



INCOME TAX ACT 2003

INCOME TAX (PORTUGAL) ORDER 2010

Approved by Tynwald
Coming into operation

19 October 2010
22 October 2010

The Council of Ministers makes this Order under section 19 of the Income Tax Act 2003¹.

1 Title

The title of this Order is the Income Tax (Portugal) Order 2010.

2 Commencement

If approved by Tynwald², this Order comes into operation on 22 October 2010.

3 Interpretation

In this Order “applicable arrangements” means the arrangements for the exchange of information relating to tax matters contained in an agreement between the Isle of Man and the Portuguese Republic signed in London on 9 July 2010 and set out in Schedule 1.

4 Information exchange arrangements

The applicable arrangements have been made with Portugal with a view to the exchange of information necessary or foreseeably relevant for carrying out —

- (a) the domestic laws of the Island concerning taxes on income or profits; and
- (b) the laws of Portugal concerning any taxes to which the arrangements relate,

¹ 2003 c.11

² As required by section 19(3) Income Tax Act 2003

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

5 Modification of the effect of certain provisions of the Income Tax Act 1970

(1) The effect of the Income Tax Act 1970³ is modified for the purpose of implementing or otherwise giving effect to the applicable arrangements as follows.

(2) In section 105C(5) after “pending appeal” insert “either in the Island or Portugal”.

(3) In section 105D —

(a) in subsection (1) for the words after “the Assessor” substitute “believes it to be necessary for the purpose of responding to a request made by Portugal in accordance with the applicable arrangements”; and

(b) in subsection (6)(a) after “such form” insert “and authenticated in such manner”.

(4) In section 105E —

(a) after subsection (2) insert —

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

(b) in subsection (6)(a) for “General Revenue” substitute “the Revenue of the Island or Portugal”.

(5) In section 105F(5)(a) after “such form” insert “and authenticated in such manner”.

(6) In section 105O insert the following definitions in the appropriate place in the alphabetical list —

“‘applicable arrangements’ means the arrangements for the exchange of information relating to tax matters contained in an agreement between the Isle of Man and the Portuguese Republic signed in London on

9 July 2010;

'income tax' includes any tax of Portugal 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 Portugal that relate to any tax to which the applicable arrangements relate, and 'this Act' shall be construed accordingly;

'Portugal' shall be construed in accordance with the applicable arrangements;

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

- (7) Schedule 2 contains the text of sections 105C to 105O of the Income Tax Act 1970, including any modifications made by this article.

MADE

26th August 2010

Mary Williams
Chief Secretary

**AGREEMENT
BETWEEN
THE ISLE OF MAN
AND
THE PORTUGUESE REPUBLIC
FOR THE EXCHANGE OF INFORMATION
RELATING TO TAX MATTERS**

WHEREAS the Isle of Man and the Portuguese Republic ("the Parties") recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

WHEREAS the Isle of Man entered into a political commitment to the Organisation for Economic Co-operation & Development's principles of effective exchange of information;

WHEREAS it is acknowledged that the Isle of Man under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Portuguese Republic;

WHEREAS the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

NOW, THEREFORE, the Parties have agreed to conclude the following Agreement:

ARTICLE 1
SCOPE OF THE AGREEMENT

1. The competent authorities of the Parties shall provide assistance through exchange of information upon request as set forth in this Agreement.

Such information shall:

- a) Be foreseeably relevant to the administration and enforcement of the domestic laws of the requesting Party concerning taxes covered by this Agreement;
- b) Include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of criminal tax matters; and
- c) Be treated as confidential as set forth in this Agreement.

2. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

ARTICLE 2

JURISDICTION

A requested Party is not obligated to provide Information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

TAXES COVERED

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

- a) In the case of the Isle of Man:
 - i) taxes on income or profits;
- b) In the case of Portugal:
 - i) Personal income tax (*imposto sobre o rendimento das pessoas singulares - IRS*);
 - ii) Corporate income tax (*imposto sobre o rendimento das pessoas colectivas – IRC*);
 - iii) Local surtax on corporate Income tax (*derrama*);
 - iv) Stamp duty on gratuitous transfers (*imposto do selo sobre as transmissões gratuitas*).

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

ARTICLE 4

DEFINITIONS

1. In this Agreement:
 - a) "Isle of Man" means the Island of the Isle of Man, including its territorial sea, in accordance with international law;
 - b) "Portugal" when used in a geographical sense comprises the territory of the Portuguese Republic in accordance with the International Law and the Portuguese Legislation, including its territorial sea, as well as those maritime areas adjacent to the outer limit of the territorial sea, comprising the seabed and subsoil thereof, over which the Portuguese Republic exercises sovereign rights or jurisdiction;
 - c) "Company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - d) "Competent authority" means in respect of the Isle of Man, the Assessor of Income Tax or his delegate and in respect of Portugal, the Minister of Finance, the Director General of Taxation (*Director-Geral dos Impostos*) or their authorised representative;
 - e) "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;

- f) "Criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Party;
- g) "Information gathering measures" means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;
- h) "Information" means any fact, statement, document or record in whatever form;
- i) "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;

- j) "Person" means a natural person, a company or any other body or group of persons;
- k) "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;
- l) "Principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- m) "Collective Investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- n) "Recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;

- o) "Requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;
- p) "Requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party;
- q) "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 5
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.

