



Isle of Man Government

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Tax Investigations

Guidance Note GN 32

This Guidance Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

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Introduction

This guidance note explains how the Income Tax Division of the Isle of Man Treasury conducts investigations. To help you understand what we mean by the term, an investigation is the work that we carry out when we believe that your tax return is incorrect to the extent that we need to conduct a detailed enquiry into your affairs. We will tell you when we need to carry out an investigation, and usually we will tell you why.

We know that investigations can be time-consuming and stressful, and we do not start them without good reason. We promise that you will be treated courteously, fairly and in accordance with the law.

There is a requirement in law that all taxpayers should pay the right amount of tax at the right time. Tax is calculated by taking into account all of the information presented in a tax return.

Tax investigations may review the affairs of individuals, trustees, partnerships and companies or look into particular transactions and other situations where substantial tax may be at risk.

We set ourselves high standards in the way we conduct our work. We promise that we will carry out our enquiries promptly and bring them to a close once we are satisfied that everything is in order.

Our approach is different in the very rare situations where fraud is suspected, and separate guidance on this will be issued in due course. We will advise any taxpayer as soon as we think it may apply.

1. Confidentiality

You have a right to the same high degree of confidentiality as all taxpayers.

Where we need information we will ask you or your professional adviser for it. Wherever possible we will avoid going to others for information, but sometimes this is unavoidable. If you have given an authority for a third party (for example, your bank) to provide us with information, we may use it to facilitate our enquiries.

When requesting information from third parties we will give proper regard to your personal and business interests and to the need for confidentiality in order to avoid embarrassing you in any way.

We will only give information to people who have not been authorised by you to receive it in the very limited circumstances allowed by law.

You can refuse to discuss your personal affairs in front of other people, including your spouse, business partners and fellow company directors. If you are married (unless you have elected for joint taxation – see Guidance Note GN 26) we will not discuss your tax affairs with your spouse without your permission. If there are matters which you do not want to be discussed with others present, you should tell us.

2. Professional representation

It is for you to decide whether to appoint a professional adviser to represent you during a tax investigation. We recommend that you should seek professional advice. However you will always be personally responsible for your own tax affairs and for the accuracy of all information supplied to us, even if you have a professional adviser. We may direct some questions to you even if you have an adviser; particularly where they relate to the day-to-day running of a business. You may change or stop using a professional adviser at any time. We expect high standards from professional advisers. If there are delays or difficulties we will let you know and may ask to deal with you directly. You should co-operate fully with your adviser. You should make sure that your professional adviser has all relevant information about your affairs.

Whether or not you are represented, you can ask us at any time to explain your rights or why we have taken a particular action or what you are obliged to do under the law: even if we have already told your adviser.

3. Opening the investigation

Before starting an investigation we will look at what you have told the Income Tax Division in your tax returns, accounts and other forms of information. We will look at information we may have received from other sources. On rare occasions we may have already made third party enquiries before we contact you or your professional adviser, to establish whether or not we need to proceed. We will normally tell you the reasons for starting our enquiries unless, exceptionally, we consider that it would prejudice the investigation.

Meetings with taxpayers and/or their professional representatives are an integral part of the investigation process. Meetings allow you to clarify and explain any points you think we may not have understood and they allow us to ask detailed questions. You are not obliged to attend any meeting, but we invite your co-operation in this respect.

You can expect us to ask you about one or more of the following areas:

- entries on your tax return, especially in relation to income and expenditure (which may mean that we ask to see your bank statements);

- the nature and performance of any business that you are involved in (which is likely to include us asking you to provide the business records or accounts for our inspection);
- your lifestyle, including assets that you have bought or investments that you have made;
- profits that you have made on asset disposals; or
- trusts, partnerships or companies that you are involved with in any way, whether in the Isle of Man or elsewhere.

If an investigation involves complex issues we may propose that any meetings we need to have with you are recorded. We will give you a copy of any recording and a transcript of it. Recording a meeting means that you and we have accurate details of what has been discussed.

