

Isle of Man Tax Information Exchange Agreements

MILES BENHAM

ADVOCATE

MANNBENHAM ADVOCATES LIMITED

ISLE OF MAN

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ISLE OF MAN TAX INFORMATION EXCHANGE AGREEMENTS

Background

While the Isle of Man is not a member of the Organisation for Economic Co-operation and Development (OECD) the United Kingdom has confirmed¹ that the territorial application of the OECD convention extends to the Isle of Man.

The OECD Convention² to which all OECD members have acceded to provides at Article 1 that the aims of the OECD shall be to promote policies designed-

(a) to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;

(b) to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and

(c) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

In 1998 the OECD published a report entitled "Harmful Tax Competition: An emerging Global Issue"³ ("the 1998 Report"). The 1998 Report looked into the issue of harmful tax competition and practices between OECD and non OECD jurisdictions. The 1998 Report developed criteria to identify what it considered to be the harmful aspects of a jurisdiction which could undermine the integrity and fairness of other countries tax systems. Various definitions were provided for what the 1998 Report considered to be a tax haven or a jurisdiction with a harmful preferential tax regime.

The 1998 Report used the following four criteria to determine whether a jurisdiction should for the purpose of the report be classed as being a tax haven or having a harmful preferential tax regime:

- No or nominal taxes in the case of tax havens and no or low effective tax rates on the relevant income in the case of preferential regimes;
- Lack of effective exchange of information;
- Lack of transparency; and

¹ <http://www.gov.im/isleofman/externalrelations.xml>

² http://www.oecd.org/document/7/0,3343,en_2649_201185_1915847_1_1_1_1,00.html

³ <http://www.oecd.org/dataoecd/33/0/1904176.pdf>

- No substantial activities, in the case of tax havens, and ring fencing, in the case of preferential regimes.

The 1998 Report was followed by a report in June 2000 entitled *"Towards Global Tax Co-Operation: Progress in Identifying and Eliminating Harmful Tax Practices (the "2000 Report")*⁴.

The 2000 Report outlined the progress made by the Forum on Harmful Tax Practices and identified 47 potentially harmful preferential tax regimes in OECD Member countries and listed 35 jurisdictions that met its criteria of a tax haven.

The 2000 Report proposed a process whereby a jurisdiction listed as meeting the criteria of a tax haven could commit to eliminate their harmful tax practices. A jurisdiction that made such a commitment was to be referred to as a "committed jurisdiction".

The list of jurisdictions which met the tax haven criteria within the 2000 Report included the Isle of Man and by letter dated 13th December 2000⁵ the Isle of Man entered into a political commitment to eliminate what the OECD considered to be its harmful tax practices. The Isle of Man commitment included addressing the issues of effective exchange of information with other tax authorities, transparency and no substantial activities.

Clarification as to what the OECD mean by effective exchange of information can be found in the 2001 Progress Report of the OECD's Project on Harmful Tax Practices.⁶

"By committing to effective exchange of information, a jurisdiction agrees to establish a mechanism for the effective exchange of information that includes the following elements. The commitment ensures that there is a legal mechanism in place that allows information to be given to a tax authority of another country in response to a request for information that may be relevant to a specific tax inquiry. An essential element of effective exchange of information is the implementation of appropriate safeguards to ensure that the information obtained and provided is used only for the

⁴ A copy of the report can be found at <http://www.oecd.org/dataoecd/9/61/2090192.pdf>

⁵ A copy of the letter from the Isle of Man Chief secretary's Office to the Co-Chairmen of the OECD's Forum on Harmful Tax practices can be found at <http://www.oecd.org/dataoecd/12/53/1903624.pdf>

⁶ The OECD's Project on Harmful Tax Practices: The 2001 Progress Report a copy of which can be found at <http://www.oecd.org/dataoecd/60/28/2664438.pdf>

purposes for which it was sought. The adequate protection of taxpayers' rights and the confidentiality of their tax affairs is essential to preserving the integrity and effectiveness of exchange of information programmes. The OECD Member countries have agreed to provide technical assistance to establish such safeguards and more generally, to assist in the implementation of exchange of information programmes in the jurisdictions. In the case of information requested for the investigation and prosecution of a criminal tax matter, the information should be provided without a requirement that the conduct being investigated would constitute a crime under the laws of the requested jurisdiction if it occurred in that jurisdiction. In the case of information requested in the context of a civil tax matter, the requested jurisdiction should provide information without regard to whether or not the requested jurisdiction has an interest in obtaining the information for its own domestic tax purposes. The committing jurisdiction is also asked to agree that it will have administrative practices in place so that the legal mechanism for exchange of information will function effectively and can be monitored. The committed jurisdictions have been invited to work with OECD Members to develop an exchange of information instrument that could be used to satisfy their commitments."

Upon becoming a committed jurisdiction the Isle of Man agreed to join the OECD Global Forum Working Group on Effective Exchange of Information ("the Working Group"). The Working Group consisted of representatives from OECD Member countries as well as delegates from Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino. The mandate of the Working Group was to develop a legal instrument that could be used to establish effective exchange of information.

The Working Group drew up the OECD Model Agreement on Exchange of Information in Tax Matters⁷ ("the Model Agreement") which establishes the standard of what constitutes effective exchange of information for the purpose of the OECD's initiative on harmful tax practices. The Model Agreement is not a binding instrument and is simply intended to act as a model for bilateral exchange of information agreements. As a result modifications to the text of the Model Agreement can be agreed in bilateral agreements so as to implement the standard set by the Model Agreement.

⁷ A copy of the agreement can be found at <http://www.oecd.org/dataoecd/15/43/2082215.pdf>

The OECD Model Agreement on Exchange of Information on Tax Matters

The Model Agreement was released in April 2002 and consists of 16 Articles along with detailed commentary to assist in the interpretation of its provisions. The Model Agreement contains both a multilateral and a bilateral version of a Tax Information Exchange Agreement (TIEA). To date the Isle of Man has only entered into bilateral TIEAs and this form of agreement will be looked at in this paper.

The objective of a TIEA is to facilitate exchange of information between the parties to the TIEA so as to assist the parties in the administration and enforcement of their tax laws.

The Model Agreement sets out what could be best described as a template of a TIEA that the parties can adapt to meet their specific requirements.

In order to fully understand the Isle of Man TIEA's it is necessary to look in some detail at the 16 Articles of the Model Agreement.

Article 1 (Object and Scope of the TIEA)

Article 1 defines the object and scope of the TIEA and provides that the parties to the TIEA will "*provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws*" of the parties to the TIEA concerning the taxes covered by the TIEA. The use of the words "foreseeably relevant" is important as while it is intended to provide for exchange of information in tax matters to the widest possible extent it makes it clear that the parties to a TIEA cannot engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a specific tax payer.

