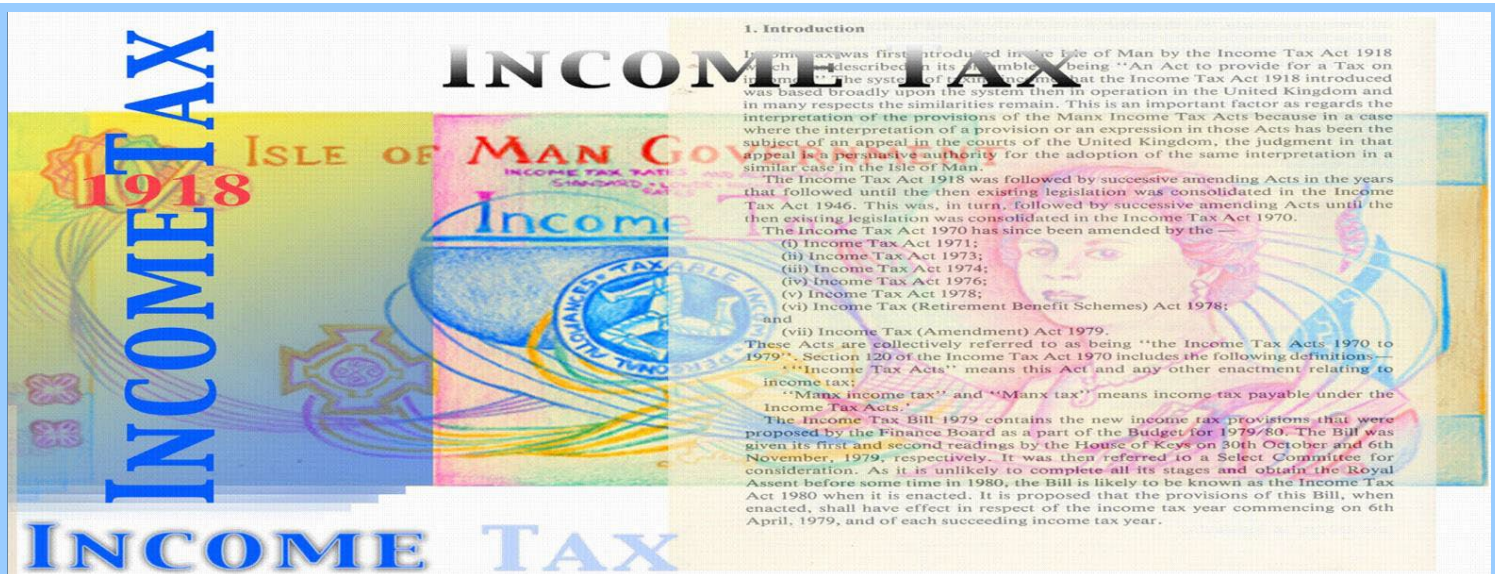




Isle of Man Government

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Application of the Income Tax Acts to Partnerships and Limited Liability Companies

Guidance Note – GN 59

PLEASE NOTE:

This guidance does not affect your right of appeal on points concerning your liability to income tax.

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1 Introduction

This Guidance Note replaces PN 145/07 'The Taxation of partnerships in the Isle of Man' that was issued on 2 October 2007.

The Income Tax Act 1970 was amended by the Income Tax (Substance Requirements) Order 2021 (SD 2021/0156) to include some additional specific provisions that apply to partnerships and to limited liability companies.

The legislation consists of three main provisions:

1. the introduction of a statutory requirement for partnerships to register with the Assessor;
2. the introduction of penalties for the late, or non-filing of income tax returns for partnerships and limited liability companies for the year of assessment ending 5 April 2022 and later; and
3. the extension of the economic substance requirement in Part 6A to partnerships and LLCs for accounting periods commencing on or after 1 July 2021.

This Guidance provides more information in relation to each of these three provisions, as well as general guidance on the taxation of partnerships and Limited Liability Companies.

Please note, when used in this guidance note, the term 'Limited Liability Company' does not refer to a company limited by shares or guarantee.

