

Statutory Document No. 2016/0343

*Income Tax Act 1970*

INCOME TAX (ACCOUNTING RECORDS) (RETENTION) REGULATIONS 2016

Approved by Tynwald: 17 January 2017
Coming into Operation: 20 January 2017

The Treasury makes the following Regulations under section 105BB of the Income Tax Act 1970.

1 Title

These Regulations are the Income Tax (Accounting Records) (Retention) Regulations 2016.

2 Commencement

If approved by Tynwald¹, these Regulations come into operation on 20 January 2017.

3 Interpretation

In these Regulations –

“**the Act**” means the Income Tax Act 1970;

“**business**” includes a trade or profession;

“**corporate taxpayer**” includes a corporate taxpayer that has ceased to exist;

“**record**” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, reference to furnishing a record includes reference to furnishing a copy of the record in legible form.

4 Application

(1) These Regulations apply to the following in respect of the relevant entities set out in paragraph (2) –

(a) corporate taxpayers (other than foundations) that are –

¹ Tynwald approval is required by section 105BB(4) of the Income Tax Act 1970.

- (i) resident in the Isle of Man for income tax purposes; or
- (ii) resident outside the Isle of Man for income tax purposes and who carry on a business in the Isle of Man or who receive income arising from the rents of land (within the meaning of section 58(3) of the Act),
and their officers;
- (b) non-corporate taxpayers who carry on a business or who receive income arising from the rents of land (within the meaning of section 58(3) of the Act);
- (c) partners resident in the Isle of Man;
- (d) trustees resident in the Isle of Man; and
- (e) for a foundation, its registered agent, enforcer and members of its council (all of these terms having the same meaning here as they have in the *Foundations Act 2011*),

to be referred to as “**applicable person**” for the purposes of these Regulations.

- (2) The following are a “**relevant entity**” for the purposes of these Regulations –
 - (a) where the applicable person is a corporate taxpayer in sub-paragraph (1)(a) and its officers, it is the company;
 - (b) where the applicable person is a non-corporate taxpayer in sub-paragraph (1)(b), it is the non-corporate taxpayer;
 - (c) where the applicable person is a partner in sub-paragraph (1)(c), it is the partnership of which they are a member;
 - (d) where the applicable person is a trustee in sub-paragraph (1)(d), it is the trust administered by them; and
 - (e) where the applicable person is the registered agent, enforcer and members of the council of a foundation in sub-paragraph (1)(e), it is the foundation.
- (3) For the purpose of these Regulations, it does not matter whether or not a relevant entity is required to make a return to the Assessor in respect of liability to income tax under the Act.
- (4) A requirement imposed by these Regulations shall apply in addition to, and not in derogation from, any duty or requirement to keep or deal with accounts or records imposed by or under the Act or any other enactment.

5 Adequacy of accounting records

- (1) An applicable person shall make and keep adequate accounting records in accordance with the provisions of this regulation and regulations 6 to 8.
- (2) Accounting records are adequate if –
 - (a) they are such as to enable the preparation of accounts and –
 - (i) to show and explain the relevant entity's transactions;
 - (ii) to disclose with reasonable accuracy, at any time, the financial position of the relevant entity at that time; and
 - (b) they fulfil the requirements of either paragraph (3) or paragraph (4), as the case may be.
- (3) In the case of a relevant entity carrying on a business, accounting records are not adequate unless they contain –
 - (a) records of all amounts received and expended by the business and the reasons for the receipt or expenditure;
 - (b) in the case of a business dealing in goods, records of all sales and purchases of goods made in the course of the business;
 - (c) records of all assets and liabilities of the business, including in particular –
 - (i) all shares, interests or units held by the business in any person or arrangement; and
 - (ii) records of all stock in hand at the end of the accounting period and a statement of the basis on which the stock is valued;
 - (d) all invoices, receipts, certificates, contracts, vouchers or other supporting documents relating to records described in paragraphs (a) to (c); and
 - (e) in a case where there are no supporting documents in relation to any goods purchased by the business, the name and address of the supplier of the goods.
- (4) In the case of any other relevant entity, accounting records are not adequate unless they contain, in relation to the relevant entity's income and expenditure –
 - (a) records of all amounts received, arising or accruing and of all amounts expended;
 - (b) the names and descriptions of the persons or sources from which the amounts so recorded were received, arose or accrued and the details of and reasons for the amounts so expended;

- (c) records of all assets and liabilities of the relevant entity, including in particular all shares, interests or units held by the relevant entity in any person or arrangement;
- (d) any other records which contain or may contain information relevant to any liability to tax to which the relevant entity is or may be subject or the amount of any such liability;
- (e) all invoices, receipts, certificates, contracts, vouchers or other supporting documents relating to records described in paragraphs (a), (c) and (d).

