



## INCOME TAX (SUBSTANCE REQUIREMENTS AND RELATED PROVISIONS) ORDER 2023

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Statutory Document No. 2023/0011



*Income Tax Act 1970*

## **INCOME TAX (SUBSTANCE REQUIREMENTS AND RELATED PROVISIONS) ORDER 2023**

*Approved by Tynwald: 19 January 2023  
Coming into Operation in accordance with article 2*

The Treasury makes the following Order under section 115A of the Income Tax Act 1970.

### **PART 1 – INTRODUCTORY PROVISIONS**

#### **1 Title**

This Order is the Income Tax (Substance Requirements and Related Provisions) Order 2023.

#### **2 Commencement**

- (1) If approved by Tynwald, this Order thereupon comes into operation.
- (2) As of the coming into operation of this Order —
  - (a) the amendments to the Income Tax Act 1970 made by Part 2 shall be deemed —
    - (i) to have come into effect on 12 December 2018; and
    - (ii) to have been in effect in respect of accounting periods commencing on or after 1 January 2019;
  - (b) for the avoidance of doubt<sup>1</sup>, the amendments to the Income Tax Act 1970 (as amended by Part 2) made by Part 3 shall be deemed —
    - (i) to have come into effect on 18 July 2019; and
    - (ii) to have been continuously in effect since that date;

<sup>1</sup> Despite the continuance in operation SD 2019/0271 which, having been made under section 80N of the Income Tax Act 1970 (rather than section 115A of that Act), did not require confirmation.

- (c) the amendments to the Income Tax Act 1970 (as amended by Parts 2 and 3) made by Part 4 shall be deemed to have come into effect on 16 December 2020 and have had effect in respect of accounting periods commencing after that date;
- (d) for the avoidance of doubt<sup>2</sup>, the amendments to the Income Tax Act 1970 (as amended by Parts 2, 3 and 4) made by Part 5 shall be deemed to have come into effect incrementally in accordance with article 8; and
- (e) for the avoidance of doubt<sup>3</sup>, the amendments to the Income Tax Act 1970 (as amended by Parts 2, 3, 4, and 5) made by Part 6 shall be deemed —
  - (i) to have come into effect on 17 June 2021; and
  - (ii) to have been continuously in effect since that date.

## PART 2 – AMENDMENT OF THE INCOME TAX ACT 1970 AND CONSEQUENTIAL AMENDMENT OF OTHER ACTS<sup>4</sup>

### 3 Amendment of the Income Tax Act 1970

- (1) The Income Tax Act 1970 is amended as follows.
- (2) After section A66(4) (corporate taxpayers: returns), insert —
  - █(4A) A corporate taxpayer is required to include in the return the information requested by the Assessor relating to the substance requirements in Part 6A. █.
- (3) In section A66(6) (corporate taxpayers: returns), after “reasonably requires”, insert █ for the administration or application of any provision of this Act █.
- (4) In section 80A(2)(a) (duty to preserve records), in both places for “4” substitute █5 █.
- (5) After section 80A (duty to preserve records), insert —
  - █PART 6A – SUBSTANCE REQUIREMENTS
  - 80B Definitions
  - In this Part —
  - “banking” means the regulated activity of deposit taking by a person holding a licence, issued under section 7 of the

<sup>2</sup> Despite the continuance in operation of SD 2021/0156 and its confirmation by the Income Tax 2022.

<sup>3</sup> Despite section 3 of the Income Tax Act 2022.

<sup>4</sup> See SD 2018/0263.

*Financial Services Act 2008*, which permits the undertaking of Class 1(1) or Class 1(2) activity as those classes of activity are described in the Regulated Activities Order 2011<sup>5</sup>, as that order is amended from time to time;

**“distribution and service centre business”** means, as the sole or main activity, —

- (a) the purchase of raw materials and finished products from foreign group entities and the resale of the materials and products for a percentage of the profit; or
- (b) the provision of services to foreign group entities;

**“financing and leasing”** means providing a credit facility of any kind for consideration to any person (a “customer”) and for the purposes of this definition —

- (a) consideration may include consideration by way of interest;
- (b) the provision of credit may be by way of instalments for which a separate charge is made and disclosed to the customer in connection with —
  - (i) the supply of goods by hire purchase;
  - (ii) financial leasing (excluding land and interests in land); or
  - (iii) conditional sale or credit sale; and
- (c) where an advance or credit repayable by a customer is assigned to another person, that other person is deemed to be providing a credit facility,

but any activity falling within the definition of banking, insurance or fund management is excluded from this definition of financing and leasing;

**“foreign tax official”** means a foreign tax official of any EU Member State with which there is an international arrangement and in which an immediate or ultimate parent company or an ultimate beneficial owner of the relevant sector company is resident;

**“fund management”** means one of the following classes of regulated activity, undertaken by a person in accordance with a licence issued under section 7 of the *Financial Services Act 2008* —

- (a) Class 3(1) (acting as a manager of a collective investment scheme other than an exempt scheme or an exempt-type scheme);

<sup>5</sup> SD 884/11

- (b) Class 3(9), where the activity is providing management services to a person acting as a manager of a collective investment scheme other than an exempt scheme or exempt-type scheme; or
- (c) Class 3(11), where the activity is acting as a manager to a collective investment scheme which is an exempt scheme or an exempt-type scheme,

and reference to a class of activity in paragraphs (a) to (c) is to be construed by reference to the class as described in the Regulated Activities Order 2011<sup>6</sup>, as that order is amended from time to time;

“**headquartering**” means provision of services for foreign group entities which are material for decision making in the group, excluding shipping, insurance, banking, fund management, financing and leasing, distribution and service centre business or activities related to holding intangible property;

a “**high risk IP company**” is an IP company which falls within paragraph (a) or (b) —

