

Statutory Document No. 2021/0156

*Income Tax Act 1970*

INCOME TAX (SUBSTANCE REQUIREMENTS) ORDER 2021

*Approved by Tynwald: 16 June 2021**Coming into Operation in accordance with article 2*

The Treasury makes the following Order under section 115A of the Income Tax Act 1970.

1 Title

This Order is the Income Tax (Substance Requirements) Order 2021.

2 Commencement and effect

If approved by Tynwald¹, this Order comes into operation on the day after it is approved and has effect in respect of –

- (a) articles 3(2), 4 and 5, immediately;
- (b) articles 3(17), 3(18) and 3(19), for the 2021/22 year of assessment and all subsequent years; and
- (c) all other articles, for accounting periods beginning on or after 1 July 2021.

3 Amendment of the Income Tax Act 1970

- (1) The Income Tax Act 1970 is amended as follows.
- (2) After section 62C, insert –

62D Registration of partnerships

- (1) A partnership that is –
 - (a) a general partnership as defined in section 80B that is formed on the Island and carries out business activity in the Island; or
 - (b) a foreign partnership formed outside of the Island that carries out business activity in the Island,must notify the Assessor.

¹ Tynwald approval is required by section 115A(2) of the Income Tax Act 1970.

- (2) The notification must be made within 90 days from the later of –
- (a) the date on which the partnership was formed;
 - (b) the date on which the partnership moves its place of effective management to the Island;
 - (c) the date on which the partnership commenced business activities in the Island; or
 - (d) this section coming into operation, in the case of a partnership formed before this section comes into operation.
- (3) A partnership that submits an annual return, pursuant to section 63, is not required to re-notify the Assessor when this section comes into operation.
- (4) Notification must be made in the prescribed form to the Assessor and must be accompanied by any information or documentation required by the Assessor.
- (5)
- (a) The notification must include the name and address of the person designated to receive correspondence from the Assessor; and
 - (b) any change to the person designated in paragraph (a) must be notified to the Assessor immediately.
- (6) A partnership that contravenes this section commits an offence of which any of the partners may be found guilty. **22**.
- (3) After section 63(3), insert –
- 24**(4) A return in respect of income in which two or more persons in co-partnership are jointly concerned must include any information requested by the Assessor relating to the substance requirements in Part 6A. **22**.
- (4) After section 63A(9), insert –
- 24**(10) A return in respect of the income of members from a limited liability company must include any information requested by the Assessor relating to the substance requirements in Part 6A. **22**.
- (5) In section 80B (definitions) –
- (a) after the definition of “**banking**”, insert –
 - 24**“**designated person**” means, in the case of a –
 - (a) relevant sector company, the company;
 - (b) limited partnership, the general partner of that limited partnership;

- (c) limited liability company, the limited liability company; and
- (d) general partnership and a foreign partnership, the person designated under section 62D(5)(a) or one of the partners; ~~22~~;
- (b) after the definition of “**distribution and service centre business**”, insert —
- ~~22~~ “**enterprise**” means any relevant entity; ~~22~~;
- (c) after the definition of “**financing and leasing**”, insert —
- ~~22~~ a “**foreign partnership**” means a partnership formed outside of the Island that carries out business activity in the Island; ~~22~~;
- (d) in the definition of “**foreign tax official**” —
- (i) after “an ultimate beneficial owner” insert ~~22~~ or controlling partner ~~22~~; and
- (ii) for “relevant sector company”, substitute ~~22~~ relevant sector entity ~~22~~;
- (e) after the definition of “**fund management**”, insert—
- ~~22~~ a “**general partnership**” means a “partnership” as defined under Part I of the *Partnership Act 1909* that is formed on the Island and carries out business activity in the Island;
- “**Governing Body**” means the person or body of persons responsible for the general supervision of the affairs of a relevant partnership and includes —
- (a) in respect of a limited liability company, the management of which has been vested in a manager or other Governing Body, that manager or other Governing Body;
- (b) in respect of a limited liability company that is managed by its members, those members;
- (c) in respect of a limited partnership, the directors of a body corporate which is the general partner of that limited partnership;
- “**group**” means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange; ~~22~~;
- (f) for the definition of a “**high risk IP company**”, substitute —
- ~~22~~ “**high risk IP entity**” is an IP entity that holds an IP asset that —

