



Isle of Man Government

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INCOME TAX

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1. Introduction

Income tax was first introduced in the Isle of Man by the Income Tax Act 1918 which described in its preamble being "An Act to provide for a Tax on income" the system of taxation and that the Income Tax Act 1918 introduced was based broadly upon the system then in operation in the United Kingdom and in many respects the similarities remain. This is an important factor as regards the interpretation of the provisions of the Manx Income Tax Acts because in a case where the interpretation of a provision or an expression in those Acts has been the subject of an appeal in the courts of the United Kingdom, the judgment in that appeal is a persuasive authority for the adoption of the same interpretation in a similar case in the Isle of Man.

The Income Tax Act 1918 was followed by successive amending Acts in the years that followed until the then existing legislation was consolidated in the Income Tax Act 1946. This was, in turn, followed by successive amending Acts until the then existing legislation was consolidated in the Income Tax Act 1970.

The Income Tax Act 1970 has since been amended by the —

- (i) Income Tax Act 1971;
- (ii) Income Tax Act 1973;
- (iii) Income Tax Act 1974;
- (iv) Income Tax Act 1976;
- (v) Income Tax Act 1978;
- (vi) Income Tax (Retirement Benefit Schemes) Act 1978;

and

- (vii) Income Tax (Amendment) Act 1979.

These Acts are collectively referred to as being "the Income Tax Acts 1970 to 1979". Section 120 of the Income Tax Act 1970 includes the following definition:—

"Income Tax Acts" means this Act and any other enactment relating to income tax;

"Manx income tax" and "Manx tax" means income tax payable under the Income Tax Acts.

The Income Tax Bill 1979 contains the new income tax provisions that were proposed by the Finance Board as a part of the Budget for 1979/80. The Bill was given its first and second readings by the House of Keys on 30th October and 6th November, 1979, respectively. It was then referred to a Select Committee for consideration. As it is unlikely to complete all its stages and obtain the Royal Assent before some time in 1980, the Bill is likely to be known as the Income Tax Act 1980 when it is enacted. It is proposed that the provisions of this Bill, when enacted, shall have effect in respect of the income tax year commencing on 6th April, 1979, and of each succeeding income tax year.

Contractor's Guide 2011

Guidance Note GN 21

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.

The information in this booklet can be provided in large print on request.

CONTENTS

	Page
Introduction.....	1
Introduction.....	1
What is the Isle of Man Construction Industry Scheme?.....	1
Legislation	1
Am I a contractor for the purposes of the scheme?	2
Which activities fall within the scheme?	3
How do I notify the Division of my intention to become a contractor?.....	4
What if I am a UK or overseas contractor?.....	4
If the contractor is an individual.....	5
If the contractor is a company or business enterprise.....	5
Exemption certificates	5
How do I advise the Division when subcontractors start or finish?	5
Keeping payroll records	6
Subcontractor tax deductions.....	6
Remittance of subcontractor tax deductions.....	7
Submission of contractor's annual return	8
What are my obligations to my subcontractors?	9
What if I also subcontract to another contractor?	10
General compliance	10
Which forms should I use?.....	11
What's new from 6 April 2011?	12
Contractor Online Tax Services.....	12
Contact details	13

Please note:

Copies of all forms and guides mentioned in this booklet can be obtained from the Income Tax Division by phoning 01624 685400.

Introduction

This guide is designed to provide contractors and their tax agents with information about the Isle of Man Construction Industry Scheme and their obligations under the scheme. It is advisable for them to familiarise themselves with its contents.

What is the Isle of Man Construction Industry Scheme?

The scheme came into operation in 1988 when, in accordance with Section 6 of the Income Tax (Instalment Payments) Act 1974, the Assessor issued a direction introducing a tax deduction scheme for subcontractors engaged in the construction industry.

The scheme applies to individuals or businesses working in the construction industry and should be operated by contractors in a similar manner to the Income Tax Instalment Payments ("ITIP") system operated by employers. Under the scheme, tax should be deducted from a subcontractor's wage or salary (where applicable) by the contractor on each pay day. The deducted amounts are credited to the appropriate subcontractor at the end of the year and are then offset against the income tax payable on that subcontractor's assessment.

