

Statutory Document No. 2019/0271

*Income Tax Act 1970*

INCOME TAX (SUBSTANCE REQUIREMENTS) (AMENDMENT) ORDER 2019

Approved by Tynwald: 17th July 2019
Coming into Operation: in accordance with article 2

The Treasury makes the following Order under section 80N of the Income Tax Act 1970.

1 Title

This Order is the Income Tax (Substance Requirements) (Amendment) Order 2019.

2 Commencement

If approved by Tynwald¹, this Order comes into operation on the day after it is approved and shall have effect immediately.

3 Amendment of the Income Tax Act 1970


- (1) The Income Tax Act 1970 is amended as follows.
- (2) In section 80B (definitions) —
 - (a) in the definition of “**foreign tax official**” after “EU Member State”, insert **or any other jurisdiction**;
 - (b) for the definition of a “**high risk IP company**”, substitute —

a “**high risk IP company**” is an IP company that holds an IP asset that—

 - (a) has been acquired from related parties or obtained through the funding of overseas research and development activities; and
 - (b) is licensed to related parties or monetised through activities performed by foreign related parties; and
 - (c) for the definition of an “**IP asset**”, substitute —

¹ Tynwald approval is required by section 80N(1) of the Income Tax Act 1970

- 66** an “IP asset” means an intellectual property right including copyright, design right, trademark, brand, patent and similar asset; **62**.
- (3) In section 80E(3)(b) (substance requirements: adequate substance), after “has adequate people and premises”, insert **66** in the Island **62**.
- (4) For section 80E(5)(g), substitute –
- 66**(g) in the case of a relevant sector company with income from holding intangible property –
- (i) where the IP asset is a –
- (A) patent or similar asset, research and development; or
- (B) marketing intangible (including a trademark), branding, marketing and distribution;
- (ii) in exceptional cases, other than in the case of a high risk IP company, other core income-generating activities relevant to the business and the IP assets, which may include –
- (A) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the IP asset generating income;
- (B) taking the strategic decisions and managing (as well as bearing) the principal risks relating to the acquisition by third parties and subsequent exploitation and protection of the IP asset;
- (C) carrying on the underlying trading activities through which the intangible assets are exploited. **62**.
- (5) For section 80E(6), substitute –
- 66**(6) In the case of an IP company, periodic decisions of non-resident board members or the passive holding of IP assets are not adequate core income-generating activity in the Island. **62**.
- (6) For subsection 80G(1) (substance requirements: high risk IP company), substitute –
- 66**(1) In the case of a high risk IP company, the substance requirements are presumed not to be met, even if there are core income-generating activities being carried on in the Island relevant to the business and the IP assets, unless the company provides evidence to satisfy the Assessor that this presumption is rebutted.

- (1A) For the purpose of subsection (1) the evidence referred to includes –
- (a) information which demonstrates that there is and historically was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the IP asset, exercised by an adequate number of full time employees with the necessary qualifications who permanently reside and perform their activities in the Island;
 - (b) detailed business plans which demonstrate the commercial rationale for the company holding the IP assets in the Island;
 - (c) information regarding the company's employees, their level of experience, type of contract, qualifications and the duration of their employment;
 - (d) evidence that the company's decision making takes place within the Island; and
 - (e) any other information required by the Assessor. .

MADE 12 JUNE 2019

A L CANNAN
Minister for the Treasury

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

This Order is made under section 80N of the Income Tax Act 1970. It amends the definition of “foreign tax official” in Part 6A of that Act so as to include other jurisdictions in addition to EU Member States with which the Island has an International Arrangement.

By amending Part 6A of the Act, this Order —

- (a) clarifies one of the substance requirements for a pure equity holding company and the core income-generating activities required for an IP company;
- (b) amends the definitions in respect of a high risk IP company, and an IP asset; and
- (c) specifies the types of information required to satisfy the Assessor that the presumption that a high risk IP company fails the substance requirements is rebutted.