**THE APPOINTMENTS COMMISSION**

Appointment of

1 Commissioner

for

Income Tax Commissioners

**Information Pack**

# **May 2024**

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**N.B.** This information pack covers the roles of all the members of The Income Tax Commissioners. This is deliberate even if the current recruitment is not for the whole Tribunal. This will allow all candidates to better understand the role of The Income Tax Commissioners and of the other members.

**1. The Income Tax Commissioners**

**The Income Tax Commissioners**

**Vacancy for: 1 Chair**

Term of office: 5 years

**What do the Income Tax Commissioners do?**

The Commissioners determine:

1. Appeals against assessments in cases when a person is aggrieved by an income tax assessment and wishes to contest that assessment;
2. Applications made by the Assessor of Income Tax relating to requests made under the various international Tax Information Exchange Agreements (TIEA).

Applicants should be aware that the Income Tax Act 1970 debars a person who is a serving officer, or in the preceding 3 years has been an officer, of any Department dealing with income tax, from being eligible to be a member of the Commissioners.

**What is the constitution of the Income Tax Commissioners?**

The Income Tax Commissioners are appointed by the Appointments Commission in accordance with the Tribunals Act 2006 under section 88 of the Income Tax Act 1970 as amended by Schedule 3 to the Tribunals Act 2006.

*The Commissioners shall consist of —*

*(a) a chairman;*

*(b) a deputy-chairman, who shall —*

*(i) be a barrister, advocate or solicitor, in each case of not less than 7 years’ standing;*

*(ii) be appointed for the purpose by the chairman, from among the eight other commissioners to be appointed in accordance with paragraph (c); and*

*(iii) be responsible for performing the functions of the chairman on all occasions when the chairman is unavailable and the deputy-chairman is available; and*

*(c) eight other commissioners, also appointed by the Appointments Commission at least one of whom must be a barrister, advocate or solicitor (in each case, of not less than 7 years’ standing).*

*No fewer than three Commissioners shall attend at the hearing of a case, except where the proceedings relate to an application made under Section 105D or 105E of the Income Tax Act 1970, in which case it may only be necessary for two Commissioners to attend.*

**Who provides administrative support for the Tribunal?**

The Tribunal is administered by the Tribunals’ Centralised Administration in the General Registry.

**Term of Office**

The Chair and Commissioners will be appointed for a period of five years from the date of appointment unless the successful candidate resigns or is removed from office.

2. Role Profile and Person Specification

**Role Profile**

**Chair:** As the Chair, you will be required to undertake the full range of Chair functions in relation to all cases coming before the Income Tax Commissioners.

It is important to recognise that claims before the Tribunal, and the responses thereto, can be both legally and factually complex in nature. Using your comprehensive knowledge and experience of relevant law and the procedural rules applicable to the Tribunal, you will be involved in matters ranging from the determination of any initial or subsequent case management issues/applications, which may need to be considered at a case management hearing or pre-hearing review, through to chairing substantive hearings. Part of this will involve you receiving regular communications from the Tribunals’ Centralised Administration, either by email or telephone, for you to consider and to advise how you wish to progress – it is important that you have both the time, availability and the commitment to ensure these matters are dealt with promptly.

You will sit as part of a Tribunal with members to whom you will provide appropriate guidance.

You will also have responsibility for the timely drafting of any Tribunal Orders and Judgments, and for any matters arising including consideration of applications for an appeal.

Keeping abreast of legal developments in relation to the relevant law is important and may require a significant amount of reading, at one’s own time and cost, not directly connected with cases with which you are involved.

You will be required to advise the Appointments Commission of poor performance of any members of the Tribunal.

**Members:** As a Commissioner you will be called upon from time to time to sit for the substantive hearing of an individual case.

You will be provided with a full copy of the papers received from the parties in advance of the hearing, and you must be able to commit the necessary time to carefully consider and gain an understanding of these before the hearing. It is important to recognise that claims before the Commissioners, and the responses thereto, can be both legally and factually complex in nature.

