

Statement of Practice on Keeping, Maintaining and Retaining Records for Income Tax Purposes

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Introduction

This is a Statement of Practice issued by the Director of Income Tax for the States of Guernsey. It explains how the Income Tax Office interprets the requirements of [The Income Tax \(Keeping of Records, etc\) Regulations, 2006](#) (“the 2006 Regulations”) and [The Income Tax \(Keeping of Records, etc\) \(Amendment\) Regulations, 2012](#) (“the 2012 Regulations”)* which place obligations on all persons to make/keep, maintain and/or retain certain records.

As with all Statements of Practice now issued by the Director, the contents have been, and any changes to the contents will be, discussed with the Statement of Practice Working Party (which consists of representatives from the Income Tax Office and the Taxation Subcommittee of the Guernsey Society of Chartered & Certified Accountants) and are noted by the Treasury & Resources Department before the Statement is published/ revised.

The full text of the Regulations is available on the Legal Resources website, which can be accessed at www.guernseylegalresources.gg

The Statement will be reviewed on a regular basis to ensure that it remains up to date and the Director is always prepared to receive representations from those who are affected by this Statement as to ways in which it may be improved.

This Statement is governed by section 204 of the Income Tax (Guernsey) Law 1975, as amended (“the Income Tax Law”).

*The expression “the Regulations” includes the 2006 Regulations and the 2012 Regulations, as the context requires.

Why are records important?

There is a legal obligation on you to ensure that when you complete an income tax return it is full and complete. If you submit a return which is not full and complete, you may have additional tax to pay and you may also incur surcharges and additional surcharges, as well as penalties.

Obviously, the more records and documentation you have about your income and any allowable expenses or deductions then the easier it will be for you to complete your tax return and the likelihood of your return being accurate will be increased.

In addition, if someone helps you to complete your return (such as an accountant) their job will be made more straight forward if you keep (i.e. make) accurate and orderly records, maintain them regularly and retain relevant documents. That may also help reduce the fees they charge for the work that they do.

If, after you have submitted your tax return, we have to make any enquiries, it will be easier for you to deal with those enquiries if you have retained reliable records to refer to. This should save your time in dealing with those enquiries and, once again, if someone is helping you deal with your tax affairs it should also save their time and costs.

Before we are able to complete any enquiries, we may ask to see the records that you made and which you used in completing your income tax return. If you can show that the records are complete, accurate, well organised and were written up promptly, it is more likely that we will be able to be satisfied that your return is accurate.

The purpose of this Statement of Practice is to help you decide whether the records you are keeping now are sufficient to satisfy the rules set down in the Regulations. If you come to the conclusion that the records you keep at the moment are insufficient to enable you to comply with the Regulations then the Statement may help you decide what additional records you need to keep. Clearly, if you do have an accountant, or other professional adviser, you may wish to discuss with them what records they suggest you should keep. The Statement also explains how long you have to retain your records for.

In addition, from 1 July 2012, the 2012 Regulations introduced further requirements which affect people who do not file tax returns in Guernsey. This was to facilitate changes to the administration of the tax system (whereby the number of persons being asked to complete returns each year was being reduced) and to ensure that Guernsey could meet international standards on exchange of information for tax purposes.

Why are these Regulations necessary?

Although the Income Tax Law places a legal requirement on people to complete income tax returns when required to do so by the Director, up until 2007 it did not lay down, perhaps surprisingly, what records should be used to complete returns, nor how long those records should be retained.

It was a common occurrence, when the Director made an enquiry about an entry in an income tax return or, more particularly, the contents of a set of business accounts, to come up against one of the following situations:

- the taxpayer concerned had made insufficient records of his income and/or expenses to allow the Director to investigate the matter fully, or
- part or all of the records which had been kept had been destroyed or were otherwise no longer available.

During 2005, the States of Guernsey passed the Income Tax (Guernsey) (Amendment) Law, 2005 (“the 2005 Law”), which extended the Director’s powers to obtain information to enable him to carry out his duties under the Income Tax Law.

The 2005 Law introduced, into the Income Tax Law, section 75P, which gave Treasury & Resources Department the power to make Regulations requiring persons to make, maintain, keep and retain certain records and other documents in respect of income tax and to make provision for criminal and civil sanctions, penalties and remedies if those Regulations were not complied with. The 2006 Regulations, made by the Department on 17 October 2006, came into effect on 1 January 2007. The 2012 Regulations, made by the Department on 28 February 2012, came into effect on 1 July 2012.

How long do I have to retain records for?