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 use all applicable 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, subject to the terms of 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; and
- b) Information regarding the legal and beneficial ownership of companies, partnerships and other persons, including
 - i) In the case of collective investment schemes, information on shares, units and other interests;
 - ii) In the case of trusts, information on settlors, trustees, protectors and beneficiaries; and
 - iii) In the case of foundations, members of the foundation council 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 and shall specify 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) The 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 6
TAX INVESTIGATIONS 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 7
POSSIBILITY OF DECLINING A REQUEST

1. The requested Party shall not be required to obtain or provide information that the requesting Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Party the obligation to obtain or provide information subject to legal privilege.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

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

6. 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 of the requested Party as compared with a national of the requesting Party in the same circumstances.

ARTICLE 8

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.

5. Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party.

6. The Parties shall ensure the protection of personal data at a level that is equivalent to that of Directive 95/46/EC of The European Parliament and of the Council of 24 October 1995 and shall comply with the guidelines established by the United Nations General Assembly Resolution 45/95, adopted on the 14th December 1990.

ARTICLE 9

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 extraordinary.

ARTICLE 10
IMPLEMENTATION LEGISLATION

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

ARTICLE 11
LANGUAGE

Requests for assistance and answers thereto shall be drawn up in English or any other language agreed bilaterally between the competent authorities of the Parties under Article 12.

ARTICLE 12
MUTUAL AGREEMENT PROCEDURE

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. In addition to the mutual agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6, 9 and 11.

3. The Parties may also agree on other forms of dispute resolution, should this become necessary.

ARTICLE 13
ENTRY INTO FORCE

1. This Agreement shall enter into force thirty days from the date on which the Parties have notified each other that their respective requirements for the entry into force of this Agreement have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. Upon the date of entry into force, this Agreement 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 14
DURATION AND TERMINATION

1. This Agreement shall remain in force for an unlimited period of time until terminated by either Party.

2. Either Party may, at any time, 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 six months after the date of receipt of notice of termination by the other Party.

3. Notwithstanding the termination, the Parties shall remain bound to the provisions of Article 8 of this Agreement 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 London, on the 9th July 2010, in duplicate in the English and Portuguese languages, both texts being equally authentic.

**FOR
THE ISLE OF MAN**

John Corne

**FOR
THE PORTUGUESE REPUBLIC**

Fernando Vasquez

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

(Modifications are shown in bold italic text)

105C Power to call for documents, etc. of taxpayer

- (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 Portugal* 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.

105D Power to call for documents relating to taxpayer

- (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 Portugal 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) Subject to section 105E(8) 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.

105E Notices under s 105D: further provisions

(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 Portugal* 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.

(8) Subject to subsection (9), if, on the application of the Assessor, 2 members of the Income Tax Commissioners panel give their written consent, the copy and summary under section 105D(4) need not be given to the taxpayer to whom they relate.

(9) Consent shall not be given under subsection (8) unless both Commissioners are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud.

(10) A Commissioner who gives a consent under subsection (8) shall not be liable in damages for, or in respect of, the consent nor any act or matter done or omitted to be done in relation to the consent unless the act or matter done or omitted to be done is shown to have been in bad faith.

(11) Subsection (10) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 2001 .

(12) Where a consent has been given by the Commissioners under subsection (8), the person to whom the notice is given under section 105D(2) shall not—

- (a) inform the taxpayer, or cause or permit the taxpayer to be informed, that the notice has been given, or
- (b) disclose to any person, or cause or permit to be disclosed to any person (including the taxpayer), any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance of the Assessor's functions.

(13) Subject to the defences in subsection (16), a person who fails to comply with subsection (12) is guilty of an offence and liable on summary conviction to fine not exceeding £5,000 or to custody for a term of 6 months, or to both.

(14) If an offence under subsection (13) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, that person, as well as the body corporate, is guilty of the same offence and liable to be proceeded against and punished accordingly.

(15) Where the affairs of a body corporate are managed by its members or by agents, subsection (14) applies in relation to the acts and defaults of a member or an agent in connection with the functions of management as if that person were a director of the body corporate.

(16) It is a defence in proceedings for an offence under subsection (13) for the person concerned to satisfy the court —

- (a) that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence by the person concerned and by any person under his control, or
- (b) in the case of an offence in respect of an alleged contravention of subsection (12)(b), that the person concerned did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance of the Assessor's functions.

105F S 105D: auditors and tax advisers

(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 disapplied 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 disapplied 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.

105G Ss 105C - 105F : supplementary

(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.

105H Orders for the delivery of taxpayer's documents

(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.

105I Orders for the delivery of documents relating to taxpayer

(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(2) 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.

105J Ss 105H and 105I : supplementary

(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.

105K Ss 105H and 105I : notices and procedures

(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.

105L Falsification etc. of documents

(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.

105M Entry with warrant to obtain material

(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.

105N Procedure where documents etc. are removed

(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).

105O Interpretation of ss 105C to 105N

In sections 105C to 105N-

'applicable arrangements' means the arrangements for the exchange of information relating to tax matters contained in an agreement between the Isle of Man and the Portuguese Republic signed in London on 9 July 2010;

'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 Portugal 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 Portugal 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;

'Portugal' shall be construed in accordance with the applicable arrangements;

'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.

EXPLANATORY NOTE
(This note is not part of the Order)

This Order is made under section 19 of the Income Tax Act 2003. It implements arrangements negotiated between the Isle of Man and the Portuguese Republic for the exchange of information relating to tax matters.