On the day of the hearing you will sit alongside the legally qualified Chair and the other Commissioner/s to hear the case which may include consideration of witness evidence and cross-examination thereon, documentary evidence and submissions that either party may wish to make. A party may represent themselves or be represented by any other person including legally qualified representation. During the hearing you will ask appropriate questions as necessary, and you will participate in the post-hearing discussion with your colleagues to enable the Commissioners to reach a decision on the matter in the light of the findings of fact and the applicable law.

Thereafter you will be provided with a written draft of the Judgment prepared by the Chair, and it is important that you can commit the necessary time to carefully consider this, and provide any feedback, without delay. On some limited occasions it may be necessary for the Commissioners to meet again to agree the Judgment.

In the event that the Tribunal’s Judgment is subject to a review hearing then you will be called to sit again as part of the same Tribunal that conducted the substantive hearing.

**Time commitment:**

For the period from January 2021 to date a total of six matters were referred to the Commissioners. Of those, only two matters required the Commissioners to convene (less than half day hearings on each occasion) with the remainder being resolved administratively/withdrawn.

**Data Protection and Information Security**

Members of the Income Tax Commissioners will have access to sensitive and personal information and are responsible for its safekeeping. Members of the Commissioners should be aware of the need to employ appropriate measures to safeguard such information.

Members will be required to uphold the requirements of the Data Protection legislation but should additionally be aware that they are likely to be in possession of sensitive personal data disclosure or use of which for purposes not connected with the proper business of the body is absolutely prohibited. Breach of this requirement will be regarded as a breach of the fundamental principles underpinning public service and may result in the withdrawal of the appointment warrant. This obligation survives the termination of the Member’s term of office.

**Criminal Offences**

This post is considered exempt under the Rehabilitation of Offenders Act and you are required to declare any criminal convictions (including those considered ‘spent’) on the application form.

Further details can be viewed at:

[https://www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders](https://www.gov.im/categories/working-in-the-isle-of-man/rehabilitation-of-offenders/)

or phone the Isle of Man Vetting Bureau on (01624) 631409.

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| **Appointments Commission – Income Tax Commissioners****Person Specification – Legally Qualified Chair** |

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| **Criteria for selection** | **Essential** **or** **Desirable** |
| * Applicants must be an advocate, barrister or solicitor of not less than 7 years standing
* Experience of drafting orders, decisions and reports
* Comprehensive knowledge of Income Tax legislation and the procedural rules applicable to the Income Tax Commissioners
* Sound judgement and decision making
* Effective communication skills
* Ability to successfully Chair Tribunal hearings and to effectively work with, and provide guidance to, members of the Commissioners
* Authority and case management skills
* A commitment to ‘The 7 Principles of Public Life’
* Computer literate with computer access (email, word processing and video conferencing)
* Able to commit time to reading case papers and decisions, and to attend at hearings
* Satisfactory references
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| **Appointments Commission – Income Tax Commissioners****Person Specification – Commissioner** |

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| **Criteria for Selection** | **Essential** **or** **Desirable** |
| * Academic and/or professional qualifications relevant to accountancy and taxation
* Sound and independent judgement
* A recognition of the requirement to act at all times in a manner which maintains public confidence in the tribunal
* Ability to work constructively with others
* An understanding of the judicial nature of the Income Tax Commissioners
* Significant experience of accountancy and taxation gained in a senior business, financial or legal role
* Effective communication and interpersonal skills
* Able to analyse and review complex issues and weigh up conflicting opinions
* A commitment to ‘The 7 Principles of Public Life’
* Computer literate with computer access (email, word processing and video conferencing)
* Able to commit time to reading case papers and decisions, and to attend at hearings
* Satisfactory references
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**3. Overview of the Procedure and Function of Tribunals and the Responsibilities of the Chair and Members**

**Overview of IOM Tribunals**

(There may be some variations between Tribunals according to the regulations which govern each one)