- (a) an IP company that owns an IP asset that —
  - (i) has been acquired from related parties or obtained through the funding of overseas research and development activities; and
  - (ii) is licensed to related parties or monetised through activities performed by foreign related parties; or
- (b) an IP company that owns an IP asset and does not carry on the core income-generating activity specified in section 80E(5)(g)(i) or (ii) in the Island;

a “**holding company**” is a company that is a pure equity holding company;

“**holding intangible property**” means the activity of an IP company;

“**income from an IP asset**” includes —

- (a) royalties;
- (b) income from a franchise agreement; and
- (c) income from licensing the IP asset;

“**insurance**” means the undertaking of insurance business in or from the Island which is authorised or permitted under the *Insurance Act 2008*;

<sup>6</sup> SD 884/11

“**international arrangement**” has the meaning given in section 104B(4);

an “**IP asset**” includes —

- (a) a patent;
- (b) technical know-how;
- (c) a trademark;
- (d) a brand; and
- (e) copyright;

an “**IP company**” is a company which holds, exploits or receives income from an IP asset or assets;

“**material for decision making in the group**” includes —

- (a) the provision of senior corporate management;
- (b) the assumption or control of risk for activities or assets owned by another group entity; and
- (c) advice to another group entity on the assumption or control of risk for its activities or assets;

a “**pure equity holding company**” is a company which as its primary function acquires and holds shares or an equitable interest in other companies, performs no commercial activity and which —

- (a) holds the majority of the voting rights in another;
- (b) is a member of another company and has the right to appoint or remove a majority of the board of directors of that other company; or
- (c) is a member of another company and controls alone, under an agreement with other members, a majority of the voting rights in that other company;

“**relevant sector**” has the meaning given in section 80D(1);

“**relevant sector company**” has the meaning given in section 80D(2);

“**ship**” includes every description of vessel used in navigation but does not include —

- (a) fishing vessels;
- (b) vessels of a kind primarily for sport or recreation;
- (c) harbour craft; or
- (d) any vessel under 24 metres in length overall;

“**shipping**” means the operation of ships in international traffic for income for the transport of passengers or cargo and includes any of the following activities where the relevant

activity is directly connected with, or ancillary to, such operation –

- (a) the rental on a charter basis of a ship;
- (b) the sale of tickets or similar documents and the provision of services connected with the sale of tickets or similar documents, either for the enterprise itself or any other enterprise;
- (c) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; and
- (d) the management of the crew of a ship; and

“**ultimate beneficial owner**” means a person who would come within the definition of a “registrable beneficial owner” in section 3 of the *Beneficial Ownership Act 2017*, as that Act is amended from time to time, if a reference in the definition of “beneficial owner” in section 4 of that Act to a legal entity to which the Act applies is construed as a reference to a relevant sector company to which this Part applies.

**80C Substance requirements: imposition of substance requirements**

A corporate taxpayer that is a resident company must, for each accounting period in which it derives any income from a relevant sector, have adequate substance in the Island. (See section 80E.)

**80D Substance requirements: relevant sectors**

- (1) In this Part a “relevant sector” means any of the following business sectors –
  - (a) banking;
  - (b) insurance;
  - (c) shipping;
  - (d) fund management;
  - (e) financing and leasing;
  - (f) headquartering;
  - (g) operation of a holding company;
  - (h) holding intangible property; and
  - (i) distribution and service centre business.
- (2) A corporate taxpayer that is a resident company with income from a relevant sector is a “relevant sector company”.

**80E Substance requirements: adequate substance**

- (1) For a relevant sector company (other than a pure equity holding company), to have adequate substance it must ensure that –



- (a) it is directed and managed in the Island;
  - (b) there is an adequate number of qualified employees in the Island (whether or not employed by it or another person and whether on temporary or long-term contracts);
  - (c) it has adequate operating expenditure proportionate to the level of activity carried on in the Island;
  - (d) it has an adequate physical presence in the Island; and
  - (e) it conducts core income-generating activity in the Island.
- (2) For the purposes of subsection (1)(e), a relevant sector company conducts core income-generating activity in the Island even if it outsources such activity, provided that it is able to demonstrate adequate supervision of the outsourced activity and the activity is conducted in the Island.
- (3) A pure equity holding company has adequate substance if it —
- (a) complies with its statutory obligations under whichever of the *Companies Act 1931*, *Companies Act 2006* or *Foreign Companies Act 2014* is relevant; and
  - (b) has adequate people and premises for holding and managing the equitable interests or shares.
- (4) For the purposes of subsection (1)(a), a relevant sector company is “directed and managed in the Island” if —
- (a) the company’s board of directors meets in the Island at an adequate frequency given the level of decision-making required;
  - (b) during each meeting in the Island, there must be quorum of directors physically present in the Island;
  - (c) strategic decisions of the company must be set at meetings of the board of directors and minutes of the meetings must reflect those decisions;
  - (d) the board of directors, as a whole, must have the necessary knowledge and expertise to discharge its duties as a board; and
  - (e) the minutes of all board meetings and the company records are kept in the Island.
- (5) For the purposes of subsection (1)(e), “core income-generating activity” includes —
- (a) in the case of the banking relevant sector —
    - (i) raising funds;

- (ii) managing risk including credit, currency and interest risk;
- (iii) taking hedging positions;
- (iv) providing loans, credit or other financial services to customers;
- (v) managing regulatory capital; and
- (vi) preparing regulatory reports and returns;
- (b) in the case of the insurance relevant sector —
  - (i) predicting and calculating risk;
  - (ii) insuring or re-insuring against risk; and
  - (iii) providing client services;
- (c) in the case of the shipping relevant sector —
  - (i) managing crew (including hiring, paying, and overseeing crew members);
  - (ii) hauling and maintaining ships;
  - (iii) overseeing and tracking deliveries;
  - (iv) determining what goods to order and when to deliver them; and
  - (v) organising and overseeing voyages;
- (d) in the case of the fund management relevant sector —
  - (i) taking decisions on the holding and selling of investments;
  - (ii) calculating risks and reserves;
  - (iii) taking decisions on currency or interest fluctuations and hedging positions; and
  - (iv) preparing relevant regulatory or other reports for government authorities and investors;
- (e) in the case of the financing and leasing relevant sector —
  - (i) agreeing funding terms;
  - (ii) identifying and acquiring assets to be leased (in the case of leasing);
  - (iii) setting the terms and duration of any financing or leasing;
  - (iv) monitoring and revising any agreements; and
  - (v) managing any risks;
- (f) in the case of the headquartering relevant sector —
  - (i) taking relevant management decisions;

