

MINISTRY OF FINANCE
INCOME TAX OFFICE



GUIDANCE NOTES
NOTIFIABLE ARRANGEMENTS & PROPOSALS
AND THE ADVANCE CLEARANCE
PROCEDURES

MAY 2011

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What legislation?

The guidance being provided is for the following sections of the Income Tax Act 2010 (“the Act”):

- Section 41 – Notification of arrangements
- Section 42 – Procedures for clearance in advance

These notes explain our interpretation of the Act and the way the Income Tax Office applies the law in practice. They are not a substitute for the Act and do not, in any way, affect a taxpayer’s right to argue a different interpretation by way of appeal to an independent tribunal.

Based on the outcome of any such appeal referred to above, this Office may wish to either amend our interpretation as set out in these notes or to propose legislative amendments to the Act as deemed necessary. Any changes to the guidance provided in these notes will be issued publicly by this Office.

What is a ‘*notifiable arrangement*’ and ‘*notifiable proposal*’?

A notifiable arrangement includes any scheme, transaction or series of transactions that will or is intended to provide the user with a tax advantage when compared to a different course of action.

A notifiable proposal is any proposal, which, if entered into, would be a notifiable arrangement.

For the purposes of the Act a notifiable arrangement will not include advice provided in respect of specific allowances, deductions and/or exemptions.

What do these sections aim to achieve?

The objectives of these sections are to primarily obtain information about tax arrangements and proposals and how they work.

What disclosure is required?

A notifiable arrangement or proposal needs only be disclosed where:

- it will, or might be expected to, enable any person to obtain a tax advantage;
- that tax advantage is, or might be expected to be, the main benefit or one of the main benefits of the arrangements.

The following information should be disclosed to the Income Tax Office in respect of any arrangement or proposal:

- Names, addresses and contact details of any promoter(s) and client(s).
- A summary of the arrangement or proposal.

This is not an exhaustive list and therefore depending on the particulars of individual arrangements or proposals there may be a need for further information or documentation to be disclosed.

Who are the parties involved, and which are you?

There are two main parties involved in notifiable arrangements or proposals. These are the **client** and the **promoter**.

Who is a client?

The client is the party using the notifiable arrangement or intending to use the notifiable proposal.

Who is a promoter?

You may be a promoter if you are either:

- A bank as defined in section 41(2)(b)(ii) of the Act; or
- Any person who provides services relating to taxation, including tax advice, or
- Any person who is involved with the provision of financial products, which are capable of reducing the incidence of taxation; and

Are to any extent responsible for the following:

- The design of a notifiable arrangement or proposal; or
- making the arrangement or proposal available for implementation by others; or
- Organising or managing the implementation of an arrangement or the intended implementation of a proposal.

A group company that provides tax services to other companies within the same group would be classified as a promoter for the purposes of the Act in accordance with the above. A group relationship is deemed to exist if one company is at least the 50% subsidiary of the other or both are at least the 50% subsidiaries of a third company.

What are your responsibilities?

Once you have determined what party of the arrangement or proposal you represent, the next step is to identify what responsibilities your role has.

If you are a promoter?

The duty to disclose the arrangement or proposal *normally* falls on the promoter. Therefore, under normal circumstances, the promoter is required to disclose information relating to any arrangement or proposal, 30 days after the earlier of:

- The date on which the proposal is made available for implementation by another person; or
- The date on which any transaction forming part of an arrangement, implementing the proposal is first identified by the promoter.

If you are a co-promoter?

A co-promoter arises in instances where there are two or more promoters in respect of the same, or substantially the same arrangement or proposal, whether or not it is made available to the same client. Only a single disclosure needs to be made, rather than a disclosure by each promoter.

If you are a promoter of multiple arrangements or proposals?

Where a promoter is involved with two or more arrangements or proposals, which are substantially the same arrangement or proposal, whether or not it is made available to the same client, no disclosure needs to be made, if a disclosure has already been made in respect of any other of the arrangements or proposals.

When is the promoter not responsible?

There are exceptions however, when the promoter is not responsible for disclosing the information relating to the arrangement or proposal, such as described as follows.

You use a non-Gibraltar based or resident promoter

A non-Gibraltar based or resident promoter is not required to disclose an arrangement or proposal. In these circumstances it is the duty of the promoter's client to make the

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disclosure within 30 days after entering into any transaction forming part of that arrangement.