For income from a **business**, records must be retained for six years after the end of the year in which the relevant income tax return was submitted but, from 1 July 2012, where no return is required to be submitted, six years from the end of the year in which the relevant accounting period ends.

For income from the letting of property, records must be retained for six years after the end of the year in which the relevant income tax return was submitted.

For **all other sources of income** up to 30 June 2012, the records have to be retained for two years after the end of the year in which the tax return was submitted.

From 1 July 2012, where the record or document relates to income of a trust or foundation, or the person concerned is a legal person (e.g. a company) the records must be kept for six years after the end of the year in which the tax return was submitted or, where no return is required, six years from the end of the year in which the record or document was created, received or obtained. In any other case the period of six years is replaced by a period of two years.

So, for example, if the Director issues a return to someone on 2 January 2009, asking for details of their **business** income received during 2008, and that return is not sent back to the Income Tax Office until, say, March 2010, the records of the business must be retained until at least 31 December 2016.

Obviously there is no obligation to destroy the records on 31 December 2016.

In this day and age, the storage of records in an electronic format is both convenient and relatively cheap. For that reason some taxpayers, particularly those in business, may wish to retain their records for periods longer than those set down in the Regulations. Regard should be had, however, to the requirements of the data protection legislation, as this places restrictions on the keeping of personal data for longer than is necessary (you may wish to refer to the Data Protection Office website (www.gov.gg under “ Government and Administration”) for more information).

If the Director starts to make enquiries into any particular period and he believes that his enquiries may continue after the period for which you are required to retain your records has expired, he may extend the period for which you have to retain them. He does this by issuing you with a formal notice to retain your records until the end of the year in which he has advised you, again by notice in writing, that his enquiries are at an end.

It should also be remembered that the Director is not prevented from raising enquiries on an income tax return simply because the taxpayer is no longer required to retain their records under the Regulations.

The Director can raise enquiries at any time if he considers it appropriate. In addition, the Director’s power to raise assessments is not limited by the Regulations but is set down in section 75 of the Income Tax Law.

For example, if the Director believes that a taxpayer has committed fraud then he is authorised, under the Income Tax Law, to raise an assessment as far back as the Year of Charge 1950.

Why can’t we just retain records for two years/six years after the end of the year involved?

When the Director sends an income tax return to someone to be completed, the return will state how long that person has to submit the return.

Most income tax returns are sent out by the Director in the early days of January, asking for details of the income relating to the previous calendar year.

Whilst it is a matter of fact that most taxpayers submit their returns during the course of the year in which the return was sent to them, there will be cases where, perhaps due to the complexity of a person’s financial affairs, the taxpayer has problems having business accounts prepared or because they just simply do not bother to complete the income tax return, the return will not be submitted until after the end of the year in which it was sent to them. The Director does not consider that it would be fair to those persons who send their income tax returns in promptly to have to retain their records for six years, whereas someone who sends their return in, say, two years late would only have to retain their records for a further four years.

Furthermore, under such a system, the Director would have a shorter period to have access to records for those who, for whatever reason, sent their income tax returns in late than he would have for those who send them in promptly. It was for that reason that the Regulations require the clock to start ticking from the date the return was submitted (or, from 1 July 2012, if no return is required, six years from another specified date (see “How long do I have to retain records for?” above).

Those taxpayers who send their returns in late, therefore, will, in effect, have to retain their records for a longer period than those who deal with their tax affairs promptly.

What happens if I don't comply with the Regulations?

Basically, the Regulations set down four kinds of offence:

- If the Director believes that:
 - someone failed to make, maintain, keep or retain a record or document that the Regulations require him to make, maintain, keep or retain, and
 - that is likely to prejudice the Director performing his official duties,

he may impose a penalty of up to £2,500.

That does not mean that the mere fact that, for example, someone fails to keep the records they are required to keep will automatically lead them to suffering a penalty of £2,500.

If the Director comes to the conclusion that, notwithstanding that the proper records were not kept, the records that were kept were, in his view, sufficient, for example, to enable him to raise an accurate assessment, and if proper records were kept from then on, it is probable that there would not be any penalty imposed.

If the Director believed that the failure to keep the proper records did stop him, for example, from being satisfied that that person's tax return was correct then he may decide to impose a penalty but the amount of that penalty would depend on the view that the Director took as to how significant the failure to keep the right records was in preventing him from carrying out his official duties.

The Director will always bear in mind that the main purpose of the Regulations is to ensure that taxpayers do make, maintain and keep proper records so that they can ensure that they make accurate tax returns.