* A tribunal is part of the administrative justice system and a rung on the ladder of the courts system
* Tribunal judgments may carry a right to a warrant of execution and may be published
* A Tribunal is run in the same way as a court – although it tries to be less formal
* The Tribunal room is set up the same way as a court with the clerk/secretary acting as ‘court usher’
* The proceedings are recorded and the recordings may be used in evidence
* Tribunals are independent of Government and provide protection of certain rights established by the Human Rights Act 2001

**The Legally Qualified Chair**

Tribunal Chairs are the legally qualified people who, together with the assistance of other members, make the Tribunal decisions.

The Chair, exercising discretion judicially, and in accordance with the relevant legislation:

* May make directions in advance of an appeal hearing in respect of witnesses, statements of case and supporting documentary evidence
* May consider applications for adjournments
* May summon witnesses
* Has the power to swear in the people giving evidence

**Members**

Members provide balance and add to the informal nature of a Tribunal. Members are not usually required to have specific qualifications but they are chosen for their experience and ability to weigh objectively all matters before them and to judge soundly and free from bias.

**Directions**

Prior to the Appeal Hearing, the Chair may issue Directions to both parties. This will cover (for example) the submission of the Statement of Case, supporting evidence, lists of witnesses to be summoned and the dates by which this information is to be submitted.

**The Hearing: Overview of the Responsibilities of the Chair**

**Prior to the Hearing:**

* whether a preliminary point as to the jurisdiction of the Tribunal to hear the matter exists and, if so, how such should be dealt with;
* the manner in which the proceedings are to be conducted;
* the provision of further information by a party;
* the discovery and inspection of documents and the relevance of such documents to the proceedings;
* extension of time-limits;
* stay of proceedings;
* postponing or adjourning any hearing;
* summon witnesses;
* the joining of further parties to the proceedings;
* the use of agreed bundles and written witness statements;
* the submission of case authorities from the Higher Courts;
* the use of interpreters in the proceedings; and
* the timetable for the substantive hearing.

**During the Hearing:**

The Chair’s functions at the hearing are to preside over the proceedings to ensure that all parties receive a fair hearing; to advise the members on the relevant law and its application to the facts of the case and to produce the written decision, including reasons, of the Tribunal.

The Chair must be able to direct the hearing and sequence of events. For example:

* which order the parties may give evidence;
* the cross examinations;
* whether late evidence may be submitted;
* the accepted style of questioning;
* who may be present during the hearing;
* when a witness can be released;
* if adjourning during an appeal, provision must be made for any witness still on the stand.

One or both parties may have representation, often a lawyer; the Chair must be able to follow the legal arguments presented and guide the members. On some Tribunals, in certain circumstances, the Chair can sit alone.

**Written Decisions/Judgments:**

Written Decisions may be made public (sometimes in a redacted version), published online.

**Sections include** (but are not limited to):

* Details of legal representation for each party
* The Claim (summary of Appellants’ grounds of appeal and Respondent’s case)
* Documentary and verbal evidence produced
* The law\*
* The Decision\*

\*The determination of facts based on the balance of probability, and the application of relevant law, in the light of these facts to reach a decision.

Appeals from Tribunal decisions are via the courts system. A decision can only be challenged on points of law.

**4**. **Conflicts of Interest Guidance Note**

**CONFLICTS OF INTEREST**

**A GUIDE FOR APPLICANTS FOR MEMBERSHIP OF TRIBUNALS**

**The Seven Principles Underpinning Public Life**

Holders of Public Office should at all times exercise the highest standards of behaviour in line with the seven principles of public life. The principles of public life are as follows**:**

**Selflessness:**

Holders of Public Office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.

**Integrity:**

Holders of Public Office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity:**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of Public Office should make choices on merit.

**Accountability:**

Holders of Public Office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness:**

Holders of Public Office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands or statute requires.