The standard of foreseeable relevance is also used in the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters ("the OECD Convention").⁸

⁸ The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the Council of Europe and the OECD and opened for signature by the members states of both organisations on 25 January 1988. The Parties to the Convention are presently Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Netherlands, Norway, Poland, Sweden, the Ukraine, the United Kingdom and the United States. Canada and Germany have signed the Convention and are awaiting ratification.

In the explanatory report to the OECD Convention it states:

"Exchanges of information are the most immediate form of administrative assistance between tax authorities. Such assistance is desirable for ascertaining and discovering facts, which may be of interest for the correct implementation of the domestic laws of the Parties. This may not only facilitate the enforcement of tax legislation, but also help the taxpayer to secure his entitlements to tax reliefs (for instance by making it easier for him to establish that he is not resident for tax purposes in a particular state, or that he has paid some foreign tax for which double taxation relief is due)."

Article 2 (Jurisdiction)

This article confirms that a party that is requested to provide information is not obliged to provide information that is neither held by its authorities nor is in the possession or control of persons within its territorial jurisdiction.

Article 3 (Taxes Covered)

Article 3 identifies the taxes that the parties have agreed to exchange information on. It is up to the parties to the TIEA to agree on what taxes they want to include in the agreement. While the parties will normally include direct taxes such as income taxes and capital taxes they can if they want also include indirect taxes. The extension of the TIEA to include indirect taxes is consistent with Article 26 of the OECD Model Convention on Income and on Capital⁹ ("OECD Model Tax Convention") which covers "taxes of every kind and description".

Article 4 (Definitions)

This article sets out the definitions of the terms used in the TIEA. It also establishes a general rule for interpretation of terms that are used in the TIEA but are not defined within it. Following the OECD Model Tax

The object of the Convention is to promote international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention is framed so as to provide for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information to the recovery of foreign tax claims.

A copy of the convention can be found at <http://www.oecd.org/dataoecd/11/29/2499078.pdf>

⁹ A condensed version as at July 2008 (416 pages) of the Model Tax Convention on Income and on Capital can be found at <http://www.oecd.org/dataoecd/14/32/41147804.pdf>

Convention it provides that any term used, but not defined in the TIEA will have the meaning it has under the law of the party applying the TIEA unless the context requires otherwise.

Article 5 (Exchange of Information Upon Request)

This is the main operational part of the TIEA and due to its importance it has been reproduced in full.

Paragraph 1

"The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party."

This paragraph provides that the parties to the TIEA are only required to exchange information upon request and that the TIEA does not cover automatic or spontaneous exchange of information.

The information to be exchanged can relate to both civil and criminal tax matters. If the information is in connection with criminal tax matters then the information has to be exchanged irrespective of whether the conduct being investigated would constitute a crime under the laws of the requested party.

Paragraph 2

"If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes."

Upon receipt of an information request the competent authority of the requested Party must first review whether it has all the information necessary to respond to a request. If the information in its own possession proves inadequate, it must take "all relevant information gathering measures" to provide the applicant with the information requested. Information gathering measures means the requested party using its laws, administrative and judicial procedures to obtain and provide the requested information.

The reason the words "*notwithstanding that the requested Party may not need such information for its own tax purposes*" are included is to avoid an information request failing due to the fact that the requested party may not impose income taxes or the request relates to an entity that is not subject to taxes in the requested parties jurisdiction.

Paragraph 3

"If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records."

This paragraph enables the requesting party to receive the information in a format that it can use in its jurisdiction e.g. depositions of witnesses, notarised or certified documents.

Paragraph 4

"Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Model Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;*
- b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties."*

This paragraph is subject to Article 7 (Possibility of Declining a Request) which is designed to limit the ability of a person to claim that the information it holds is privileged.

It is likely that in practice authorities will have little difficulty in obtaining information on the ownership of companies, partnerships and trusts where they are administered by a licensed third party entity such as a bank or corporate service provider¹⁰ as that information is now required to be held by licensed entities under the Isle of Man Anti Money Laundering legislation¹¹.

Paragraph 5

“The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;*
- (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;*
- (c) the tax purpose for which the information is sought;*
- (d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;*
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;*
- (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the*

¹⁰ In the Isle of Man the provision of corporate and fiduciary incorporation and administration services is a licensed activity and requires a licence from the Isle of Man Financial Supervision Commission. See <http://www.gov.im/fsc>

¹¹ A copy of the Isle of Man Anti Money Laundering Handbook can be found at <http://www.gov.im/fsc/handbooks/guides/AML>

information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

(g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.”

This paragraph lists the information that the applicant party must provide to the requested party. The reason the applicant party has to provide so much detail is to ensure that the applicant party has demonstrated that the information is foreseeably relevant to the administration or enforcement of its tax laws. The requirement for foreseeable relevance is set out in Article 1 of the TIEA and is a key factor in determining what should or should not be disclosed.

The procedural requirements in paragraph 5 should stop the TIEA from being used for fishing expeditions.

In order to avoid effective exchange of information from being frustrated by the requirements of paragraph 5 the OECD advise that subparagraphs a) to g) will need to be interpreted liberally. The commentary to the Model Agreement provides a number of examples on how to interpret paragraph 5 and these are reproduced below:

- Example 1 (sub-paragraph (a))

Where a Party is asking for account information but the identity of the accountholder(s) is unknown, subparagraph (a) may be satisfied by supplying the account number or similar identifying information.

- Example 2 (sub-paragraph (d)) (“is held”)

A taxpayer of Country A withdraws all funds from his bank account and is handed a large amount of cash.

He visits one bank in both country B and C, and then returns to Country A without the cash. In connection with a subsequent investigation of the taxpayer, the competent authority of Country A sends a request to Country B and to Country C for information regarding bank accounts that may have been opened by the taxpayer at one or both of the banks he visited. Under such circumstances, the competent authority of Country A has grounds to believe that the information is held in Country B or is in the possession or control of a person subject to the jurisdiction of Country B. It also has grounds to believe the same with respect to Country C. Country B (or C) cannot decline the request on the basis that Country A

has failed to establish that the information “is” in Country B (or C), because it is equally likely that the information is in the other country.

- Example 3 (sub-paragraph (d))

A similar situation may arise where a person under investigation by Country X may or may not have fled Country Y and his bank account there may or may not have been closed. As long as country X is able to connect the person to Country Y, Country Y may not refuse the request on the ground that Country X does not have grounds for believing that the requested information “is” held in Country Y. Country X may legitimately expect Country Y to make an inquiry into the matter, and if a bank account is found, to provide the requested information.

Paragraph 6

“The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.”

