



INCOME TAX ACT 2003
INCOME TAX (NETHERLANDS) ORDER 2006

Approved by Tynwald *17th May 2006*
Coming into operation in accordance with article 1(1)

In exercise of the powers conferred on the Council of Ministers by section 19 of the Income Tax Act 2003¹, and of all other enabling powers, the following Order is hereby made :-

Citation and commencement

1. (1) This Order may be cited as the Income Tax (Netherlands) Order 2006.
- (2) This Order shall come into operation on the day on which it is approved by Tynwald.

Information exchange arrangements

2. (1) It is declared that the applicable arrangements have been made with the contracting country with a view to the exchange of information necessary for carrying out –
 - (a) the domestic laws of the Island concerning income tax; and
 - (b) the laws of the contracting country concerning any taxes to which the arrangements relates,

and it is expedient that those arrangement have effect under section 19 of the Income Tax Act 2003.

- (2) In this article –

“applicable arrangements” means the arrangements for the exchange of information relating to taxes contained in an agreement between the Government and the Government of the Kingdom of the Netherlands signed in Douglas on 12 October 2005 and set out in Schedule 1;

“contracting country” means the Kingdom of the Netherlands.

¹ 2003 c.11

Modification of sections 105C to 105O of the Income Tax Act 1970

3. Sections 105C to 105O of the Income Tax Act 1970 as modified and set out in Schedule 2 shall have effect for the purpose of implementing and giving effect to the applicable arrangements.

SCHEDULES

SCHEDULE 1

AGREEMENT WITH GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

AGREEMENT BETWEEN THE ISLE OF MAN AND THE KINGDOM OF THE NETHERLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

Whereas the Isle of Man and the Kingdom of the Netherlands (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the Isle of Man has the right, acting within the area of its domestic competence, to negotiate and conclude a tax information exchange agreement with the Kingdom of the Netherlands;

Whereas the Isle of Man on the 13th December 2000 entered into a political commitment to the OECD’s principles of effective exchange of information and actively participated in the drafting of the OECD Model Agreement on Exchange of Information in Tax Matters;

Whereas the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes:

Now, therefore, the Parties have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

ARTICLE 1

SCOPE OF THE AGREEMENT

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons liable to such taxes, or to the investigation or prosecution of tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of nor obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to the following taxes imposed by the Parties:

(a) in the case of the Netherlands:

- (i) Income tax (Inkomstenbelasting)
- (ii) Wages tax (Loonbelasting)
- (iii) Company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant the Mining Act (Vennootschapsbelasting, daaronder begrepen het aandeel van de Regering in de netto-winsten behaald met de exploitatie van natuurlijke rijkdommen geheven krachtens de Mijnbouwwet)
- (iv) Dividend tax (Dividendbelasting)
- (v) Gift tax (Schenkingsrecht)
- (vi) Inheritance tax (Successierecht)

(b) in the case of Isle of Man:

Taxes on income or profit.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

ARTICLE 3 DEFINITIONS

1. In this Agreement:

“the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial seas, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

“Isle of Man” means the island of the Isle of Man;

“company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

“competent authority” means, in the case of the Netherlands the Minister of Finance or his authorised representative; and in the case of the Isle of Man, the Chief Financial Officer of the Treasury or his delegate;

“criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

“criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;

“information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

“information” means any fact, statement, document or record in whatever form;

“legal privilege” means

- i) communications between a professional legal advisor and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - ii) communications between a professional legal advisor and his client or any person representing his client or between such an advisor or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
 - iii) items enclosed with or referred to in such communications and made
 - a) in connection with the giving of legal advice; or
 - b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.
- Items held with the intention of furthering a criminal purpose are not subject to legal privilege;

“person” means a natural person, a company or any other body or group of persons;

“publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

“principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

“recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

“public collective investment scheme” means any scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

“requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;

“tax” means any tax covered by this Agreement;

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 4

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall at its own discretion use all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Party shall ensure that it has the authority, for the purposes referred to in Article 1, to obtain and provide, through its competent authority and upon request:

(a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

(b) (i) information regarding the beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;

(ii) in the case of trusts, information on settlors, trustees and beneficiaries,

Provided that this Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible in specifying in writing;

(a) the identity of the person under examination or investigation;

(b) the period for which the information is requested;

(c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;

(d) the tax purpose for which the information is sought;

(e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;

(f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;

(g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;

(h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

(i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

ARTICLE 5
TAX EXAMINATIONS ABROAD

1. With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

ARTICLE 6
POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested Party may decline to assist:

- (a) where the request is not made in conformity with this Agreement;
- (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- (c) where the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose upon a requested Party any obligation: to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4(4) shall not by reason of that fact alone be treated as such a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting Party the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

ARTICLE 7
CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

4. Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

**ARTICLE 8
COSTS**

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

**ARTICLE 9
LANGUAGE**

Requests for assistance and responses thereto shall be drawn up in English.

