

Isle of Man Tax Information Exchange Agreements and Trusts

The Isle of Man has entered into Tax Information Exchange Agreements (“TIEA’s”) with the following countries:

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

The Isle of Man has also entered into Double Taxation Agreements which contain provisions on information exchange with the following countries:

- Belgium (not yet in force)
- Estonia
- Malta
- United Kingdom

While not identical the TIEA’s follow a similar format and enable the parties respective tax authorities to request and obtain information from each other that is relevant to the administration and enforcement of their domestic taxes.

TIEA’s are brought into effect under IOM law by way of Income Tax Orders (e.g. the Income Tax (United Kingdom) Order 2008 (“the UK Income Tax Order”) and by amendment to the Isle of Man Income Tax Act 1970.

The table at Appendix 1 lists all of the International Tax Agreements that the Isle of Man Treasury has entered into¹ and their status as at June 2010.

Of relevance to UK Tax and Isle of Man trusts is the TIEA between the IOM and the UK ("the UK TIEA"). The UK TIEA has been effective since 2nd April 2009 and is separate to the Double Taxation Agreement the IOM has with the UK.

The UK TIEA

Article 1 of the UK TIEA provides that the IOM and the UK:

"shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of tax matters in relation to such persons."

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 UK TIEA applies in respect of the following taxes:

- 1) In the United Kingdom:
 - i) Income tax;
 - ii) Corporation tax;
 - iii) Capital gains tax; and
 - iv) Inheritance tax;
- 2) In the Isle of Man:
 - i) Taxes on income or profit

¹ The table is provided with the kind permission of the by the Isle of Man Treasury and can be accessed from their website at <http://www.gov.im/treasury/incometax/sections/practitioners/internationalagreements.xml>

Article 5

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 by the competent authority of the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of 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 article further provides that the UK and the IOM will ensure that they have power to obtain and provide upon request:

- 1) Information held by any person including nominees and trustees acting in an agency or fiduciary capacity;
- 2) Information regarding the ownership of trusts including information on settlors, trustees and beneficiaries.

Article 5 paragraph 5 provides that the request for information must be formulated with the greatest detail possible in specifying in writing:

- a) the identity of the person under examination or investigation;*
- b) the period for which the information is requested;*
- c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;*
- d) the tax purpose for which the information is sought;*
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the domestic laws of the requesting Party, with respect to the person identified in (a) of this paragraph;*
- f) grounds for believing that the information requested is present in the*

requested Party or is in the possession or power of a person within the jurisdiction of the requested Party;

g) to the extent known, the name and address of any person believed to be in possession or power of the information requested;

h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulty."

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 account holder(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.

Power to Decline a Request

Article 7 provides that the IOM or the UK may decline to assist:

- 1) Where the request is not made in conformity with the UK TIEA;
- 2) Where the requesting party has not pursued all means available to it in its own territory to obtain the information; except where recourse to such means would give rise to disproportionate difficulty; or
- 3) Where disclosure of the information would be contrary to public policy.

The provisions of the UK TIEA are brought into force under IOM domestic legislation by amendments to 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 Assessor’s 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.

Sections 105C to 105O of the ITA 1970 are modified by the UK Income Tax Order to include specific provisions which enable the UK TIEA to be implemented under IOM domestic law. When considering the legal application of a TIEA it is necessary to look at the amendments contained in the Income Tax Order as a number of the Orders make their own specific amendments to the Act for the purpose of the particular TIEA.

Applicability of UK TIEA to IOM Trustees

Under the ITA 1970² the definition of a 'person' includes any association of persons, corporate or unincorporate.

The UK TIEA adds into the ITA 1970³ a definition of taxpayer for the purpose of interpreting sections 105C to 105N of the ITA 1970. Tax payer is defined as including "a person who is or may be liable to any tax to which the applicable arrangements relate."

While Trusts, settlements, trustees and beneficiaries are not specifically referred to in Isle of Man income tax law, the Isle of Man Assessor has advised that trustees and beneficiaries fall within the definition of persons for the purpose of Isle of Man income tax⁴.

There are two powers that need to be considered. The power to obtain documents directly from the taxpayer (section 105C) and the power to obtain documents relating to the taxpayer from a 3rd party (section 105D).

Section 105C Power to obtain documents from the Isle of Man Trustee

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.