If a person's records are found to be deficient due to a simple error or oversight, and if the Director does not believe that significant amounts of tax have been put at risk as a consequence then, so long as the taxpayer has attempted to reach an acceptable compromise with the Director, to put right any possible shortfall in his tax liability, the Director is likely to take a sympathetic view when it comes to considering penalties.

By contrast, however, if the Director should find that a taxpayer has deliberately failed to keep adequate records, or he has continued to fail to do this notwithstanding having been previously advised to do so by the Director, and particularly if, as a consequence, the assessment and collection of tax has been prejudiced, then the amount of any penalty imposed as a consequence may well be higher (up to £2,500).

- If a person, without reasonable excuse, fails to make, maintain, keep or retain records or documents which the Regulations require him to make, maintain, keep or retain then he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale (in January 2007 this was equivalent to £10,000).

Records and documents which are incomplete, illegible or indecipherable are regarded as not having been made, maintained, kept or retained for the purposes of the Regulations.

This provision is in place so that where someone has failed to comply with the Regulations and the Director believes that what they have done is towards the more serious end of the scale, the matter may be referred to the Law Officers with a request that the person be prosecuted through the Courts.

- Where a person keeps records outside of Guernsey, they are under a duty, from 1 July 2012, to ensure that they keep control of those records and can have the records sent to Guernsey when, properly, requested by the Director to do so. Anyone who fails to comply is subject to a penalty of up to £2,500. See also “Do the records have to be kept in Guernsey?” below).
- Finally, the Regulations also provide that if someone intentionally falsifies, conceals, destroys or disposes of (or allows the falsification, concealment, destruction or disposal of) records or documents which they are required to keep under the Regulations, they are guilty of an offence.

Similarly, someone who:

- makes a statement which they know, or have reasonable cause to believe, is materially false, deceptive or misleading, or
- dishonestly or otherwise recklessly makes a materially false, deceptive or misleading statement, or
- produces or furnishes, or allows to be produced or furnished, any information, record or document which he knows, or has reasonable cause to believe, is materially false, deceptive or misleading, or
- dishonestly or otherwise recklessly produces or furnishes, or recklessly allows to be produced or furnished, any information, record or document which is materially false, deceptive or misleading,

is guilty of an offence. On summary conviction a person can be liable to a term of imprisonment for two years, a fine not exceeding twice level 5 on the uniform scale (in January 2007 this was equivalent to £20,000) or to both imprisonment and a fine.

Clearly, these provisions exist to enable sanctions to be taken against those taxpayers whose actions are at the most serious end of the scale.

In summary, those taxpayers who make an honest effort to comply with the requirements of the Regulations but who fall short in a minor or inconsequential way, and who co-operate with the Director in putting things right, for the past and the future, should not have any real cause to fear these penalty provisions.

Anyone who is charged a penalty by the Director would have a right of appeal to the Guernsey Tax Tribunal if they believed the Director had acted unreasonably.

The Director's Statement of Practice on Penalties and the Notes for Appellants, issued by the Guernsey Tax Tribunal, can be accessed on the Income Tax website (see "Introduction" on page 3).

So what records do I have to make/keep?

This will depend on what kinds of income you have.

If you are in **business** or receive **income from letting property**, there are separate, special, rules (see below).

For **everyone else**, and with effect from 1 July 2012, there are specific requirements that you make/keep particular records which are contained in the 2012 Regulations. These provide that you must keep:

- records of all amounts received, arising or accruing,
- the names or descriptions of the persons or sources from whom or from which the amounts were received or arose or accrued, and the periods to which those amounts relate,
- you must keep any other documents which contain or may contain information relevant to any liability to tax to which you may be subject or the amount of any such liability, and
- you must keep all supporting documents relating to the records and documents mentioned above, including (without limitation) accounts, contracts, leases, licenses or other agreements, vouchers and receipts.

This will cover, therefore, people whose income is derived from sources such as:

- employment (including wages, salaries, bonuses, tips, share option schemes, redundancy/termination payments, benefits in kind, etc),

- pensions (occupational and private),
- investment income (bank and building society interest, dividends, income from trusts, etc).

If you claim to be not resident for Guernsey tax purposes or resident but not solely or principally resident, you should ensure that you keep and retain records of where you spent your time (and related documents) in case the Director makes enquiries about your residential status. These may include:

- A paper or electronic record of travel to and from Guernsey.
- Employment contracts/letters of assignment.