**Honesty:**

Holders of Public Office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership:**

Holders of Public Office should promote and support these principles by leadership and example.

All candidates who put themselves forward for public appointment must be able to demonstrate their commitment to the principles and values of public service.

**What is a conflict of interest?**

Public Appointments require the highest standards of propriety, involving impartiality, integrity and objectivity, in relation to the stewardship of public funds and the oversight and management of all related activities. This means that any private, voluntary, charitable or political interest which might be material and relevant to the work of the body concerned should be declared.

There is always the possibility for real or perceived conflicts of interest to arise. Both are a problem, as the perceived inference of a conflict may, on occasions, be as damaging as the existence of a real conflict.

The test which should be applied in relation to a potential case of perceived bias is:

*“whether the ascertained relevant circumstances would lead a fair-minded and informed observer to conclude that there is a real possibility that the decision-maker was biased.”*

*Judgment delivered by His Honour Deemster Kerruish on 12 February 2007.*

**Surely a perceived conflict is not a problem, as long as I act impartially at all times?**

The integrity of the individual is not in question here. However, it is necessary for the standing of the individual and the Tribunal that members of the public have confidence in their independence and impartiality. Even a perceived conflict of interest on the part of a member can be extremely damaging to the Tribunal’s reputation and it is therefore essential that these are declared and explored in the same way as an actual conflict would be. The fact that a member acted impartially may be no defence against accusations of potential bias.

**What should I do if I think I have a conflict of interest?**

The Tribunals Act 2006 covers situations where a conflict of interest or duty occurs.

(a)      Section 6(1) provides that if a Tribunal member becomes aware of a conflict he should declare that a conflict exists and should withdraw from taking any further part in the proceedings of the Tribunal.

(b) Section 6(2) provides that if a member has made such a declaration, he may nonetheless continue to take part in the proceedings of the Tribunal if both parties consent thereto.

(c)      Section 7(1) provides that a party to a Tribunal may object to a member of a Tribunal on the ground that there is a material conflict of interest or duty.

**5. Remuneration of Members of the Tribunal**

The Members are remunerated in accordance with the provisions of the Payment of Members’ Expenses Act 1989.

The Attendance Allowances Order 2008 specifies a rate of £89.50 per hour for the legally qualified Chair (with a minimum of £156.00 per meeting) and £78.00 for other Members per morning or afternoon session. These expenses must be declared for income tax purposes, but are not taxable.

‘Session’ means any of the following periods:

1. 9.00 a.m. to 1.30 p.m.;
2. 2.00 p.m. to 6.30 p.m.;
3. 6.00 p.m. to 12 midnight.

An additional payment shall be made to the legally qualified Chair in respect of the time taken in preparing for a meeting or hearing and report writing in relation to a meeting or hearing at the rate of £89.50 per hour. These payments are taxable.

The following travel allowance is also paid, in accordance with the “Payment of Members’ Expenses (Travelling Allowances) Order 2022”-

Motor Vehicle 57p per mile

Motorcycle 30p per mile

**6. The Appointments Commission**

The Appointments Commission has been established by the Council of Ministers under the auspices of the Tribunals Act 2006 as an independent body. Its principal function is to make appointments to various Appeal Tribunals and other bodies covered by the statutory provisions.

**7. Recruitment Policy**

**Recruitment Policy Statement**

It is the Appointment Commission’s policy to promote equal opportunities. Procedures in relation to recruitments form part of this commitment. The Commission seeks to select the most suitable person for the post. The selection process is undertaken without discrimination and regardless of race, gender, age or any other personal circumstances.

**Appointments Commission Recruitment Procedure**

The Appointments Commission will prepare a shortlist of suitable candidates using the information provided on the application form for the relevant post. It is important that your answers on this form demonstrate how you meet the requirements of the post applied for. Interviews will be conducted in accordance with the policy of the Commission, but please be aware that the Commission may appoint to a Tribunal without interviews if it is satisfied by the written application and references in appropriate circumstances.