2 Types of Partnership and Limited Liability Company

A partnership is defined in law as 'a relationship which subsists between persons carrying on a business in common with a view to profit' (Section 4, Partnership Act 1909). The 'persons' referred to in that law are the partners of the partnership.

Partnerships are usually constituted by way of a written agreement, although this is not a legal requirement and many are constituted by verbal agreement between the partners.

An overview of the types of partnership is provided in section 2.1 below.

Important Note: This overview is provided for general information only; it is not binding and should not be relied upon. It is recommended that you seek appropriate legal and tax advice before entering into any form of business arrangement.

2.1 Partnerships formed under Isle of Man Law

The Isle of Man's Partnership Act 1909 supports the formation of two types of partnership under Isle of Man law: general partnerships and limited partnerships.

2.1.1 General Partnerships

These are formed under Part 1 of the Partnership Act 1909.

Partners in a general partnership can be individuals, companies or a combination of both.

- A general partnership does not have separate legal personality from its partners and a partner in a general partnership does not have limited liability.
- A general partnership cannot own assets or incur liabilities in its own right; these are the assets and the liabilities of the partners.
- The partners can undertake the business activity of the partnership jointly or severally.

There is no official public register of general partnerships in the Isle of Man.

However, if the partnership is conducting business activity using a name other than the legal names of its partners, there will be an obligation to register it under the Registration of Business Names Act 1918 (as amended in 2020).

For more details please refer to: www.gov.im/categories/business-and-industries/companies-registry/registries/

2.1.2 Limited Partnerships (LPs)

These are formed under Part 2 of the Partnership Act 1909. They have two types of partners – limited partners and general partners.

- The partners in a limited partnership can be individuals, companies, or a combination of both.

- A limited partnership does not have separate legal personality from its partners; however, the legislation permits the making of an irrevocable election for the limited partnership to have legal personality.
- A limited partnership WITHOUT legal personality cannot own assets or incur liabilities in its own right; these remain the assets and the liabilities of the partners.
- Once an irrevocable election for legal personality is made, the limited partnership can own assets and incur liabilities in its own right.
- There must be at least one general partner, and the general partner is liable for all the debts and obligations of the partnership.
- The limited partners must contribute a stated sum of capital, and their liability is limited to the capital sum contributed.
- A limited partner cannot take part in the management of the business and does not have the power to bind the partnership.

A limited partnership must register with the Companies Registry and will be issued with a registration number ending with P.

For more details please refer to: www.gov.im/categories/business-and-industries/companies-registry/registries/

2.1.3 Limited Liability Partnerships (LLPs)

Limited Liability Partnerships cannot be formed under Isle of Man law.

2.1.4 Limited Liability Companies (LLCs)

The Limited Liability Companies Act 1996 supports the formation of Limited Liability Companies in the Isle of Man.

- An LLC has legal personality, meaning that it can own assets and incur liabilities in its own name.
- It has members rather than partners but, in effect, the members are the same as general partners in terms of what they are permitted to do.

A LLC must register with the Companies Registry and will be issued with a registration number ending with L.

For more details please refer to: www.gov.im/categories/business-and-industries/companies-registry/registries/

2.2 Partnerships formed outside the Isle of Man

The legal system in other jurisdictions may support the formation of:

- General partnerships
- Limited Partnerships (LP)

- Limited Liability Partnership (LLP)
- Limited Liability Companies (LLC)

Entities of these types formed outside the Isle of Man are treated in the same manner for Isle of Man income tax purposes as Isle of Man partnerships or LLCs.

3 Taxation Principles in the Isle of Man

3.1 The Partnership or LLC

Specific sections of the Income Tax Act 1970 deem all types of partnership and LLC to be transparent for income tax purposes in the Isle of Man (this is commonly referred to as 'tax transparent'), even if they are formed in another jurisdiction and regardless of whether they have legal personality.

The applicable sections of the Income Tax Act 1970 are:

- Section 2M – Limited Liability Companies
- Section 2MA – Limited Partnerships with legal personality
- Section 63(3) – Other partnerships

Tax transparent means that the partners/members are considered to undertake the activity – even if the partnership/LLC has legal personality - and the partners/members are the persons that are subject to tax on the income of the partnership or LLC.