- (ii) incurring expenditures on behalf of group entities; and
    - (iii) co-ordinating group activities;
  - (g) in the case of a relevant sector company with income from holding intangible property –
    - (i) research and development (rather than acquiring or outsourcing);
    - (ii) marketing, branding and distribution;
    - (iii) taking strategic decisions and managing (as well as bearing) the principal risks relating to the development and subsequent exploitation of the intangible asset;
    - (iv) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the third party acquisition and subsequent exploitation of the intangible asset; and
    - (v) carrying on the underlying trading activities through which the intangible asset is exploited and which lead to the generation of revenue from third parties; and
  - (h) in the case of the distribution and service centre business relevant sector –
    - (i) transporting and storing goods;
    - (ii) managing stocks and processing orders; and
    - (iii) the provision of consultation or administrative services.
- (6) For the purpose of subsection (4)(a), in the case of an IP company, periodic decisions of non-resident board members are not taken into account.

**80F Substance requirements: verification**

- (1) The Assessor may, in respect of any accounting period, request any additional information in order to satisfy the Assessor that a relevant sector company meets the substance requirements.
- (2) A person who fails to comply with a request under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Where the Assessor is not satisfied that a relevant sector company meets the substance requirements, the Assessor shall issue a notice to the company, the contents of which shall include notification –

- (a) that the Assessor has decided that the relevant sector company does not meet the substance requirements;
- (b) of the reasons for that decision; and
- (c) of the sanctions that will apply under sections 80H and 80I.

**80G Substance requirements: high risk IP company**

- (1) In the case of a high risk IP company, the adequate substance requirements in section 80E relating to conducting core income-generating activity in the Island are presumed not to be met, unless the company provides evidence to rebut this presumption.
- (2) In respect of any accounting period, the Assessor shall disclose to a foreign tax official any relevant information which relates to a high risk IP company under and in accordance with the articles on spontaneous exchange of information in an international arrangement, irrespective of whether the substance requirements are met.
- (3) The provision regarding the disclosure of information in relation to a high risk IP company referred to in subsection (2) is in addition to the provisions regarding the disclosure of information in sections 80H, 80I and 80J.
- (4) Nothing in this Part authorises a disclosure, in contravention of any provisions of the data protection legislation, of personal data which is not exempt from those provisions.
- (5) In subsection (4), “**data protection legislation**” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>7</sup> as it has effect from time to time.

**80H Substance requirements: initial sanction**

If the Assessor is not satisfied that a relevant sector company meets the substance requirements in an accounting period the Assessor shall –

- (a) disclose to a foreign tax official any relevant information which relates to the relevant sector company under and in accordance with the articles on spontaneous exchange of information in an international arrangement; and
- (b) issue a notice to the company, the contents of which shall include notification that –

<sup>7</sup> SD 2018/0145

- (i) in the case of a high risk IP company, the company is liable to a civil penalty of £50,000; and
- (ii) in the case of all other relevant sector companies, the company is liable to a civil penalty of £10,000.

**80I Substance requirements: additional sanctions**

- (1) If, in the accounting period next following the accounting period in which a relevant sector company was subject to an initial sanction under section 80H, the Assessor is again not satisfied that the company meets the substance requirements, the Assessor shall —
  - (a) disclose information in the manner set out in section 80H; and
  - (b) in the case of a high risk IP company, issue a notice to the company, the contents of which shall include notification that —
    - (i) the company is liable to an additional civil penalty of £100,000; and
    - (ii) where the Assessor decides there is no realistic possibility of the company meeting the substance requirements, the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the high risk IP company off the register; and
  - (c) in the case of all other relevant sector companies, issue a notice to the company, the contents of which shall include notification that the company is liable to an additional civil penalty of £50,000.
- (2) If, in the accounting period next following that specified in subsection (1), the Assessor is again not satisfied that the relevant sector company meets the substance requirements, the Assessor shall —
  - (a) again disclose information in the manner set out in section 80H; and
  - (b) in the case of a high risk IP company, issue a notice to the company, the contents of which shall include notification that the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the high risk IP company off the register; and

- (c) in the case of all other relevant sector companies, issue a notice to the company, the contents of which shall include notification that —
  - (i) the company is liable to an additional civil penalty of £100,000; and
  - (ii) where the Assessor decides there is no realistic possibility of the company meeting the substance requirements, the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the company off the register.
- (3) If, in the accounting period next following that specified in subsection (2), the Assessor is again not satisfied that the relevant sector company meets the substance requirements, the Assessor shall in the case of a relevant sector company, other than a high risk IP company, —
  - (a) again disclose information in the manner set out in section 80H; and
  - (b) issue a notice to the company, the contents of which shall include notification that the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the company off the register.
- (4) If, in any accounting period following an accounting period for which the Assessor has issued a notice to a high risk IP company under (2)(b) or to a relevant sector company other than a high risk IP company under (3)(b), the Assessor is still not satisfied that the relevant sector company meets the substance requirements, the Assessor shall in all cases —
  - (a) again disclose information in the manner set out in section 80H; and
  - (b) issue a notice to the company, the contents of which shall include notification that —
    - (i) the company is liable to an additional civil penalty of £100,000; and
    - (ii) the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the company off the register.
- (5) In the case of a relevant sector company that is not incorporated in the Island, references in subsection (1), (2), (3) or (4) to the power to serve notice on the Department for

Enterprise or the Registrar requiring a company to be struck off the register, shall be construed as the power to notify the tax administration in the company's jurisdiction of incorporation, of the company's failure to comply with this Part.