- (a) has been acquired from a group or obtained through the funding of overseas research and development activities; and
- (b) is licensed to a group or monetised through activities performed by a foreign group; ~~22~~;
- (g) for the definition of a “**holding company**”, substitute —
~~22~~ “**holding entity**” is a relevant entity that is a pure equity holding entity; ~~22~~;
- (h) in the definition of “**holding intangible property**” for “company”, substitute ~~22~~ entity ~~22~~;
- (i) for the definition of an “**IP company**” substitute —
~~22~~ “**IP entity**” is a relevant entity which holds, exploits or receives income from an IP asset or assets; ~~22~~;
- (j) after the definition of an “**IP company**”, insert —
~~22~~ a “**limited liability company**” is a company formed under the *Limited Liability Companies Act 1996*;
a “**limited partnership**” means a limited partnership registered in accordance with Part II of the *Partnership Act 1909*; ~~22~~;
- (k) after the definition of “**material for decision making in the group**”, insert —
~~22~~ “**MNE group**” means any group that includes two or more enterprises, the tax residence for which is in different jurisdictions or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction;
a “**partner**” includes a “member” of a limited liability company; ~~22~~;
- (l) in the definition of a “**pure equity holding company**” —
(i) for “**pure equity holding company**”, substitute ~~22~~ pure equity holding entity ~~22~~;
(ii) for “a company”, substitute ~~22~~ a relevant entity ~~22~~; and
(iii) in paragraph (a) after “another”, insert ~~22~~ company ~~22~~;
- (m) after the definition of a “**pure equity holding company**”, insert —
~~22~~ “**relevant entity**” means a resident company and a relevant partnership;
“**relevant partnership**” means —
(a) a general partnership;
(b) a limited partnership;
(c) a limited liability company; or
(d) a foreign partnership; ~~22~~;

- (n) after the definition of “**relevant sector company**”, insert —
- ▣ “**relevant sector entity**” has the meaning given in section 80D(2);
 - “**relevant sector partnership**” has the meaning given in section 80D(2);
 - “**resident partnership**” means—
 - (a) a partnership which—
 - (i) has its place of effective management in the Isle of Man; or
 - (ii) is a limited partnership or a limited liability company; but
 - (b) a limited partnership or a limited liability company is not resident if it can be proven to the satisfaction of the Assessor that its place of effective management is in a country or territory other than the Isle of Man in which —
 - (i) the partnership is required to satisfy a test that is substantially the same as the substance requirements in 80C; or
 - (ii) the partnership is in a jurisdiction where the highest rate which may be charged to tax on any part of its profits is 15% or higher; ▣;
- (o) in the definition of “**self-managed scheme**” for “resident company”, substitute ▣ relevant entity ▣; and
- (p) in the definition of “**ultimate beneficial owner**” for “company”, substitute ▣ entity ▣.
- (6) In section 80C —
- (a) for “corporate taxpayer that is a resident company”, substitute ▣ relevant entity ▣;
 - (b) after “accounting period”, insert ▣ or year of assessment (as appropriate) ▣.
- (7) In section 80D —
- (a) in subsection (1)(g) for “company”, substitute ▣ entity ▣;
 - (b) for subsection (2) substitute —
 - ▣ (2) For the purposes of this Part —
 - (a) a corporate taxpayer that is a resident company with income from a relevant sector is a “relevant sector company”;
 - (b) subject to subsection (4), a resident partnership that is a relevant partnership with income from a relevant sector is a “relevant sector partnership”; and