² Section 120 Income Tax Act 1970.

³ See Schedule 2 of the UK Income Tax Order under section 105O.

⁴ See Practice Note141/07 "The Taxation of Trusts in the Isle of Man".

This provision would be used where the UK wished to obtain information from an IOM trustee or an IOM resident beneficiary.

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:
 - (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 the Island or in the UK.

Section 105D Power to call for documents relating to a taxpayer

This section is likely to be the main section used for information requests under the UK 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.

This section also applies where the IOM trustee holds information relevant to the tax liabilities of a beneficiary of the trust.

Section 105D(1) states:

*“The powers conferred by this section may be used for the purpose of enquiring into the liability to income tax **of any person** (‘the taxpayer’) in any case in which the Assessor believes it to be necessary for the purpose of responding to a request made by the United Kingdom in accordance with the applicable arrangements.”*

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 tax⁵ 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 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:

⁵ Income Tax is defined as including any tax of the UK and to which the applicable arrangements relate.

- 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.

The obligation to provide documents does not apply to documents that are more than 6 years old unless the case involves fraud by the taxpayer.

When no notice is given to the taxpayer

In cases of fraud by the taxpayer the requirement to give the taxpayer a copy of the notice and a written summary of the Assessors reasons for giving notice can be waived with the consent of 2 members of the Income Tax Commissioners panel.

Where the taxpayer is not given notice then section 105E (12) provides that the person who has received the notice to provide the information must not:

- a) inform the taxpayer that notice has been given; or
- b) disclose to any person any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance of the Assessor's functions.

The penalty for breaching this requirement is on summary conviction a fine of up to £5000 or custody for a term of 6 months or both.

Directors, managers and secretaries of companies that provide trustee

services should carefully note that section 105E (14) states:

“If an offence ... 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.”

It is a defence to proceedings under S105E (14) if the person can 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.”

Exemptions for Auditors and Tax Advisors

Section 105F of the ITA 1970 provides exemptions to auditors and tax advisers from the requirement to disclose documents under a S105D 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 Assessor's 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.

Taxation of Trusts in the Isle of Man

The Isle of Man Income Tax division has issued two practice notes on the taxation of trusts in the Isle of Man, being practice notes PN 141/07 dated 8th March 2007 and PN 160/09 dated 23rd October 2009.

Practice Note 141/07

Trusts, settlements, trustees and beneficiaries are not referred to in Manx income tax law.

In the Income Tax Act 1970 the term a 'person' is given a wide definition and includes any association of persons, corporate or unincorporate.

The practice note provides that trustees and beneficiaries are "persons" for the purposes of Isle of Man Income Tax.

The taxation position of trustees and beneficiaries is determined by a combination of residence and source-based taxation which takes into account the residence of the beneficiaries of the trust rather than the residence of the settlor or the trustees.

In the practice note the Assessor acknowledges that as trust property is held for the use and benefit of the beneficiaries, the taxation of the trust should reflect the tax position of the beneficiaries. This means that the burden of tax imposed on the income of a trust should be the same as would have been levied on the beneficiaries had they received the income directly.

A trust falls within the scope of Isle of Man income tax where:

- At least one trustee is resident in the Isle of Man; or
- The administration of the trust is conducted in the Isle of Man.

The practice note states that "where income is derived from property held by one person as nominee for another, or from property held by a trustee for another person who is absolutely entitled to that property as against the trustee, then the person or trustee, respectively, is not within the scope of Manx income tax in respect of that income."

Where the beneficiaries of a trust only have an interest in possession to part of the trusts income then the Assessor will treat the trust as two separate trusts, one being an IIP trust and the other a discretionary trust.

The practice note at clause 9 provides that the Assessor will adopt the following approach to Manx trusts:

Interest in Possession Trusts ("IIP Trust")

The Assessor will treat a beneficiary of an IIP Trust as though the trust income accrued directly to the beneficiary.

The trustees are not liable to tax in this case.

Discretionary trusts

If trust **income is distributed**, the **beneficiaries will be taxed** according to their residence status:

- beneficiaries who are not resident in the Isle of Man will be taxed on the income distributed to them as if the income accrued to them directly;
- beneficiaries who are resident in the Isle of Man will be subject to Manx tax in respect of any income distributed to them (to the extent that it has not already been taxed in the hands of the trustees as previously undistributed income).