**80J Avoidance**

(1) If it appears to the Assessor that in any accounting period a corporate taxpayer has acted so as to avoid or seek to avoid the application of this Part, the Assessor may —

- (a) disclose to a foreign tax official, under and in accordance with the articles on spontaneous exchange of information in an international arrangement, any relevant information provided to the Assessor which relates to that corporate taxpayer; and
- (b) issue a notice to the company, the contents of which shall include notification that the corporate taxpayer shall be liable to a civil penalty of £10,000.

(2) A person who fraudulently avoids or seeks to avoid the application of this Part commits an offence and is liable —

- (a) on conviction on information, to custody for a term not exceeding 7 years, a fine or both; or
- (b) on summary conviction —
  - (i) to custody for a term not exceeding 6 months;
  - (ii) a fine not exceeding level 5 on the standard scale; or
  - (iii) both.

(3) Where a person commits an offence under subsection (2), the Assessor may disclose to a foreign tax official, under and in accordance with the articles on spontaneous exchange of information in an international arrangement, any relevant information provided to the Assessor which relates to the relevant sector company.

**80K Appeals**

(1) An appeal shall lie to the Commissioners (see section 88 (Income Tax Commissioners)) with respect to —

- (a) a decision of the Assessor under any of the following sections —
  - (i) 80F(3);
  - (ii) 80I; or
  - (iii) 80J(1),

and on appeal the Commissioners may confirm or reverse the decision; and

- (b) any liability to a penalty under this Part and on an appeal the Commissioners may confirm, vary or reverse the penalty.
- (2) The procedure with respect to an appeal under subsection (1) shall, with the necessary modifications, be the same as that for an appeal against an assessment.
  - (3) Despite subsection (2), on an appeal under –
    - (a) subsection (1)(a)(i) or (ii) it is for the appellant to prove that it does have adequate substance in the Island; and
    - (b) subsection (1)(a)(iii) it is for the appellant to prove that it is not a relevant sector company or that it has not acted so as to avoid or seek to avoid the application of this Part to that company.

**80L Substance requirements: civil penalties general**

- (1) Where a company is liable to a penalty under this Part, the Assessor or, on appeal, the Commissioners may reduce the penalty to such amount (including nil) as the Assessor or the Commissioners think proper.
- (2) The Commissioners may cancel the whole or any part of a reduction made by the Assessor under subsection (1).
- (3) In exercising their powers under this section, the Assessor and the Commissioners shall not take into account –
  - (a) the insufficiency of the funds available to any person for paying the amount of penalty; or
  - (b) the fact that the company liable to the penalty or a person acting on that taxpayer's behalf has acted in good faith.

**80M Guidance**

- (1) The Assessor may issue guidance about any of the provisions in this Part.
- (2) Regard must be had to guidance issued under subsection (1) in interpreting this Part.
- (3) The Assessor may revise guidance issued under subsection (1) and a reference to guidance includes a reference to revised guidance.
- (4) Guidance issued under subsection (1) must be published by the Assessor in a manner the Assessor considers will bring it to the attention of those likely to be affected by it.

**80N Amendments by order**



- (1) The Treasury may, by order, amend —
    - (a) the definitions in section 80B;
    - (b) section 80C;
    - (c) section 80D;
    - (d) section 80E; and
    - (e) any other provision of this Part, in order to comply with the recommendations or standards of the Code of Conduct Group (Business Taxation) established on 9 March 1998 (in accordance with a resolution of the European Council dated 1 December 1997 on a code of conduct for business taxation) or any other international standard.

Tynwald procedure – approval required.
  - (2) An order under subsection (1) may include such consequential, incidental, transitory, transitional or supplemental provision, including amendment to other provisions of this Act as may appear to the Treasury to be necessary or expedient in consequence of or in connection with the amendment of this Part. **22**.
- (6) In section 120(1) (definitions) in the definition of “**tax position**” —
- (a) at the end of paragraph (d), omit “or”;
  - (b) at the end of paragraph (e), omit “and”; and
  - (c) after paragraph (f), insert —
    - 23** and
    - (g) the person’s status in relation to a relevant sector or as a high risk IP company (see sections 80B and 80D) and the substance requirement (see Part 6A). **22**.

#### 4 Amendment of Companies Act 1931

- (1) The Companies Act 1931 is amended as follows.
- (2) After section 273(10A) (Department may strike defunct company off register), insert —
  - 23**(10B) If the Department has received a notice from the Assessor under section 80I of the *Income Tax Act 1970* (substance requirements: additional sanctions), it must strike the name of that company off the register in the same manner and subject to the same notice and conditions as a company that is not in operation. **22**.

#### 5 Amendment of Companies Act 2006

- (1) The Companies Act 2006 is amended as follows.

- (2) In section 183(1) (striking company off register) —
- (a) after paragraph (c), omit “or”; and
  - (b) after paragraph (d), insert —
    - ca; or
    - (e) the Registrar has received a notice from the Assessor under section 80I of the *Income Tax Act 1970* (substance requirements: additional sanctions).<sup>8</sup>

## PART 3 – INCOME TAX ACT 1970: AMENDMENT OF SECTIONS 80B, 80E AND 80G<sup>8</sup>

### 6 Amendment of the Income Tax Act 1970

- (1) The Income Tax Act 1970 is amended as follows.
- (2) In section 80B (definitions) —
- (a) in the definition of “**foreign tax official**” after “EU Member State”, insert **ca** or any other jurisdiction **ca**;
  - (b) for the definition of a “**high risk IP company**”, substitute —
    - ca**a “**high risk IP company**” is an IP company that holds an IP asset that —
      - (a) has been acquired from related parties or obtained through the funding of overseas research and development activities; and
      - (b) is licensed to related parties or monetised through activities performed by foreign related parties; **ca**; and
  - (c) for the definition of an “**IP asset**”, substitute —
    - ca**an “**IP asset**” means an intellectual property right including copyright, design right, trademark, brand, patent and similar asset; **ca**.
- (3) In section 80E(3)(b) (substance requirements: adequate substance), after “has adequate people and premises”, insert **ca** in the Island **ca**.
- (4) For section 80E(5)(g), substitute —
  - ca**(g) in the case of a relevant sector **ca** company with income from holding intangible property —
    - (i) where the IP asset is a —
      - (A) patent or similar asset, research and development; or

<sup>8</sup> See SD 2019/0271.