- (c) a relevant sector company and a relevant sector partnership are a “relevant sector entity”.²²;
- (c) after subsection (2), insert —
- ²²(2A) This Part does not apply to collective investment schemes within the meaning of the Collective Investment Schemes Act 2008, other than self-managed schemes.²²;
- (d) in subsection (3)(b) for “company”, substitute ²²entity²²;
- (e) after subsection (3), insert —
- ²²(4) A relevant partnership is not a relevant sector partnership and will not be required to meet the substance requirements in section 80C if the Assessor is satisfied that —
- (a) the relevant partnership is not part of an MNE group and carries out all its activities on the Island; or
- (b) all of the partners of the relevant partnership are individuals and subject to personal income tax in the Island.
- (5) Any person who is a partner of a relevant sector partnership to which this Part applies is not required to meet the substance requirements under section 80C in respect of any income derived by that person from the relevant sector partnership.²².
- (8) In section 80E —
- (a) in subsection (1), in both places, for “company”, substitute ²²entity²²;
- (b) for subsection (1)(a), substitute—
- ²²(a) in the case of a relevant sector company it is directed and managed in the Island, or in the case of a relevant sector partnership it has a place of effective management on the Island;²²;
- (c) in subsection (1)(b) after “qualified employees”, insert ²²or individual partners²²;
- (d) in subsections (2) and (3) for “company”, substitute ²²entity²²;
- (e) in subsection (3)(a) —
- (i) for “or”, substitute ²²,²²;
- (ii) after “*Foreign Companies Act 2014*”, insert ²², *Partnership Act 1909* or *Limited Liability Companies Act 1996*²²;
- (f) for subsection (4) substitute —
- ²²(4) For the purposes of subsection (1)(a) —
- (a) a relevant sector company is “directed and managed in the Island” if —

- (i) the company’s board of directors meets in the Island at an adequate frequency given the level of decision-making required;
 - (ii) during each meeting in the Island, there must be a quorum of directors physically present in the Island;
 - (iii) strategic decisions of the company are set at meetings of the board of directors and minutes of the meetings must reflect those decisions;
 - (iv) the board of directors, as a whole, must have the necessary knowledge and expertise to discharge its duties as a board; and
 - (v) the minutes of all board meetings and the company records are kept in the Island; and
- (b) a relevant sector partnership, despite the fact that a limited partner cannot take part in the management of the partnership business under section 49(1) of the *Partnership Act 1909*, has a place of effective management on the Island if –
- (i) the relevant partnership’s Governing Body meets in the Island at an adequate frequency given the level of decision-making required, during those meetings, a majority of the relevant persons are physically present in the Island;
 - (ii) strategic decisions of the relevant partnership are set at meetings of the Governing Body and minutes of the meetings must reflect those decisions;
 - (iii) the members of the Governing Body, as a whole, must have the necessary knowledge and expertise to discharge their duties; and
 - (iv) the minutes of all meetings of the Governing Body and the records relating to the relevant partnership are kept in the Island. **22**;
- (g) in subsection (5)(g), in both places, for “company”, substitute **“entity 22**; and
- (h) in subsection (6) –
- (i) for “company”, substitute **“entity 22**; and
 - (ii) after “non-resident board members”, insert **“or partners 22**.
- (9) In section 80F –

- (a) in subsection (1) —
 - (i) after “accounting period”, insert **63** or year of assessment (as appropriate) **62**;
 - (ii) for “company”, substitute **63** entity **62**;
 - (b) in subsection (3) —
 - (i) for “relevant sector company”, substitute **63** relevant sector entity **62**; and
 - (ii) for “issue a notice to the company”, substitute **63** issue a notice to the designated person **62**; and
 - (c) in subsection (3)(a) for “company”, substitute **63** entity **62**.
- (10) In section 80G —
- (a) in the title for “company”, substitute **63** entity **62**;
 - (b) in subsection (1) —
 - (i) for “high risk IP company”, substitute **63** high risk IP entity **62**;
 - (ii) for “the company”, substitute **63** the high risk IP entity **62**;
 - (c) in subsection (1A)(b) for “company”, substitute **63** high risk IP entity **62**;
 - (d) in subsection (1A)(c) and (d) for “company’s”, substitute **63** high risk IP entity’s **62**;
 - (e) in subsection (2) —
 - (i) after “accounting period”, insert **63** or year of assessment (as appropriate) **62**;
 - (ii) for “company”, substitute **63** entity **62**; and
 - (f) in subsection (3) for “company”, substitute **63** entity **62**.
- (11) In section 80H —
- (a) in both places, for “relevant sector company”, substitute **63** relevant sector entity **62**;
 - (b) after “accounting period”, insert **63** or year of assessment (as appropriate) they are liable to a penalty; and **62**;
 - (c) for paragraph (b), substitute —
 - 63**(b) issue a notice to the designated person, the contents of which shall include notification that —
 - (i) in the case of a high risk IP entity, the high risk IP entity is liable to a civil penalty of £50,000; and
 - (ii) in the case of all other relevant sector entities, the relevant sector entity is liable to a civil penalty of £10,000. **62**.
- (12) In section 80I —