The **trustees will be taxed on income not distributed** as follows:

- if all of the beneficiaries are not resident in the Isle of Man, undistributed income will be subject to the same amount of tax as would be charged where the same type and amount of income had been received by a non-resident individual;
- if any of the beneficiaries is resident in the Isle of Man, undistributed income will be subject to Manx tax.

Practice Note 160/09

This practice note provides guidance on:

- tax return filing requirements and "non-liable trusts";
- trustee remuneration as a deductible expense for income tax purposes;
- Distributions of income to non-resident beneficiaries;
- the tax position of purpose trusts.

The practice note states that "trustees are obliged by law to inform the

assessor when there is, or may be, an Isle of Man income tax liability”.

Section 62 (1) of the Income Tax Act 1970 provides that:

“Every person liable to pay income tax shall in respect of such tax, ... , make and deliver to the Assessor a true and correct return of his whole income for the year ended on the fifth day of April then last past...”

Section 62(5) provides that:

“For the purposes of this section, any person resident in the Isle of Man, or deriving income therefrom, shall be deemed to be a person liable to pay Manx income tax, although on assessment, or by reason of allowances and deductions, it may eventually be found that no income tax is in fact payable by such person in the Isle of Man.”

As Isle of Man trustees are by their very nature resident on the Isle of Man they have an obligation under Section 62 to file a return. The practice note addresses this issue and provides guidance as to when trustees do not need to file a return.

Rate of Tax

The rate of tax applicable to trusts is 20%.⁶

Non-liable Trusts

The practice note introduces the concept of the “non-liable trust”.

If a trust is a non-liable trust then:

- the Assessor does not require notification that it has been created; and
- An annual tax return is not required.

A trust is a non-liable trust if:

- 1) the trust deed has a clause (“IOM Resident Exclusion Clause”) which specifically excludes any Isle of Man resident from becoming a beneficiary and that clause has not been revoked, and the trust has no Isle of Man source income other than from certain sources; or
- 2) The trust deed does not have a clause which specifically excludes any Isle of Man resident from becoming a beneficiary and the trust has no Isle

⁶ The rate of tax for trusts has been increased from 18% to 20% by Statutory Document 18/10 “Income Tax (Rates of Income Tax) (Non-Corporate Taxpayers) Order 2010. The new rate of tax has effect in respect of the income tax year commencing 6th April 2010 and subsequent years.

of Man resident beneficiaries, and the trust has no income from taxable sources in the Island.

The practice note enables trustees to obtain written confirmation of the trusts tax position from the Assessor. Trustees need to complete and submit the trust questionnaire ("the Trust Questionnaire") at appendix 1 to the practice note along with a copy of the trust deed.

Requirement where there is no Isle of Man Resident Exclusion Clause

Where the trust deed does not contain a Non Resident Exclusion Clause but it is treated as a non-liable trust because it has no IOM resident beneficiaries and no income from taxable sources in the IOM then the practice note sets out the following requirements that must be followed by the trustees:

- 1) If an Isle of Man resident becomes a beneficiary of the trust or a existing beneficiary moves to the Island then the trustees must by the 6th October in the year following the year of assessment in which the beneficiary was added (or moved to the IOM⁷) provide the Assessor with:
 - a copy of the trust deed (if the IOM beneficiary was appointed by way of a deed of appointment it would be sensible to provide this as well);
 - a completed Trust Questionnaire;
 - a copy of the trust accounts for that year.
- 2) If the trust receives income from taxable sources in the Island, the trustees are required to notify the Assessor as soon as possible but not later than the normal return form submission date of 6 October following the year of assessment in which the income is received⁸.
- 3) Where the trustees are required to give notice to the Assessor under paragraphs 1 or 2 above, the Assessor will require a tax return to be filed annually showing the worldwide income of the trust and any expenses incurred, accompanied by a tax computation and full details of any distributions made⁹.

⁷ While the practice note at clause 9 only makes reference to when the beneficiary was added it would seem sensible that this should be interpreted as including when the beneficiary became IOM resident.

⁸ Clause 10 of Practice note 160/09

⁹ Clause 11 of Practice note 160/09

No resident beneficiaries but Isle of Man source income

Where a trust that specifically excludes IOM residents from being a beneficiary receives income from taxable sources in the Island such as rental income from IOM property or profits from a business carried on in the IOM then there is a liability to IOM income tax¹⁰.

