

Statutory Document No. 2021/0147



Income Tax Act 1970

RECOVERY OF FOREIGN TAXES REGULATIONS 2021

Approved by Tynwald: 16 June 2021

Coming into operation in accordance with regulation 2

The Treasury makes these Regulations under section 104EA of the Income Tax Act 1970.

1 Title

These Regulations are the Recovery of Foreign Taxes Regulations 2021.

2 Commencement

If approved by Tynwald¹, these Regulations come into operation on the day after they are approved.

3 Interpretation

In these Regulations —

“**applicant authority**” means an authority in a foreign territory which makes a request for recovery in accordance with arrangements having effect by virtue of sections 104B to 104E of the Income Tax Act 1970;

“**competent body**” means a competent body of the foreign territory in which the applicant authority is situated;

“**a contested claim**” is a claim which is subject to action brought by an interested party before the competent body in accordance with the laws in force in the foreign territory, challenging —

- (a) the foreign claim; or
- (b) the instrument permitting enforcement action;

“**enforcement action**” means action to enforce a foreign claim by way of legal proceedings including distress, diligence or other process which might be taken to enforce an Isle of Man claim for the same amount;

“**a final decision**” is a decision against which no appeal lies or against which an appeal lies within a period that has expired without an appeal having been brought by either party to the proceedings;

¹Tynwald approval is required by section 104EA(1) of the Income Tax Act 1970.

“**a foreign claim**” means a debt relating to any relevant foreign tax under an international arrangement having effect by virtue of section 104B of the Income Tax Act 1970;

“**Income Tax Acts**” has the meaning given in section 120 of the Income Tax Act 1970;

“**instrument permitting enforcement**” means —

- (a) any instrument issued by an applicant authority in relation to a foreign claim; or
- (b) a decision on that claim given in favour of that authority by a court or tribunal or other competent body in that territory which permits recovery of that claim in that territory or part thereof;

“**Isle of Man claim**” means a claim for income tax in respect of an assessment under the Income Tax Acts;

“**request for recovery**” means a request for recovery of a foreign claim by an applicant authority; and

“**transmission by electronic means**” includes transmission by means of an electronic communications system (and cognate expressions shall be construed accordingly).

4 Relevant foreign claim

- (1) For the purposes of these Regulations a foreign claim shall be treated as if it were an Isle of Man claim subject to paragraphs (2) to (8).
- (2) The Assessor may take such enforcement action in relation to a foreign claim as he or she would for an Isle of Man claim in the same amount.
- (3) The provisions of sections 97, 98A, 98B, 99, 100 and any other relevant section of the Income Tax Act 1970 have effect in relation to a foreign claim as they have effect in relation to an Isle of Man claim.
- (4) A foreign claim shall apply only if the Assessor receives an instrument permitting its enforcement in the Island.
- (5) Where a foreign claim is against a person, who is not a resident of the applicant authority, the recovery of that claim can only apply where the claim can no longer be contested in the foreign territory in which the applicant authority is situated, unless otherwise agreed between the applicant authority and the Assessor.
- (6) A foreign claim concerning a deceased person or their estate is limited to the value of the estate or of the property acquired by each beneficiary of the estate, depending on whether the claim is to be recovered from the estate or from the beneficiaries.

- (7) A foreign claim shall not have any priority specially accorded to it and should be treated in the same way as an Isle of Man claim.
- (8) The Assessor may permit the deferral of payments towards the foreign claim or allow for payment by installments subject to the terms of an agreement, provided that if there is a deferral or payment by installments is agreed the Assessor must, inform the applicant authority.

5 Requests for recovery

- (1) A request for recovery of a foreign claim shall be made in writing and copies of the instrument permitting enforcement and all supporting documents of the applicant authority, and a certified English translation thereof where such document is not in English, provided.
- (2) The request for recovery should be accompanied by —
 - (a) a declaration that the foreign claim concerns a tax covered by an international arrangement;
 - (b) an official copy of the instrument permitting enforcement by the applicant authority; and
 - (c) any other document required for recovery or measures of conservancy.
- (3) The instrument permitting enforcement by the applicant authority shall, where appropriate and in accordance with the provisions in force in the Isle of Man, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for the assistance, by an instrument, charge or assessment permitting enforcement in the Isle of Man.
- (4) A request for recovery shall give the sterling equivalent of the amount of the foreign claim or such currency as the Assessor and the applicant authority may agree, using the latest selling rate for sterling recorded on the most representative exchange market or markets of the territory in which the applicant authority is situated on the date when the request for recovery is made.
- (5) The Assessor and the applicant authority may accept and transmit the information required by paragraph (1) and any other relevant communication by electronic means where there is agreement between them to waive paper communication.
- (6) The Assessor and the applicant authority shall agree a minimum amount in sterling of the foreign claim for the purposes of making a request for recovery.
- (7) The Assessor is not be obliged to act on a request for recovery where the amount concerned is less than the agreed minimum amount.