**ARTICLE 10
MUTUAL AGREEMENT AND ARBITRATION PROCEDURES**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the parties in a mutual agreement procedure pursuant to paragraph 1 of this Article within a period of two years after the question was raised, the case may, at the request of either party, be submitted for arbitration, but only after fully exhausting the procedure available under paragraph 1 of this Article. The decision of the arbitrator in a particular case shall be binding on both parties with respect to this case.
3. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties shall, where necessary, within a period of two years after any difficulty or doubt arises mutually agree on the procedures to be used under paragraph 2 of this Article and Articles 4, 5 and 8.

**ARTICLE 11
ENTRY INTO FORCE**

This Agreement shall enter into force when each Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon the date of entry into force, it shall have effect:

- (a) for criminal tax matters on that date; and
- (b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

**ARTICLE 12
TERMINATION**

1. This Agreement shall remain in force until terminated by either Party.
2. Either Party may after the expiration of two years from the date of its entry into force terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

In witness whereof, the undersigned being duly authorised in that behalf by the respective Parties, have signed the Agreement.

Done at Douglas in duplicate this 12th day of October, 2005, in the English language

HON. A. R. BELL, M.H.K.,
MINISTER FOR THE TREASURY
FOR THE GOVERNMENT OF
OF THE ISLE OF MAN:

MR JOOP WIJN
STATE SECRETARY FOR FINANCE
FOR THE GOVERNMENT OF
THE KINGDOM OF
THE NETHERLANDS:

SCHEDULE 2

SECTIONS 105C TO 105O OF THE INCOME TAX ACT 1970 AS MODIFIED

(Modifications are shown in bold italic text)

Power to call for documents, etc. of taxpayer

105C(1) Subject to this section, the Assessor may by notice in writing require a person-

- (a) to deliver to him such documents as are in the person's possession or power and as (in the Assessor's reasonable opinion) contain, or may contain, information relevant to-
 - (i) any liability to income tax to which the person is or may be subject, or
 - (ii) the amount of any such liability;
- (b) to furnish to him such particulars as the Assessor may reasonably require as being relevant to, or to the amount of, any such liability; or
- (c) to furnish to him such evidence as the Assessor may reasonably require as being relevant to the person's residence status for the purposes of this Act.

(2) Before a notice is given to a person by the Assessor under this section, the person must have been given a reasonable opportunity to deliver the documents in question, or to furnish the particulars in question.

(3) When the Assessor gives a notice under subsection (1), he shall also give to the person to whom the notice applies a written summary of his reasons for the giving of the notice.

(4) Subsection (3) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which he took into account in deciding whether to give the notice.

(5) A notice under subsection (1) does not oblige a person to deliver documents or furnish particulars relating to the conduct of any pending appeal *either in the Island or the contracting country* by him in respect of tax.

(6) To comply with a notice under subsection (1), copies of documents may be delivered instead of the originals; but-

- (a) the copies must be in such form as the Assessor may reasonably require; and
- (b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement, and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

Power to call for documents relating to taxpayer

105D(1) The powers conferred by this section may be used for the purpose of enquiring into the liability to income tax of any person ('the taxpayer') in any case in which the Assessor *believes it to be necessary for the purpose of responding to a request made by the contracting party in accordance with the applicable arrangements*.

(2) Subject to this section and section 105E, the Assessor may by notice in writing require any person other than the taxpayer to deliver to the Assessor or, if so required by the Assessor, to make available for inspection by the Assessor, such documents as are in his possession or power and as (in the Assessor's reasonable opinion) contain, or may contain, information relevant to-

- (a) any liability to income tax to which the taxpayer is or may be subject;
- (b) the amount of any such liability;
- (c) the taxpayer's residence status for the purposes of this Act.

(3) Before a notice is given to a person by the Assessor under this section, that person must have been given a reasonable opportunity to deliver or make available the documents in question.

(4) When the Assessor gives a notice under subsection (2), he shall also give to the taxpayer concerned-

- (a) a copy of the notice; and
- (b) a written summary of his reasons for the giving of the notice.

(5) Subsection (4) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which he took into account in deciding whether to give the notice.