If you receive income from the **letting of property** (whether that property is in Guernsey or elsewhere) you have to make/keep the following records:

- details of all amounts received and spent, and reasons for the receipt and expenditure;
- the names of the persons from whom amounts were received and the period to which those relate; and
- all supporting documentation relating to the above (including, for example, contracts, leases, licenses or other agreements, vouchers and receipts).

So if, for example, you let a building that has four flats then you would need to make/keep (and retain):

- A copy of any contract or other tenancy agreement you may have with each tenant.
- Details of the amounts received from each tenant (such as “Mr Jones, Flat 1, £150 for week commencing 16 July 2011”).
- Records of all expenses that you have incurred in relation to the letting of the flat and the underlying documents. (For example “26 September 2011, £256, Guernsey Electricity re Flat 1 (see invoice number 76)”. You could then write “76” prominently on the electricity bill and keep it, along with all other vouchers, receipts, etc, in numerical order for easy reference, should the need arise.)

(For expenditure, the Director would not require you to keep or retain details of any expenses for which you have not claimed, and do not propose claiming, a deduction against the income you received from letting the property.)

Not surprisingly, the most detailed requirement on what kind of records have to be made/kept relate to persons carrying on a **business**. The requirements are the same whether the business is carried on in Guernsey or elsewhere.

The Regulations require that the business should make/keep:

- Records of all amounts received and expended, and the reasons for the receipt and expenditure.
- Where the business deals in goods, records of all sales and purchases of goods made in the course of the business.
- All supporting documents relating to the records mentioned above (including, for example, contracts, vouchers and receipts). If the business has to buy in any goods – such as raw materials – and there are no contracts, vouchers and receipts, the business is required to make/keep a record of the name and address of the supplier of the goods.
- A record of all stock in hand at the end of the business' accounting period and a record of the basis on which the stock has been valued (an example of the basis on which stock is valued is the lower of cost or market value).

The Regulations also require that the records and documents referred to above should be made, kept and maintained at the same time as the event they relate to took place or as soon as reasonably practical afterwards. This means that records should be updated regularly. How regularly will be dictated by the type of business – for example, a shop may have an ongoing record of sales by using an electronic till, whereas a building firm may only have one sales invoice to record each week. A restaurant may obtain the majority of its food and drinks supplies from one supplier and receive a monthly invoice. Recording those expenses monthly would be perfectly adequate. There may be occasions, however, where the restaurant may buy produce “at the door” for which it does not receive an invoice. In that situation the restaurateur would have an obligation to obtain the name and address of the supplier and make a record of the purchase immediately or very shortly afterwards.

What is meant by “stock”?

The Regulations define “stock” as:

- Assets purchased for sale (for example, a garage purchasing a second hand car to put on the forecourt for sale).
- Consumable stores (for example, a restaurant may buy salt and pepper, sauces, olive oil, etc).
- Raw materials and components purchased for incorporation into products for sale (for example, a sandwich bar would buy bread, cheese, meats, salad, etc).
- Products and services in intermediate stages of completion (for example, a boat building yard that had a boat partly built at the end of its accounting period would have to include the value of the half-built boat).
- Long-term contract balances (a building contractor may be carrying out a large project that runs over two, or maybe more, of its financial periods. The value of the ongoing contract at each financial year end would have to be included).

- Finished goods (for example, a knitwear factory may have 1,000 pullovers on display in its showroom at the end of its financial period).

What is meant by “goods”?

The Regulations provide that “goods” means:

- assets purchased for sale;
- consumable stores;
- raw materials and components purchased for incorporation into products for sale.

(See “What is meant by “stock”?” above.)

What is meant by “business”?

The word “business” in the Regulations means the same as it does in the Income Tax Law, i.e. it includes any profession, trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture.

What is included in the term “documents”?

As well as contracts, receipts, vouchers, cash books, rent books, ledgers, etc in paper form, the Regulations also define “documents” as including information stored or recorded in other ways (including, for example, electronically, such as on a computer, on a CD or any other form of information storage technology).

If information is stored or recorded otherwise than in a way in which it can be read (for example, on a mainframe computer) it must be capable of being turned into a format in which it can be taken away and in which it is visible and legible or from which it can be readily produced in a visible and legible form (for example, being transferred onto a CD that could then be given to the Director and which he could then read using a computer in the Income Tax Office).

What sort of business records may I need to make/keep?

As suggested under “Why are records important?” (page 4), if you are unsure whether the records you make/keep will be sufficient to satisfy the requirements of the Regulations, you may wish to consult an accountant or other professional adviser. The onus is upon you to ensure that what records you do make/keep are sufficient (and that you then retain those records for the required periods).

