



## INCOME TAX ACT 1970

### TAXES (ITALY) ORDER 2013

*Approved by Tynwald  
Coming into operation*

*19 November 2013  
22 November 2013*

The Council of Ministers makes the following Order under section 104B of the Income Tax Act 1970.

#### **1 Title**

This Order is the Taxes (Italy) Order 2013.

#### **2 Commencement**

If approved by Tynwald, this Order comes into operation on 22 November 2013.<sup>1</sup>

#### **3 Interpretation**

In this Order “applicable arrangement” means the arrangement for the exchange of information relating to tax matters contained in an agreement between the Government of the Isle of Man and the Government of the Italian Republic signed in London on 16 September 2013 and set out in the Schedule.

#### **4 Information exchange arrangement**

It is declared that –

- (a) the applicable arrangement has been made with the Government of the Italian Republic with a view to the exchange of information necessary or foreseeably relevant for carrying out laws (whether in the Island or the Italian Republic) concerning any taxes to which the applicable arrangement relates; and

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<sup>1</sup> Tynwald approval is required by section 104B(6) of the Income Tax Act 1970.

- (b) the arrangement should have effect as part of the law of the Island.

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

- (1) For the purpose of implementing or otherwise giving effect to the applicable arrangement the Income Tax Act 1970 is to be treated as having effect subject to the following modifications.
- (2) In section 105C(5) (power to call for documents, etc. of taxpayer) after “pending appeal” insert “either in the Island or the Italian Republic”.
- (3) In section 105D (power to call for documents relating to taxpayer) —
  - (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 the Government of the Italian Republic in accordance with the applicable arrangement”; and
  - (b) in subsection (6)(a) after “such form” insert “and authenticated in such manner”.
- (4) In section 105E (notices under s. 105D : further provisions) —
  - (a) after subsection (2) insert —
    - “(2A) In determining a reference under subsection (2), the Commissioners shall take account of the requirements of the applicable arrangement.”; and
    - (b) in subsection (6)(a) for “General Revenue” substitute “General Revenue of the Island or the Revenue of the Italian Republic”.
- (5) In section 105F(5)(a) (s. 105D : auditors and tax advisers) after “such form” insert “and authenticated in such manner”.
- (6) In section 105O (interpretation of ss. 105C to 105N) insert the following definitions alphabetically —
  - ““applicable arrangement” means the arrangement for the exchange of information relating to tax matters contained in an agreement between the Government of the Isle of Man and the Government of the Italian Republic signed in London on 16 September 2013;
  - “income tax” includes any tax to which the applicable arrangement

relates, and “tax”, “liability to income tax” and “liability” shall be construed accordingly;

“Income Tax Acts” includes the laws of the Island or of Italy that relate to any tax to which the applicable arrangement relates, and “this Act” shall be construed accordingly;

“Italy” shall be construed in accordance with the applicable arrangement;

“taxpayer” includes a person who is or may be liable to any tax to which the applicable arrangement relates.”.

MADE 24<sup>th</sup> October 2013

**W GREENHOW**  
Chief Secretary

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

This Order is made under section 104B of the Income Tax Act 1970. It implements an arrangement negotiated between the Government of the Isle of Man and the Government of the Italian Republic for the exchange of information relating to tax matters.

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

**Whereas** the Government of the Isle of Man and the Government of the Italian Republic wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

**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 Government of the Italian Republic;

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

**ARTICLE 1**  
**OBJECT AND SCOPE OF THIS AGREEMENT**

The competent authorities of 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 taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, enforcement, recovery or collection of such taxes, with respect to persons subject to such taxes, or to the investigation or prosecution of tax matters in relation to such persons. 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. The taxes which are the subject of this Agreement are:

(a) in Italy:

- (i) the personal income tax;
- (ii) the corporate income tax;
- (iii) the regional tax on productive activities;
- (iv) the value added tax;
- (v) the inheritance tax;
- (vi) the gift tax;
- (vii) the substitute taxes; and

(b) in the Isle of Man:

- (i) the taxes on income or profit; and
- (ii) the value added tax.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Parties in the form of an exchange of letters. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.



## **ARTICLE 4**

### **DEFINITIONS**

1. For the purposes of this Agreement, unless otherwise defined:
  - (a) the term "Italy" means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with the international law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
  - (b) the term "Isle of Man" means the island of the Isle of Man, including its territorial sea, in accordance with international law;
  - (c) the term "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;

- (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term "competent authority" means in the case of Italy, the Ministry of Economy and Finance and in the case of the Isle of Man, the Assessor of Income Tax or his or her delegate;
- (f) the term "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (g) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Requesting Party;
- (h) the term "information" means any fact, statement or record in any form whatever;
- (i) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- (j) the term "Party" means the Isle of Man or Italy as the context requires;
- (k) the term "person" includes an individual, a company and any other body of persons;

- (l) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (m) the term "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;
- (n) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Parties;
- (o) the term "Requested Party" means the Party requested to provide information;
- (p) the term "Requesting Party" means the Party requesting information; and
- (q) the term "tax" means any tax to which this Agreement applies.

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 law 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 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 such conduct occurred in the jurisdiction 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, that Party shall 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 its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide 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 legal and beneficial ownership of companies, partnerships, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain;
  - (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and
  - (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

Further 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 funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the Requesting Party wishes to receive the information from the Requested Party;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the territory of the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;
- (e) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- (f) a statement that the request is in conformity with the law 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;

- (g) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Party shall forward the requested information as soon as reasonably possible to the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.



**ARTICLE 6**  
**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 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 provide information subject to legal privilege or 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 Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).

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

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 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.

## **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 in providing assistance (including costs of engaging external advisers 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 if the costs of providing information with respect to a specific request are expected to be extraordinary.

“Extraordinary costs” do not include ordinary administrative and overhead expenses incurred by the Requested Party in reviewing and responding to information requests submitted by the Requesting Party.

**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**  
**MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
  
2. In addition to the 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 and 9.
  
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
  
4. The Parties may also agree on other forms of dispute resolution.

**ARTICLE 12**  
**ENTRY INTO FORCE**

1. This Agreement is subject to ratification by the Parties, in accordance to their respective laws.

2. This Agreement shall enter into force on the date of the receipt of the last notification by which each Party shall formally have communicated to the other that the respective internal procedures for entry into force have been completed. Upon 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 13**  
**TERMINATION**

1. Either Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Party.
  
2. 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 any termination of this Agreement the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

**DONE** at London on the sixteenth day of September 2013, in two originals in the English and Italian languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF  
THE ISLE OF MAN**



**FOR THE GOVERNMENT OF  
THE ITALIAN REPUBLIC**