(6) As an alternative to delivering documents to comply with a notice under subsection (2), copies of documents may be delivered instead of the originals; but-

- (a) the copies must be in such form *and authenticated in such manner* as the Assessor may reasonably require; and
- (b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

Notices under s 105D: further provisions

105E (1) A notice under section 105D(2) shall name the taxpayer with whose liability the Assessor is concerned unless the Assessor is satisfied-

- (a) that the notice relates to a taxpayer whose identity is not known to the Assessor or to a class of taxpayers whose individual identities are not so known;
- (b) that there are reasonable grounds for believing that the taxpayer or any of the class of taxpayers to whom the notice relates may have failed or may fail to comply with any provision of the Income Tax Acts;
- (c) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax; and
- (d) that the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

(2) A person to whom a notice under section 105D(2) is given may, if, in accordance with subsection (1), the notice does not name the taxpayer concerned, by notice in writing given to the Assessor within 30 days after the date of the notice under that section, object to that notice on the ground that it would be onerous for him to comply with it, and if the matter is not resolved by agreement, it shall be referred to the Commissioners, who may confirm, vary or cancel that notice.

(2A) In determining a reference under subsection (2), the Commissioners shall take account of the requirements of the applicable arrangements.

(3) The Treasury may by order declare that information of a particular description is not to be subject to the obligation imposed by section 105C(3) or 105D(4) if it is satisfied that there are reasonable grounds for suspecting the taxpayer of fraud or disclosure of information of that description would prejudice the assessment or collection of tax.

(4) An order under subsection (3) shall not come into operation unless it is approved by Tynwald.

(5) A notice under section 105D(2), does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice.

(6) Subsection (5) does not apply where-

- (a) the Assessor is satisfied that there is reasonable ground for believing that tax has, or may have been, lost to *the Revenue of the Island or the contracting country* owing to the fraud of the taxpayer; and
- (b) the notice is so expressed as to exclude the restrictions of that subsection.

(7) A notice under section 105D(2) in relation to a taxpayer who has died cannot be given if more than 6 years have elapsed since the death.

S 105D: auditors and tax advisers

105F (1) Subject to subsection (3), a notice under section 105D(2)-

- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
- (b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.

(2) In subsection (1)-

'relevant communications' means communications between the tax adviser and-

- (a) a person in relation to whose tax affairs he has been appointed, or
- (b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

(3) Subject to subsection (4), if, in accordance with section 105E(1), a notice does not name the taxpayer concerned, subsection (1) shall not have effect in relation to any document which contains information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.

(4) Subsection (1) is not disappplied by subsection (3) in the case of any document if-

- (a) the information within subsection (3) is contained in some other document, and
- (b) either-
 - (i) that other document, or a copy of it, has been delivered to the Assessor, or
 - (ii) that other document has been inspected by the Assessor.

(5) Where subsection (1) is disappplied by subsection (3) in the case of a document, the person to whom the notice is given either shall deliver the document to the Assessor or make it available for inspection by the Assessor or shall-

- (a) deliver to the Assessor a copy (in such form *and authenticated in such manner* as the Assessor may reasonably require) of any parts of the document which contain the information within subsection (3), and
- (b) if so required by the Assessor, make available such parts of the document as contain that information for inspection by the Assessor in accordance with the requirement;

and failure to comply with any requirement under paragraph (b) above shall constitute a failure to comply with the notice.

Ss 105C - 105F : supplementary

105G (1) The persons who may be treated as 'the taxpayer' for the purposes of sections 105C to 105E include a company which has ceased to exist and an individual who has died.

(2) In sections 105C to 105E references to documents do not include-

- (a) personal records, or
- (b) journalistic material, or
- (c) items subject to legal privilege,

and references to particulars do not include particulars contained in such personal records, journalistic material or items.

(3) Subject to subsection (2), references in sections 105C to 105F to documents and particulars are to those specified or described in the notice in question; and-

- (a) the notice shall require documents to be delivered (or delivered or made available), or particulars to be furnished, within such time (which shall not be less than 30 days after the date of the notice) as may be specified in the notice; and
- (b) the person to whom they are delivered, made available or furnished may take copies of them or of extracts from them.

Court orders to deliver documents, etc.

Orders for the delivery of taxpayer's documents

105H (1) The High Court may make an order under this section if satisfied on information on oath given by the Assessor-

- (a) that a notice under section 105C(1) has not been complied with; or
 - (b) that there is reasonable ground for suspecting that such a notice will not be complied with.
- (2) An order under this section is an order requiring the person to whom the notice is given to-
- (a) deliver to the Assessor such documents as are in the person's possession or power and as (in the Court's opinion) contain, or may contain, information relevant to-
 - (i) any liability to income tax which the person is or may be subject, or
 - (ii) the amount of any such liability;
 - (b) furnish to the Assessor such particulars as the Court may specify as being relevant to, or to the amount of, any such liability; or
 - (c) furnish to the Assessor such evidence of residence as the Court may specify.

