

Income Tax Act 1970 – Sections 88 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 chairman and eight other commissioners appointed in accordance with the Tribunals Act 2006.
- (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)** Every member of the Commissioners shall, before acting in the duties of his office, take before a Deemster a declaration in the form set out in the Second Schedule.
- (5) and (6)**..... *[Subss (5) and (6) repealed by Tribunals Act 2006 Sch 3.]*
- (7)** A Commissioner shall continue to act until his successor is appointed.
- (8) and (9)** *[Subss (8) and (9) repealed by Tribunals Act 2006 Sch 3.]*
- (10)** The Commissioners shall 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)(a)** If and when any Deemster who is assigned to hold the office of Chairman is temporarily unable to attend, or if there is a vacancy in the office of Chairman, the Council of Ministers may nominate any other Deemster to sit as temporary Chairman, and the Deemster so nominated shall, for the purpose of any case which he may hear, until the final determination thereof, have the same jurisdiction and powers as if he were assigned as Chairman;
- (b)**..... *[Para (b) repealed by Tribunals Act 2006 Sch 3.]*
- (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 doléance, 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)** The names of the Commissioners present at each sitting of the Commissioners shall be recorded in the minutes of the sitting.

(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)[Subs (19) repealed by Tribunals Act 2006 Sch 3.]

(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 fourteen 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.

Schedule 2

Form of Declaration to be Made by the Isle of Man Income Tax Commissioners Section 88 (5)

I, () do solemnly declare that I will truly, faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by the Income Tax Acts for the time being of the Isle of Man, and that I will exercise the powers entrusted to me by the said Acts in such manner only as shall appear to me necessary for the due execution of the same; and that I will judge and determine upon all matters and things which shall be brought before me under the said Acts, without favour, affection, or malice, and that I will not disclose any particular contained in any statement, return, or other document delivered with respect to Income Tax, or any evidence or answer given by any person who shall be examined, or shall make affidavit or deposition, respecting the same, in pursuance of the said Acts, except to such persons only as shall act in the execution of the said Acts, and where it shall be necessary to disclose the same to them for the purposes of the said Acts, or in order to, or in the course of, a prosecution for perjury committed in such examination, affidavit, or deposition.

Tax Information Exchange Agreement (TIEA) Section 105E of the Income Tax Act 1970

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

[P1970/9/20 and 20B in part](1) A notice under section 105D(2) shall name the taxpayer with whose liability the Assessor is concerned unless the Assessor is satisfied-

(a) 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;

(b) 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;

(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) that 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.

(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) A notice under section 105D(2), does not oblige a person to deliver or make available any document the whole of which originates more than 6 years before the date of the notice.

(6) Subsection (5) does not apply where-

(a) the Assessor is satisfied that there is reasonable ground for believing that tax has, or may have been, lost to the General Revenue owing to the fraud of the taxpayer; and

(b) the notice is so expressed as to exclude the restrictions of that subsection.

(7) A notice under section 105D(2) in relation to a taxpayer who has died cannot be given if more than 6 years have elapsed since the death.

(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.

[Subs (8) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

(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.

[Subs (9) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

(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.

[Subs (10) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

(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.

[Subs (11) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

(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.

[Subs (12) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

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

[Subs (13) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

(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.

[Subs (14) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

(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.

[Subs (15) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]

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

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

(b) in the case of an offence in respect of an alleged contravention of subsection (12)(b), that the person concerned did not know or suspect that the disclosure was likely to be prejudicial to the inquiry or to the performance of the Assessor's functions.

[S 105E inserted by Income Tax (Amendment) Act 2004 Sch 2. Subs (16) added by Income Tax (Amendment) Act 2008 s 3(1) effective i.r.o. the year of assessment or accounting period commencing on or after 6/4/2007.]