Where the investigation is straightforward, or you decline to have a meeting recorded we will make notes of any meeting that we need to have with you and provide you with a copy. You will be given the opportunity to tell us if you consider the notes to be incorrect on any point and to tell us about any matters which you feel may have been omitted.

Original records that we inspect will be returned to you as quickly as possible. Sometimes we will take copies from the records. We may ask to see records of private transactions, including bank and building society statements if we think they are relevant to our enquiry. We may also ask you to confirm details of your assets and liabilities. You should tell us if you think your records are not adequate or are incorrect for any reason. You may ask for the return of any records if you need them. If we have to keep them, we will give you a receipt and copies of any documents you need. We will do this free of charge and we will agree a timetable for complying with such a request.

4. During the investigation

We will always be courteous, fair and professional. We may ask you to attend meetings at Government Office, your offices, your business premises, or, exceptionally, at your home. You can ask your adviser to attend any meeting that we have with you. A meeting at any of your premises will always be discreet and with your prior permission.

Meetings allow us to explain the results of our examination of your tax returns, business records and accounts and ask for your comment. If after discussion you accept that your tax returns are not complete and that there are matters that you need to tell us about, we will invite you to instruct a professional adviser to prepare a disclosure report setting out the true position. We expect that you will certify that the report is correct and complete. It is for you to decide whether to instruct a professional adviser to prepare this report or to undertake any

other work in connection with our investigation. Booklet GN 33 gives guidance to professional advisers on how to prepare a disclosure report.

If you have told us that you need to make a disclosure in respect of your taxation affairs we will want to agree a written timetable with you and your advisers for its submission. The timetable will vary according to the complexity of the case. The cost of producing the report and of dealing with our investigation must be borne by you, as it is your responsibility to put your affairs in order. The costs are not allowable for tax purposes.

It is important that a full disclosure of any tax irregularities is made within a reasonable period. We will carry out the investigation ourselves if we are not satisfied with progress, and will tell you if we need to do this.

It is your responsibility to ensure that the disclosure report is correct and complete to the best of your knowledge and belief. We will review the report to satisfy ourselves that it is correct and complete and will let you know how long we expect this to take.

Where you agree that there are matters which need to be disclosed but do not wish to have a disclosure report prepared, you will need personally to provide full details of all shortcomings directly to the Division in line with a timetable agreed between us. We will undertake a detailed review of the information you provide.

5. Providing information

We expect you to provide complete and accurate information relating to your accounts and tax returns. You should ensure that the answers you give us at meetings are correct to the best of your knowledge and belief. It is your responsibility to do so. If you think that what you have told us is wrong, or you want to add anything, you should tell us as soon as possible. You should consider very carefully any points we have raised about your accounts or tax return and reply as fully and promptly as possible. You should tell us about any special features of your business or your financial affairs that you think might be relevant to the questions we are asking. You should ask your accountant or other financial adviser, if you have one, for advice.

We also expect you to provide the information that is essential to the investigation. Sometimes an exchange of correspondence may not be an adequate substitute for a meeting. We try to avoid long and protracted correspondence, but it is often essential to ask you to clarify points we may not understand fully.

We will take up as little of your time as possible by trying to ask for everything that we need to know early in the investigation. We will do our best to avoid asking for information in a piecemeal way, but one query can lead to another. We often find that a meeting is the best

way of overcoming this problem. We will ask only for necessary information because we know that some of what we ask for may be sensitive and personal.

We will give you a reasonable time to provide any information. You should tell us if you think we have not given enough time to provide information and suggest how long it might take to provide. We will usually agree the new deadline with you or explain if we do not think it is right to do so.

You should tell us if you have difficulty obtaining the information we have asked for and we will discuss with you how you might obtain it. You should also tell us if you think it is not relevant to the enquiry. We will consider your reasons carefully. If we think we still need the information, you will be told our reasons.

