Letter of explanation

We will send a letter of explanation with the Written Determination.

Variation of determination

A determination may be varied based on the circumstances and facts of your case or following an appeal. We can also vary a determination if it becomes clear that it is incorrect or it has become inappropriate. If we vary the determination you should let us know immediately if you think that the varied decision is wrong.

What to do with your Written Determination

If you have a professional adviser or agent, you should make sure that they see the Written Determination and any explanatory letter at once. We will have sent them copies if they have been involved in the correspondence.

If you accept the decision

If you accept the determination, you should pay any outstanding amount due from you or which you are entitled to pay immediately. Keep your Written Determination in case you need to refer to it in the future.

If you do not accept the decision

If you think the decision is wrong you should appeal against it at once (see section on appeals below). Let us have any further information you have. We may be able to vary the decision. If you appeal you do not have to pay the amount due until your appeal is settled.

Appeals

The appeals procedure is laid down by law and provides a method for disagreements between you and the Assessor to be settled. Most appeals concern disagreements over interpretations of the law or over facts, information or figures you have provided.

Usually agreement is reached by correspondence or discussion and in most cases we will be able to settle the matter with you personally. However, if we disagree with you on a point of law, or if we cannot accept the facts, figures or information you have provided, you can take your appeal to the Income Tax Commissioners (an independent tribunal).

When to appeal

If you decide to appeal a Written Determination, you must do so within 30 days of the date of its issue. Please note that we cannot normally accept late appeals and the same appeal process applies when we vary a decision.

The time limit for appealing may only be extended if you can satisfy us that there were good reasons why you did not appeal within 30 days, and that you are raising the matter as soon as reasonably possible. If we are not satisfied with your reasons then your application to appeal outside the usual time limit will be considered by the Income Tax Commissioners.

We will try to settle the appeal by explaining how the legislation used to make this decision applies to the particular facts of the case. If this is not possible, we will arrange for the appeal to be heard by the Income Tax Commissioners.

How to appeal

An appeal should be made in writing to us at the address shown on your Written Determination. You can use the 'Written Determinations - Appeal Form' (form R246 on the [Employer's Forms](#) page of the income tax website) or you can contact the Commissioners directly. We will need to know:

- your name;
- our reference number which is shown at the top of the Written Determination;
- why you think you, as a director, did not know or could reasonably be expected not to have known of the failure to pay the ITIP deductions and NICs; and
- the name of your agent or representative if you are appointing one.

Each named person to whom the Written Determination is issued has a right of appeal. We will also accept appeals from a professional adviser or agent acting on your behalf.

What happens next

When we receive your appeal we will review our decision. You should let us have any further information you consider relevant with your appeal. We may write to you if something is unclear. If we are able to change our decision we will send you a Written Varied Determination. Let us know immediately if you consider the Varied Determination to be wrong.

If we cannot vary our decision, perhaps because you have not supplied information that we need, your appeal will be decided by the Income Tax Commissioners. You will be told the date, time and place of the hearing. You should attend or send a representative. If you do not attend the Commissioners may determine the appeal in your absence.

Withdrawal of appeal

If you do not wish to continue with your appeal you should contact us immediately. If the appeal has progressed to the Income Tax Commissioners, you must inform the Secretary to the Commissioners in writing and send a copy to the Assessor. The Commissioners may allow you to withdraw an appeal at any time before they have made their decision on your appeal.

Income Tax Commissioners

The Income Tax Commissioners consist of a chairman and eight other commissioners appointed in accordance with the Tribunals Act 2006. The Commissioners are appointed to hear appeals in cases where a person is in dispute with the Assessor. The Commissioners are completely independent of the Assessor and chosen for their impartiality and appropriate experience. They are bound by strict confidentiality rules and are paid a statutory allowance for attending meetings.

They listen to the case presented by both sides and then decide how the dispute is to be settled. This meeting is known as an 'appeal hearing'. Not less than three Commissioners shall attend at the hearing of any case.

We will arrange for the appeal hearing or, if you prefer, you can approach them directly. Contact with the Commissioners should always be made through their Secretary. We can provide you with the contact details if required.

Adjournments

If the appeal hearing has been arranged at your request and we think we will need more time to conclude our enquiries, or it is otherwise not appropriate for your case to be heard at that time, we will tell you and ask the Commissioners to adjourn the hearing to a later date. You are entitled to oppose our request.

If the appeal hearing has been arranged at our request and you need more time to provide information, you can ask the Commissioners to adjourn the hearing to a later date. It will be up to them to decide whether to do so.

Appeal hearing

The Commissioners will expect you to provide them with the written statement of your case no less than 14 days before the date of the hearing. This should set out all of your grounds for appeal.

You can choose whether or not to have your case presented for you by a professional representative, or by any other person, providing the Commissioners do not object. Matters that we need to put to the Commissioners can be complex and involve important issues. We advise you to be professionally represented at any hearing.

We have the right to put our case as well and will aim to ensure that the Commissioners have all the relevant facts about the company you are a director of when considering their decision.