6 Preservation of accounting records

Accounting records made by an applicable person under regulation 5 shall be kept by that applicable person for at least 5 years beginning immediately after the end of –

- (a) the year of assessment or accounting period to which those records relate and in relation to which a return in respect of liability to income tax is required to be delivered in accordance with the Act; or
- (b) where no such return is required to be delivered, the calendar year in which the accounting record or document in question was created.

7 Duty to produce accounting records

The Assessor may by notice served on any applicable person require the applicable person to furnish, by such a date or within such a period as may be specified in the notice, such accounting records or part of those records as the Assessor may require.

8 Accounting records kept outside the Isle of Man

- (1) Where accounting records are kept outside the Isle of Man, the applicable person on whom the requirement to keep those records is imposed shall ensure –
 - (a) that the records remain within that applicable person's power and control; and
 - (b) that effective arrangements are in place for delivery of the records to the Isle of Man and –
 - (i) for the records to be furnished to the Assessor in accordance with any notice served on them under regulation 7; and
 - (ii) for the records to be furnished, disclosed, delivered or in any way provided to the Assessor or any other person in

accordance with any requirement to do so imposed by or under the Act or any other enactment.

- (2) In this regulation and in regulation 9, “records” includes all such supporting documents and information as described in regulation 5(3) and (4).

9 Fines for knowingly or negligently furnishing false or incorrect accounts, etc.

- (1) If any applicable person knowingly or negligently furnishes to the Assessor any incorrect accounts or records in purported compliance with these Regulations the person commits an offence and shall be liable on summary conviction to a fine in accordance with paragraph (2).
- (2) Where, under paragraph (1), incorrect accounts or records are furnished –
 - (a) negligently, the applicable person shall be liable to a fine not exceeding £2,500;
 - (b) knowingly, the applicable person shall be liable to a fine not exceeding £10,000.
- (3) Where any incorrect accounts or records are furnished by an applicable person neither knowingly nor negligently but it comes to the applicable person’s notice that they are incorrect, the accounts or records shall be treated for the purposes of this regulation as having been negligently furnished, unless the error is remedied without unreasonable delay.

10 Penalties for non-compliance with the Regulations

An applicable person, who, without reasonable excuse, fails to comply with any of these Regulations, shall be liable to a penalty of £2,500.

11 Penalties – right to appeal

- (1) If an applicable person becomes liable to a penalty under these Regulations the Assessor must notify the person and the notice must include a statement that the person may appeal to the Income Tax Commissioners against the imposition of the penalty.
- (2) On an appeal the Commissioners may confirm, reduce or remit the penalty.
- (3) The procedure with respect to an appeal under paragraph (2) shall, with the necessary modifications, be the same as that for an appeal against an assessment.

12 Mitigation of penalties

- (1) Where a person is liable to a penalty under these Regulations, the Assessor, or on appeal, the Commissioners may reduce the penalty to such amount as they think proper.
- (2) In the case of a penalty reduced by the Assessor under paragraph (1), the Commissioners, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Assessor.

13 Amendment of the Income Tax Act 1970

In section 62C of the Act, at the end insert —

- ❏ (6) For the purposes of this section, “**corporate taxpayer**” includes a corporate taxpayer that has ceased to exist. ❏.

MADE 23RD NOVEMBER 2016

A L Cannan
Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce a requirement for applicable persons to make adequate accounting records in respect of relevant entities and to keep them for at least 5 years. They also provide that, on receipt of a notice from the Assessor, they must provide her with the accounting records requested in the notice.

The Regulations apply regardless of whether the accounting records are kept in the Isle of Man or elsewhere.

The Regulations impose a fine for knowingly or negligently providing the Assessor with incorrect accounts or records for the purposes of the Regulations, and they also impose a penalty for non-compliance with the Regulations.

Lastly, the Regulations amend section 62C of the Income Tax Act 1970 in order to enable that section to also apply to a corporate taxpayer that has ceased to exist.