- (a) in subsection (1) —
- (i) in both places, after “accounting period”, insert **“or year of assessment (as appropriate)”**;
 - (ii) for “relevant sector company”, substitute **“relevant sector entity”**;
 - (iii) for “the company”, substitute **“the relevant sector entity”**; and
 - (iv) after “substance requirements,”, insert **“the entity is liable to a further penalty; and”**;
- (b) for subsection (1)(b), substitute —
- (b)** in the case of a high risk IP entity, issue a notice to the designated person, the contents of which shall include notification that —
- (i) the high risk IP entity is liable to an additional civil penalty of £100,000; and
 - (ii) where the Assessor decides there is no realistic possibility of the high risk IP entity meeting the substance requirements, the Assessor may serve notice on the Department for Enterprise or the Registrar, as the case may be, requiring the Department or the Registrar to strike the high risk IP entity off the register; and **“”**.
- (c) for subsection (1)(c), substitute —
- (c)** in the case of all other relevant sector entities, issue a notice to the designated person, the contents of which shall include notification that the relevant sector entity is liable to an additional penalty of £50,000. **“”**.
- (d) in subsection (2) —
- (i) after “accounting period”, insert **“or year of assessment (as appropriate)”**;
 - (ii) for “relevant sector company”, substitute **“relevant sector entity”**; and
 - (iii) after “substance requirements,”, insert **“the entity is liable to a further penalty; and”**;
- (e) in subsection (2)(b) —
- (i) in both places, for “high risk IP company”, substitute **“high risk IP entity”**; and
 - (ii) for “the company”, substitute **“the designated person”**;
- (f) in subsection (2)(c) —
- (i) for “relevant sector companies”, substitute **“relevant sector entities”**;

- (ii) for “issue a notice to the company”, substitute **66** issue a notice to the designated person **62**; and
- (iii) for “the company”, wherever it occurs, substitute **66** the relevant sector entity **62**;
- (g) in subsection (3) —
 - (i) after “accounting period”, insert **66** or year of assessment (as appropriate) **62**; and
 - (ii) for “company”, wherever it occurs, substitute **66** entity **62**;
- (h) in subsection (3)(b) —
 - (i) for “issue a notice to the company,”, substitute **66** issue a notice to the designated person **62**; and
 - (ii) for “to strike the company”, substitute **66** to strike the relevant sector entity **62**;
- (i) in subsection (4) —
 - (i) in both places, after “accounting period”, insert **66** or year of assessment (as appropriate) **62**;
 - (ii) for “company”, wherever it occurs, substitute **66** entity **62**; and
 - (iii) after “substance requirements,”, insert **66** the entity is liable to a further penalty; and **62**;
- (j) in subsection (4)(b) —
 - (i) for “issue a notice to the company,”, substitute **66** issue a notice to the designated person **62**; and
 - (ii) for “the company”, wherever it occurs, substitute **66** the relevant sector entity **62**; and
- (k) after subsection (5) insert —
 - 66**(6) In the case of a relevant sector partnership, where the Assessor decides there is no realistic possibility of the partnership meeting the substance requirements in section 80C and strike off action is not possible, the Assessor may —
 - (a) for each accounting period or year of assessment (as appropriate), impose and continue to impose an additional civil penalty of £150,000 on the relevant sector partnership for each additional year of failure by issuing a notice to the designated person; and
 - (b) this failure shall be construed as the power for the Assessor to notify the tax administration in which the foreign partnership is registered of the foreign partnership’s failure to comply with this Part. **62**.
- (13) In section 80J —
 - (a) in subsection (1) —

