



Isle of Man Government

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1. Introduction

Income tax was first introduced in the Isle of Man by the Income Tax Act 1918 which is described in its preamble as being "An Act to provide for a Tax on the income of the system of Man". The Income Tax Act 1918 introduced was based broadly upon the system then in operation in the United Kingdom and in many respects the similarities remain. This is an important factor as regards the interpretation of the provisions of the Manx Income Tax Acts because in a case where the interpretation of a provision or an expression in those Acts has been the subject of an appeal in the courts of the United Kingdom, the judgment in that appeal is a persuasive authority for the adoption of the same interpretation in a similar case in the Isle of Man.

The Income Tax Act 1918 was followed by successive amending Acts in the years that followed until the then existing legislation was consolidated in the Income Tax Act 1946. This was, in turn, followed by successive amending Acts until the then existing legislation was consolidated in the Income Tax Act 1970.

The Income Tax Act 1970 has since been amended by the —

- (i) Income Tax Act 1971;
- (ii) Income Tax Act 1973;
- (iii) Income Tax Act 1974;
- (iv) Income Tax Act 1976;
- (v) Income Tax Act 1978;
- (vi) Income Tax (Retirement Benefit Schemes) Act 1978;
- and
- (vii) Income Tax (Amendment) Act 1979.

These Acts are collectively referred to as being "the Income Tax Acts 1970 to 1979". Section 120 of the Income Tax Act 1970 includes the following definitions—
"Income Tax Acts" means this Act and any other enactment relating to income tax;
"Manx income tax" and "Manx tax" means income tax payable under the Income Tax Acts."

The Income Tax Bill 1979 contains the new income tax provisions that were proposed by the Finance Board as a part of the Budget for 1979/80. The Bill was given its first and second readings by the House of Keys on 30th October and 6th November, 1979, respectively. It was then referred to a Select Committee for consideration. As it is unlikely to complete all its stages and obtain the Royal Assent before some time in 1980, the Bill is likely to be known as the Income Tax Act 1980 when it is enacted. It is proposed that the provisions of this Bill, when enacted, shall have effect in respect of the income tax year commencing on 6th April, 1979, and of each succeeding income tax year.

Incorrect Tax Returns

Guidance Note GN 34

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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1 Introduction

There is a requirement in law that all taxpayers should pay the right amount of tax at the right time. Tax is calculated by taking into account all of the information presented in a tax return.

This guidance note explains what action the Income Tax Division of the Isle of Man Treasury might take when an incorrect tax return has been submitted. Your tax return can be incorrect for a number of reasons, for example:

- when income has been shown incorrectly on your tax return because you have made an error or a mistake;
- when income has been shown incorrectly on your tax return because you have acted negligently or deliberately chosen to include the wrong information; or
- when you have negligently or deliberately made a false claim to any allowance, relief or deduction.

In these circumstances you may have to pay interest and/or tax–geared penalties in addition to the right amount of tax. Occasionally, in the most serious cases, we may prosecute you.

Our decision about interest and penalties will normally be at the end of an investigation into your tax affairs. We have separate guidance (GN 32) which explains about tax investigations.

We do not normally charge penalties when additional tax becomes payable as the result of resolving a straightforward enquiry about your tax return; provided that you have not intentionally misled us.

2 What if you realise you have made a mistake on your tax return?

If you tell us voluntarily within 12 months of the end of a tax year (the tax year runs from 6 April to 5 April) that you have made a mistake on your tax return for that tax year and/or the previous tax year, if we do not feel that any further enquiries are needed, and if you are not already subject to a tax investigation: we will adjust your tax assessments to the correct figures. You may have more tax to pay as a result and we may charge interest, as any additional tax will have been paid late.

In these circumstances, however, we will not charge a penalty.

3 What if you tell us that your tax return has been incorrect for a number of years?

If your circumstances are similar to section 1, but more tax years are involved, we may still deal with your affairs in the same way, provided that:

- you tell us everything that we need to know in order to bring your tax affairs up to date;
- you are not already subject to a tax investigation;
- a person or business that you are associated with is not already subject to a tax investigation;
- you have not made a similar voluntary disclosure in the previous three years;
- you have not been subject to a tax investigation in the previous five years; and

if the tax returns were incorrect because the wrong amount of income from self-employment, a company or a trust had been declared or the source was omitted, you will arrange to have an independent "disclosure report" drawn up by an accountant or other suitable person which will set out the true position.

Interest will be charged on the additional tax due.

Separate guidance is available on disclosure reports (see GN 33).

4 What happens once a disclosure report has been submitted?

When considering the disclosure report we may ask to see the records used in its preparation. Once the contents of the report have been agreed, we will tell you how much tax and interest you will need to pay and ask you to sign a "certificate of full disclosure" confirming that you have told us about everything affecting your tax affairs for the years in question. Once we have the certificate, you will receive relevant assessments and interest charges. Payment in full of all liabilities will be required within 30 days.

5 What if a disclosure report is found to be incomplete?

If we find out for any reason that a disclosure report is incomplete or inaccurate we follow a different procedure. If we had been applying the approach described in section 2, we will now start a tax investigation. If the report had been produced as part of an investigation, we will take a different view of how much co-operation you have given and this will impact on the level of penalty that we charge.

Knowingly giving us an incomplete or inaccurate disclosure report is a serious matter and could lead to you being prosecuted.

6 How many years will be subject to adjustment?

We are governed by the powers in the Income Tax Acts when making additional tax assessments to make good:

- income which has not been declared to us;
- income which has been under declared on a tax return; and
- tax reliefs which have been excessive.

The law recognises two situations relating to incorrect tax returns, and gives us different time limits for each one.

