



INCOME TAX ACT 2003

INCOME TAX (NETHERLANDS AND USA) (AMENDMENT) ORDER 2008

Approved by Tynwald

16th July 2008

Coming into operation in accordance with article 1(2)

In exercise of the powers conferred on the Council of Ministers by section 19 of the Income Tax Act 2003¹, and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Income Tax (Netherlands and USA) (Amendment) Order 2008.

(2) This Order shall come into operation on the day on which it is approved by Tynwald.

Interpretation

2. In this Order-

“the Netherlands Order” means the Income Tax (Netherlands) Order 2006²; and

“the USA Order” means the Income Tax (USA) Order 2006³.

Amendment to S.D. 168/06 and S.D. 169/06

3. In Schedule 2 to both the Netherlands Order and the USA Order (which modify the effect of sections 105C to 105O of the Income Tax Act 1970⁴)-

(a) in section 105D(4), at the beginning insert “Subject to section 105E(8),”; and

(b) after section 105E(7) insert-

“(8) Subject to subsection (9), if, on the application of the Assessor, 2 members of the Income Tax Commissioners panel give their written consent, the copy and summary under section 105D(4) need not be given to the taxpayer to whom they relate.

(9) Consent shall not be given under subsection (8) unless both Commissioners are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud.

¹ 2003 c.11

² Statutory Document 168/06

³ Statutory Document 169/06

⁴ XXI p.260

(10) A Commissioner who gives a consent under subsection (8) shall not be liable in damages for, or in respect of, the consent nor any act or matter done or omitted to be done in relation to the consent unless the act or matter done or omitted to be done is shown to have been in bad faith.

(11) Subsection (10) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 2001.

(12) Where a consent has been given by the Commissioners under subsection (8), the person to whom the notice is given under section 105D(2) shall not—

- (a) inform the taxpayer, or cause or permit the taxpayer to be informed, that the notice has been given, or
- (b) disclose to any person, or cause or permit to be disclosed to any person (including the taxpayer), any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance of the Assessor's functions.

(13) Subject to the defences in subsection (16), a person who fails to comply with subsection (12) is guilty of an offence and liable on summary conviction to fine not exceeding £5,000 or to custody for a term of 6 months, or to both.

(14) If an offence under subsection (13) is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, that person, as well as the body corporate, is guilty of the same offence and liable to be proceeded against and punished accordingly.

(15) Where the affairs of a body corporate are managed by its members or by agents, subsection (14) applies in relation to the acts and defaults of a member or an agent in connection with the functions of management as if that person were a director of the body corporate.

(16) It is a defence in proceedings for an offence under subsection (13) for the person concerned to satisfy the court —

- (a) that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence by the person concerned and by any person under his control, or
- (b) in the case of an offence in respect of an alleged contravention of subsection (12)(b), that the person concerned did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance of the Assessor's functions."

Made this 13th June 2008

Mary Williams

Chief Secretary

EXPLANATORY NOTE
(This Note is not part of the Order)

This Order amends Schedule 2 of both the Income Tax (Netherlands) Order 2006 and the Income Tax (USA) Order 2006.

These amendments are in line with changes made to the Assessor's information gathering provisions in the Income Tax (Amendment) Act 2008.

These measures allow the Assessor to obtain authorisation from two Income Tax Commissioners to collect information from a third party without having to inform the taxpayer in question. These measures will only be used in cases of suspected fraud and where the case could be prejudiced by the taxpayer being informed.