The scheme ensures that any payments made by a contractor to a subcontractor in respect of construction activities are properly recorded and reported, that subcontractor tax exemption certificates are checked where appropriate, and that any income tax due in respect of the payments is correctly deducted and then paid to the Income Tax Division in good time.

Legislation

The legislation under which the Isle of Man Construction Industry Scheme operates, and which defines contractor obligations, is contained within the following Acts passed by Tynwald:

- Income Tax (Instalment Payments) Act 1974;
- Income Tax (Amendment) Act 1986;
- Income Tax Act 1989.

In addition, the following regulations and orders have been passed to supplement the above Acts of Tynwald:

- Income Tax (Modified ITIP) Regulations 1987 [Government Circular No 92/87];
- Income Tax (Instalment Payments) (Temporary Taxation) Order 2010 [Statutory Document No 21/10].

I want to know if I am a contractor for the purposes of the scheme

Under the Isle of Man Construction Industry Scheme, a person may be a contractor if:

They carry on a business which includes construction operations - If they have this type of business and they engage subcontractors, they are a contractor. The businesses covered include builders who carry out construction work themselves and pay others to do so, property developers and speculative builders who build or alter properties to make a profit, gang leaders who organise labour for construction work and foreign businesses that carry out construction work in the Isle of Man.

Or

They carry on a business that spends an average of £50,000 or more a year over a three year period on construction operations - This includes businesses like manufacturers or retailers which are not primarily in the construction trade.

If a contractor's spending on construction work has fallen below an average of £50,000 over a three year period, they must seek authorisation from the Income Tax Division to cease being treated as a contractor under the scheme.

In the case of a newly started business, where one third of total expenditure on construction operations for the period since commencement of the business exceeds £50,000, the business will be deemed to be a contractor for the purposes of the scheme.

Any type of business, including a company, partnership or self-employed individual, can be a contractor under the scheme.

If construction work is carried out on an individual's home, they cannot be deemed to be a contractor even if they engage builders, and regardless of how much they spend, as they do not carry on a business.

For more information about what is classed as 'construction operations', please refer to the section on "Which activities fall within the scheme?".

It is possible to be a contractor while also being engaged as a subcontractor by another main contractor e.g. someone who is a gang leader. In these circumstances, it is important to comply with the obligations both as a contractor and subcontractor. For more information regarding subcontractors and their obligations under the scheme, please refer to GN 44 - Subcontractor's Guide.

I want to know which activities fall within the scheme

Generally, anything carried out on a construction site in the Isle of Man in connection with construction work is likely to fall within the scheme. This includes not only the construction of new buildings, but also the demolition, alteration, repair, fitting and decorating of existing buildings.

As a guide, activities falling within the scheme are as follows:

- the construction, alteration, repair, extension, demolition or dismantling of buildings or structures, whether permanent or not;
- the construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land without prejudice to the foregoing walls, road works, power-lines, telecommunication apparatus, aircraft runways, docks and harbours, pipe-lines, reservoirs, water mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
- the installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;
- the internal cleaning of buildings and structures, so far as is carried out in the course of their construction, alteration, repair, extension or restoration;
- any operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this list of activities, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works;
- the painting or decorating of the internal or external surfaces of any building or structure.

As a guide, the following activities generally fall outside of the scheme:

- the drilling for, or extraction of, oil or natural gas;
- the extraction, whether by underground or surface working, of minerals, tunnelling or boring, or construction of underground works for this purpose;
- the manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;
- the manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;
- the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;

- the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature; sign writing and erecting, installing and repairing signboards and advertisements;
- the installation of seating, blinds and shutters;
- the installation of security systems, including burglar alarms, closed circuit television and public address systems;
- service facilities such as a canteen, medical centre, site security or temporary office facilities.

Some construction contracts incorporate a number of activities, some of which will fall within the scheme and some outside. These are called Mixed Contracts. All payments due under such a contract should be treated as falling within the scheme. This applies even when only one of the activities falls within the scheme.

If in doubt, the contractor should contact the Income Tax Division to clarify how the payments should be treated, as failure to deduct tax when required can result in the contractor being held liable for any tax not deducted.

