



**Isle of Man
Government**

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A Consultation Document



Enhanced Requirements for Accounting Records

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12 July 2016

Index

Page

1. Background2

2. Introduction.....2

3. Draft Record-Keeping Regulations3

4. Purpose of this Document4

5. Submissions.....4

Appendix 1 – Section 105BB of the Income Tax Act 1970.....5

Appendix 2 – Draft Regulations.....6

Enhanced Requirements for Accounting Records

1. Background

The Isle of Man is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum has 134 members and is the international body for ensuring the implementation of the international standards of transparency and exchange of information for tax purposes. Monitoring is by way of an in depth peer review process involving a detailed assessment of the laws, regulations and exchange of information mechanisms, their implementation and effectiveness.

The Isle of Man was subject to a combined phase 1 and phase 2 review in 2010 and the report on the Isle of Man was issued in 2011. Subsequently, in 2014, the Global Forum published ratings for the 71 countries reviewed at that time and the Isle of Man was one of only 20 countries to be awarded the top 'compliant' rating. By March 2016 ratings on 94 countries had been published of which only 22 countries had been awarded the top 'compliant' rating.

The Island will undergo its next review in early 2017. Since our last review many other jurisdictions have undergone reviews and, as a result, a considerable amount has been learnt by the Global Forum and the international standards have been updated in a number of areas. This has highlighted the need to ensure that the Island's legislation dealing with the making and keeping of accounting records applies an appropriate standard to all relevant entities.

2. Introduction

The requirement for relevant entities to make and keep adequate accounting records is one of the elements to be assessed as part of the Island's next peer review. The international standard for record retention is five years. Although the Island's legislation already contains requirements for certain entities to keep records, the requirements vary and the current legislation does not apply the same standard to all the entities that will be considered relevant for the purposes of the next Global Forum review.

In order to strengthen the Island's legislation ahead of the next review, section 8 of the Income Tax Act 2015 introduced a new section, 105BB, into the Income Tax Act 1970. This new section provides Treasury with the power to make regulations about the keeping of accounting records.

Section 105BB specifies what the regulations can address and to whom they can apply. It also restricts them to only making those changes that are required for the keeping and preservation of accountancy records.

In order to ensure that any regulations made under this power are appropriate it was made clear, during the passage of the Bill through the Branches, that the Assessor intends to consult on any changes that may be proposed by these regulations. In addition, following the consultation exercise, the regulations must then be approved by Tynwald in order to come into operation.

A copy of section 105BB can be found in Appendix 1.

3. Draft Record-Keeping Regulations

In preparation for the Island's next Global Forum review, regulations addressing the making and keeping of accounting records have now been drafted under the provision introduced at section 105BB of the Income Tax Act 1970, and these are set out in Appendix 2.

The proposed regulations will be subject to Tynwald approval, and, if approved, will come into operation with immediate effect.

The regulations apply to –

- a) all corporate taxpayers that are:
 - resident in the Isle of Man for income tax purposes, and their officers; or
 - resident outside the Isle of Man for income tax purposes and who carry on a business in the Island or who receive income arising from the rents of land (within the meaning of section 58(3) of the Act), and their officers;
- b) all non-corporate taxpayers who carry on a business or who receive income arising from the rents of land (within the meaning of section 58(3) of the Act);
- c) all partners resident in the Isle of Man, either individuals or corporate;
- d) all trustees resident in the Isle of Man;
- e) the registered agent, enforcer and members of the council, of a foundation,

in respect of accounting records for –

- i) the company;
- ii) the non-corporate taxpayer;
- iii) the partnership of which the partners are members;
- iv) trusts administered by the trustees; or
- v) the foundation,

respectively.

Those listed at a) to e) above must make accounting records that meet the provisions specified within the regulations and must keep those records for a minimum period of five years, the international standard. The accounting records will apply to the company, non-corporate taxpayer, partnership, trust or foundation respectively. This requirement will apply regardless of whether or not the entities concerned need to submit annual income tax returns to the Assessor.

In addition, affected entities may be asked to produce some or all of those records at any time by the Assessor. This applies equally to records held in the Island and to those kept in another country. Those entities will therefore need to ensure that the records can be made available at any time, regardless of where they are being kept.

In some cases, an affected entity may already be required to keep accounting records by current Isle of Man legislation. In those circumstances, the records must be retained for whichever is the longer period – either the five year period required by the proposed regulations or any existing longer period.

If the entity does not comply with the regulations or they knowingly or negligently provide incorrect accounts, then the regulations propose that penalties or fines will apply.

These record-keeping regulations will not affect the majority of Isle of Man resident individuals who are employed and who are not in business in their own right.

4. Purpose of this Document

The purpose of this document is to circulate the regulations and to seek feedback on what is being proposed as well as to invite suggestions for improvement.