You should respond promptly when we ask you for information. If you co-operate with us in our enquiries, it will limit any penalties you may have to pay.

Where, exceptionally, we need to use the legal powers Tynwald has given us to obtain information, you will benefit from statutory safeguards to ensure we are using them properly.

We will deal with letters from you or your adviser in accordance with the agreed timetable. If we cannot do so we will advise you of the reason for the delay. You can help us complete our enquiry quickly, and so reduce costs all round by ensuring that replies are prompt and complete.

If it is found that your Tax Returns are incomplete we will always take into account, when calculating any penalty which may be due, whether you have been helpful and have freely and fully volunteered any information about income which was omitted or understated.

6. Your costs

We are aware that dealing with our enquiries takes up your own time, and that you will have to pay the fees of any adviser you employ. We appreciate that these fees can be high, so we will make sure that our enquiries are reasonable in the overall circumstances of the case. We will close our investigation as soon as we are satisfied that everything is in order, or is settled.

You can make representations to us on these matters. We will tell you why the enquiry is to continue, unless to do so would prejudice our enquiries.

7. Keeping you informed

We will tell you the reasons for:

- seeking a meeting with you;
- making any further tax assessments on your income;
- not being satisfied with your explanations, whenever that is the case, and what you need to do to satisfy us; or
- using our statutory powers to obtain information or documents. You can ask us:
- to explain your rights or tell you why we have taken a particular action, or explain what you are obliged to do under the law – and you may ask for these explanations even if we have already given them to your professional adviser.

8. Concluding the investigation

If we find nothing wrong, we will tell you and let you know that our enquiries are finished. This will normally happen after we have examined your books and records and considered any information that you have given us during meetings.

Where we consider that there is something wrong, and you have said that you intend to provide a disclosure report, we will review the report with your adviser and usually come to a swift agreement on the revisions needed.

Where we consider that there is something wrong, but you disagree with us and say that you do not intend to provide a disclosure report, you will be told why we are not satisfied with any figures or explanations provided. We will then try to agree with you any adjustments needed.

We may seek to adjust profits for years earlier than those originally subject to investigation.

We will only suggest adjustments that we consider justified by the information that we have. You should ask us to explain if you do not understand any figures being put forward.

Where there have been significant errors or omissions in your accounts or tax returns we will ask you to sign a “certificate of full disclosure” towards the end of an investigation confirming that you have now declared all of your taxable income. You should consider this document very carefully before signing. We will not ask for a certificate if the investigation showed that nothing was wrong, or where the omissions were trivial.

When concluding the investigation we will advise you if we consider that your business records were inadequate. It is important for you to understand the nature of any shortcomings with your accounts or tax returns. You should ask us, or your professional adviser, to confirm what is needed to get them right in the future.

Usually we will write to you or your professional adviser to confirm settlement of your affairs.

We will not start another investigation in the future simply because something was wrong on a previous occasion, but we may want to check that you have made the necessary changes to put things right.

9. Payments towards any additional liability

During the investigation, we may offer you the chance to make a payment towards any additional liability thought to be due. This will usually reduce any interest chargeable.

10. Interest and penalties

Interest will be payable whenever tax is paid late, including tax resulting from an investigation. Penalties may also be due, which are in most cases set at a level below the statutory maximum that we can charge. We can seek penalties for incorrect returns only if an error was due to fraud, wilful default or negligent conduct. If we think interest or penalties apply we will explain our reasons.

Most investigations are concluded by agreement; often by an exchange of letters in which you agree to pay specified liabilities and also, where applicable, interest and penalties.

Agreement will result in assessments, interest determinations and penalty notices being issued.

The way that we work out interest and penalties is set out in a separate guidance note GN 34. We will supply copies on request.