- (8) The Assessor and the applicant authority shall agree how and if any applicable costs associated with the recovery of the foreign claim shall be met.
- (9) The Assessor and the applicant authority shall agree the method and timing of the transfer of the amount recovered to the applicant authority.

6 Procedure on receipt of request

When the Assessor receives a request for recovery, the Assessor —

- (a) shall acknowledge receipt of the request in writing, by electronic means if appropriate, to the applicant authority; and
- (b) may request additional information or documentation from the applicant authority if the information and documentation specified in regulation 5(1) and (2) has not been supplied.

7 Requests for recovery — further provisions

For the purposes of these Regulations —

- (a) a request for recovery made by an applicant authority shall be taken to be duly made in accordance with arrangements relating to international tax enforcement unless the contrary is proved; and
- (b) except as set out in regulations 10, 11 and 12, no question may be raised as to a person's liability in relation to the foreign claim.

8 Communication of information

Information sent to the Assessor as part of a request for recovery may only be communicated by the Assessor to —

- (a) the person mentioned in the request for recovery;
- (b) those persons who are responsible for the recovery of claims on the Island, and solely for that purpose; or
- (c) the judicial authorities or a Coroner dealing with matters concerning the recovery of claims.

9 Adjustment of a foreign claim

- (1) This regulation applies where the amount of a foreign claim is amended for any reason.
- (2) Where the amendment leads to a reduction in the amount of the foreign claim the following rules apply —
 - (a) the Assessor shall continue the action which he or she has undertaken with a view to recovery, but that action shall be limited to only the amount still outstanding;

- (b) if at the time the Assessor is informed of the reduction in the amount of the foreign claim, an amount exceeding the amount still outstanding has already been recovered by them, but this amount has not yet been transferred to the applicant authority, the Assessor shall repay the excess to the person who appears to the Assessor to be entitled to it;
- (3) Where the amendment leads to an increase in the amount of the foreign claim the following rules apply —
 - (a) the additional request shall, as far as possible and in line with the usual domestic collection procedure, be dealt with by the Assessor at the same time as the original request;
 - (b) where, in view of the state of progress of the existing recovery procedure, consolidation of the additional request with the original request is not possible, the Assessor shall treat that request as a new claim but shall only be required to comply with it if it concerns an amount not less than the minimum amount referred to in regulation 5(6).

10 Cancellation or payment of a foreign claim

In any case where the Assessor takes enforcement action in relation to a foreign claim, and upon receipt of notice in writing, by electronic means if appropriate, by the applicant authority that —

- (a) the taxpayer has made payment in satisfaction of that claim; or
 - (b) the claim has been terminated or cancelled for some other reason;
- the Assessor shall cease any enforcement action in relation to that claim.

11 Contested foreign claims

- (1) No enforcement action under these Regulations shall be taken against a person if the person shows that proceedings relevant to the person's liability in relation to the foreign claim are pending, or are about to be instituted, before a court, tribunal or other competent body in the foreign territory in which the applicant authority is situated.
- (2) For the purposes of paragraph (1), proceedings relevant to a person's liability in relation to a foreign claim are pending until a final decision is made.

12 Foreign claims determined in taxpayer's favour

- (1) No enforcement action under these Regulations shall be taken against a person if a final decision on the foreign claim has been given in the person's favour by a court, tribunal or other competent body in the foreign territory in which the applicant authority is situated.

- (2) If a person can show that such a decision has been given in the person's favour in respect of part of the claim, no enforcement action under these Regulations shall be taken in relation to that part.