Partnerships and LLCs are required to make and deliver income tax returns in respect of a year of assessment. See 5 for more information.

3.2 The Partners or Members

The partners or members are the taxable 'persons' who are subject to income tax on their share of the business profits of the partnership or LLC.

The income sources on which a person is subject to tax are contained within section 2(1) Income Tax Act 1970.

- Persons resident in the Isle of Man are subject to income tax on income from anywhere in the world (often referred to as 'worldwide income').
- Persons not resident in the Isle of Man are subject to income tax on income from sources in the Isle of Man. For partnerships and LLCs this would generally be:
 - income or profits derived from any trade or business activity conducted in the Isle of Man;
 - income from land and property in the Isle of Man; or
 - income from investments situated in the Isle of Man.

It should be noted that certain types of investment income are excluded from income tax when paid to a non-resident individual by virtue of statute, order or regulation.

Although each partnership or LLC is required to make and deliver an income tax return including the overall partnership/LLC information, each partner or member must also include their share of the profits as income on their own income tax return.

3.2.1 Business Activity conducted in the Isle of Man

This phrase is relevant to partnerships and LLCs formed outside the Isle of Man, and to those formed in the Isle of Man with non-resident partners or members, because it is the income from this trade or business activity that is subject to income tax in the Isle of Man.

The phrase 'partnership income or profits derived from trade or business activity conducted in the Isle of Man' means the profits derived from a fixed place of business in the Isle of Man through which the trade or business is wholly or partly carried on.

A 'fixed place of business' includes the situation where the premises from which the trade or business conducted in the Isle of Man belong to another party (e.g. a corporate service provider) and the personnel of that party, the partnership or indeed any other party, are conducting the trade or business on those premises.

For limited partnerships, only the general partner is permitted to conduct the business activity of the limited partnership. Where the general partner is resident in the Isle of Man, or where it is a non-resident and has a fixed place of business in the Isle of Man, the business activity that they conduct on behalf of the limited partnership is conducted in the Isle of Man.

In cases where a general partnership or LLC has no premises, assets or personnel conducting its business in the Isle of Man (either directly for the partnership or on its behalf), the general position will be that it has no business activity conducted in the Isle of Man.

If there is any doubt in respect of the Isle of Man income tax treatment of a partnership or LLC income in the hands of its partners/members, appropriate enquiries should be made with the Assessor.

4 Registration Requirement

Section 62D has been added to the Income Tax Act 1970. With effect from 17 June 2021 section 62D introduces a legal requirement for partnerships to register with the Assessor and to provide specific information as part of that registration.

Registration with the Assessor must be done within 90 days from the later of:

1. the date that the partnership was formed
2. the date that the partnership moves its place of effective management to the Isle of Man; or
3. the date that the partnership commenced business activity in the Isle of Man.

Point 1 applies to Isle of Man partnerships.

Points 2. and 3. apply to partnerships that are formed outside the Isle of Man, but which have a presence in the Isle of Man.

There are transitional arrangements for partnerships and LLCs that were in operation prior to the legislation coming into force. See section 4.3 for details.

4.1 Place of Effective Management ('POEM')

In determining the location of the POEM for a partnership or LLC the Assessor will take into account who the partnership considers to be its 'Governing Body' and whether that Governing Body exercises its functions on the Isle of Man.

The term Governing Body is defined in section 80B Income Tax Act 1970. The list below summarises the Governing Body for the different types of partnership and LLC:

- for an LLC that is managed by its members, those members;
- for an LLC that has vested its management in another person, that person or persons;
- for a Limited Partnership, the general partner or the directors of the general partners if it is a body corporate; and
- for a general partnership, the partners.

4.2 Types of Partnership Required to Register

The following must register under section 62D:

- Isle of Man General Partnerships (including those where the partners are a married couple or civil partners); and
- partnerships (of all types) and LLCs formed outside the Isle of Man.

Limited Partnerships and Limited Liability Companies formed in the Isle of Man are not required to register separately under section 62D because the Assessor is notified by the Registrar when an Isle of Man Limited Partnership and Isle of Man LLC is placed on the official register at the Isle of Man Companies Registry.