This paragraph is designed to ensure that the requested party gives a prompt response to the request for information. If a requested party is unable to provide the information within the agreed time frame then it must advise the applicant party of the reasons why.

Article 6 (Tax Examinations Abroad)

This article provides that a requested party may in its discretion allow representatives of the applicant party to enter its jurisdiction and

interview individuals and examine records. This power is subject to the persons concerned having given their written consent to this process. If all relevant parties agree to this procedure then officials of the applicant party will be able to participate directly in the information gathering process.

Article 6 also includes a provision that the requested party can agree to allow foreign tax officials to be present during a tax examination. The commentary to the Model Agreement¹² states that "*this type of assistance should not be requested unless the competent authority of the applicant Party is convinced that the presence of its representatives at the examination in the requested Party will contribute to a considerable extent to the solution of a domestic tax case.*" A requesting party seeking this form of assistance should set out the motive for the request as clearly as possible and include a clear description of the domestic tax case to which the request relates.

Article 7 (Possibility of Declining a Request)

This article identifies the situations where a requested party is not required to supply the requested information.

The grounds under which a request can be declined are:

1. Where the applicant party would under its own laws be unable to obtain the information sought from the requested party (paragraph 1).
2. Where the request is not made in conformity with the Model Agreement (paragraph 1).
3. Where the information sought would disclose any trade, business, industrial, commercial or professional secret or trade process (paragraph 2).
4. Where the information would reveal confidential communications between a client and a lawyer where such communications are for:
 - a. The purpose of seeking or providing legal advice; or
 - b. To be used in existing or contemplated legal proceedings. (paragraph 3)

¹² See footnote 7

5. Where disclosure of the information would be contrary to public policy (paragraph 4).
6. Where the information requested is to be used by the applicant party to enforce a provision of its tax law that discriminates against a national of the requested party as compared with a national of the applicant party in the same circumstances (paragraph 6).

Article 7 also provides that a request for information cannot be refused on the ground that the tax claim which has given rise to the request for information is disputed.

The key issue with Article 7 is that the requested party is given a discretion as to whether to accept or reject a request for information whenever any of the grounds for declining a request under the article are met. Hence, the requested party can if it so wishes assist a requesting party by providing the information sought even if there are grounds to enable it to decline the request. The commentary to the Model Agreement advises that where the information is provided even though there are conditions present that give the requested party a discretion to decline the request "the person concerned cannot allege an infraction of the rules on secrecy."

It is worth noting that paragraph 1 of Article 7 gives the requested party a discretion to decline a request when the applicant party would not be able to obtain the information under its own laws or where the request is not made in conformity with the Model Agreement. While on the face of it these seem powerful grounds to protect the rights of the individual taxpayer they need to be considered in the context of Article 5.

Article 5 (Exchange of Information Upon Request) at paragraph 5 (discussed above) provides that the applicant party must when making a request for information provide the requested party with the information set out in paragraph 5 "to demonstrate the foreseeable relevance" of the information to the request.

Paragraph 5(f) of Article 5 requires the applicant party to provide a statement confirming that if the information requested was within its own jurisdiction that it would under its own laws be able to obtain that information and, further, that the request is in conformity with the Model Agreement.

Due to the requirements of Article 5 paragraph 5(f) all applications for information must include a statement which should stop a request being declined for breaching paragraph 1 of Article 7.

In practice paragraph 1 of Article 7 should help to protect the rights of the taxpayer under investigation by enabling the requested party to decline a request for information when it has information of its own that gives it grounds to believe that the statements given by the requesting party are inaccurate. This however, presupposes that the requested party will actually be proactive and will not simply take each request at face value without researching and verifying its accuracy. Unfortunately, the Model Agreement places the requested party under no obligation to verify the statements provided by the applicant party and the responsibility for the accuracy of the statements rests with the applicant party.

Attorney-Client Privilege

Paragraph 3 of Article 7 enables a requested party to decline a request for information when the information requested is protected by attorney-client privilege. The provisions of paragraph 3 are open to interpretation and are likely to vary from jurisdiction to jurisdiction depending on the requested jurisdictions laws and practices governing attorney-client privilege in tax matters.

Article 8 (Confidentiality)

This Article provides that any information received by a party to the Model Agreement shall be treated as confidential.

Information provided under the TIEA can only be disclosed to persons or authorities in the parties jurisdiction concerned with:

- The assessment or collection of the taxes covered by the TIEA.
- The enforcement or prosecution of matters relating to the taxes covered by the TIEA.
- The determination of appeals in relation to the taxes covered by the TIEA.

The information can also be communicated to the taxpayer, his proxy or a witness.

The information cannot without the written consent of the party that provided the information be disclosed to any other party or any other jurisdiction.

In keeping with modern international standards on information exchange the information obtained under a TIEA can be disclosed in public court proceedings or in judicial decisions.

Article 9 (Costs)

This article allows the parties to agree rules regarding the costs of obtaining and providing the requested information.

The Isle of Man TIEAs generally provide that unless the parties otherwise agree, ordinary costs incurred in providing assistance are to be borne by the requested party and extraordinary costs are to be borne by the requesting party. Extraordinary costs are costs such as the cost of employing an Advocate to obtain a court order for disclosure of documentation. The definition of ordinary and extraordinary costs is normally agreed by the Isle of Man and each TIEA partner in a separate agreement which is not a public document.

Article 10 (Implementation Legislation)

This article requires the parties to enact such legislation in their respective jurisdictions as will ensure compliance with and give effect to the terms of the Model Agreement.

On the Isle of Man this provision is being complied with through the use of a Tax Order which bring the provisions of a TIEA into domestic legislation and makes such amendments to the Isle of Man tax legislation as are necessary to comply with the Island's obligations under the TIEA.

Article 11 (Language)

This article is used in the multilateral version of the Model Agreement to enable the parties to agree on the language to be used in making and responding to requests.

Article 12 (Other International Agreements or Arrangements)

This article is used in the multilateral version of the Model Agreement to ensure that the applicant party is able to use the international instrument it deems most appropriate for obtaining the necessary information.

Article 13 (Mutual Agreement Procedure)

This article provides that the parties to the TIEA will endeavour to resolve any difficulties or doubts over the implementation or interpretation of the agreement by mutual agreement. The parties can for the purpose of reaching a mutual agreement communicate directly with each other and do not need to go through diplomatic channels.

The article also provides that the parties to the TIEA can agree to other forms of dispute resolution. This enables the parties to refer matters which cannot be resolved by the mutual agreement procedure to alternative dispute resolution procedures such as arbitration.

By way of example, the Islands TIEA with the Netherlands provides that if a matter cannot be resolved by the parties by mutual agreement within 2 years of the question being raised then either party can request that the matter be referred to arbitration. The TIEA provides that the decision of the arbitrator is binding on both parties.