The practice note provides at clause 7 that in this case the trustees must:

“submit a completed trust questionnaire and a copy of the relevant trust accounts, showing worldwide income received and expenses incurred. These should be received by the Assessor by 6 October in the year following the year of assessment in which the income was received. The Assessor will notify the trustees of what is required of them on an ongoing basis.”

Trustees obligations in respect of trusts that are **not** non-liable

For trusts that do not fall within the definition of a non-liable trust the practice note¹¹ provides that the trustees have the following obligations:

- 1) to inform the Assessor when there have been any changes which affect or may affect a trustee's tax position. Such changes include:
 - when a trust ends;
 - when trust interests or assets vest;
 - a change in the Isle of Man residence status of a beneficiary; and
 - the commencement or cessation of an income source in the Isle of Man.

- 2) To inform the Assessor as soon as possible of any change of trustees and to provide the Assessor with a copy of the deed of retirement and appointment.

Trustee Management Expenses

¹⁰ This has to be read in conjunction with the provisions of clause 9 of Practice note 141/07 which sets out the Assessors approach to the taxation of Manx trusts.

¹¹ At clause 12

1) Section 27 of the Income Tax Act 1970 provides:

"Where a settlor or testator under any instrument creating a trust has directed remuneration to a trustee out of the income of the trust, or where the trustee or the beneficiary of the trust proves to the satisfaction of the Assessor that the trustee at the time of accepting the trust contracted for remuneration for his services as trustee out of the income of the trust, the beneficiary shall be entitled to a deduction of such remuneration from such income up to an amount not exceeding five per centum of the annual income of the trust."

The Assessor allows a deduction for trustee remuneration of up to 5% of the trusts gross income or £500 whichever is the greater. This deductible expense is referred to as "trustee management expenses".

2) Rental Income- where a trust receives rental income expenses allowable under Section 58 of the Income Tax Act 1970 can be relieved against the rental income.¹²

For the purpose of calculating trustee management expenses the net rental income figure is used.

Income Distributions to Non-Resident Beneficiaries

The practice note sets out where the Assessor requires withholding tax to be deducted from an income distribution to a non-resident beneficiary.

When a trustee of an IOM trust that is not a non-liaible trust, makes a distribution of trust income to a non-resident beneficiary the Assessor can issue the trustee with a notice to deduct withholding tax at 20% from the distribution and to remit this to the Assessor.

Withholding tax need not be deducted from an income distribution in the following circumstances¹³:

- where the distribution is of interest from a bank or building society in the Isle of Man;
- where the distribution is of dividends received from a company resident in the Isle of Man;
- where a distribution is of income which is derived from business transactions outside the Isle of Man, or from dealings with persons

¹² See practice note 51/94 – Assessment of Income Arising from Land and Property

¹³ Clause 20

- resident outside the Isle of Man, or from the provision of services outside the Isle of Man; and
- where the distribution is of income that has already suffered Isle of Man tax in the hands of the trustees.

Non-resident beneficiaries in receipt of income from non-approved Isle of Man sources will need to register with the Income Tax Division and file an annual tax return if they wish to claim a personal allowance. The return must detail all Isle of Man source income.

Purpose Trust

As a purpose trust cannot be created for the benefit of a particular person or persons the Assessor accepts that any income received by a purpose trust will not be subject to Isle of Man income tax during the lifetime of the trust.

If a person resident in the Isle of Man is or may be the residual beneficiary on the termination of a purpose trust and that person receives a distribution from the trust which includes accumulated income, then the Assessor may charge that person to income tax on the income distribution. Where the Isle of Man resident person is a charity, there will be no charge to income tax.

Appendix 1

International Agreements

See <http://www.gov.im/treasury/incometax/sections/practitioners/internationalagreements.xml>

Country	Document Title	Signed	Effective	Status
Australia	TIEA	29 January 2009	5 January 2010	In force
Australia	Agreement for allocation of taxing rights with respect to certain income of individuals and a MAP in respect of transfer pricing adjustments	29 January 2009	5 April 2011 (Isle of Man) 1 July 2011 (Australia)	In force
Australia	Joint declaration	29 January 2009	Not applicable	Not applicable
Belgium	Double Taxation Agreement	16 July 2009	Awaiting ratification	Not in force
Denmark	TIEA	30 October 2007	26 September 2008	In force
Denmark	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Denmark) 6 April 2009 (Isle of Man)	In force
Denmark	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Denmark	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Denmark	Political declaration	30 October 2007	Not applicable	Not applicable
Estonia	Double Taxation Agreement	8 May 2009	1 January 2010 (Estonia) 5 April 2010 (Isle of Man)	In force