I want to know how I notify the Division of my intention to become a contractor

A contractor who engages one or more subcontractors must notify the Income Tax Division of their intention to become a contractor within 14 days of making their first payment to a subcontractor. This notification is required in all cases, irrespective of the number of subcontractors or the amount paid, and should be made using form R13 "Contractor's Notification Form".

The Division will require details of the names and addresses of both the contractor and the business or, if the contractor is a Limited Company, the registered office address together with details of the directors. The contractor will also need to supply the date they engaged or intend to engage their first subcontractor(s) and the approximate number, if they are not already engaged.

If subcontractors are already engaged, the contractor must, at the same time, supply the full name, address and date of birth of each subcontractor, the subcontractor's tax reference number and the date of their engagement using form C20 "Subcontractor Commencing".

Once these have been received by the Division, an information pack including all the necessary documentation will be issued.

Failure to notify the Division within the specified period will result in a penalty of £250.

I want to know about being a UK or overseas contractor

A UK or overseas contractor must notify the Income Tax Division within 14 days of making their first payment to a subcontractor as described in "How do I notify the Division of my intention to become a contractor?".

In addition, UK and overseas contractors commencing operations in the Isle of Man must contact the Division on 01624 685400 as they may be subject to non-resident tax on any profits attributable to their Isle of Man operations.

If the contractor is an individual

If the contractor is an individual and will be present in the Island for less than 183 days in any tax year, income tax will be deducted at 20% as they may have a non-resident tax liability. However, it may be possible for them to reclaim all or part of the tax that has been deducted if a double taxation agreement applies. The individual should contact the Division directly if they believe they may be due a repayment of tax.

If the contractor is in the Island for 183 or more days in any tax year, they may be deemed to be resident for Isle of Man income tax purposes and charged to income tax as a resident from their date of arrival.

If the contractor is a company or business enterprise

The contractor may be liable to non-resident tax if they operate through a permanent establishment in the Island or if they are engaged on a site for a period of more than 12 months.

Exemption certificates

UK and overseas individuals may apply for an Isle of Man tax exemption certificate once they have been resident in the Island for six months.

UK and overseas companies or business enterprises may apply for an exemption certificate if they can demonstrate that they are authorised to receive payments gross in the UK.

For further information about qualifying for a tax exemption certificate, please refer to GN 44 - Subcontractor's Guide.

I want to know how I advise the Division when subcontractors start or finish

Details of any subcontractors engaged at the time of commencing as a contractor must be enclosed with form R13 "Contractor's Notification Form". Details of subcontractors engaged after this form has been submitted should be sent to the Income Tax Division within 14 days of the date of their engagement.

In all cases, the subcontractor details must be submitted on form C20 "Subcontractor Commencing" and will include the subcontractor's tax reference number, tax exemption certificate number (if held), name, address, date of birth and the date that they were first paid.

When a contractor ceases to engage a subcontractor and has no intention of engaging the same subcontractor in the future, they must complete form C21 "Certificate of Payments and Tax Deducted for a Part Year" and send it to the Division within 14 days of the date that the engagement ceased.

I want to know about keeping payroll records

A contractor must complete and retain all records and documents needed to support their contractor's annual return and to comply with the regulations.

These documents include accounts, books, deeds, contracts and receipts. The records and documents must be kept for three years after the end of the tax year to which they relate and must be produced to the Income Tax Division upon request.

Failure to complete, retain or produce these documents on request will result in a penalty of £250.

I want to know about subcontractor tax deductions

Before making any payment to a subcontractor, the contractor must check whether the subcontractor holds a valid tax exemption certificate.

If a valid certificate is presented, the payment can be made gross i.e. code NT (no tax) can be applied and no tax need be deducted from the payment.

If a valid certificate cannot be presented, then code HR (Higher Rate) must be applied and tax must be deducted from the payment at the rate of 20%, with the net amount being paid to the subcontractor. Tax should only be deducted in respect of the labour element of the payment and not the materials element.