Article 14 (Depositary's Functions)

Article 14 is only used in the multilateral version of the Model Agreement and it discusses the functions of the Secretary General of the OECD when acting as the depositary under the Model Agreement.

Article 15 (Entry Into Force)

This article uses in its bilateral version the standard treaty language¹³ that provides that the TIEA is subject to ratification, acceptance or approval of the parties to the agreement in accordance with their domestic laws.

Article 15 provides that the Model Agreement will enter into force on the following dates:

- 1st January 2004 in respect of exchange of information for criminal tax matters.
- 1st January 2006 in respect of all other matters covered in Article 1.

¹³ Paragraph 1 of Article 15 is similar to Article 30, paragraph 1 of the OECD Model Convention on Income and on Capital. See footnote 9.

Article 16 (Termination)

Either party to the TIEA can terminate it by giving notice to the other party. Termination takes effect on the first day of the month following the expiration of a period of 6 months from the date of receipt of the notice by the other party.

After termination of the agreement the parties are still bound by the confidentiality provisions of Article 8.

In practice some of the Isle of Man TIEAs have differing provisions on the issue of termination. Using the Island's TIEA with the Netherlands as an example, this TIEA can only be terminated after a period of 2 years from its entry into force and the termination becomes effective 3 months after the receipt of the notice of termination by the other party.

Isle of Man Tax Information Exchange Agreements

As at May 2009 the Isle of Man has entered into 15 TIEAs with the following countries:

Australia	Denmark	Faroe Islands
Finland	France	Germany
Greenland	Iceland	Ireland
New Zealand	Netherlands	Norway
Sweden	United Kingdom	United States

The Isle of Man's first TIEA was with the United States and this was signed on the 3rd October 2002 and came into force on the 1st January 2004.

The table below lists the countries with which the Isle of Man has TIEAs, the date upon which they were signed, the date of ratification of the TIEA and whether the TIEA is in force¹⁴.

Country	Signed	Effective	Status
Australia	29 January 2009	Awaiting ratification	Not in force
Denmark	30 October 2007	26 September 2008	In force
Faroe Islands	30 October 2007	3 August 2008	In force
Finland	30 October 2007	14 June 2008	In force
France	26 March 2009	Awaiting ratification	Not in force
Germany	2 March 2009	Awaiting ratification	Not in force
Greenland	30 October 2007	11 April 2008	In force
Iceland	30 October 2007	28 December 2008	In force
Ireland	24 April 2008	31 December 2008	In force
Netherlands	12 October 2005	21 July 2006	In force
New Zealand	24 July 2009	Awaiting ratification	Not in force
Norway	30 October 2007	23 August 2008	In force
Sweden	30 October 2007	27 December 2008	In force
United Kingdom	29 September 2008	2 April 2009	In force
United States	3 October 2002	1 January 2004	In force

As a TIEA is only an international agreement between the parties to the agreement it is not domestic legislation that can be enforced against individuals on the Island. In order for a TIEA to be effective its provisions

¹⁴ Information obtained from Isle of Man Treasury Website. A useful chart providing information on all of the Isle of Man's International Agreements is available at <http://www.gov.im/treasury/incometax/sections/practitioners/internationalagreements.xml>

have to be brought into the Island's domestic legislation. This is achieved on the Island by the Income Tax Act 2003 which enables the provisions of a TIEA to be brought into domestic legislation through an Income Tax Order.

The Isle of Man has in recent months started the process of creating a network of **Double Taxation Agreements** (DTA) and its fourth DTA was entered into on 23rd October 2009 with Malta. The table below lists the countries with which the Isle of Man has DTA's, the date upon which they were signed, the date of ratification of the DTA and whether the DTA is in force.

Country	Document Title	Signed	Effective	Status
Belgium	Double Taxation Agreement	16 July 2009	Awaiting ratification	Not in force
Estonia	Double Taxation Agreement	8 May 2009	Awaiting ratification	Not in force
Malta	Double Taxation Agreement	23 October 2009	Awaiting ratification	Not in force
United Kingdom	Double taxation agreement	29 July 1955	6 April 1955	In force

Income Tax Act 2003

Sections 19 to 21 of the Income Tax Act 2003 ("ITA 2003"), which came into operation on the 1st March 2005 deal with International information exchange agreements and prescribe restrictions on the disclosure and use of incoming and outgoing information.

Section 19 of ITA 2003 gives the Island's Council of Ministers power to make subordinate legislation in the form of an order ("an Income Tax Order") to give effect to a TIEA. In order to implement and give effect to the TIEA under domestic law the Income Tax Order modifies sections 105C to 105O of the Income Tax Act 1970; which contain the powers of

the Assessor of Income Tax to obtain information, as the competent authority to deal with information exchange under a TIEA.

An income Tax Order only has effect when it is approved by the Island's parliament Tynwald.

Sections 20 and 21 set out the restrictions on disclosure and use of incoming and outgoing information.

Incoming Information (S20)

The Treasury and the Assessor of Income Tax ("the Assessor") must not disclose or use any information received from another country under a TIEA except:

- For the purposes of income tax;
- For the facilitation of legal proceedings for failure to observe the income tax laws of the Isle of Man; or
- As permitted under the TIEA.

Outgoing Information (S21)

Section 21 provides that neither the Treasury nor the Assessor can disclose any information under a TIEA unless they are satisfied that the authorities of the requesting party are bound by, or have undertaken to observe, rules of confidentiality concerning the information which are at least as strict as the rules that apply to the information on the Island.

The Treasury and the Assessor can only authorise the disclosed information to be used for:

- The purpose of taxes covered by the TIEA;
- To facilitate legal proceedings for failure to observe the laws of the requesting parties relating to the taxes covered by the TIEA;

In the situation where criminal proceedings could be brought by the requesting party against the person who furnished the information then the Treasury and the Assessor have power to refuse to disclose information unless they are satisfied that the information would only be used in criminal proceedings for an offence of perjury or a like offence.

All of the Isle of Man Income Tax Orders contain provisions that amend the sections 105C to 105O of the Income Tax Act 1970.

The Income Tax Act 1970

Sections 105C to 105O of the Isle of Man Income Tax Act 1970 (“ITA 1970”) give the Assessor wide powers to obtain documentation relating to a person’s income tax liability. The Assessors powers were originally drawn up to enable him to obtain documentation relating to a person’s liability to Isle of Man income tax. To enable the Island to comply with the requirements of the TIEAs that it has entered into, the ITA 1970 has been amended to enable the Assessor to obtain documentation for a Requesting Party.

Each Income Tax Order contains a schedule setting out an amended form of Sections 105C to 105O of ITA 1970 that applies to the specific TIEA.