In any situation where we find that tax returns have been incorrect, we can make additional assessments going back four years in the case of companies and going back six years in the case of individuals and other taxable persons.

However, where any form of dishonesty or negligence has been committed by or on behalf of any person in connection with or in relation to tax, we can make additional assessments going back 12 years in the case of companies and we have no time limit in the case of individuals and other taxable persons.

We will only apply these powers where it is clear that the problem that led to tax returns being incorrect spans several years. In other words, if the problem can be shown to relate to one or two years only, then those are the years that will be subject to adjusted or additional tax assessments.

7 What is the legal basis for charging interest on overdue tax?

The Income Tax Act 1970 provides generally for interest to be charged on overdue tax, and specifically (in section 111B) where additional tax has become due which is wholly or partly attributable to the fraud, wilful default or neglect of any person.

Interest represents commercial restitution to the Treasury for the delay in payment of the tax.

Tynwald sets the rate of interest.

8 What is the legal basis for charging tax-gear penalties?

The Income Tax Act 1970 provides that if you have incorrectly completed your tax return through neglect or fraud and, as a result, paid too little tax, you could be liable to a penalty charge of up to 100% (or in the case of fraud 200%) of the additional tax due

9 How is the level of penalty worked out?

Once we have established the amount of additional tax, we can reduce the maximum penalty that the law permits after taking into account factors such as:

- the nature, extent and seriousness of the problems with your tax returns;
- the extent to which you have volunteered information about incorrect entries on your tax returns; and
- the extent to which you have co-operated with our enquiries.

Some examples showing how we might determine the level of a penalty are set out below. The examples cannot cover every possible set of circumstances and are a general guide only.

Scenario 1

You find a straightforward mistake in last year's tax return when completing this year's return and tell us immediately. No penalty would be charged but interest may be due.

Scenario 2

You find a mistake affecting a number of your tax returns, but tell us immediately and explain in detail what has happened. No penalty would be charged, but interest will be due.

Scenario 3

You tell us about problems affecting a number of your tax returns. We feel that a tax investigation is needed. During the investigation you help us by attending meetings, by answering promptly questions put to you in letters and by arranging to have a disclosure report prepared. We would consider an appropriate penalty to lie in the range of 5-15% of the additional tax, and interest will be due.

Scenario 4

We uncover problems affecting a number of your tax returns and decide to start a tax investigation. Once we have told you about the investigation you help us by attending meetings, by answering promptly questions put to you in letters and by arranging to have a disclosure report prepared. We would consider an appropriate penalty to lie in the range of 15-30% of the additional tax, and interest will be due.

Scenario 5

We uncover problems affecting a number of your tax returns and decide to start a tax investigation. Once we have told you about the investigation you help us by attending meetings, but delay answering questions put to you in letters and do not provide all of the information that we have asked to see. We would consider an appropriate penalty to lie in the range of 20-40% of the additional tax, and interest will be due.

Scenario 6

We uncover problems affecting a number of your tax returns and decide to start a tax investigation. Once we have told you about the investigation you refuse to attend meetings, either refuse to or delay answering questions put to you in letters and although you arrange to have a disclosure report prepared, it is later shown to be incomplete. We would consider an appropriate penalty to lie in the range of up to 100% of the additional tax, and interest will be due.

10 How will you know what you owe us?

When we feel that we have the full picture we will either ask you to attend a meeting (with your professional adviser if you have one) or we will write to you to let you know:

- what our conclusions are;
- the amount of additional tax we think you owe;
- the extent to which the additional tax payable is due to fraud or neglect; and
- the interest due and the maximum amount of penalties that you could pay.

We will explain that it is normal to ask someone in your position to offer to pay a sum "in settlement" to cover tax, interest and penalties. We will suggest an amount of the penalty that should apply in your case, reduced from the maximum as described in section 8. We will ask you to sign a letter confirming your acceptance of the overall settlement figure and we may also ask you to sign a "certificate of full disclosure". Once we have the letter of acceptance (and the certificate if we have asked you for one), we will send you the relevant assessments and charge notices. Payment in full of all liabilities will be required within 30 days.

11 What documents can you expect to receive from us?

You will normally receive:

- a tax assessment notice (Form R200) for each year where additional tax is due;
- a certificate of interest charged (Form R73) calculated from the normal due date of payment for the relevant tax year to the date on which the tax is to be paid; and
- a penalty charge notice (Form R20) showing the amount of the penalty which we have agreed with you.

12 What if you cannot pay?

If you agree how much you owe us, but cannot pay the full amount straight away, it may be possible to arrange payment by instalments. You should try to agree this with us as part of the settlement discussions covered in section 9, as paying by instalments will affect the interest figure and therefore the overall settlement figure.

We will expect you to make as large an initial payment as you can and to pay the rest, which will usually include an amount for extra interest, by agreed instalments over as short a period as possible.

We will suggest that you pay the instalments by standing order or direct debit.

13 What if you do not accept the interest and penalty charges?

You have a right to appeal against our conclusions and the imposition (but not the amount) of any penalties to an independent body known as the Income Tax Commissioners. We may use the information or documents you provided during an enquiry in any appeal process.

14 Under what circumstances could you be prosecuted?

We will normally prosecute only serious cases. We consider 'serious' to mean:

- where false invoices or documents have been produced; or
- where you have been subject to a tax investigation in the previous five years that resulted in additional tax.

We do not consider enquiries into a minor matter, technical disagreements or mere oversights to be serious matters in this context.

15 Contact information

Address: The Treasury
Income Tax Division
Second Floor
Government Office
Buck's Road
Douglas
IM1 3TX

Telephone: (01624) 685362
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E-mail: incometax@itd.treasury.gov.im
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Opening Hours: Monday to Thursday 9.15am – 5.00pm
Friday 9.15am – 4.30pm