Materials include not only building materials but also such items as consumable store, fuel and plant (including plant hire) actually used in carrying out the construction operations, but exclude the cost of fuel used by the subcontractor or the work force in travelling.

It is important to note that, in the absence of evidence from the subcontractor of the cost of materials, the contractor should deduct income tax from the total payment in cases where no valid exemption certificate is presented.

In addition, when a payment is made, the contractor must fully and accurately complete a form C11 "Certificate of Tax Deducted in Respect of Subcontracted Work" and issue this to the subcontractor. The contractor must also enter the details of the C11 on the relevant subcontractor's form C11(a) "Details of Subcontractor's Payments and Tax Deducted". Forms C11 and C11(a) can be requested from the Income Tax Division.

If a contractor fails to deduct tax from any payment made when a valid tax exemption certificate has not been presented, the contractor will be liable for any tax that should have been deducted. They may also be liable to a penalty of £250 for failure to comply with the regulations.

If in doubt, the contractor should contact the Division to obtain clarification as to whether a payment should be made gross to any specific subcontractor.

I want to know about the remittance of subcontractor tax deductions

A contractor must submit their C35 "Remittance Card for Deductions of Tax from Subcontractors" and payment of any tax deducted from subcontractors to the Income Tax Division on a monthly basis. The remittance card and payment are due by the 19th of the month within which the payment period ends.

The term "payment period" for the purposes of this guide refers to an income tax month, being the period from the 6th day of any calendar month and ending on the 5th day of the following calendar month. For example, the period commencing on 6th April will end on 5th May, with the payment of any tax deducted during that payment period being due on or before 19th May.

Before submitting the remittance card, the contractor must, at the end of each payment period, total the tax deducted for each week as entered on each subcontractor's C11(a) "Details of Subcontractor's Payments and Tax Deducted" and input this total amount in the relevant payment period on the remittance card.

The remittance card should still be submitted if no tax has been deducted during the payment period. In this case, the remittance card should be completed showing "0.00" for the relevant payment period.

Contractors should note that by enrolling for Contractor Online Tax Services their monthly remittance can be made online, (including a nil remittance), therefore removing the need for the remittance card to be sent to the Division each month. Payments can be made by BACS Credit Transfer, Credit Card or Debit Card. For more information, please see "Contractor Online Tax Services".

It is important to understand that the contractor is deducting tax from the payments made to subcontractors on behalf of the Division. The tax deducted does not belong to the contractor and must not be used to assist with cash flow within their business. The tax deducted belongs to the subcontractor and will be used to offset any future income tax liability belonging to that subcontractor.

Late payment of the monthly remittance will be subject to a penalty of 5% of the amount due. An additional penalty of 5% will be due if all or part of the amount outstanding remains unpaid six months after the due date. The additional penalty will be 5% of the amount unpaid.

Penalties for late payment of the monthly remittance will also be due:

- if investigations or payroll inspections identify that an underpayment has arisen for any payment period
- on outstanding remittances for which an arrangement is in place allowing the contractor to make payments over an agreed period of time
- if the 19th of the month falls on a non-working day and the payment is made after the next working day. The payments are due **on or before** the 19th of the month within which the payment period ends.

A Notice of Determination estimating the amount that should have been paid will be issued in cases where payment has not been made by the due date. The penalty will equal 5% of the amount of the Notice of Determination.

It is therefore important that all payments are made on time.

Where payments are not made on time, any subsequent payment will, unless otherwise specified by the contractor, be offset against the earliest outstanding amount first.

I want to know about the submission of a contractor's annual return

A C37 "Contractor's Annual Return" must be submitted within 30 days of the end of the tax year to which the return relates or within 30 days from ceasing to be an employer, whichever is the earlier.

The return should be completed fully and accurately. It should also be accompanied by a complete and accurate C11a "Details of Subcontractor's Payments and Tax Deducted" and C14 "Isle of Man Subcontractor's Deduction Card" for each subcontractor engaged during the tax year. (A C14 must be completed for each subcontractor engaged during the tax year, even if no tax was deducted from payments made to them.)

The contractor's annual return summarises the following information:

- the number of C14s enclosed with the return
- the total gross labour payments made during the year
- the total payments made for materials during the year
- the total amount of tax deducted during the year.