For the purpose of this paper I will look at the version of Sections 105C to 105O that are contained in Schedule 2 of the US Tax Order. Where later Tax Orders contain material differences to the amendments contained within the US Tax Order I will highlight these differences.

The Isle of Man’s TIEA with the United States

The TIEA between the Isle of Man and the United States¹⁵ (“the US TIEA”) was signed in Washington on the 3rd October 2002 by United States Treasury Secretary Paul H. O’Neill and Isle of Man Treasury Minister Allan Bell.¹⁶ The US TIEA was the first TIEA the Island had entered into and the seventh TIEA ever entered into globally.¹⁷

At the signing ceremony Treasury Secretary Paul O’Neill gave the following remarks¹⁸:

“The United States and the Isle of Man already have a close and cooperative relationship on law enforcement matters. Today cooperation between governments is more important than ever before. We greatly value the cooperation of Isle of Man, particularly now as we work to

¹⁵ A copy of the US TIEA can be found at <http://www.gov.im/lib/docs/treasury/incometax/finaltieaus.pdf>

¹⁶ See <http://www.treas.gov/press/releases/po3494.htm>

¹⁷ The first ever TIEA was signed on the 6th December 2000 between Antigua and Barbuda and the United States. A list of all of the current TIEA’s by date of signature can be found at http://www.oecd.org/document/7/0,3343,en_2649_33767_38312839_1_1_1_1,00.html.

¹⁸ A copy of the press release can be found at <http://www.treas.gov/press/releases/po3502.htm>

ensure that no safe haven exists anywhere in the world for the funds associated with illicit activities, including terrorism, money laundering, and tax evasion.

I have spoken on numerous occasions about our obligation to enforce our tax laws, because failing to do so undermines the confidence of honest taxpayers in the fairness of our tax system. Access to needed information is vital to our efforts to ensure enforcement of our laws.

This new tax information exchange agreement is an important development, and further demonstrates the commitment of the Isle of Man to cooperating with the United States on law enforcement matters and to upholding international standards in this area. We look forward to continuing to strengthen the ties between us."

Effect of the US TIEA under IOM law

The US TIEA was brought into effect under Isle of Man domestic law on the 26th April 2006 by the Income Tax (USA) Order 2006¹⁹ ("the US Tax Order") using the power given to the Council of Ministers under S19 of ITA 2003 to create Tax Orders.

In order to implement and give effect to the arrangements contained in the US TIEA under Isle of Man domestic law the US Tax Order amends as required sections 105C to 105O of ITA 1970. This is achieved by, for example, extending the definition of 'income tax' to include the US taxes covered by the TIEA and the definition of 'taxpayer' to include a person who is or may be liable to those taxes.

Section 105C Power to call for documents, etc. of taxpayer

S105C of the ITA 1970 gives the Assessor power to obtain documentation from the individual taxpayer (not third parties) relating to that persons tax liability.

The procedure for obtaining the documentation is as follows:

1. The Assessor must first give the person a reasonable opportunity to provide the Assessor with the documents he has requested.
2. If the documents have not been provided then the Assessor issues the person with a written notice requiring the person:

¹⁹ Statutory Document No. 169/06 a copy can be found at <http://www.gov.im/lib/docs/treasury/incometax/sd16906.pdf>

(a) to deliver to him such documents as are in the person's possession or power and contain, or may contain, information relevant to-

(i) any liability to income tax to which the person is or may be subject, or

(ii) the amount of any such liability;

(b) to furnish to him such particulars as the Assessor may reasonably require as being relevant to, or to the amount of, any such liability; or

(c) to furnish to him such evidence as the Assessor may reasonably require as being relevant to the person's residence status for the purposes of the ITA 1970.

3. The Assessor must give the person a written summary of the reasons for giving the notice.
4. A notice does not oblige the person to deliver documents or to furnish particulars relating to the conduct of a pending tax appeal taking place on or off the Island.

Section 105D Power to call for documents relating to taxpayer

This section is likely to be the main section used for information requests under an Isle of Man TIEA as it enables the Assessor to obtain documentation from a person other than the tax payer: e.g. from parties such as banks and corporate service providers.

The section is subject to section 105E and provides that the Assessor may by notice in writing require any person other than the taxpayer to deliver to the Assessor or, make available for inspection by the Assessor, such documents as are in his possession or power and contain, or may contain, information relevant to:

(a) any liability to income tax to which the taxpayer is or may be subject;

(b) the amount of any such liability;

- (c) the taxpayer's residence status for the purposes of the ITA 1970.

A minimum of 30 days from the date of the notice must be given for the delivery of the documents.

Before a notice is issued the Assessor must have given the person a reasonable opportunity to deliver the documents or make them available to the Assessor. In practice the Assessor allows a 30 day period before issuing any notice. A total period of 60 days is therefore given to enable the person to deliver the documents or information.

When a notice is given a copy must be given to the taxpayer under investigation in the United States together with a written summary of the Assessors reasons for giving the notice. ITA 1970 enables the Treasury by Order approved by Tynwald to declare that the Assessor does not need to give a written summary of his reason for giving a notice in cases of suspected fraud by the taxpayer or where the disclosure of the information would prejudice the assessment or collection of tax.

Section 105E of the ITA 1970 provides that the notice should name the tax payer that it relates to unless one of the following grounds exists:

- a) the notice relates to a taxpayer whose identity is not known to the Assessor;
- (b) there are reasonable grounds for believing that the taxpayer may have failed or may fail to comply with any provision of the Income Tax Acts;
- (c) that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax; and
- (d) the information which is likely to be contained in the documents to which the notice relates is not readily available from another source.

A person who receives a notice which does not name the tax payer can within 30 days of the date of the notice object to the notice on the ground that it would be onerous for him to comply with it. If the Assessor cannot reach an agreement with the person on this then the matter is referred to the Isle of Man Tax Commissioners. While the Commissioners have power to confirm, vary or cancel the notice they must take account of the arrangements for the exchange of information contained within the TIEA.

Section 105F of the ITA 1970 provides exemptions to auditors and tax advisers from the requirement to disclose documents under a notice from the Assessor.

- Auditor

A notice does not oblige an auditor to deliver or make available documents which are his property and were created by him or on his behalf for the performance of his functions as auditor.

- Tax Adviser

A tax adviser is defined as a person who:

- a) In the ordinary course of his business, gives and holds himself out as giving advice to others about their tax affairs; and
- b) Has been appointed to give such advice either by the person in relation to whose tax affairs he has been appointed or by another tax adviser of that person.

A notice does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.

'relevant communications' means communications between the tax adviser and-

- (a) a person in relation to whose tax affairs he has been appointed; or
- (b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs.

The exemptions are limited in cases where the notice does not name the tax payer. In such cases any documents that contain "information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person" must be disclosed to the Assessor.