The opportunity exists for all candidates to speak to the Clerk of the Tribunal for further information about the function and procedures of the Tribunal.

Where formal qualifications are a requirement of appointment the Commission will require original certificates to be produced. Applicants may be required to provide verification of identity and address in a form and manner acceptable to the Commission.

Further information and downloadable documents are available at the Appointments Commission’s website: <https://www.gov.im/appointmentscommission>

**8. Further information**

An overview of the Income Tax Commissioners can be found by following this link: https://www.courts.im/court-procedures/tribunals-service/tribunals/

Isle of Man Primary and secondary legislation are available at: <https://www.legislation.gov.im/cms/>

For persons who do not have access to the internet, copies of legislation are available from the Tynwald Library at The Ground Floor, Legislative Buildings, Finch Road, Douglas, or telephone 01624 685522.

**How do I apply?**

The information pack and application form for these vacancies are available online at the Appointments Commission <https://www.gov.im/appointmentscommission>

or from Kate Hooson-Owen, Executive Assistant to the Appointments Commission. Tel: 687562

Email: appointments.commission@gov.im

**Applications should reach the Executive Assistant no later than 5pm on 17 May 2024.**

The application form you submit must set out how you meet the essential requirements of the role.

If, after reading through the information pack, you have any queries about the duties and responsibilities of the post, or the Tribunal, please contact Ray Quinn, Secretary to the Income Tax Commissioners on Tel: 682382

**9. Income Tax Act 1970 – Sections 88, 105D and 105E**

**Section 88: Income Tax Commissioners**

(1) There shall continue to be a tribunal called the Isle of Man Income Tax Commissioners (in this Act referred to as “the Commissioners”).

(2) The Commissioners shall consist of —

(a) a chairman;

(b) a deputy-chairman, who shall —

(i) be a barrister, advocate or solicitor, in each case of not less than 7 years’ standing;

(ii) be appointed for the purpose by the chairman, from among the eight other commissioners to be appointed in accordance with paragraph (c); and

(iii) be responsible for performing the functions of the chairman on all occasions when the chairman is unavailable and the deputy-chairman is available; and

(c) eight other commissioners, also appointed by the Appointments Commission.

(3) No person who is an officer, or in the preceding 3 years has been an officer, of any Department dealing with income tax shall be eligible to be a member of the Commissioners.

(4) [Repealed]

(5) and (6)[Repealed]

(7) A Commissioner shall continue to act until his successor is appointed.

(8) and (9) [Repealed]

(10) The Commissioners shall, if an audio recording of the proceedings is not being made, keep Minutes of their proceedings and any Minute made of proceedings at sittings of the Commissioners, if signed by the Chairman of the Commissioners or by any person purporting to be the Chairman, either at the sitting of the Commissioners at which such proceedings took place or at the next ensuing sitting of the Commissioners, shall be receivable in evidence in all legal proceedings, without further proof; and, until the contrary is proved, every sitting of the Commissioners in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held.

(11) The Commissioners shall meet from time to time for the dispatch of business.

(12) [Repealed]

(13) Not less than three Commissioners shall attend at the hearing of any case.

(14) The opinion of the Chairman upon any question which in the opinion of the Commissioners is a question of law, shall prevail.

(15) Save as provided by this Act, an order or proceeding of the Commissioners shall not be questioned or reviewed, and shall not be restrained or removed by petition of doleance, injunction or otherwise, either at the instance of the Crown or otherwise.

(16) Save as aforesaid every question shall be decided by a majority of votes of the Commissioners present and voting on that question.

(17) Where, pursuant to subsection (10), minutes of the proceedings at a sitting of the Commissioners are required to be kept on account of no audio recording being made of said proceedings, the names of the Commissioners present at the sitting shall be recorded in the minutes.

(18) For the purposes of this section “a case” means any objection to an assessment which has not been disposed of by agreement, and which has been notified to the Commissioners under the provisions of subsection (5) of section eighty-seven of this Act.