- (B) marketing intangible (including a trademark), branding, marketing and distribution;
  - (ii) in exceptional cases, other than in the case of a high risk IP company, other core income-generating activities relevant to the business and the IP assets, which may include —
    - (A) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the IP asset generating income;
    - (B) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the acquisition by third parties and subsequent exploitation and protection of the IP asset;
    - (C) carrying on the underlying trading activities through which the intangible assets are exploited. **22**.
- (5) For section 80E(6), substitute —
  - 63**(6) In the case of an IP company, periodic decisions of non-resident board members or the passive holding of IP assets are not adequate core income-generating activity in the Island. **22**.
- (6) For subsection 80G(1) (substance requirements: high risk IP company), substitute —
  - 63**(1) In the case of a high risk IP company, the substance requirements are presumed not to be met, even if there are core income-generating activities being carried on in the Island relevant to the business and the IP assets, unless the company provides evidence to satisfy the Assessor that this presumption is rebutted.
  - (1A) For the purpose of subsection (1) the evidence referred to includes —
    - (a) information which demonstrates that there is and historically was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the IP asset, exercised by an adequate number of full time employees with the necessary qualifications who permanently reside and perform their activities in the Island;
    - (b) detailed business plans which demonstrate the commercial rationale for the company holding the IP assets in the Island;
    - (c) information regarding the company’s employees, their level of experience, type of contract, qualifications and the duration of their employment;
    - (d) evidence that the company’s decision making takes place within the Island; and

- (e) any other information required by the Assessor.<sup>9</sup>

## PART 4 – INCOME TAX ACT 1970: AMENDMENT OF SECTIONS 80B AND 80D<sup>9</sup>

### 7 Amendment of the Income Tax Act 1970

- (1) The Income Tax Act 1970 is amended as follows.
- (2) In section 80B (definitions), at the appropriate place insert –
- “self-managed scheme”** means a resident company which is a collective investment scheme within the meaning of the *Collective Investment Schemes Act 2008*, and which has no other person or body conducting fund management in respect of it;<sup>9</sup>
- (3) In section 80D (substance requirements: relevant sectors), after subsection (2) insert –
- (3)** For the purposes of this Part, a self-managed scheme (but no other collective investment scheme within the meaning of the *Collective Investment Schemes Act 2008*) –
- (a) is to be treated as receiving income from the relevant sector of fund management; and
- (b) is a relevant sector company.<sup>9</sup>

## PART 5 – INCOME TAX ACT 1970: INSERTION OF NEW SECTION AND AMENDMENT OF VARIOUS SECTIONS<sup>10</sup>

### 8 Commencement and effect

The incremental coming into effect of this Part referred to in article 2(2)(d) shall be deemed to have been as follows –

- (a) in respect of articles 9(2), 10 and 11, on 17 June 2021 and to have been continuously in effect since;
- (b) in respect of articles 9(17), 9(18) and 9(19), for the 2021/22 year of assessment and to have been continuously in effect for all subsequent years; and
- (c) in respect of all other articles, for accounting periods beginning on or after 1 July 2021.

<sup>9</sup> See SD 2020/0518.

<sup>10</sup> See SD 2021/0156.

## 9 Amendment of the Income Tax Act 1970

(1) The Income Tax Act 1970 is amended as follows.

(2) After section 62C, insert —

### **62D Registration of partnerships**

(1) A partnership that is —

- (a) a general partnership as defined in section 80B that is formed on the Island and carries out business activity in the Island; or
- (b) a foreign partnership formed outside of the Island that carries out business activity in the Island,

must notify the Assessor.

(2) The notification must be made within 90 days from the later of —

- (a) the date on which the partnership was formed;
- (b) the date on which the partnership moves its place of effective management to the Island;
- (c) the date on which the partnership commenced business activities in the Island; or
- (d) this section coming into operation, in the case of a partnership formed before this section comes into operation.

(3) A partnership that submits an annual return, pursuant to section 63, is not required to re-notify the Assessor when this section comes into operation.

(4) Notification must be made in the prescribed form to the Assessor and must be accompanied by any information or documentation required by the Assessor.

(5) Notification —

- (a) required under subsection (1) must include the name and address of the person designated to receive correspondence from the Assessor;
- (b) of any change to the person designated in paragraph (a) must be immediately given to the Assessor.

- (6) A partnership that contravenes this section commits an offence of which any of the partners may be found guilty. **22**.
- (3) After section 63(3), insert —
- 22**(4) A return in respect of income in which two or more persons in co-partnership are jointly concerned must include any information requested by the Assessor relating to the substance requirements in Part 6A. **22**.
- (4) After section 63A(9), insert —
- 22**(10) A return in respect of the income of members from a limited liability company must include any information requested by the Assessor relating to the substance requirements in Part 6A. **22**.
- (5) In section 80B (definitions) —
- (a) after the definition of “**banking**”, insert —
- 22**“**designated person**” means, in the case of a —
- (a) relevant sector company, the company;
- (b) limited partnership, the general partner of that limited partnership;
- (c) limited liability company, the limited liability company; and
- (d) general partnership and a foreign partnership, the person designated under section 62D(5)(a) or one of the partners; **22**;
- (b) after the definition of “**distribution and service centre business**”, insert —
- 22**“**enterprise**” means any relevant entity; **22**;
- (c) after the definition of “**financing and leasing**”, insert —
- 22** a “**foreign partnership**” means a partnership formed outside of the Island that carries out business activity in the Island; **22**;
- (d) in the definition of “**foreign tax official**” —
- (i) after “an ultimate beneficial owner” insert **22**or controlling partner **22**; and
- (ii) for “relevant sector company”, substitute **22**relevant sector entity **22**;
- (e) after the definition of “**fund management**”, insert —
- 22**a “**general partnership**” means a “partnership” as defined under Part I of the *Partnership Act 1909* that is formed on the Island and carries out business activity in the Island;