S105G of the ITA 1970 provides that in sections 105C to 105E "documents" do not include:

- Personal records;

- Journalistic material;
- Items subject to legal privilege.

Personal records is defined as documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating-

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who-
 - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
 - (ii) by reason of an order of a court has responsibilities for his supervision.

Journalistic material is defined as material acquired or created for the purposes of journalism.

Items subject to legal privilege is defined as:

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

Section 105H and Section 105I Orders

The Assessor is given power to apply for a High Court order to obtain the documents sought by his notice.

When seeking documents by way of a court order, Section 105K provides that, subject to the exception below, the person from whom the documents are sought must be given at least 14 days notice of the intention to apply for a court order against him.

A person given notice of an application is entitled to appear and be heard at the hearing of the application.

The High Court has power to make an order without the person being notified or appearing at the hearing if it is satisfied that such notice or appearance would seriously prejudice the investigation of the offence.

Section 105H Orders for the delivery of taxpayer's documents

The Assessors powers to obtain information for the purposes of complying with a request under a TIEA are backed up by his ability under section 105H to obtain a High Court order for the information.

Where a notice under section 105C (non third party) from the Assessor has not been complied with or there is reasonable ground for suspecting that a notice will not be complied with then the Isle of Man High Court can make an order under section 105H ("a non Third Party Order").

A non Third Party Order requires the person to whom the notice was sent to:

(a) deliver to the Assessor such documents as are in the person's possession or power and in the Court's opinion contain, or may contain, information relevant to-

(i) any liability to income tax which the person is or may be subject, or

- (ii) the amount of any such liability;
- (b) furnish to the Assessor such particulars as the Court may specify as being relevant to, or to the amount of, any such liability; or
- (c) furnish to the Assessor such evidence of residence as the Court may specify.

Section 105I Orders for the delivery of documents relating to taxpayer

This section relates to notices under section 105D (third party) and enables the High Court to make an order against a third party for the disclosure to the Assessor of documentation relating to a tax payer.

A Section 105I order (“a Third Party Order”) can be made where:

- the notice under section 105D(1) has not been complied with; or
- there is reasonable ground for suspecting that such a notice will not be complied with; or
- the taxpayer concerned may have failed or may fail to comply with any provision of the Income Tax Acts, and that any such failure is likely to have led or to lead to serious prejudice to the proper assessment or collection of tax.

If a person fails to comply with a Third Party Order or a Non Third Party Order then they can be dealt with as if they had committed contempt of court.

Section 105L makes it an offence to intentionally falsify, destroy, conceal or dispose of documents that the Assessor or the Court has requested by general request, notice, or court order.

Section 105M Entry with warrant to obtain material

The Assessor has power to obtain a warrant authorising him to enter and search premises, if necessary by force to find material relevant to a TIEA request.

In order to obtain a warrant the Assessor must satisfy an Isle of Man Deemster (High Court Judge) that there is reasonable ground for suspecting that an offence involving tax fraud is being or about to be committed and that evidence of it can be found on the premises.

The warrant gives the Assessor power to seize and remove anything found on the premises that is not subject to legal privilege, which he believes may be required as evidence for the purpose of proceedings in connection with the suspected tax fraud.

Differences between the US TIEA and the Model Agreement

The US TIEA follows the Model Agreement with some amendments. The significant amendments are discussed below.

1. Article 5 Exchange of Information Upon Request

There is a subtle change to Paragraph 5(d) as the word reasonable has been inserted at the start of the paragraph. The applicant party is only required to provide “reasonable grounds” for believing that the information is held within the requested parties jurisdiction rather than definite “grounds” as is set out in the Model Agreement.

The US TIEA is also different to the Model Agreement in that there is no requirement for the requested party to provide the information “as promptly as possible to the applicant party”. The notification provisions of Paragraph 6 of the Model Agreement have not been reproduced in the US TIEA.

2. Article 7 Possibility of Declining a Request

The Model Agreement’s provisions relating to legal privilege have been re-written in the US TIEA and are clearer and more precise.

The US TIEA provides that there is no obligation on the parties to “provide items subject to legal privilege”. The definition of legal privilege follows that used on the Island in Section 105G ITA 1970.

3. Article 8 Confidentiality

The Model Agreement enables the party that has disclosed the information to agree to the information being disclosed to 3rd parties. The US TIEA specifically states that any information that has been provided cannot be disclosed to a 3rd party.

Taxes covered by the US TIEA

Subject to modification by agreement in the form of an exchange of letters between the parties the US TIEA applies in respect of the following taxes:

In the case of the US, all federal taxes.

In the case of the Isle of Man, taxes on income or profits.

The second TIEA the Island entered into was with the Netherlands.

The Isle of Man's TIEA with the Netherlands

On the 12th October 2005 the Isle of Man and the Netherlands signed the following series of bilateral agreements:

- A TIEA ("the Netherlands TIEA")²⁰
- A shipping and aircraft taxation agreement ensuring that a relevant business based in the Isle of Man will not be taxed in the Netherlands so long as it is conducting international trade.
- A 'transfer pricing' agreement; to enable the Isle of Man and the Netherlands to work together to ensure certainty of treatment when companies having operations in the two territories move goods and services between them.
- An agreement that Manx subsidiaries of Dutch companies would not experience any tax issues when the Isle of Man moved to its zero rate of income tax for companies.
- A commitment to work towards a full DTA (double taxation agreement) between the Isle of Man and the Netherlands.

While the Netherlands TIEA follows the Model Agreement it has been redrafted and a number of minor amendments have been made. The provisions of the Netherlands TIEA were brought into domestic legislation by the Income Tax (Netherlands) Order 2006²¹ ("the Netherlands Tax Order") which was approved by Tynwald on the 17th May 2006.

The Netherlands Tax Order makes the same form of amendments to sections 105C to 105O of the Income Tax Act 1970 as the US Tax Order.

Taxes covered by the Netherlands TIEA

Subject to modification by agreement between the parties the Netherlands TIEA applies in respect of the following taxes:

In the case of the Netherlands:

- I. Income tax

²⁰ A copy of the Netherlands TIEA can be found at <http://www.gov.im/lib/docs/treasury/incometax/iomnltiea12oct05.pdf>

²¹ A copy of the Netherlands Tax Order can be found at <http://www.gov.im/lib/docs/treasury/incometax/pdfs/sd16806itnetherlandsorder06.pdf>

- II. Wages tax
- III. Company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act
- IV. Dividend tax
- V. Gift tax
- VI. Inheritance tax

In the case of the Isle of Man, taxes on income or profit.

The Island's third to ninth TIEAs were entered into with the seven members of the Nordic Council in a signing ceremony in Oslo.