(19) [Repealed]

(20) For the purpose of settling objections to assessments which have not been disposed of by agreement, the Commissioners shall sit at such time and place in the town of Douglas or elsewhere as they shall think fit. The Commissioners shall sit in Chambers.

(21) The Commissioners shall give twenty-eight days’ notice of the time and place of such sitting in the prescribed form to the persons whose objections are to be heard.

(22) The Commissioners may adjourn a sitting from day to day or to any day or place as they shall think fit; and, except in the case of adjournment from day to day, the Commissioners shall give notice in writing of the time and place of every adjourned sitting to the persons whose objections will be considered at such sitting.

(23) Commissioners who have given their consent under section 105E(8) in respect of a particular taxpayer shall be disqualified for appointment to hear an appeal by that taxpayer against any assessment or matter that arises out of the circumstances to which that consent applied.

(24) The Treasury, after consultation with the chairman, may make regulations generally for the purpose of prescribing the practice and procedure of the Commissioners.

(25) Without limiting subsection (24), regulations —

(a) may make provision —

(i) with respect to the period within which and the manner in which proceedings before the Commissioners may be commenced;

(ii) with respect to the parties to such proceedings, and for the giving of notice of such proceedings;

(iii) for the burden of proof in such proceedings;

(iv) for the summoning of witnesses and the administration of oaths;

(v) for securing the production of documents and other records (including records held on a computer);

(vi) for conducting such proceedings in the absence of a party;

(vii) for prescribing the quorum of sittings of the Commissioners;

(viii) for determining such proceedings without a hearing;

(ix) for enabling any matter preliminary or incidental to such proceedings to be dealt with by the chairman;

(x) for the awarding of costs, and for taxing or otherwise settling any such costs (and in particular for enabling such costs to be taxed in the High Court);

(xi) for the registration and proof of decisions and orders of the Commissioners;

(xii) for the publication of reports of the Commissioners’ decisions;

(xiii) for the enforcement of summonses and orders of the Commissioners by the High Court; or

(xiv) for conferring on the Commissioners such ancillary powers as the Treasury, with the agreement of the Council of Ministers, thinks necessary for the proper discharge of its functions; and

(b) shall provide for proceedings of the Commissioners to be conducted in public unless —

(i) the proceedings relate to a matter of national security; or

(ii) the Commissioners in their absolute discretion decide that their proceedings shall be conducted wholly or partly in private.

**Tax Information Exchange Agreement (TIEA)**

**Sections 105D and 105E of the Income Tax Act 1970**

*The domestic legislation contained in Parts 11 and 12 of the Income Tax Act 1970 is modified for the purposes of international arrangements, such as TIEAs, by Part 12A of the Act.*

*Sections 105D and 105E are both contained in Part 11. The text reproduced below therefore contains those sections as they are modified for the purposes of a TIEA.*

**Section 105D**

With particular reference to the Commissioners’ duties as set out in subsections (3A) to (3C) inclusive.

**105D Power to call for documents or information relating to taxpayer**

(1) 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”) for the purpose of responding to a request made by the country to which the international arrangement relates in accordance with that arrangement.

(2) Subject to this section and section 105E, the Assessor may by notice in writing require any person other than the taxpayer to deliver to the Assessor or, if so required by the Assessor, to make available for inspection by the Assessor —

(a) such documents as are in his possession or power and as (in the Assessor’s reasonable opinion) contain, or may contain, information relevant to —

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

(ii) the amount of any such liability;

(iii) the taxpayer’s residence status for the purposes of this Act; and

(b) such information as the Assessor may reasonably require as being relevant to, or to the amount of, any such liability.

(3) Before giving a notice under this section to a person, the Assessor must afford the person a reasonable opportunity to provide the documents or information in question or produce for inspection the documents in question.

(3A) Subsection (3C) applies if, on the application of the Assessor, 2 members of the Income Tax Commissioners panel give their written consent that it is to apply.