5. Submissions

Anyone wishing to submit their views on the regulations proposed in Appendix 2 is invited to do so by Friday 26 August 2016. Responses should be sent to:

Audrey Christian, Deputy Assessor
Income Tax Division
2nd Floor Government Offices
Bucks Road
Douglas IM1 3TX Email: consultation@itd.treasury.gov.im

In any consultation exercise the responses received do not guarantee that changes will be made to what has been proposed.

Appendix 1 – Section 105BB of the Income Tax Act 1970

(inserted into that Act by section 8 of the Income Tax Act 2015)

105BB Regulations about record-keeping

- (1) The Treasury may by regulations (“record-keeping regulations”) make such provision as appears to it to be appropriate about —
 - (a) the keeping of accounting records by persons to whom this section applies (“a relevant person”);
 - (b) the adequacy of such records, and their preservation;
 - (c) the production of such records and the duties of a relevant person in connection with their production (including the production of records kept outside the Island);
 - (d) penalties for the negligent or fraudulent furnishing of false or incorrect accounts or records;
 - (e) the imposition of fixed penalties by the Assessor for non-compliance with the regulations, not exceeding £2,500; and
 - (f) appeals against fixed penalties imposed by virtue of paragraph (e).
- (2) Relevant persons are —
 - (a) non-corporate taxpayers;
 - (b) corporate taxpayers (other than foundations) and their officers;
 - (c) partners, in respect of a partnership of which they are members;
 - (d) trustees, in respect of trusts for which they are responsible; and
 - (e) for a foundation, its registered agent, enforcer and members of its council.

Terms used in paragraph (e) have the same meaning there as they have in the Foundations Act 2011.

- (3) Record-keeping regulations may make any provision that might be made by an Act of Tynwald.

Accordingly, so far as is necessary or expedient in consequence of provision made under subsection (1), they may —

- (a) amend any Act of Tynwald, and
 - (b) modify, in its application to the Island, any Act of Parliament so applied under an Act of Tynwald.
- (4) Record-keeping regulations must be approved by Tynwald before coming into operation.

Appendix 2 – Draft Regulations

DRAFT - INCOME TAX (ACCOUNTING RECORDS) (RETENTION) REGULATIONS 2016

The Treasury makes the following Regulations under section 105BB of the Income Tax Act 1970.

1 Title

These Regulations are the Income Tax (Accounting Records) (Retention) Regulations 2016.

2 Commencement

If approved by Tynwald¹, these Regulations come into operation on xxxxxxxxxxxx.

3 Interpretation

In these Regulations –

“**the Act**” means the Income Tax Act 1970;

“**business**” includes a trade or profession;

“**record**” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, reference to furnishing a record includes reference to furnishing a copy of the record in legible form.

4 Application

(1) These Regulations apply to the following in respect of the relevant entities set out in paragraph (2) –

(a) corporate taxpayers (other than foundations) that are –

(i) resident in the Isle of Man for income tax purposes; or

(ii) resident outside the Isle of Man for income tax purposes and who carry on a business in the Isle of Man or who receive income arising from the rents of land (within the meaning of section 58(3) of the Act),

and their officers;

(b) non-corporate taxpayers who carry on a business or who receive income arising from the rents of land (within the meaning of section 58(3) of the Act);

(c) partners resident in the Isle of Man;

(d) trustees resident in the Isle of Man; and

¹Tynwald approval is required by section 105BB(4) of the Income Tax Act 1970.

- (e) for a foundation, its registered agent, enforcer and members of its council (all of these terms having the same meaning here as they have in the *Foundations Act 2011*),
- to be referred to as **"applicable person"** for the purposes of these Regulations.
- (2) The following are a **"relevant entity"** for the purposes of these Regulations –
- (a) where the applicable person is a corporate taxpayer in sub-paragraph (1)(a) and its officers, it is the company;
 - (b) where the applicable person is a non-corporate taxpayer in sub-paragraph (1)(b), it is the non-corporate taxpayer;
 - (c) where the applicable person is a partner in sub-paragraph (1)(c), it is the partnership of which they are a member;
 - (d) where the applicable person is a trustee in sub-paragraph (1)(d), it is the trust administered by them; and
 - (e) where the applicable person is the registered agent, enforcer and members of the council of a foundation in sub-paragraph (1)(e), it is the foundation.
- (3) For the purpose of these Regulations, it does not matter whether or not a relevant entity is required to make a return to the Assessor in respect of liability to income tax under the Act.
- (4) A requirement imposed by these Regulations shall apply in addition to, and not in derogation from, any duty or requirement to keep or deal with accounts or records imposed by or under the Act or any other enactment.