The Isle of Man's TIEAs with the Nordic Countries

On the 30th October 2007 the Isle of Man concluded taxation and economic cooperation agreements with the seven members of the Nordic Council being Denmark, the Faroe Islands, Finland, Iceland, Norway, Greenland and Sweden. A package of 28 agreements was signed in Oslo which included TIEAs, shipping and aircraft taxation agreements and an agreement affording relief from double taxation with respect to certain income of individuals.

As would be expected the seven TIEA agreements are essentially the same as each other. While the TIEAs do not follow the exact wording of the Model agreement they are in effect similar in their objects and achieve the same purpose.

The provisions of Article 4 which deal with exchange of information upon request includes a limitation in that the requesting party agrees to only make a request for information when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

The modifications to ITA 1970 are the same as those contained in the US Income Tax Order with the addition of new exemptions to the requirement under section 105D(4) for the Assessor to give the taxpayer a copy of the notice served on the 3rd party and a written summary of his reasons for giving the notice.

The new exemption provides that if on the application of the Assessor two members of the Income Tax Commissioners panel (“the Commissioners”) give their written consent then the Assessor does not need to give the tax payer a copy of his notice nor the written summary of his reasons for giving the notice to the 3rd party.

The Commissioners can only give their consent to the Assessors application if they are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud.

To prevent the third party upon whom the notice was served informing the taxpayer of the notice the new exemption makes it an offence punishable with imprisonment for the third party to:

- Inform the taxpayer, or cause or permit the taxpayer to be informed, that the notice has been given;
- 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.

Amendments were also subsequently made to the USA Tax Order and Netherlands Tax Order to bring these new provisions into effect in respect of the US and Netherlands TIEAs.

Taxes covered by the TIEAs with the Nordic Countries

Subject to modification by agreement in the form of an exchange of letters between the parties the TIEAs with the Nordic countries apply in respect of the following taxes:

Denmark

In the case of Denmark:

- I. The income tax to the State
- II. The income tax to the municipalities

In the case of the Isle of Man, taxes on income or profit.

The Faroes

In the case of the Faroes, taxes on income or profit.

In the case of the Isle of Man, taxes on income or profit.

Finland

In the case of Finland:

- I. The state income taxes
- II. The corporate income tax
- III. The communal tax
- IV. The church tax
- V. The tax withheld at source from interest
- VI. The tax withheld at source from non-residents' income
- VII. The withholding tax for foreign employees

In the case of the Isle of Man, taxes on income or profit.

Greenland

In the case of Greenland:

- I. the home rule tax
- II. the special home rule tax
- III. the municipal tax
- IV. the intermunicipal tax
- V. the company tax
- VI. the dividend tax
- VII. the royalty tax

In the case of the Isle of Man, taxes on income or profit.

Iceland

In the case of Iceland:

- I. the income taxes to the State
- II. the income tax to the municipalities

In the case of the Isle of Man, taxes on income or profit.

Norway

In the case of Norway:

- I. the tax on general income
- II. the tax on personal income
- III. the special tax on petroleum income
- IV. the resource rent tax on income from production of hydroelectric power
- V. the withholding tax on dividends
- VI. the tax on Remuneration to non-resident artistes, etc

In the case of the Isle of Man, taxes on income or profit.

Sweden

In the case of Sweden:

- I. the national income tax
- II. the withholding tax on dividends
- III. the income tax on non-residents
- IV. the income tax on non-resident artistes and athletes
- V. the municipal income tax

In the case of the Isle of Man, taxes on income or profit.

The Isle of Man's TIEA with Ireland

The Islands tenth TIEA was entered into with Ireland. The signing ceremony took place in Dublin on the 24th April 2008. In addition to a TIEA ("the Irish TIEA") the Island also signed an agreement with Ireland affording relief from double taxation with respect to certain income of individuals and establishing a mutual agreement procedure in connection with the adjustment of profits of associated enterprises.

The Irish TIEA was brought into the Island's domestic legislation through an Income Tax Order which was approved by the Island's parliament, Tynwald on 17th June 2008.

The Irish TIEA was subsequently ratified in Ireland and entered into force on the 31st December 2008.

The Irish TIEA follows the wording used in the Nordic TIEAs with a few minor amendments.

The modifications to ITA 1970 are the same as those contained in the TIEAs with the Nordic countries.

The significant difference between the Irish TIEA and its predecessors is that a protocol between Ireland and the Isle of Man forms part of the agreement.

The protocol was signed at the same time as the Irish TIEA and relates to the confidentiality provisions at Article 7 of the Irish TIEA. The protocol allows information obtained under the Irish TIEA to be used in the investigation or prosecution of Value Added Tax ("VAT") matters or for the determination, assessment or enforcement of VAT.

Taxes covered by the Irish TIEA

Subject to modification by agreement between the parties the Irish TIEA applies in respect of the following taxes:

In the case of the Ireland:

- I. the income tax
- II. the corporation tax
- III. the capital gains tax
- IV. the capital acquisitions tax

In the case of the Isle of Man, taxes on income or profit.

The Isle of Man's TIEA with the United Kingdom

At a signing ceremony in Douglas on the 29th September 2008, the Isle of Man entered into a TIEA ("the UK TIEA") and an amendment to the Double Taxation agreement with the United Kingdom affording relief from double taxation with respect to pensions by allocating taxing rights to the taxpayer's country of residence.

The Income Tax (United Kingdom) Order 2008 which was approved by the Island's parliament, Tynwald on 18th November 2008 makes the same modifications to sections 105C to 105O of the Income Tax Act 1970 as the Nordic TIEAs. The UK TIEA was subsequently ratified by the United Kingdom and came into force on the 2nd April 2009.

The UK TIEA follows the format of the Nordic TIEAs and the Model Agreement with a few subtle amendments.

The Model Agreement (at Article 6) and all prior TIEAs entered into by the Island contain a right for the requested party to decline a request for information when the information requested is to be used to enforce a tax law that discriminates against a national of the requested party as compared with a national of the applicant party in the same circumstances. The UK TIEA does not contain this provision.

The rules on confidentiality are subtly different to previous TIEAs and the Model Agreement. The UK TIEA provides at Article 8 that:

"Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, the oversight of such purposes or the regulation of disclosure and use of information. The information shall be used by such persons and authorities only for the purposes specified in Article 1, including the determination of any appeal, or for the purposes which fall strictly within the specific powers and objects of such persons or authorities. For the avoidance of doubt, information which has been disclosed to such persons or authorities may be disclosed in public court proceedings or in judicial decisions."