Orders for the delivery of documents relating to taxpayer

105I (1) The High Court may make an order under this section if satisfied on information on oath given by the Assessor-

- (a) that a notice under section 105D(1) has not been complied with; or
- (b) that there is reasonable ground for suspecting that such a notice will not be complied with; or
- (c) that the taxpayer concerned may have failed or may fail to comply with any provision of the Income Tax Acts, and that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax.

(2) An order under this section is an order requiring the person who appears to the Court to have in his possession or power the documents specified or described in the order to deliver them to the Assessor.

Ss 105H and 105I : supplementary

105J (1) An order under section 105H or 105I shall require compliance within-

- (a) 7 days after the day on which notice of the order is served on him, or
- (b) such shorter or longer period as may be specified in the order.

(2) If a person fails to comply with an order made under section 105H or 105I, he may be dealt with as if he had committed a contempt of the court.

(3) Where an order under section 105H or 105I applies to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

(4) Sections 105H or 105I do not apply to-

- (a) personal records, or
- (b) journalistic material, or
- (c) items subject to legal privilege.

Ss 105H and 105I : notices and procedures

105K (1) A person is entitled-

- (a) to at least 14 days notice of the intention to apply for an order against him under section 105H or 105I, and
- (b) to appear and be heard at the hearing of the application,

unless the High Court is satisfied that this would seriously prejudice the investigation of the offence.

(2) A person who has been given notice of intention to apply for an order under section 105H or 105I shall not-

- (a) conceal, destroy, alter or dispose of any document to which the application relates, or
- (b) disclose to any person (other than his professional legal adviser or tax adviser) information or any other matter likely to prejudice the investigation of the offence to which the application relates.

(3) Subsection (2)(a) does not prevent anything being done-

- (a) with the leave of the Court,
- (b) with the written permission of the Assessor authorised for the purpose,
- (c) after the application has been dismissed or abandoned, or
- (d) after any order made on the application has been complied with.

(4) Subsection (2)(b) does not prevent a professional legal adviser from disclosing any information or other matter-

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person-
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Subsection (2)(b) does not prevent a tax adviser from disclosing any information or other matter to, or to a representative of, a client of his in connection with the giving by the adviser of tax advice to the client

(6) Subsections (4) and (5) do not apply in relation to any information or other matter which is disclosed with a view to furthering a criminal purpose.

(7) A person who fails to comply with the obligation in subsection (2)(a) or (b) may be dealt with as if he had failed to comply with an order under section 105H or 105I as the case requires.

Falsification etc. of documents

105L (1) Subject to subsections (2) to (4), a person is guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which-

- (a) he has been required by a notice under section 105C or 105D or an order under section 105H or 105I, or
- (b) he has been given an opportunity in accordance with section 105C(2) or 105D(3),

to deliver, or to deliver or make available for inspection.

(2) A person does not commit an offence under subsection (1) if he acts-

- (a) with the written permission of the Assessor authorised for the purpose; or
- (b) after the document has been delivered or, in a case within section 105C, inspected, or
- (c) after a copy has been delivered in accordance with section 105C(1) or 105D(2) and the original has been inspected.

(3) A person does not commit an offence under subsection (1)(a) if he acts after the end of the period of 2 years beginning with the date on which the notice is given or the order is made, unless before the end of that period the Assessor has notified the person in writing that the notice or order has not been complied with to his satisfaction.

(4) A person does not commit an offence under subsection (1)(b) if he acts after an application for consent to a notice being given in relation to the document has been refused.

(5) A person guilty of an offence under subsection (1) shall be liable-

- (a) on summary conviction, to a fine not exceeding £5,000;
- (b) on conviction on indictment, to custody for a term not exceeding 2 years or to a fine or to both.

Entry with warrant to obtain material

105M (1) If a Deemster is satisfied on information on oath given by the Assessor that there is reasonable ground for suspecting that-

- (a) an offence involving fraud in connection with, or in relation to, income tax is being, has been or is about to be committed; and
- (b) that evidence of it is to be found on premises specified in the information,

the Deemster may issue a warrant in writing authorising the Assessor to enter the premises, if necessary by force, at any time within 14 days from the time of issue of the warrant, and search them.

