

Isle of Man Primary legislation

Income Tax Act http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0003/IncomeTaxAct1970_17.pdf

PART 9 – INTERNATIONAL ARRANGEMENTS⁴⁵¹

DIVISION 1 – PRELIMINARY

104A Definitions for Part

In this Part —

“arrangement order” has the meaning given under section 104B(1);

“country” includes territory and (to avoid doubt) also includes any area outside a country’s territorial waters within which a country’s rights with respect to the sea bed and subsoil and their natural resources are exercisable;

“double tax arrangement” means an arrangement to which the Government is a party made with a view to preventing the imposition of, or otherwise affording relief from, double taxation under both the Island’s laws and under a foreign law;

“foreign tax official” means an officer of a foreign country that is a party to an international arrangement, which officer is authorised under that country’s laws to administer or enforce its taxes;

“international arrangement” has the meaning given under section 104B(4);

“Manx tax official” means a person who holds an appointment mentioned in section 105 (Assessor and other officers);

“simultaneous tax examination” has the meaning given by the international arrangement in question;

“tax” means any type of taxation (whatever called) and includes —

- (a) income tax;
- (b) value added tax;
- (c) an amount owing by way of a civil or criminal penalty, administrative cost or fine for, or for interest on, an unpaid tax debt;
- (d) a tax outside the Island of a type for which there is no equivalent under the Island’s laws; and
- (e) a duty;

“tax examination abroad” has the meaning given by the international arrangement; and

“taxpayer” includes a person whose tax position is being examined under the Island’s laws or foreign laws.

DIVISION 2 – DECLARATION OF ARRANGEMENT

104B Power to make declarations about arrangements

(1) The Council of Ministers may, by order (an “arrangement order”), declare that any or all of the following have been made with respect to the Island —

(a) a double tax arrangement;

(b) an intergovernmental arrangement about the exchange of information foreseeably relevant to taxes chargeable under the Island’s laws or foreign laws; or

(c) an intergovernmental arrangement about international tax enforcement;

(d) any regulation, directive, convention, code or standard in respect of taxation not falling within paragraph (a), (b) or (c);

and that the arrangement should have effect (to such extent as is specified in the order) as part of the law of the Island.

(2) The arrangement may be bilateral or multilateral.

(3) The order must specify the arrangement.

(4) An arrangement that is the subject of an arrangement order is an “international arrangement” for the purposes of this Part.

(5) In this section “international tax enforcement” means simultaneous tax examinations or tax examinations abroad.

(6) An order under this section must be approved by Tynwald before coming into operation.⁴⁵⁴

104C Other matters for which an arrangement order may provide

(1) An arrangement order may also —

(a) provide for any or all of the following matters —

(i) the exchange of information foreseeably relevant to implementing an international arrangement;

(ii) resolving questions or disputes about interpreting or applying an international arrangement;

(iii) simultaneous tax examinations; or

(iv) tax examinations abroad;

(b) modify all or part of any of the following to implement or otherwise give effect to an international arrangement —

(i) [Repealed]

(ii) Part 13 (authorised officers: inspection and document powers); and

(iii) any provision insofar as it contains a definition relevant to this Part;

(c) include incidental, supplemental, transitional and saving provisions.

(2) If the order concerns a double tax arrangement, it may also provide for the attribution or adjustment of income, profits or gains for the taxes concerned.

104D Regulations to give effect to international arrangement (inserted by SD315/13 effective tax year commencing 6/4/2013 and thereafter.)

(1) The Treasury may make regulations for the purpose of giving effect to, or enabling effect to be given to, an international arrangement.

(2) The regulations may in particular —

(a) authorise the Assessor to require persons specified for the purposes of this paragraph (“**relevant financial entities**”) to provide the Assessor with information of specified descriptions;

(b) require the information in paragraph (a) to be provided at such times and in such form and manner as may be specified;

(c) impose obligations on relevant financial entities;

(d) make provision (including provision imposing penalties) about contravention of, or non-compliance with, the regulations;

(e) make provision about appeals in relation to the imposition of any penalty.

(3) Regulations under subsection (2) may also contain incidental, supplemental, transitional, transitory or saving provisions (including provisions amending any enactment).