Partners of Isle of Man Limited Partnerships and Members of Isle of Man LLCs in possession of a registration certificate issued by the Department for Enterprise can assume that the Assessor has been notified of the registration.

4.3 Transitional Arrangements

There is a transitional arrangement for partnerships that were formed, or commenced business activity on the Isle of Man, prior to the date that the legislation came into effect. These entities have a 90 day period from the 17 June 2021 (i.e. by 15 September 2021) in which to register with the Assessor, if they are not subject to an exemption as outlined below.

4.4 Designated Person

Every partnership that is required to register under section 62D must also provide the details of the designated person to receive correspondence from the Assessor.

Changes to the designated person must be notified to the Assessor. Changes can be notified in writing at the time of the change, or can be detailed on the income tax return for the year of assessment in which the change took place.

In practice the Assessor will issue correspondence to the partnership at the address provided on the registration form or to the appointed tax agent, but the designated person will receive correspondence if the usual methods of correspondence do not secure a response.

4.5 Exemptions from Registration

As explained in section 4.2 above, Limited Partnerships and Limited Liability Companies formed in the Isle of Man are not required to register separately under section 62D. In addition there is an exemption from registration for partnerships that are already filing partnership or LLC income tax returns with the Assessor. The applicable return forms are R1P or R7.

However, if partnership profits have previously been included on the tax returns of the partners only, the partners **must** register the partnership under section 62D within 90 days of 17 June 2021 (i.e. by 15 September 2021).

4.6 Failure to Register

If you miss the 90 day deadline for registration of your partnership please contact the Division as soon as possible to discuss the facts and circumstances that led to the deadline being missed, and ensure that the necessary completed registration form is submitted without delay.

Registration with the Assessor is not optional, and a partnership that does not register within the specified 90 days registration requirement commits an offence of which any of the partners may be found guilty.

4.7 Registration Form

A specific form R255 has been introduced to enable registration with the Assessor. The form is available on the [Forms page](#) of our website.

The form requires the following details:

- Partnership name and address
- Partnership type and whether it has legal personality
- Jurisdiction of formation
- Registration number
- Date for formation (IOM partnerships only)
- Date of commencement of business activity on the Isle of Man (non-IOM partnerships only)
- Accounting date
- Business activity
- Partner/Member details (including the country of tax residence and tax identification number)
- Designated person
- Profit sharing arrangements
- Nature of assets held

The information provided on the form will be used for the purposes of the administration of all aspects of the Income Tax Act 1970, the Social Security Contributions and Benefits Act 1992 and any secondary legislation enacted under those primary Acts.

5 Income Tax Return Forms and Penalties for Late Filing

Partnerships (general and limited) are required to make and deliver income tax returns in accordance with section 63 Income Tax Act 1970.

LLCs are required to make and deliver income tax returns in accordance with section 63A Income Tax Act 1970.

In both cases, the income tax return is for the tax year 6 April to 5 April. The Assessor issues the tax returns just after the 5 April each year and the due date for filing is 6 October.

Previously partnerships and LLCs have not been subject to financial penalties and prosecution for late, or non-filing of their income tax return.

With effect from the year of assessment **commencing on 6 April 2021 and later**, changes have been made to Sections 111C and 111D to apply financial penalties and prosecution for late, or non-filing of income tax returns to partnerships and LLC.

- Returns are due for filing on the following 6 October (e.g. 6 October 2022 for a return to 5 April 2022) and, if not filed by this date, the partnership/LLC will be subject to a late return form penalty of £100.
- If the return remains outstanding at the following 5 April (e.g. 5 April 2023), the partnership will be subject to a further late return form penalty of £200.
- Failure to file the return by the next 5 April (e.g. 5 April 2024) is a criminal offence for which the partnership/LLC may be found guilty and subject to a fine, or custodial sentence.

The legislation (sections 111C to 111J Income Tax Act 1970) will be applied to partnerships and LLCs in the same manner as it is to other non-corporate taxpayers.

Partnerships and LLCs have the same right of appeals against the late return form penalties on the basis of reasonable excuse or mitigating circumstances.

There is a key difference for partnerships and LLCs because they are 'tax transparent' and so it is the partners or members that are assessed to income tax on their share of the business profits of the partnership or LLC not the partnership or LLC itself. As a result of this, the legislation that reduces of the first penalty to the amount of tax payable in the assessment based on the return when it is filed, does not apply.