Failure to complete the return fully and accurately may result in it being deemed to be unacceptable and returned to the contractor to be fully completed. The Income Tax Division will treat such returns in the same manner as other outstanding contractor returns.

Practice Note P.N. 169/11 contains examples of returns which will not be considered as complete, as follows;

1. Unsigned annual return - if an annual return has not been signed, it will be returned to the contractor for signature. Where the original unsigned return was received by the due date, no penalty will be charged, if the form was otherwise complete and accurate.
2. No annual return received - if the required forms C14 are received without the annual return (for example, via email or on disc), the contractor will be contacted and, if the return is not submitted by the due date, penalties will be charged.
3. Annual return received but not all required forms C14 received - if an annual return is received by the due date but some of the required documentation is missing, the

contractor will be asked to provide the missing items. If the documentation requested is not received by the due date, late return penalties will be charged.

4. Annual return not fully completed - if the annual return is not fully completed, it will be returned to the contractor for amendment. If the completed return is not received by the due date, penalties will be charged.
5. Forms C14 not fully completed - if the forms C14 are not fully completed, the contractor will be contacted and asked for the missing information. If the information is not received by the due date, penalties will be charged.

In each of examples 2 - 5 above, if the contractor does not provide the required documentation by the due date, a penalty of £250 will be charged. Further penalties of £50 per day will be charged, commencing from the day after that on which the £250 penalty is charged, until everything required has been submitted. The level of penalty charged is not linked to how many documents remain outstanding

Information omitted from a return

If a contractor completes a return to the best of their knowledge which is accepted by the Assessor but an omission is subsequently identified (e.g. an officer discovers that a taxable benefit-in-kind should have been on the return), no penalty will be charged if the relevant forms are submitted, and any payment due is made, within 30 days of the employer being notified of the omission.

If the return is still outstanding six months after the due date, the case will be referred for prosecution action to be taken and the contractor will be liable, on summary conviction, to custody of up to six months or to a fine not exceeding £5,000, or to both.

If a contractor ceases during a tax year, they should contact the Division in order for a part year return to be issued for the period from the start of the tax year (6 April) to the date of cessation. This return must be submitted within 30 days of cessation. If a full and accurate return has not been received by the due date, the same penalties and action will be taken as for a late annual return.

I want to know what my obligations are to my subcontractors

A contractor has certain obligations in respect of any subcontractors they engage. These obligations are there to assist both the contractor and the subcontractor to comply with their income tax requirements.

A contractor must ensure that they:

- notify the Income Tax Division of any new subcontractors using form C20 "Subcontractor Commencing" within 14 days of the date of their engagement;
- establish whether or not the subcontractor holds a valid tax exemption certificate and deduct income tax from any payments if a valid certificate is not presented;
- pay any income tax deducted to the Division by the due date;

- issue a full and accurate form C11 "Certificate of Tax Deducted in Respect of Subcontracted Work" to the subcontractor every time a payment is made;
- complete form C14 "Isle of Man Subcontractor's Deduction Card" for each subcontractor at the end of the tax year and give a copy to the subcontractor for their records;
- notify the Division within 14 days of ceasing to engage a subcontractor who they have no intention of engaging in the future using form C21 "Certificate of Payments and Tax Deducted for a Part Year".

I want to know what I do if I also subcontract to another contractor

It is possible to be a contractor and a subcontractor at the same time. Construction businesses are often paid by a contractor for doing construction work, while at the same time paying their own subcontractors to do work for them. When being paid by a contractor to do construction work they are subcontractors and must follow the guide for subcontractors. When paying their own subcontractors they are a contractor and must follow the guide for contractors.

I want to know about general compliance and penalties

Failure to comply with the Isle of Man Construction Industry Scheme under the provisions of the Income Tax (Instalment Payments) Act 1974 and the regulations made under that Act may result in penalties being imposed. These penalties could be imposed in respect of each instance of non-compliance. These are detailed below;

Late return penalties:

If a contractor fails to submit their contractor's annual return form C37 within 30 days from the end of the tax year or 30 days from date of ceasing to be a contractor they will be liable to a £250 late return penalty, together with a further penalty of £50 per day that the return form remains outstanding.