5 Adequacy of accounting records

- (1) An applicable person shall make and keep adequate accounting records in accordance with the provisions of this regulation and regulations 6 to 8.
- (2) Accounting records are adequate if –
- (a) they are such as to enable the preparation of accounts and –
 - (i) to show and explain the relevant entity's transactions;
 - (ii) to disclose with reasonable accuracy, at any time, the financial position of the relevant entity at that time; and
 - (b) they fulfil the requirements of either paragraph (3) or paragraph (4), as the case may be.
- (3) In the case of a relevant entity carrying on a business, accounting records are not adequate unless they contain –
- (a) records of all amounts received and expended by the business and the reasons for the receipt or expenditure;
 - (b) in the case of a business dealing in goods, records of all sales and purchases of goods made in the course of the business;
 - (c) records of all assets and liabilities of the business, including in particular –
 - (i) all shares, interests or units held by the business in any person or arrangement; and
 - (ii) records of all stock in hand at the end of the accounting period and a statement of the basis on which the stock is valued;

- (d) all invoices, receipts, certificates, contracts, vouchers or other supporting documents relating to records described in paragraphs (a) to (c); and
 - (e) in a case where there are no supporting documents in relation to any goods purchased by the business, the name and address of the supplier of the goods.
- (4) In the case of any other relevant entity, accounting records are not adequate unless they contain, in relation to the relevant entity's income and expenditure –
- (a) records of all amounts received, arising or accruing and of all amounts expended;
 - (b) the names and descriptions of the persons or sources from which the amounts so recorded were received, arose or accrued and the details of and reasons for the amounts so expended;
 - (c) records of all assets and liabilities of the relevant entity, including in particular –
 - (i) all shares, interests or units held by the relevant entity in any person or arrangement; and
 - (ii) records of all stock in hand at the end of the accounting period and a statement of the basis on which the stock is valued;
 - (d) any other records which contain or may contain information relevant to any liability to tax to which the relevant entity is or may be subject or the amount of any such liability;
 - (e) all invoices, receipts, certificates, contracts, vouchers or other supporting documents relating to records described in paragraphs (a), (c) and (d).

6 Preservation of accounting records

Accounting records made by an applicable person under regulation 5 shall be kept by that applicable person for at least 5 years beginning immediately after the end of –

- (a) the year of assessment or accounting period to which those records relate and in relation to which a return in respect of liability to income tax is required to be delivered in accordance with the Act; or
- (b) where no such return is required to be delivered, the calendar year in which the accounting record or document in question was created.

7 Duty to produce accounting records

The Assessor may by notice served on any applicable person require the applicable person to furnish, by such a date or within such a period as may be specified in the notice, such accounting records or part of those records as the Assessor may require.

8 Accounting records kept outside the Isle of Man

- (1) Where accounting records are kept outside the Isle of Man, the applicable person on whom the requirement to keep those records is imposed shall ensure –
- (a) that the records remain within that applicable person's power and control; and
 - (b) that effective arrangements are in place for delivery of the records to the Isle of Man and –

- (i) for the records to be furnished to the Assessor in accordance with any notice served on them under regulation 7; and
 - (ii) for the records to be furnished, disclosed, delivered or in any way provided to the Assessor or any other person in accordance with any requirement to do so imposed by or under the Act or any other enactment.
- (2) In this regulation and in regulation 9, "records" includes all such supporting documents and information as described in regulation 5(3) and (4).

9 Fines for knowingly or negligently furnishing false or incorrect accounts, etc.

- (1) If any applicable person knowingly or negligently furnishes to the Assessor any incorrect accounts or records in purported compliance with these Regulations the person commits an offence and shall be liable on summary conviction to a fine in accordance with paragraph (2).
- (2) Where, under paragraph (1), incorrect accounts or records are furnished –
 - (a) negligently, the applicable person shall be liable to a fine not exceeding £2,500;
 - (b) knowingly, the applicable person shall be liable to a fine not exceeding £10,000.
- (3) Where any incorrect accounts or records are furnished by an applicable person neither knowingly nor negligently but it comes to the applicable person's notice that they are incorrect, the accounts or records shall be treated for the purposes of this regulation as having been negligently furnished, unless the error is remedied without unreasonable delay.

10 Penalties for non-compliance with the Regulations

An applicable person, who, without reasonable excuse, fails to comply with any of these Regulations, shall be liable to a penalty of £2,500.

11 Penalties – right to appeal

- (1) If an applicable person becomes liable to a penalty under these Regulations the Assessor must notify the person and the notice must include a statement that the person may appeal to the Income Tax Commissioners against the imposition of the penalty.
- (2) On an appeal the Commissioners may confirm, reduce or remit the penalty.
- (3) The procedure with respect to an appeal under paragraph (2) shall, with the necessary modifications, be the same as that for an appeal against an assessment.

12 Mitigation of penalties

- (1) Where a person is liable to a penalty under these Regulations, the Assessor, or on appeal, the Commissioners may reduce the penalty to such amount as they think proper.
- (2) In the case of a penalty reduced by the Assessor under paragraph (1), the Commissioners, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Assessor.

13 Amendment of the Income Tax Act 1970

In section 62C of the Act, at the end insert —

“(6) For the purposes of this section, “**corporate taxpayer**” includes a corporate taxpayer that has ceased to exist.”.



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