(3B) Consent shall not be given under subsection (3A) unless both Commissioners are satisfied that the Assessor has reasonable grounds for suspecting the taxpayer of fraud.

(3C) When giving a person an opportunity to provide documents or information, or to produce documents for inspection, under subsection (3), the Assessor may direct the person —

(a) not to inform the taxpayer, or cause or permit the taxpayer to be informed, that the person has been given that opportunity; and

(b) not to disclose to any person, or cause or permit to be disclosed to any other person (including the taxpayer), any information or matter which is likely to prejudice —

(i) the inquiry to which the documents or information relate; or

(ii) the performance of the Assessor’s functions.

(4) Subject to section 105E(8), if the Assessor is aware of the taxpayer’s address or whereabouts, the Assessor must give the taxpayer —

(a) a copy of the notice; and

(b) a written summary of his reasons for the giving of the notice.

(5) Subsection (4) does not require the disclosure of any information which would, or might, identify any person who has provided the Assessor with any information which he took into account in deciding whether to give the notice.

(6) As an alternative to delivering documents to comply with a notice under subsection (2), copies of documents may be delivered instead of the originals; but —

(a) the copies must be in such form and authenticated in such manner as the Assessor may reasonably require; and

(b) if so required by the Assessor in the case of any documents specified in the requirement, the originals must be made available for inspection by the Assessor in accordance with the requirement,

and failure to comply with a requirement under this subsection counts as failure to comply with the notice.

**Section 105E**

With particular reference to the Commissioners’ duties as set out in subsections 2A and 8 to 16 inclusive.

**105E Notices under s 105D: further provisions**

(1) A notice under section 105D(2) must name the taxpayer with whose liability the Assessor is concerned unless the Assessor is satisfied –

1. that the notice relates to a taxpayer whose identity is not known to the Assessor, or to a class of taxpayers whose individual identities are not so known; or
2. that there are reasonable grounds for believing that the taxpayer or any of the class of taxpayers to whom the notice relates may have failed or may fail to comply with any provision of the Income Tax Acts.

This is subject to subsection (1A).

(1A) The Assessor may only give a notice under section 105D(2) by virtue of subsection (1) if –

1. the information; or
2. the information which is likely to be contained in the documents,

to which the notice relates is not readily available from another source.

(2) A person to whom a notice under section 105D(2) is given may, if, in accordance with subsection (1), the notice does not name the taxpayer concerned, by notice in writing given to the Assessor within 30 days after the date of the notice under that section, object to that notice on the ground that it would be onerous for him to comply with it, and if the matter is not resolved by agreement, it shall be referred to the Commissioners, who may confirm, vary or cancel that notice.

(2A) In determining a reference under subsection (2), the Commissioners must have regard to the requirements of the international arrangement in question.

(3) The Treasury may by order declare that information of a particular description is not to be subject to the obligation imposed by section 105C(3) or 105D(4) if it is satisfied that there are reasonable grounds for suspecting the taxpayer of fraud or disclosure of information of that description would prejudice the assessment or collection of tax.

(4) An order under subsection (3) shall not come into operation unless it is approved by Tynwald.

(5) [omitted]

(6) [omitted]

(7) [omitted]

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

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

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

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

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

(a) inform the taxpayer, or cause or permit the taxpayer to be informed, that the notice has been given, or

(b) disclose to any person, or cause or permit to be disclosed to any person (including the taxpayer), any information or matter which is likely to prejudice the inquiry to which the notice relates or the performance of the Assessor’s functions.

(13) Subject to the defences in subsection (16), a person who fails to comply with subsection (12) or a direction under section 105D(3C) is guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 or to custody for a term of 6 months, or to both.

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

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

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

(a) that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence by the person concerned and by any person under his control, or

(b) in the case of an offence in respect of an alleged contravention of subsection (12)(b) or a direction under section 105D(3C)(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.