“**Governing Body**” means the person or body of persons responsible for the general supervision of the affairs of a relevant partnership and includes —

- (a) in respect of a limited liability company, the management of which has been vested in a manager or other Governing Body, that manager or other Governing Body;
- (b) in respect of a limited liability company that is managed by its members, those members;
- (c) in respect of a limited partnership, the directors of a body corporate which is the general partner of that limited partnership;

“**group**” means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;<sup>22</sup>

(f) for the definition of a “**high risk IP company**”, substitute —

“**high risk IP entity**” is an IP entity that holds an IP asset that —

- (a) has been acquired from a group or obtained through the funding of overseas research and development activities; and
- (b) is licensed to a group or monetised through activities performed by a foreign group;<sup>22</sup>

(g) for the definition of a “**holding company**”, substitute —

“**holding entity**” is a relevant entity that is a pure equity holding entity;<sup>22</sup>

(h) in the definition of “**holding intangible property**” for “**company**”, substitute “**entity**”;<sup>22</sup>

(i) for the definition of an “**IP company**” substitute —

“**IP entity**” is a relevant entity which holds, exploits or receives income from an IP asset or assets;<sup>22</sup>

(j) after the definition of an “**IP company**”, insert —

a “**limited liability company**” is a company formed under the *Limited Liability Companies Act 1996*;

a “**limited partnership**” means a limited partnership registered in accordance with Part II of the *Partnership Act 1909*;<sup>22</sup>

(k) after the definition of “**material for decision making in the group**”, insert —

- “MNE group” means any group that includes two or more enterprises, the tax residence for which is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction;
- a “partner” includes a “member” of a limited liability company;
- (l) in the definition of a “pure equity holding company” —
- (i) for “pure equity holding company”, substitute “pure equity holding entity”;
  - (ii) for “a company”, substitute “a relevant entity”; and
  - (iii) in paragraph (a) after “another”, insert “company”;
- (m) after the definition of a “pure equity holding company”, insert —
- “relevant entity” means a resident company and a relevant partnership;
- “relevant partnership” means —
- (a) a general partnership;
  - (b) a limited partnership;
  - (c) a limited liability company; or
  - (d) a foreign partnership;
- (n) after the definition of “relevant sector company”, insert —
- “relevant sector entity” has the meaning given in section 80D(2);
- “relevant sector partnership” has the meaning given in section 80D(2);
- “resident partnership” means —
- (a) a partnership which —
    - (i) has its place of effective management in the Isle of Man; or
    - (ii) is a limited partnership or a limited liability company; but
  - (b) a limited partnership or a limited liability company is not resident if it can be proven to the satisfaction of the Assessor that its place of effective management is in a country or territory other than the Isle of Man in which —
    - (i) the partnership is required to satisfy a test that is substantially the same as the substance requirements in 80C; or



- (ii) the partnership is in a jurisdiction where the highest rate which may be charged to tax on any part of its profits is 15% or higher; **22**;
  - (o) in the definition of “**self-managed scheme**” for “resident company”, substitute **23** relevant entity **22**; and
  - (p) in the definition of “**ultimate beneficial owner**” for “company”, substitute **23** entity **22**.
- (6) In section 80C –
- (a) for “corporate taxpayer that is a resident company”, substitute **23** relevant entity **22**; and
  - (b) after “accounting period”, insert **23** or year of assessment (as appropriate) **22**.
- (7) In section 80D –
- (a) in subsection (1)(g) for “company”, substitute **23** entity **22**;
  - (b) for subsection (2) substitute –
    - 23**(2) For the purposes of this Part –
      - (a) a corporate taxpayer that is a resident company with income from a relevant sector is a “relevant sector company”;
      - (b) subject to subsection (4), a resident partnership that is a relevant partnership with income from a relevant sector is a “relevant sector partnership”; and
      - (c) a relevant sector company and a relevant sector partnership are a “relevant sector entity”. **22**;
  - (c) after subsection (2), insert –
    - 23**(2A) This Part does not apply to collective investment schemes within the meaning of the *Collective Investment Schemes Act 2008*, other than self-managed schemes. **22**;
  - (d) in subsection (3)(b) for “company”, substitute **23** entity **22**; and
  - (e) after subsection (3), insert –
    - 23**(4) A relevant partnership is not a relevant sector partnership and will not be required to meet the substance requirements in section 80C if the Assessor is satisfied that –
      - (a) the relevant partnership is not part of an MNE group and carries out all its activities on the Island; or
      - (b) all of the partners of the relevant partnership are individuals and subject to personal income tax in the Island.

- (5) Any person who is a partner of a relevant sector partnership to which this Part applies is not required to meet the substance requirements under section 80C in respect of any income derived by that person from the relevant sector partnership. ~~22~~.
- (8) In section 80E –
- (a) in subsection (1), in both places, for “company”, substitute ~~23~~entity ~~22~~;
- (b) for subsection (1)(a), substitute –
- ~~23~~(a) in the case of a relevant sector company it is directed and managed in the Island, or in the case of a relevant sector partnership it has a place of effective management on the Island; ~~22~~;
- (c) in subsection (1)(b) after “qualified employees”, insert ~~23~~ or individual partners ~~22~~;
- (d) in subsections (2) and (3) for “company”, substitute ~~23~~entity ~~22~~;
- (e) in subsection (3)(a) –
- (i) for “or”, substitute ~~23~~, ~~22~~;
- (ii) after “*Foreign Companies Act 2014*”, insert ~~23~~, *Partnership Act 1909* or *Limited Liability Companies Act 1996* ~~22~~;
- (f) for subsection (4) substitute –
- ~~23~~(4) For the purposes of subsection (1)(a) –
- (a) a relevant sector company is “directed and managed in the Island” if –
- (i) the company’s board of directors meets in the Island at an adequate frequency given the level of decision-making required;
- (ii) during each meeting in the Island, there must be a quorum of directors physically present in the Island;
- (iii) strategic decisions of the company are set at meetings of the board of directors and minutes of the meetings must reflect those decisions;
- (iv) the board of directors, as a whole, must have the necessary knowledge and expertise to discharge its duties as a board; and
- (v) the minutes of all board meetings and the company records are kept in the Island; and
- (b) a relevant sector partnership, despite the fact that a limited partner cannot take part in the management