The Commissioners' decision

When the hearing of your appeal has finished, the Commissioners will ask everyone to leave the hearing room while they consider their decision. The Commissioners may reach their decision on a majority vote.

In simple cases the Commissioners may inform you of their decision orally at the end of the hearing but if the case is complex, they may reserve the decision to be notified later. In either case, a written copy of the decision will be sent to you and to the Assessor. The decision will state whether the Commissioners confirm or amend the Written Determination and will normally include a summary of the reasons for the decision.

When the Commissioners reserve the decision in a complex case, their written reasons and the decision may be sent out some weeks after the hearing. The reasons and decision will not be published and will be kept confidential. Sometimes the Assessor will issue guidance or a Practice Note afterwards, taking account of the Commissioners' decision, but you will not be named and your identifying details will be removed.

Appeals to the Income Tax Commissioners

The right to any further appeal is governed by section 90, Income Tax Act 1970.

If the decision of the Commissioners goes against you and you want to take the matter further, there is no appeal from the Commissioners on a question of fact (i.e. matters provided in evidence upon which the Commissioners have based their decision).

An appeal may be made to the Staff of Government Division of the High Court of Justice of the Isle of Man for the determination of a question of law. If you want to appeal to the Staff of Government Division, you must give notice of the appeal to the Assessor within 21 days from receiving the decision issued by the Commissioners. If the Assessor wants to appeal on a question of law, she must first give you written notice of appeal, again within 21 days after receiving the notice of determination.

Broadly speaking, a question of law arises if you think the Commissioners misinterpreted the law relevant to your case, or applied the wrong law, or reached a conclusion which was completely inconsistent with the evidence, or breached the rules of natural justice, i.e. acted unfairly or with bias or prejudice. Before you decide to appeal it is often advisable to seek professional advice from a solicitor, an accountant or a specialist tax adviser.

Advice centres

Advice centres, like the Manx Citizens' Advice Service, can represent you and may help you understand the reasons for the determination. They can also help you to fill in forms or to write a letter. They will sometimes go with you to the appeal hearing. It will help the advice centre if you show them any letters you have about the Written Determination that you think is wrong. Trade unions may also offer free advice to their members. They may also be able to speak for you at the appeal hearing.

Advocates

You may wish to seek your own legal and/or other professional advice for preparing and presenting your case. You will have to meet any costs, including travel costs, but in very limited circumstances assistance may be available for legal advice under the Legal Aid Green Form Scheme.

Legal Aid is not available for proceedings before the Income Tax Commissioners, although very limited assistance may be available (should your means be such as to comply with the rules) under what is termed the Green Form Scheme. This enables an appellant to obtain legal advice from an advocate, but this does not include representation at an appeal hearing.

Further information on the Green Form Scheme is available from the Legal Aid Office by emailing legalaid.treasury@gov.im or by telephoning 685977. You can also seek information from an advocate, of which a list is available from the Isle of Man Law Society website, www.iomlawsociety.co.im or alternatively, the Law Society can be contacted by telephoning 662910.

Remember

- Always give the company's tax reference number when you write to the Assessor.
- The time limit for appealing is 30 days from the date shown on the determination.
- You should attend an appeal hearing if you possibly can, or ask for a postponement if you cannot be present. If you do not attend and have not arranged a postponement, the Commissioners have the power to determine the appeal in your absence.
- Many disputes can be rapidly resolved by answering any queries from the Assessor fully and quickly.

Our service commitment to you

You are entitled to expect the Income Tax Division to be fair, by dealing with the company impartially, by expecting them to pay only what is due, and by acting consistently.

We aim to help you understand your obligations as a company director by providing clear guidance and forms, by giving you information and assistance, and by being courteous at all times.

We aim to provide an efficient service by settling your company's liabilities promptly and accurately, by keeping their affairs strictly confidential, by using the information you give us only as allowed by the law, by minimising the costs of complying with the law, and by keeping our costs down.

In return, we expect you to be honest, to give us accurate information within a reasonable time, and to pay the company's income tax and National Insurance on time.

Contact information

Income Tax Division:

Address	The Treasury Income Tax Division Second Floor Government Office Buck's Road Douglas Isle of Man IM1 3TX
Telephone	(01624) 685400
Fax	(01624) 685351
E-mail	incometax@itd.treasury.gov.im
Website	www.gov.im/incometax

Opening Hours Monday to Thursday 9.15am – 5.00pm
Friday 9.15am – 4.30pm

Income Tax Commissioners:

Address Secretary to the Income Tax Commissioners
Tribunals Office
Isle of Man Courts of Justice
Deemsters' Walk
Buck's Road
Douglas
Isle of Man
IM1 3AR

Telephone (01624) 682382

E-mail tribunals@gov.im

Website www.courts.im/court-procedures/tribunals-service/tribunals

Opening Hours Monday to Thursday 9.15am – 5.00pm
Friday 9.15am – 4.30pm

Note: This document is for guidance only and is not intended to be a complete and authoritative statement of the law.