It is therefore important that you ensure that the return form is fully and accurately completed and submitted by the due date, together with all appropriate supporting documentation in order to avoid such penalties being imposed.

If you engage an agent to complete and submit the return form, you will need to ensure that the agent completes and submits the return form by the due date, otherwise you will remain liable to penalties as you are legally responsible for ensuring that the return form is submitted by the due date.

If the return form is incomplete or not completed accurately, then the return form may be deemed to be unacceptable. In this case the return form will be returned to you for amendment. If the amended return form is not submitted by the due date, then again, you will be liable to penalties for the late submission of a complete return form.

Late payment penalties:

If a contractor fails to make payment of any monthly remittance of subcontractor tax deductions by the 19th day of each month, they will be liable to a penalty of 5% of the amount due for

payment. Any amount which remains outstanding after a further 6 months will be liable to an additional 5% penalty. This penalty will not be charged where the amount of the penalty is less than £25.

It is therefore important that you make timely payment of the full amount of subcontractor tax deductions due for each payment month in order to avoid the imposition of a penalty.

Failure to comply penalties:

From 6 April 2010, any failure to comply with the legislation will be subject to a penalty of £250, provided that a penalty does not already exist.

This includes the following requirements for contractors:

- To notify the Assessor within 14 days of making their first payment as a contractor to a subcontractor
- To retain payroll records and other supporting documents i.e. accounts, deeds, receipts, vouchers and contracts for 3 years
- To provide subcontractors with payslips i.e. C11
- To notify the Assessor of new subcontractor details within 14 days of taking on a subcontractor
- To notify the Assessor of the subcontractor details within 14 days of a person ceasing to be an subcontractor
- Any other failure to comply with the Income Tax (Instalment Payments) Act 1974 or associated regulations

Which forms should I use?

A description of each form is shown below.

Form Number	Description
C11	A payment advice completed by the contractor and given to the subcontractor with each payment.
C11(a)	A record of the payments made on forms C11 for each subcontractor, divided into monthly payment periods.
C14	A two part form completed annually by the contractor for each subcontractor, one copy to be given to the subcontractor and one copy to be submitted with the contractor's annual return.
C20	To be completed by the contractor and submitted to the Income Tax Division when engaging a subcontractor.
C21	To be completed and submitted to the Division when the engagement of a subcontractor ceases.
C31	Stationary request form.

C35	Contractor remittance card to be submitted to the Division on a monthly basis showing the total monthly tax deductions (total figure is derived from forms C11(a)). This does not need to be completed if the contractor is enrolled for Contractor Online Tax Services and submits their payment online.
C37	Contractor's annual return detailing totals from the C14 forms.
C49	A listing of all linked subcontractors which is issued by the Division prior to the C37 being issued.
R13	To be completed by the contractor and submitted to the Division within 14 days of commencing as a contractor.

What's new from 6 April 2011?

No amendments have been made to the scheme for the tax year commencing 6 April 2011.

Contractor Online Tax Services

By enrolling for Contractor Online Tax Services, monthly remittance of tax deducted from subcontractors can be made online, including nil remittances. Payments can be made by BACS Credit Transfer, Credit Card or Debit Card. This removes the need for the remittance card to be sent to the Income Tax Division each month, therefore reducing cost and administration.

As payments are credited at the time they are made, it is possible to see the updated payment position in respect of current and previous years.

Contractors or their tax agents can also view their C37 annual return history as well as details of any charges issued (Notices of Determination).

To access Contractor Online Tax Services, first register for Isle of Man Government Online Services – login to www.gov.im/onlineservices and follow the instructions.

Contact details

Please do not hesitate to contact the Division with any questions about the scheme.

Address	The Treasury Income Tax Division Second Floor Government Office Buck's Road Douglas Isle of Man IM1 3TX
Telephone	(01624) 685400
Fax	(01624) 685351
E-mail	incometax@itd.treasury.gov.im
Website	www.gov.im/incometax

Copies of all forms and guides mentioned in this booklet can be obtained from the Division by phoning 01624 685400.