- of the partnership business under section 49(1) of the *Partnership Act 1909*, has a place of effective management on the Island if –
- (i) the relevant partnership’s Governing Body meets in the Island at an adequate frequency given the level of decision-making required, during those meetings, a majority of the relevant persons are physically present in the Island;
  - (ii) strategic decisions of the relevant partnership are set at meetings of the Governing Body and minutes of the meetings must reflect those decisions;
  - (iii) the members of the Governing Body, as a whole, must have the necessary knowledge and expertise to discharge their duties; and
  - (iv) the minutes of all meetings of the Governing Body and the records relating to the relevant partnership are kept in the Island. **22**;
- (g) in subsection (5)(g), in both places, for “company”, substitute **63**entity **22**; and
- (h) in subsection (6) –
- (i) for “company”, substitute **63**entity **22**; and
  - (ii) after “non-resident board members”, insert **63**or partners **22**.
- (9) In section 80F –
- (a) in subsection (1) –
    - (i) after “accounting period”, insert **63**or year of assessment (as appropriate) **22**;
    - (ii) for “company”, substitute **63**entity **22**;
  - (b) in subsection (3) –
    - (i) for “relevant sector company”, substitute **63**relevant sector entity **22**; and
    - (ii) for “issue a notice to the company”, substitute **63**issue a notice to the designated person **22**; and
  - (c) in subsection (3)(a) for “company”, substitute **63**entity **22**.
- (10) In section 80G –
- (a) in the title for “company”, substitute **63**entity **22**;
  - (b) in subsection (1) –
    - (i) for “high risk IP company”, substitute **63**high risk IP entity **22**;

- (ii) for “the company”, substitute **“the high risk IP entity”**;
  - (c) in subsection (1A)(b) for “company”, substitute **“high risk IP entity”**;
  - (d) in subsection (1A)(c) and (d) for “company’s”, substitute **“high risk IP entity’s”**;
  - (e) in subsection (2) —
    - (i) after “accounting period”, insert **“or year of assessment (as appropriate)”**;
    - (ii) for “company”, substitute **“entity”**; and
  - (f) in subsection (3) for “company”, substitute **“entity”**.
- (11) In section 80H —
  - (a) in both places, for “relevant sector company”, substitute **“relevant sector entity”**;
  - (b) after “accounting period”, insert **“or year of assessment (as appropriate) they are liable to a penalty; and”**;
  - (c) for paragraph (b), substitute —
    - (b)** issue a notice to the designated person, the contents of which shall include notification that —
      - (i) in the case of a high risk IP entity, the high risk IP entity is liable to a civil penalty of £50,000; and
      - (ii) in the case of all other relevant sector entities, the relevant sector entity is liable to a civil penalty of £10,000.
- (12) In section 80I —
  - (a) in subsection (1) —
    - (i) in both places, after “accounting period”, insert **“or year of assessment (as appropriate)”**;
    - (ii) for “relevant sector company”, substitute **“relevant sector entity”**;
    - (iii) for “the company”, substitute **“the relevant sector entity”**; and
    - (iv) after “substance requirements,”, insert **“the entity is liable to a further penalty; and”**;
  - (b) for subsection (1)(b), substitute —
    - (b)** in the case of a high risk IP entity, issue a notice to the designated person, the contents of which shall include notification that —
      - (i) the high risk IP entity is liable to an additional civil penalty of £100,000; and

- (ii) where the Assessor decides there is no realistic possibility of the high risk IP entity meeting the substance requirements, the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the high risk IP entity off the register; and ~~22~~;
- (c) for subsection (1)(c), substitute —
  - ~~63~~(c) in the case of all other relevant sector entities, issue a notice to the designated person, the contents of which shall include notification that the relevant sector entity is liable to an additional penalty of £50,000. ~~22~~;
- (d) in subsection (2) —
  - (i) after “accounting period”, insert ~~63~~or year of assessment (as appropriate) ~~22~~;
  - (ii) for “relevant sector company”, substitute ~~63~~relevant sector entity ~~22~~; and
  - (iii) after “substance requirements,”, insert ~~63~~the entity is liable to a further penalty; and ~~22~~;
- (e) in subsection (2)(b) —
  - (i) in both places, for “high risk IP company”, substitute ~~63~~high risk IP entity ~~22~~; and
  - (ii) for “the company”, substitute ~~63~~the designated person ~~22~~;
- (f) in subsection (2)(c) —
  - (i) for “relevant sector companies”, substitute ~~63~~relevant sector entities ~~22~~;
  - (ii) for “issue a notice to the company”, substitute ~~63~~issue a notice to the designated person ~~22~~; and
  - (iii) for “the company”, wherever it occurs, substitute ~~63~~the relevant sector entity ~~22~~;
- (g) in subsection (3) —
  - (i) after “accounting period”, insert ~~63~~or year of assessment (as appropriate) ~~22~~; and
  - (ii) for “company”, wherever it occurs, substitute ~~63~~entity ~~22~~;
- (h) in subsection (3)(b) —
  - (i) for “issue a notice to the company,”, substitute ~~63~~issue a notice to the designated person, ~~22~~; and
  - (ii) for “to strike the company”, substitute ~~63~~to strike the relevant sector entity ~~22~~;
- (i) in subsection (4) —