(4) The power conferred by this section does not limit, and is not limited by, any other power conferred by or under any other enactment or document.

(5) Regulations under this section must not come into operation unless they are approved by Tynwald.

104E Effect of international arrangement

(1) An international arrangement has effect despite any enactment or other document or any other rule of law.

(2) If an international arrangement authorises a Manx tax official to disclose particular information to a foreign tax official, no obligation of confidentiality (whether arising under an enactment or otherwise) prevents —

(a) a Minister or a person performing functions for a Department from disclosing the information to the Manx tax official; or

(b) the Manx tax official from making the disclosure under the arrangement.

(3) Subsection (2) is subject to Division 3.

DIVISION 3 – INFORMATION: RESTRICTIONS ON DISCLOSURE AND USE

104F Incoming information

A Manx tax official must not disclose or use information received from another country under an international arrangement, except—

(a) for tax purposes; or

(b) for legal proceedings for a contravention of the Island’s tax laws; or

(c) as otherwise permitted under the arrangement.

104G Outgoing information

(1) A Manx tax official must only disclose information, or authorise the use or further disclosure of information, in accordance with the international arrangement under which the information is provided.

(2) Information provided to the Assessor in pursuance of a requirement imposed under international arrangements may not be used in any criminal proceedings against the person who furnished it to the Assessor except proceedings for an offence of perjury or any similar offence.

104H Depositions for international arrangements

(1) This section applies if —

(a) another country (the “requesting country”) is a party to an international arrangement; and

(b) under the arrangement, the country has asked the Assessor to disclose information to it.

(2) The High Bailiff may, on the Assessor’s application, summon a stated person (the “witness”) to attend before the High Bailiff (the “hearing”) to —

(a) give on oath stated information, or information about a stated matter, relevant to the request; and

(b) produce a sworn deposition that —

(i) exhibits any documented part of the information; and

(ii) states the deposition is given in response to the summons.

(3) The High Bailiff has the same powers to secure the witness's attendance as in proceedings before a court of summary jurisdiction.

(4) If the stated person is a body corporate or unincorporate, the body is taken to comply with the summons if an individual (also the "witness") attends the hearing on its behalf and swears to be its duly authorised officer or representative.

(5) The witness —

(a) must bear the witness's costs of attending the hearing;

(b) has the right to be represented at the hearing by an advocate; and

(c) is not compellable to give evidence that would not be compellable in criminal proceedings —

(i) in a court of summary jurisdiction; or

(ii) in the requesting country, if the witness's claim to be exempt from giving the evidence has been conceded by a court, tribunal or authority from the requesting country.

(6) The High Bailiff may, at the Assessor's request, adjourn the hearing from time to time.

(7) In this section, "information" includes documents and evidence.

104I Offence: unlawful disclosure of protected information

(1) This section applies if someone (the "witness") has been summoned under section 104H.

(2) A person who unlawfully discloses any of the following information ("protected information") commits an offence and is liable on summary conviction to custody for 6 months, a fine not exceeding £5,000, or both —

(a) any of the following facts —

(i) that the relevant requesting country under section 104H(1) has asked the Assessor to disclose information to it;⁴⁶⁷

(ii) that an investigation to which the request relates is being carried out; or

(iii) that, under the request, information has been, is to be or may be, given to the requesting country; or

(b) documents, evidence, information or a matter ("prejudicial material") likely to prejudice the investigation or the performance of the Assessor's functions relating to it or under any international arrangement.

(3) However, subsection (2) does not apply to the Assessor or anyone performing functions for the Assessor.

(4) Protected information is unlawfully disclosed if the disclosure is to anyone except —

(a) if the witness is not an individual, to an employee or officer of the witness and the disclosure is necessary to comply with the summons;

(b) to a supervisory authority within the meaning of *Part 3 of the Proceeds of Crime Act 2008*, if the witness is a financial institution within the meaning of that Part;

(c) to the Assessor or anyone performing functions for the Assessor; or

(d) in compliance with the summons or as required by law.

(5) In a proceeding for an offence against subsection (2), it is a defence for the defendant to prove that —

(a) all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence by the defendant and everyone under the defendant's control; or

(b) the protected information concerned is prejudicial material and the defendant did not know or reasonably suspect it was prejudicial material.