The following should be treated as illustrative only, therefore.

- Till rolls or other form of electronic record of sales.

- Cash book (a summary and analysis of all bank account entries or cash receipts, payments and drawings).
- Details of ancillary sources of income, such as commissions/bonuses from suppliers, sales of scrap, etc.
- Records of any goods taken for your own or your family's personal use.
- Goods provided in exchange for other goods or services from other traders ("bartering").
- Details of cash taken out of the till to pay small business expenses, or for your own or your family's personal use.
- Bills/invoices/receipts for purchases and expenses.
- A record of stock on hand at the end of the year (including work in progress but not completed by the end of the year).
- All bank and building society statements, passbooks, cheque stubs and paying-in slips that include details of business transactions.
- Details of any private money introduced into the business.
- Details of any money taken out of the business bank account for your own or your family's personal use (whether in cash or by cheque drawn for private purposes).
- Details of any assets used for both private and business purposes, and the extent of the private and business usage.
- Wages, bonuses, commissions, etc paid to employees (most of this information may be available in the documentation relating to the Employees Tax Instalment ("ETI") Scheme).
- Records of work done/services provided to customers/clients (including details of work/services completed but not yet paid for).
- Copies of sales invoices that you issue.
- Petty cash book.
- Contracts entered into with customers/clients.
- Leases on business assets/premises.
- Documentation relating to business loans and other forms of financing.

Do I have to keep original documents?

The Regulations envisage that if documents exist in paper form then those original documents should be retained, in accordance with the statutory requirements.

Obviously if a record has only ever existed in an electronic format (for example, if a company keeps its cash book using proprietary or bespoke computer software) then the electronic record is the original record (but see “What is included in the term “documents”?” above concerning the production of computer records in a legible format).

The Director appreciates, however, that a requirement for a business to keep original business documents for six years could give rise to storage difficulties when a more convenient solution would be for a business to retain an electronic scanned image.

This has to be balanced against the need, from time to time, for the Director to be able to have access to original documents (for example, where the genuineness of a document may be in doubt).

By way of a compromise, therefore, in order to reduce the burden on businesses (but not other persons affected by the Regulations) of complying with the Regulations, the Director is prepared to accept:

- where he requests sight of documents before the end of the year following the year in which the relevant income tax return was submitted: the original documents; and
- where the Director requests sight of the documents later than the end of the year following the year in which the relevant return was submitted: the original documents or, in their place, an electronic scanned image of the original document (or, if he so requires, a paper copy of the electronic scanned image of the original document).

If a business wishes to electronically scan its documents, and destroy the originals, in accordance with the above concession, it should be ensured that all sides of the documents are scanned (even if some of those are blank).

It should also be noted that if a business chooses to electronically scan its business documents and destroy the originals prior to the expiry of the statutory “6 year” retention period, it is the responsibility of the business to ensure the security of the scanned image. For example, if documents are scanned to a CD and, following a valid request from the Director to have access to those documents, it is found that the documents cannot be accessed because the CD has been misplaced or has become corrupted, the Director would be within his rights, under the Regulations, to treat that in the same way as a failure to retain the documents (see “What happens if I don’t comply with the Regulations?” above).

Do the records have to be kept in Guernsey?

The 2006 Regulations contained no provision detailing where records had to be kept.

The 2012 Regulations (which are effective from 1 July 2012) provide that where records and documents are kept outside of Guernsey then the person who is required by the Regulations to make, maintain, keep and retain those documents must ensure that:

- they remain within his control or power, and
- effective arrangements are in place and are implemented for them to be brought to Guernsey, if the Director asks to see the records for the purposes of calculating or assessing any liability to tax, or if the records are otherwise required to be produced and disclosed in accordance with any duty, obligation or requirement imposed under the Income Tax Law, or any other Law.

What about records relating to 2006 and earlier?

As explained at the beginning of this Statement of Practice (see “Introduction” on page 3), the legal obligation to make/keep, maintain and retain records for tax purposes commenced with effect from 1 January 2007. There is no legal obligation, therefore, on you to have made/kept certain types of records prior to 1 January 2007. There is also no legal obligation on you to retain any records that you do have for periods up to and including 2006.

How are companies which will be subject to a 0% rate of income tax from 2008 affected?

Whilst a company subject to the zero rate may not have any tax to pay directly, the business profits/investment income of the company may affect the tax liability of others (for example, the shareholders).

Such companies will still be required to file income tax returns and, as a consequence, the Regulations will apply to those companies in the same way as any other person receiving an income tax return.

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Director of Income Tax

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