It is not clear from the UK TIEA what UK person or authority would fall within the description of dealing with "*the oversight of such purposes or*

the regulation of disclosure and use of information". The identification of who these persons or authorities are could become important if a request under the UK TIEA was made as the article enables the person or authority to use the information *"for the purposes which fall strictly within the specific powers and objects of such persons or authorities"*. Until the identity of these persons or authorities is identified it is not possible to determine the limitations of the confidentiality obligation under this agreement.

Taxes covered by the UK TIEA

Subject to modification by agreement between the parties the UK TIEA applies in respect of the following taxes:

In the case of the UK:

- I. the income tax
- II. the corporation tax
- III. the capital gains tax
- IV. the inheritance tax

In the case of the Isle of Man, taxes on income or profit.

The Isle of Man's TIEA with Australia

At a signing ceremony at Australia House in London on the 29th January 2009 the Isle of Man and Australia entered into a TIEA ("the Australian TIEA") and an agreement for the allocation of taxing rights over certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments.

The Australian TIEA has been brought into the Islands domestic legislation through the Income Tax (Australia) Order 2009 which was approved by the Island's parliament, Tynwald on the 17th March 2009. The Australian Income Tax Order makes the same modifications to sections 105C to 105O of the Income Tax Act 1970 as the Nordic TIEAs.

The Australian TIEA is in a format similar to the Nordic TIEAs.

Taxes covered by the Australian TIEA

Subject to modification by agreement in the form of an exchange of letters between the parties the Australian TIEA applies in respect of the following taxes:

In the case of the Australia, income tax including the Petroleum Resource Rent Tax and Fringe Benefits Tax imposed under the federal law of Australia.

In the case of the Isle of Man, taxes on income or profits.

The Isle of Man's TIEA with Germany

On the 2nd March 2009 at a signing ceremony in Berlin the Isle of Man and Germany concluded a TIEA ("the German TIEA") and an agreement for the avoidance of double taxation with respect to enterprises operating ships in international traffic.

Jeffrey Owens, Director of OECD's Centre for Tax Policy and Administration welcomed the new agreement as a further step in efforts to bring greater transparency and fairness to cross-border financial transactions and stated that "The time has now come for all jurisdictions that have made commitments to the international standards of transparency and exchange of information to follow the Isle of Man's lead in implementing them."²²

The Income Tax (Germany) Order 2009 which was approved by the Island's parliament, Tynwald, on the 17th March 2009 brings the German TIEA into the Islands domestic legislation. As with the Australian TIEA the format is similar to the Nordic TIEAs and the same amendments are made to sections 105C to 105O of the Income Tax Act 1970.

At the same time as entering into the German TIEA the governments of the Isle of Man and Germany agreed upon a protocol which forms an integral part of the German TIEA.

The protocol sets out rules on how personal data can be used and requires the parties to the Agreement to ensure that for the purpose of transferring personal data between the parties they will ensure that a level of protection equivalent to that of Directive 95/46/EC of the

²² See press release at

http://www.oecd.org/documentprint/0,3455,en_2649_34487_42268300_1_1_1_1,00.html

European Parliament²³ and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²⁴.

This requirement should be covered by the Isle of Man Data Protection Act 2002 which is based upon the United Kingdom Data Protection Act 1998 and is compliant with the EC Data Protection Directive 95/46/EC. The European Commission made a formal decision on 28th April 2004²⁵ recognising the Isle of Man as a jurisdiction with an adequate level of protection for personal data.

The protocol also provides examples of the type of costs that the requesting party will be responsible for.

Taxes covered by the German TIEA

Subject to modification by agreement between the parties the German TIEA applies in respect of the following taxes:

In the case of the Federal Republic of Germany:

- I. the income tax
- II. the corporation tax
- III. the trade tax
- IV. the capital tax
- V. the inheritance tax

including the supplements levied thereon.

In the case of the Isle of Man, taxes on income or profit.

The Isle of Man's TIEA with France

The Isle of Man's 14th TIEA was entered into with France ("the French TIEA") and was signed on the 26th March 2009 at a ceremony in Douglas. The Island also entered into an agreement with France for the avoidance

²³ A copy of the directive is at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1995L0046:20031120:EN:PDF>

²⁴ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>

²⁵ See <http://www.gov.im/lib/docs/odps//adequacydecision.pdf>

of double taxation with respect to enterprises operating ships in international traffic.

The French TIEA was brought into the Island's domestic legislation through an Income Tax Order which was approved by the Island's parliament, Tynwald on 24 April 2009.

The French TIEA is similar to the Nordic TIEAs with the exception that it cannot be terminated by either party for a period of two years.

The Isle of Man and French governments also entered into a protocol to which the French TIEA is subject. The protocol provides that with the written consent of the requested party, information provided under the French TIEA can also be used in respect of the determination, assessment, enforcement, collection, investigation or prosecution of matters relating to Value Added Tax.

HM Treasury issued a press statement²⁶ on 30th April 2009 welcoming the fact that the Isle of Man had been recognised by the Organisation for Economic Co-operation and Development as a jurisdiction that has substantially implemented the internationally agreed standard on exchange of information in tax matters and on its ongoing progress in signing Tax Information Exchange Agreements.

Taxes covered by the French TIEA

Subject to modification by agreement between the parties the French TIEA applies in respect of the following taxes:

In the case of France:

- I. income tax
- II. corporation income tax
- III. taxes on salaries
- IV. wealth tax
- V. inheritance and gift taxes
- VI. registration duties on transactions

In the case of the Isle of Man, taxes on income or profits.

²⁶ A copy of the press statement is at http://www.hm-treasury.gov.uk/press_45_09.htm

The Isle of Man's TIEA with New Zealand

On 27th July 2009 the Island concluded agreements with the government of New Zealand. The agreements included the Island's 15th TIEA and an agreement for the allocation of taxing rights over certain income of individuals and establishing a mutual agreement procedure in respect of transfer pricing adjustments.

Upon entering into the two agreements the parties also entered into a Joint Declaration which provides that "New Zealand will recognise the Isle of Man by Order in Council as an approved territory for the purposes of designating Isle of Man entities as qualified equity investors and exempt under the venture capital regime."

With the exception of a few minor amendments the New Zealand TIEA follows the format of the previous Isle of Man TIEAs.

Taxes covered by the New Zealand TIEA

The taxes covered by the TIEA are:

New Zealand - Income Tax

Isle of Man – taxes on income or profits

Article 3 provides that the TIEA does not apply to taxes imposed by states, municipalities or other political subdivisions of a party.

About the author



Miles Benham is an Isle of Man advocate and Notary Public and is a director of MannBenham Advocates Limited and MannBenham Fiduciaries Limited based on the Isle of Man. Miles is a member of the International Tax Planning Association.

MannBenham Advocates Limited

49 Victoria Street,

Douglas,

Isle of Man

IM1 2LD

Telephone 00 44 (0) 1624 639350

www.mannbenham.com

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