- (i) in both places, after “accounting period”, insert “or year of assessment (as appropriate)”;
    - (ii) for “company”, wherever it occurs, substitute “entity”;
    - (iii) after “substance requirements,”, insert “the entity is liable to a further penalty; and”;
  - (j) in subsection (4)(b) —
    - (i) for “issue a notice to the company,”, substitute “issue a notice to the designated person;” and
    - (ii) for “the company”, wherever it occurs, substitute “the relevant sector entity”;
  - (k) after subsection (5) insert —
    - (6) In the case of a relevant sector partnership, where the Assessor decides there is no realistic possibility of the partnership meeting the substance requirements in section 80C and strike off action is not possible, the Assessor may —
      - (a) for each accounting period or year of assessment (as appropriate), impose and continue to impose an additional civil penalty of £150,000 on the relevant sector partnership for each additional year of failure by issuing a notice to the designated person; and
      - (b) this failure shall be construed as the power for the Assessor to notify the tax administration in which the foreign partnership is registered of the foreign partnership’s failure to comply with this Part.
- (13) In section 80J —
- (a) in subsection (1) —
    - (i) after “accounting period”, insert “or year of assessment (as appropriate)”;
    - (ii) for “corporate taxpayer”, wherever it occurs, substitute “relevant sector entity”;
    - (iii) after “this Part,”, insert “the relevant sector entity is liable to a penalty; and”;
    - (iv) for “company”, substitute “designated person”;
  - (b) in subsection (3) for “company”, substitute “entity”.
- (14) In section 80K —
- (a) for subsection (1)(a), substitute —
    - (a) a decision of the Assessor under any of the following sections —
      - (i) 80F(3);

- (ii) 80H;
  - (iii) 80I; or
  - (iv) 80J(1),
- and on appeal the Commissioners may confirm or reverse the decision; and **22**; and
- (b) in subsection (3)(b) —
    - (i) for “relevant sector company”, substitute **63** relevant sector entity **22**; and
    - (ii) for “that company”, substitute **63** that relevant sector entity **22**.
- (15) In section 80L —
- (a) in both places, for “company”, substitute **63** relevant sector entity **22**; and
  - (b) for “taxpayer’s”, substitute **63** entity’s **22**.
- (16) In section 98A (distrain for overdue tax) after subsection (3)(b), insert —
- 63**(c) any penalty charged under this Act in respect of compliance with any international standard including economic substance. **22**.
- (17) In section 111C(1) for “or section 62A” substitute **63** section 62A, section 63 or section 63A **22**.
- (18) In section 111D (extended default) —
- (a) in subsection (1)(c) for “,”, substitute **63**; or **22**; and
  - (b) after subsection (1)(c), insert —
    - 63**(d) a return as required by section 63(1) before the expiry of the period of 12 months immediately following the end of the year of assessment to which the return relates; or
    - (e) a return as required by section 63A(1) before the expiry of the period of 12 months immediately following the end of the year of assessment to which the return relates, **22**.
- (19) In section 111J(1)(a) after “62(1)”, insert **63**, section 63 or section 63A **22**.

## 10 Amendment of the Partnership Act 1909

- (1) The Partnership Act 1909 is amended as follows.
- (2) After section 51A(1) (Department may strike off defunct limited partnership), insert —
  - 63**(1A) If the Department has received a notice from the Assessor under section 80I of the *Income Tax Act 1970* (substance requirements: additional sanctions), it must strike the name of that limited partnership off the

register in the same manner and subject to the same notice and conditions as a limited partnership that is not carrying on business or in operation. **22**.

## 11 Amendment of the Limited Liability Companies Act 1996

- (1) The Limited Liability Companies Act 1996 is amended as follows.
- (2) After section 11(1) (Department may strike defunct limited liability company off register), insert –
  - 23**(1A) If the Department has received a notice from the Assessor under section 80I of the *Income Tax Act 1970* (substance requirements: additional sanctions), it must strike the name of that limited liability company off the register in the same manner and subject to the same notice and conditions as a limited liability company that is not carrying on business or in operation. **22**.

## PART 6 – AMENDMENT OF AMENDMENTS TO THE INCOME TAX ACT 1970 MADE BY PART 5<sup>11</sup>

### 12 Amendments of Part 5

- (1) Part 5 is amended as follows.
- (2) In article 9(5), omit paragraph (b).
- (3) In article 9(5)(f) –
  - (a) in paragraph (a) of the definition of “**high risk IP entity**”, for “a” substitute **23**its**22**; and
  - (b) in paragraph (b) of the definition of “**high risk IP entity**” –
    - (i) for “a” where it first occurs, substitute **23**its**22**;
    - (ii) for “by a foreign” substitute **23**overseas by a member of its**22**.
- (4) In article 9(7)(e), in the inserted subsection (4) omit “is not a relevant sector partnership and”.
- (5) In article 9(8)(b), in the substituted paragraph (a) of section 80E(1) for “has a place of effective management on the Island” substitute **23**is managed in the Island in relation to the activity**22**.
- (6) In article 9(8)(f), in paragraph (b) of the substituted section 80E(4) for “has a place of effective management on the Island” substitute **23**is managed in the Island in relation to the activity**22**.

<sup>11</sup> See section 3 of the Income Tax Act 2022.



**MADE 16 JANUARY 2023**

**DR ALEX ALLINSON**  
*Minister for the Treasury*





**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order re-enacts the provisions of various pre-existing Orders that amended the Income Tax Act 1970 to introduce a substance test for certain Isle of Man resident entities that are within relevant business sectors. It does so out of an abundance of caution, in view of doubts as to whether some or all of the pre-existing Orders are extant.

In making this Order the Treasury exercises its power, enshrined in section 115A(1) of the Income Tax Act 1970, to “make such provision as may be made in an Act of Tynwald”. As the making of legislation with retroactive effect is squarely within the scope of this virtually plenary power, the Treasury appropriately aims to secure *via* this Order the uninterrupted applicability and enforceability of the substance provisions so as to, *inter alia*, comply with the Island’s relevant EU/international obligations.