13 Limitation

- (1) The period of limitation or prescription in relation to any issue arising on the recovery of any foreign claim under these Regulations shall be that applicable under the laws in force in the foreign territory in which the applicant authority is situated.
- (2) For the purposes of paragraph (1), any step taken by the Assessor in recovery of a foreign claim pursuant to a request for recovery shall be deemed to have been taken in the foreign territory in which the applicant authority is situated where that step, if it had been taken by that applicant authority, would have had the effect of suspending or interrupting the period of limitation or prescription in accordance with the laws in force in that territory.
- (3) Any steps taken by the Assessor in recovery of a foreign claim shall be no more onerous than would be taken in respect of an Isle of Man claim for the same or similar amount.

14 Interest

- (1) A foreign claim can include interest in respect of the relevant foreign tax and a penalty if the international arrangement having effect by virtue of section 104B of the Income Tax Act 1970 so provides.
- (2) Where the international arrangement provides that the rate of interest is that which applies under the law of the territory in which the applicant authority is situated, the foreign claim carries interest at that rate, for the period determined in accordance with those laws.
- (3) Where paragraph (2) applies, the applicant authority must provide details to the Assessor of —
 - (a) the daily rate of interest to be applied; and
 - (b) the period for which interest runs.
- (4) Where the international arrangement provides that the rate of interest is that which applies in respect of any tax imposed under the domestic law of the Isle of Man, the claim carries interest at the rate applicable to income tax under section 111A of the Income Tax Act 1970 from the relevant date until payment.
- (5) In paragraph (4), "the relevant date" is the date on which the Assessor receives the relevant foreign claim.

- (6) Interest is payable under this regulation without any deduction of income tax.
- (7) For the purposes of this regulation, where —
- (a) any payment is made by cheque to the Isle of Man Government; and
 - (b) the cheque is paid on its first presentation to the banker on whom it is drawn;
- the payment shall be treated as made on the day on which the cheque is received by the Assessor.
- (8) Interest charged under this regulation shall be recoverable as if it were interest charged under a provision of the Income Tax Act 1970.

15 Evidence

- (1) An instrument permitting enforcement of a foreign claim recognised by the Assessor as an instrument authorising enforcement of the claim in the Isle of Man, together with a certificate from the Assessor that payment of the claim has not been made to them, or to the best of their knowledge and belief, to any other officer, or to any person acting on their behalf, or on behalf of another officer, or to the applicant authority, is sufficient evidence that the sum mentioned in the instrument is unpaid and is due to the applicant authority.
- (2) A certificate from the Assessor that interest is payable under either regulation 14(2) or 14(4) and that payment of the interest has not been made to them, or, to the best of their knowledge and belief, to any other officer, or to any person acting on their behalf or on behalf of another officer, or to the applicant authority, is sufficient evidence that the interest is unpaid and due to the applicant authority.
- (3) For the purposes of this regulation, any document purporting to be such a certificate as is mentioned in paragraphs (1) and (2) is deemed to be such a certificate unless the contrary is proved.

MADE 12 MAY 2021

A L CANNAN
Minister for the Treasury

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

These Regulations, made under section 104EA of the Income Tax Act 1970, make provision for the recovery of foreign taxes in the Isle of Man on behalf of a foreign territory (“a foreign claim”).

Regulation 1 - Title

Regulation 2 - provides for citation and commencement.

Regulation 3 - Interpretation

Regulation 4 specifies what constitutes a foreign claim for the purposes of a claim under Isle of Man income tax law. Further it provides that the Assessor may take enforcement action to recover such a claim on behalf of an applicant authority.

Regulation 5 specifies rules for how a request for recovery of a foreign claim should be made.

Regulation 6 specifies the procedure to be used by the Assessor on receipt of a request for recovery.

Regulation 7 makes further procedural provisions.

Regulation 8 specifies rules relating to whom the Assessor may communicate the documents sent to them.

Regulation 9 specifies rules for procedures to be used where a foreign claim is adjusted.

Regulation 10 specifies rules relating to the cancellation and payment of a foreign claim.

Regulation 11 specifies rules on the procedures to be used when a foreign claim is contested.

Regulation 12 specifies rules relating to a foreign claim which has been determined in the taxpayer’s favour.

Regulation 13 makes provision in relation to limitation.

Regulation 14 makes provision in relation to interest.

Regulation 15 specifies rules relating to the evidence required for the enforcement of a foreign claim.