(2) An application for a warrant under this section shall not be approved under subsection (1)(b) unless there are reasonable grounds for believing that use of the procedure under section 105H or 105I (order for production of documents) might seriously prejudice the investigation.

(3) The powers conferred by a warrant under this section shall not be exercisable-

- (a) outside such times of day as may be so specified;
- (b) if the warrant so provides, otherwise than in the presence of a constable in uniform.

(4) When entering the premises under the authority of a warrant under this section the Assessor may-

- (a) take with him such other persons as appear to him to be necessary;
- (b) seize and remove any thing whatsoever found there which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1); and
- (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such things;

but no person shall be searched except by a person of the same sex.

(5) In the case of any information contained in a computer stored in any electronic form which is information that-

- (a) the Assessor has reasonable cause to believe may be required as evidence for the purposes mentioned in subsection (4)(b); and
- (b) is accessible from the premises,

the power of seizure under that subsection includes a power to require the information to be produced in a form in which it can be taken away and in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(6) Nothing in subsection (4) authorises the seizure and removal of items subject to legal privilege.

(7) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

(8) A person seeking to exercise the powers conferred by a warrant under this section or, if there is more than one person, that one of them who is in charge of the search-

- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the Assessor to be in charge of the premises is present, shall supply such a copy to that person; and
- (c) if neither paragraph (a) nor paragraph (b) applies, shall leave such a copy in a prominent place on the premises.

(9) Where entry to premises has been made with a warrant under this section, and the person making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.

Procedure where documents etc. are removed

105N (1) A person who removes anything in the exercise of the power conferred by section 105M shall, if so requested by a person showing himself-

- (a) to be the occupier of premises from which it was removed, or
- (b) to have had custody or control of it immediately before the removal,

provide that person with a record of what has been removed.

(2) The record shall be provided within a reasonable time from the making of the request for it.

(3) Where anything that has been removed by the Assessor as mentioned in subsection (1) is of such a nature that a photograph or copy of it would be sufficient-

- (a) for use as evidence at a trial for an offence, or
- (b) for forensic examination or for investigation in connection with an offence,

it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

(4) Subject to subsection (8), if a request for permission to be granted access to anything which-

- (a) has been removed, and
- (b) is retained for the purpose of investigating an offence,

is made to the Assessor by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Assessor shall allow the person who made the request access to it under the supervision of the Assessor.

(5) Subject to subsection (8), if a request for a photograph or copy of any such thing is made to the Assessor by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the Assessor shall-

- (a) allow the person who made the request access to it under the supervision of the Assessor for the purpose of photographing it or copying it, or
- (b) photograph or copy it, or cause it to be photographed or copied.

(6) Where anything is photographed or copied under subsection (5)(b) the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be supplied within a reasonable time from the making of the request.

(8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the Assessor has reasonable grounds for believing that to do so would prejudice-

- (a) the investigation of an offence for the purposes of which the thing was removed;
- (b) the investigation of another offence; or
- (c) any criminal proceedings which may be brought as a result of any investigation mentioned in paragraph (a) or (b).

Interpretation of ss 105C to 105N

105O In sections 105C to 105N-

'applicable arrangements' means the arrangements for the exchange of information relating to taxes contained in an agreement between the Government and the Government of the Kingdom of the Netherlands signed in Douglas on 12 October 2005;

'contracting country' means the Kingdom of the Netherlands;

'document' means anything in which information of any description is recorded but without prejudice to the definition of that word in the Interpretation Act 1976;

'income tax' includes any tax of the contracting country to which the applicable arrangements relate, and "tax", "liability to income tax" and "liability" shall be construed accordingly;

'income tax Acts' includes the laws of the contracting country that relate to any tax to which the applicable arrangements relate, and "this Act" shall be construed accordingly;

'items subject to legal privilege' has the same meaning as in the Police Powers and Procedures Act 1998;

'journalistic material' has the same meaning as in the Police Powers and Procedures Act 1998;

'personal records' has the same meaning as in the Police Powers and Procedures Act 1998;

'tax adviser' means a person who-

- (a) in the ordinary course of his business, gives, and holds himself out as giving, advice to others about their tax affairs; and
- (b) has been appointed to give such advice either by the person in relation to whose tax affairs he has been appointed or by another tax adviser of that person;

'taxpayer' includes a person who is or may be liable to any tax to which the applicable arrangements relate.

Made this 15th March 2006

Mary Williams

Chief Secretary

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order is made under section 19 the Income Tax Act 2003. It implements arrangements negotiated between the Government of the Isle of Man and the Kingdom of the Netherlands for the mutual exchange of information in respect of tax.