Country	Document Title	Signed	Effective	Status
Faroe Islands	TIEA	30 October 2007	3 August 2008	In force
Faroe Islands	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Faroes) 6 April 2009 (Isle of Man)	In force
Faroe Islands	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Faroe Islands	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Faroe Islands	Political declaration	30 October 2007	Not applicable	Not applicable
Finland	TIEA	30 October 2007	14 June 2008	In force
Finland	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Finland) 6 April 2009 (Isle of Man)	In force
Finland	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Finland	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Finland	Political declaration	30 October 2007	Not applicable	Not applicable
France	TIEA	26 March 2009	Awaiting ratification	Not in force
France	Shipping and aircraft agreement	26 March 2009	Awaiting ratification	Not in force
Germany	TIEA	2 March 2009	Awaiting ratification	Not in force
Germany	Shipping agreement	2 March 2009	Awaiting ratification	Not in force
Germany	Political declaration	2 March 2009	Not applicable	Not applicable

Country	Document Title	Signed	Effective	Status
Greenland	TIEA	30 October 2007	11 April 2008	In force
Greenland	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Greenland) 6 April 2009 (Isle of Man)	In force
Greenland	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Greenland	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Greenland	Political declaration	30 October 2007	Not applicable	Not applicable
Iceland	TIEA	30 October 2007	28 December 2008	In force
Iceland	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Iceland) 6 April 2009 (Isle of Man)	In force
Iceland	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Iceland	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Iceland	Political declaration	30 October 2007	Not applicable	Not applicable
Ireland	TIEA	24 April 2008	31 December 2008	In force
Ireland	Agreement for affording relief from double taxation in respect of certain income of individuals and a MAP for the adjustment of profits	24 April 2008	1 January 2009 (Ireland) 6 April 2009 (Isle of Man)	In force
Ireland	Joint declaration	24 April 2008	Not applicable	Not applicable

Country	Document Title	Signed	Effective	Status
Malta	Double Taxation Agreement	23 October 2009	1 January 2011 (Malta) 6 April 2011 (Isle of Man)	In force
Netherlands	TIEA	12 October 2005	21 July 2006	In force
Netherlands	MAP for the adjustment of profits	12 October 2005	21 July 2006	In force
Netherlands	Shipping and aircraft agreement	12 October 2005	21 July 2006	In force
Netherlands	Mutual understanding on the application of the participation exemption	12 October 2005	12 October 2005	Lapsed 31 December 2006 - now encompassed within Dutch legislation
Netherlands	Political declaration	12 October 2005	Not applicable	Not applicable
New Zealand	TIEA	27 July 2009	Awaiting ratification	Not in force
New Zealand	Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments	27 July 2009	Awaiting ratification	Not in force
New Zealand	Joint declaration	27 July 2009	Not applicable	Not applicable
Norway	TIEA	30 October 2007	23 August 2008	In force
Norway	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Norway) 6 April 2009 (Isle of Man)	In force

Country	Document Title	Signed	Effective	Status
Norway	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Norway	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Norway	Political declaration	30 October 2007	Not applicable	Not applicable
Sweden	TIEA	30 October 2007	27 December 2008	In force
Sweden	Agreement for the avoidance of double taxation on individuals	30 October 2007	1 January 2009 (Sweden) 6 April 2009 (Isle of Man)	In force
Sweden	MAP for the adjustment of profits	30 October 2007	1 January 2009	In force
Sweden	Shipping and aircraft agreement	30 October 2007	1 January 2009	In force
Sweden	Political declaration	30 October 2007	Not applicable	Not applicable
United Kingdom	Double taxation agreement	29 July 1955	6 April 1955	In force
United Kingdom	TIEA	29 September 2008	2 April 2009	In force
United Kingdom	Amendment to the 1955 double taxation agreement	29 September 2008	6 April 2009	In force
United States	TIEA	3 October 2002	1 January 2004	In force
United States	Shipping agreement	1 August 1989	1 January 1987	In force

About the author



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