11. Assessments and appeals

If we cannot reach agreement with you, we may make assessments to include any amounts of tax we believe are due on the basis of all the relevant information available to us at that time and impose penalties where appropriate. You will have the right to appeal against these assessments and penalty notices. You can ask us to postpone payment of part or all of the tax, but interest may be charged if the final amount of tax is greater than you anticipate.

You can appeal against the imposition, but not the amount, of a penalty charge in the same way that you can appeal against a tax assessment. There is however no statutory right of appeal against an interest charge; although we will review the position if you feel that interest has been incorrectly calculated.

You can find out how to make an appeal by reading the notes issued with assessments or by asking us to explain the process.

12. Appeal hearings

We will try, wherever possible, to reach agreement with you about your tax without the need for a formal hearing of any appeal.

If you have made an appeal against an assessment or the imposition of a penalty charge, you have the right to ask for the appeal to be heard by the Income Tax Commissioners. We will arrange for this to be done or, if you prefer, you can approach them directly. Contact with the Commissioners should always be made through their secretary. We will give you the appropriate name and address if you ask for it.

If the appeal hearing has been arranged at your request and we think we will need more time to conclude our enquiries, or it is otherwise not appropriate for your case to be heard, we will tell you and ask the Commissioners to adjourn the hearing to a later date. You are entitled to oppose our request.

We may ask the Commissioners to hear your appeal if there is little or no progress being made toward settling it by agreement.

If the appeal hearing has been arranged at our request and you need more time to provide information, you can ask the Commissioners to adjourn the hearing to a later date. It will be up to them to decide whether to do so.

The Commissioners will expect you to provide them with the written statement of your case no less than 14 days before the date of the hearing. This should set out all of your grounds for appeal.

You can choose whether or not to have your case presented for you by a professional representative, or by any other person, providing the Commissioners do not object. Matters that we need to put to the Commissioners can be complex and involve important issues. We advise you to be professionally represented at any hearing.

We have the right to put our case as well and will aim to ensure that the Commissioners have all the relevant facts about your tax affairs when considering their decision.

After listening to both parties and considering the evidence, the Commissioners will decide whether tax assessments should remain unchanged, be increased or reduced and in the case of a penalty, whether it should have been imposed.

You may ask us, or if you prefer the secretary to the Commissioners, if there is anything about the appeal hearing procedure which you do not understand or feel you need to know.

13. **Suggestions**

The investigations we conduct are a serious matter. We set high standards for the way we carry out our work. We do appreciate that our enquiries may be unwelcome. If you have any suggestions about our investigation work, please write to the Head of Compliance, Income Tax Division, Buck's Road, Douglas, IM1 3TX.

14. **Complaints**

If you believe that:

- we have not acted in accordance with this guidance; or
- we have made a mistake; or
- you have been treated badly in some other way during the investigation

you can ask for your case to be reviewed. The Treasury produces a booklet "I wish to make a complaint" which gives further guidance and this is available from Income Tax Division.

15. **Your entitlement**

You are entitled to expect the Income Tax Division

To be fair

- By dealing with your tax affairs impartially
- By expecting you to pay only what is due
- By treating everyone equally

To help you understand your obligations and get your tax affairs right

- By providing clear leaflets and forms
- By giving you information and assistance
- By being courteous at all times

To provide an efficient service

- By settling your tax affairs promptly and accurately
- By keeping your private affairs strictly confidential
- By using the information you give us only as allowed by the law
- By minimising your costs of complying with the law
- By keeping our costs down

If you are not satisfied we will tell you exactly how to complain.

In return, we expect you

- To be honest
- To give us accurate information within a reasonable time
- To pay your tax on time

16. Contact information

Address	The Treasury Income Tax Division Second Floor Government Office Buck's Road Douglas Isle of Man IM1 3TX	
Telephone	(01624) 685362	
Fax	(01624) 685351	
E-mail	incometax@itd.treasury.gov.im	
Website	www.gov.im/incometax	
Opening Hours	Monday to Thursday	9.15am – 5.00pm
	Friday	9.15am – 4.30pm