5.1 Return Form Compliance

The income tax return form for a partnership is an **R1P** and the income tax return form for an LLC is an **R7**. There will be a return form guidance note to support the completion of each of these forms for the year of assessment ending 5 April 2022 and later.

In accordance with section 62 Income Tax Act 1970 and PN 176/12 Income Tax Return Compliance, income tax return forms must be fully completed and signed, with the relevant financial statements and tax computations attached.

In the event that a return form is not fully completed with the relevant financial statements and tax computations attached, it may be returned for full completion.

If the fully completed return form is not submitted by the due date, late return form penalties will be issued.

6 Economic Substance - Extension of Part 6A

The economic substance requirements in Part 6A Income Tax Act 1970 that apply to companies, have been extended to partnerships and LLCs in order to ensure that the Isle of Man continues to fully meet the international standard for economic substance.

Please refer to the Income Tax Act 1970, which is can be accessed on the Attorney General's Chambers legislation.gov.im site, for further details of the extension of the requirement to partnerships and LLCs.

7 Registration Examples

7.1 Existing Partnerships - Transition

Joe and Jeff

Joe and Jeff have been trading in general partnership as 'The Partnership A' since formation in 1998.

They have registered the name under the Registration of Business Names Act and have been filing partnership income tax returns with the Assessor under section 63 Income Tax Act 1970 since 1998.

They have been subject to income tax on their share of profits, and have been declaring these on their personal income tax returns.

As the partnership has been submitting tax returns under section 63, The Partnership A **is not required to register** with the Assessor within 90 days of the new section 62D coming into force.

Toni and Peter

Toni and Peter have been trading in general partnership as 'The Partnership B' since formation in 2010 and have registered the name under the Registration of Business Names Act.

They have been including the profits of the partnership on their personal income tax returns for all years since then. They married in 2019 and elected for joint taxation from 6 April 2020.

As the partnership has not been submitting income tax returns under section 63, The Partnership B **is required to register** with the Assessor within 90 days of the new section 62D coming into force.

Toni and Peter will be required to make a separate return of the partnership profits for the year of assessment ending 5 April 2022. They will remain subject to income tax on their share of profits and should continue to declare these on their personal returns.

If The Partnership B employs staff, the employer details will also need to be transferred to the partnership tax reference with effect from 6 April 2021 and a new online employer registration will be required.

IOM Branch of UK Accounts People LP

UK Accounts People LP (a UK limited partnership) opened an office in the Isle of Man in 2015 and registered with the Assessor at that time. It has been submitting income tax returns under section 63B since then.

As the partnership has been submitting tax returns under section 63, UK Accounts People LP **is not required to register** with the Assessor within 90 days of the new section 62D coming into force.

7.2 New Partnerships

IOM New LP

IOM New LP registers as a limited partnership under Part 2 of the Partnership Act 1909 in June 2022. The Registrar notifies the Assessor of the formation of the LP at that time.

IOM New LP **is not required to register** with the Assessor within 90 days of formation, because she has already been notified by the Registrar.

New IOM General Partnership

Joe, Jeff, Toni and Peter form a new general partnership in July 2022 and register the partnership under the Registration of Business Names Act.

They must register the new general partnership with the Assessor under section 62D within 90 days of its formation.

New Off Island Limited Partnership – POEM

Off Island LP is registered outside the Isle of Man. On 1 September 2022 its general partner GP Co Ltd becomes tax resident in the Isle of Man because its directors exercise management and control in the Isle of Man.

As a direct consequence of the general partner being managed and controlled in the Isle of Man, Off Island LP has a POEM in the Isle of Man from 1 September 2022 and **will be required to register** with the Assessor within 90 days.

New Off Island LLC – Business Activity Conducted in the Isle of Man

Off Island LLC is formed outside the Isle of Man and opens an office in Douglas on 1 November 2022, from which it conducts part of its business activity.

As a direct consequence of the business activity being conducted in the Isle of Man, Off Island LLC **will be required to register with the** Assessor within 90 days of the opening of the office in Douglas.