- (i) after “accounting period”, insert **“or year of assessment (as appropriate)”**;
 - (ii) for “corporate taxpayer”, wherever it occurs, substitute **“relevant sector entity”**;
 - (iii) after “this Part,”, insert **“the relevant sector entity is liable to a penalty; and”**; and
 - (iv) for “company”, substitute **“designated person”**;
- (b) in subsection (3) for “company”, substitute **“entity”**.
- (14) In section 80K —
- (a) for subsection (1)(a), substitute —
 - (a)** a decision of the Assessor under any of the following sections —
 - (i) 80F(3);
 - (ii) 80H;
 - (iii) 80I; or
 - (iv) 80J(1),
 and on appeal the Commissioners may confirm or reverse the decision; and
 - (b) in subsection (3)(b) —
 - (i) for “relevant sector company”, substitute **“relevant sector entity”**; and
 - (ii) for “that company”, substitute **“that relevant sector entity”**.
- (15) In section 80L —
- (a) in both places, for “company”, substitute **“relevant sector entity”**; and
 - (b) for “taxpayer’s”, substitute **“entity’s”**.
- (16) In section 98A (distrainment for overdue tax) after subsection 3(b), insert —
- (c)** any penalty charged under this Act in respect of compliance with any international standard including economic substance.
- (17) In section 111C(1) for “or section 62A” substitute **“section 62A, section 63 or section 63A”**.
- (18) In section 111D (extended default) —
- (a) in subsection (1)(c) for “,”, substitute **“; or”**; and
 - (b) after subsection 1(c), insert —

- 62(d) a return as required by section 63(1) before the expiry of the period of 12 months immediately following the end of the year of assessment to which the return relates; or
- (e) a return as required by section 63A(1) before the expiry of the period of 12 months immediately following the end of the year of assessment to which the return relates, 62.

(19) In section 111J(1)(a) after “62(1)”, insert 62, section 63 or section 63A 62.

4 Amendment of the Partnership Act 1909

After section 51A(1) of the *Partnership Act 1909* (Department may strike off defunct limited partnership), insert —

- 62(1A) If the Department has received a notice from the Assessor under section 80I of the *Income Tax Act 1970* (substance requirements: additional sanctions), it must strike the name of that limited partnership off the register in the same manner and subject to the same notice and conditions as a limited partnership that is not carrying on business or in operation. 62.

5 Amendment of the Limited Liability Companies Act 1996

After section 11(1) of the *Limited Liability Companies Act 1996* (Department may strike defunct limited liability company off register), insert—

- 62(1A) If the Department has received a notice from the Assessor under section 80I of the *Income Tax Act 1970* (substance requirements: additional sanctions), it must strike the name of that limited liability company off the register in the same manner and subject to the same notice and conditions as a limited liability company that is not carrying on business or in operation. 62.

MADE 24TH MAY 2021

A L CANNAN
Minister for the Treasury

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

This Order is made under section 115A of the Income Tax Act 1970 (“the Act”). It is made pursuant to the recommendations of the EU Code of Conduct Group on Business Taxation.

The Order amends the Act so as to introduce a substance test for certain Isle of Man relevant partnerships.

The Order requires the registration of partnerships on the Island and submission of further information from relevant partnerships in order for the Assessor to determine whether the partnership has substance in the Island.

The amendments to the Act provide that all relevant partnerships carrying on relevant activities will be required to meet the same substance requirements as relevant sector companies.

The Order also amends the Partnership Act 1909 and the Limited Liability Companies Act 1996 to provide that receipt of a notice from the Assessor by the Department for Enterprise can require a limited partnership, or as the case may be, a limited liability company to be struck off the relevant register.