

---

---

## PRACTICE NOTE

---

---

**PN 176/12**

**Date: 5 April 2012**

### INCOME TAX RETURN COMPLIANCE

#### Introduction

This guidance sets out the Assessor's views regarding what constitutes a true and correct income tax return, the use of provisional and estimated figures in returns and assessments and the management of technical enquiries for all taxpayers.

The Income Tax Act 1970 (the Act) defines two categories of taxpayer and they both have a legal obligation to deliver a true and correct return of their income to the Assessor by a set date.

The first category is "non-corporate taxpayers" - individuals and trustees – and the return due date is 6 October in respect of the preceding tax year ended on 5 April or, if the taxpayer ceased residence during the year, six months from the date of cessation of residence (sections 62 and 62A of the Act).

The second category is "corporate taxpayers" – and the return due date is 12 months and one day following the end of the accounting period (section A66 of the Act).

All taxpayers also have a legal obligation to retain for specified periods all documents and records needed to complete their tax return (section 80A of the Act).

#### Incomplete Returns

In order to be accepted as a complete return, the return must contain details of all income, expenses, deductions and other information as required.

If any applicable part of the return is not fully completed it will not be accepted and will be sent back either to the taxpayer, or to their authorised agent, indicating what is missing.

If a return which has been sent back for completion is not resubmitted to the Division by the due date, a late return penalty will be issued. As the original return was incomplete, the fact that it was submitted before the due date will not be accepted as a reason for the Assessor not to charge the penalty.

Returns containing the following will **not** be accepted as fully completed:

- income or deduction boxes marked "to follow", "see accounts" or similar; or
- type of income or deduction is completed, but the amount box is left blank.

## **True and Correct Returns**

### Non-corporate Taxpayers

For non-corporate taxpayers, the Assessor must be satisfied that the return is true and correct before issuing an assessment for the period. If the Assessor is satisfied with the return, an assessment will be issued based on the declared information.

If the Assessor is not satisfied that the return is true and correct, he will make an enquiry into the return before issuing an assessment.

### Corporate Taxpayers

Corporate taxpayers are assessed on a "pay and file" basis, so the tax computation accompanying the return is treated as the first assessment. The Assessor then has a period of 12 months during which to make an enquiry into the return and may issue another assessment if he is not satisfied with the return. Full details of the pay and file system can be found in guidance note GN38 on the Division's website.

If the Assessor wishes to enquire into the return, a formal notice of enquiry under Section A84 of the Act, setting out the details of the enquiry, will be issued to the taxpayer or their agent.

## **Use of Provisional Figures – Corporate and Non-corporate Taxpayers**

A provisional figure is one which the taxpayer supplies pending the submission of an accurate final figure.

The most common situations where a provisional figure may be used are when business accounts have not been finalised, or when final confirmation of the tax liability in another country has not been received.

The Assessor will accept a return with some figures clearly marked as "provisional". An estimated date for providing the final figure should be noted next to the provisional figure.

If a provisional figure is entered on a return:

- that figure will be used in the assessment and the taxpayer or their agent will be advised to submit the final figure and any relevant documentation on or before the estimated date provided; or
- the Assessor will make an enquiry into that aspect of the return and the taxpayer or their agent will be contacted to request additional information to support the provisional figure before the return is accepted; or
- under the pay and file system for corporate taxpayers, any provisional figure on a return will be used in the assessment, and the Assessor may make an enquiry into the return.

The taxpayer will always be required to provide a final figure and if it is not provided by the stated date, the Assessor will take appropriate action to obtain it (see section 7 below).

## **Estimated Figures**

Care should be taken in differentiating between provisional figures and estimated figures.

As stated above, a provisional figure is one provided whilst the final figure is ascertained, whereas an estimated figure is one which the taxpayer would like to be accepted as final because it is not possible to provide an accurate figure: for example if records have been lost, or destroyed in a flood or fire.

If an estimated figure is provided then either:

- the return will be accepted and the estimated figure will be used in the assessment; or
- the return will not be accepted and the Assessor will make an enquiry into the return and may in the interim make his own estimate and use that figure in the assessment.

### **Business Accounts**

The Assessor will always require a computation of taxable business profit to support a business tax return and will normally require a copy of the business accounts.

Draft accounts will be accepted, but the resulting taxable profit figure will be treated as provisional until the final accounts are provided.

Photocopies of signed final accounts will be accepted, as will "type signed" copies of accounts.

In some cases accounts will not be required every year. Taxpayers will be advised of how often accounts will be required.

### **Important Note – Penalties and Interest**

Delays in providing a final figure to replace a provisional figure will be considered to constitute negligence. Accordingly, if there is any delay in providing the final figure to replace a provisional figure, penalties under section 111(1)(b) of the Act and late payment interest under section 111B of the Act may be charged on any additional tax due.

### **Assessments – Non-corporate Taxpayers**

If the Assessor is satisfied with a return, he will issue an assessment using the figures included in the return in accordance with Section 83 of the Act.

An assessment may include a provisional figure if the Assessor is satisfied that it is broadly similar to the previous year's figures.

If the Assessor is not satisfied with any aspect of a return, whether the figure is provisional or final, he will make an enquiry into that aspect and will request any information necessary to support the return.

### **Making an Enquiry / Requesting Additional Information to Support a Return**

If the Assessor wishes to make an enquiry into a return, he may use a number of statutory powers to obtain information etc. These powers will be used as necessary in the performance of the Assessor's duties under the Income Tax Acts.

<b>Section of the Act</b>	<b>Power</b>
62B and 62C	The Assessor may serve a notice on a taxpayer to deliver accounts within a specified timescale.  Failure to comply with the notice is an offence and the taxpayer may be prosecuted.

A84	The Assessor may open an enquiry into the return of a <b>corporate taxpayer</b> within 12 months of the date of its submission. This is an enabling provision and the information relating to the enquiry will be requested via one of the other sections.
B84	<p>The Assessor may require any person to produce such information or documents as he may require.</p> <p>If the documents are not submitted, or the Assessor is not satisfied with them, he may make an assessment according to best judgement.</p> <p>Failure to provide the requested information or documents is an offence and the taxpayer may be prosecuted.</p>
105C	<p>The Assessor may issue a notice to the taxpayer to produce such information or documents as he may require in relation to the taxpayer's income tax liability.</p> <p>Before a notice is issued under this section, the taxpayer will be given reasonable opportunity to deliver the required documents.</p> <p>Failure to submit the information requested in a notice constitutes failure to comply with the notice and is an offence under Section 108 of the Act and may lead to prosecution.</p>
105D	<p>The Assessor may issue a notice to a person other than the taxpayer to deliver documents in their possession relating to the liability to income tax of the taxpayer.</p> <p>Before a notice is issued under this section, the person will be given reasonable opportunity to deliver the required documents.</p> <p>Failure to submit the information requested in a notice constitutes failure to comply with the notice and is an offence under Section 108 of the Act and may lead to prosecution.</p>

**The Assessor encourages all taxpayers to submit their returns using Online Tax Services.**

**M Couch**

**Assessor of Income Tax**

This practice 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.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.