Nevertheless if the non-Gibraltar based or resident promoter discloses the information to the Income Tax Office, the client is not required to also do so.

Your arrangements or proposals does not involve a promoter

In instances where there is no promoter the client must disclose the information in respect of the arrangement or proposal. This disclosure must do so within 30 days of entering into the first transaction forming part of the arrangement.

There exists a conflict for a lawyer with legal professional privilege

Although arrangements or proposals that are promoted by lawyers are within the scope of the disclosure requirements in the same way as for other promoters, there may be instances when legal professional privilege prevents the lawyer from disclosing any confidential communications with a client.

Under these situations it is the client that must disclose the information required to the Income Tax Office in respect of the arrangement or proposal.

How to make a disclosure?

Disclosure of any arrangement or proposal should be made in the prescribed form made available by the Income Tax Office (Form N1). A copy of this form has been included in Appendix 2.

This form is available to download from the Government of Gibraltar website at www.gibraltar.gov.gi or can be collected from the Income Tax Office at St. Jago's Stone Block, 331 Main Street Gibraltar.

What is the arrangement or proposal reference number?

This is the reference number, which will be allocated once the arrangement or proposal is notified to the Income Tax Office.

Please note that the allocation and notification of a reference number in respect of an arrangement or proposal does not indicate that the Income Tax Office has accepted the arrangement or proposal.

What is the purpose of the allocated reference number?

To identify the users of these disclosed arrangements and proposals from the returns being filed hence allowing the Income Tax Office to co-ordinate enquiries into these.

What are the responsibilities in respect of the arrangement or proposal reference number?

The Income Tax Office

The Income Tax Office may notify the party responsible for making the disclosure, either the promoter or if the appropriate conditions prevail, the client directly, within thirty days of either the promoter or client having made the appropriate disclosure.

The promoter of the arrangement or proposal

The promoter is responsible for notifying the client of the allocated reference number within thirty days after, the later of:

- The date on which the promoter first becomes aware of any transaction forming part of the arrangement; or
- The date on which the reference number is notified to the promoter.

The client or other user of the arrangement or proposal

If you are a party or user to an arrangement or proposal, either the promoter or the client should have provided you with a reference number in respect of that arrangement or proposal.

Parties to an arrangement or proposal must include the allocated reference number on their return so that the Income Tax Office can identify their participation in the relevant arrangement or proposal.

Are there any penalties for not disclosing an arrangement or proposal?

In accordance with Section 65(5) of the Act any person who fails to comply with a notification requirement shall be liable to a penalty as follows:

- £100 on the date¹ the person fails to notify the Income Tax Office of the arrangement or proposal; followed by
- £200 for each day until full disclosure of the arrangement or proposal is made. Full disclosure includes all the information and/or documentation, which should have been submitted initially.

¹ *The date referred to above is thirty days after the earlier of either the date on which the proposal is made available for implementation by another person or the date on which any transaction forming part of an arrangement, implementing the proposal is first identified by the promoter.*

What are the advance clearance procedures?

These are the procedures that should be followed when an application is made seeking an advanced tax ruling that the result of undertaking an arrangement or proposal would not be liable to tax under the anti-avoidance provisions of the Act.

What are the obligations and conditions under the advanced clearance procedures?

The following conditions apply to an advanced tax ruling under these clearance procedures.

Any applicant seeking an advanced tax ruling must apply to the Commissioner of Income Tax in writing, providing full details of the arrangement and consenting to publication by the Commissioner of Income Tax of a description of the arrangement together with the advance tax ruling. The anonymity of the applicant in the publication will be maintained. An advance tax ruling will only be issued once all the pertinent facts regarding the subject matter of the ruling are appropriately disclosed. If subsequent to the issue of a ruling the facts and circumstances described therein are found to be inaccurate or not materialise the previously issued advance tax ruling will become void.

The issuing of a ruling in respect of an arrangement does not prevent the Commissioner of Income Tax from applying the anti-avoidance provisions of the Act should the need arise or be suspected to arise.

If the Commissioner believes that an advance tax ruling provided would benefit other applicants with similar applicable circumstances then the ruling will be published, once again maintaining the anonymity of the original applicant.

How to follow the advance clearance procedures?

The process is illustrated through the use of a flow chart included in Appendix 1.

Further help and advice

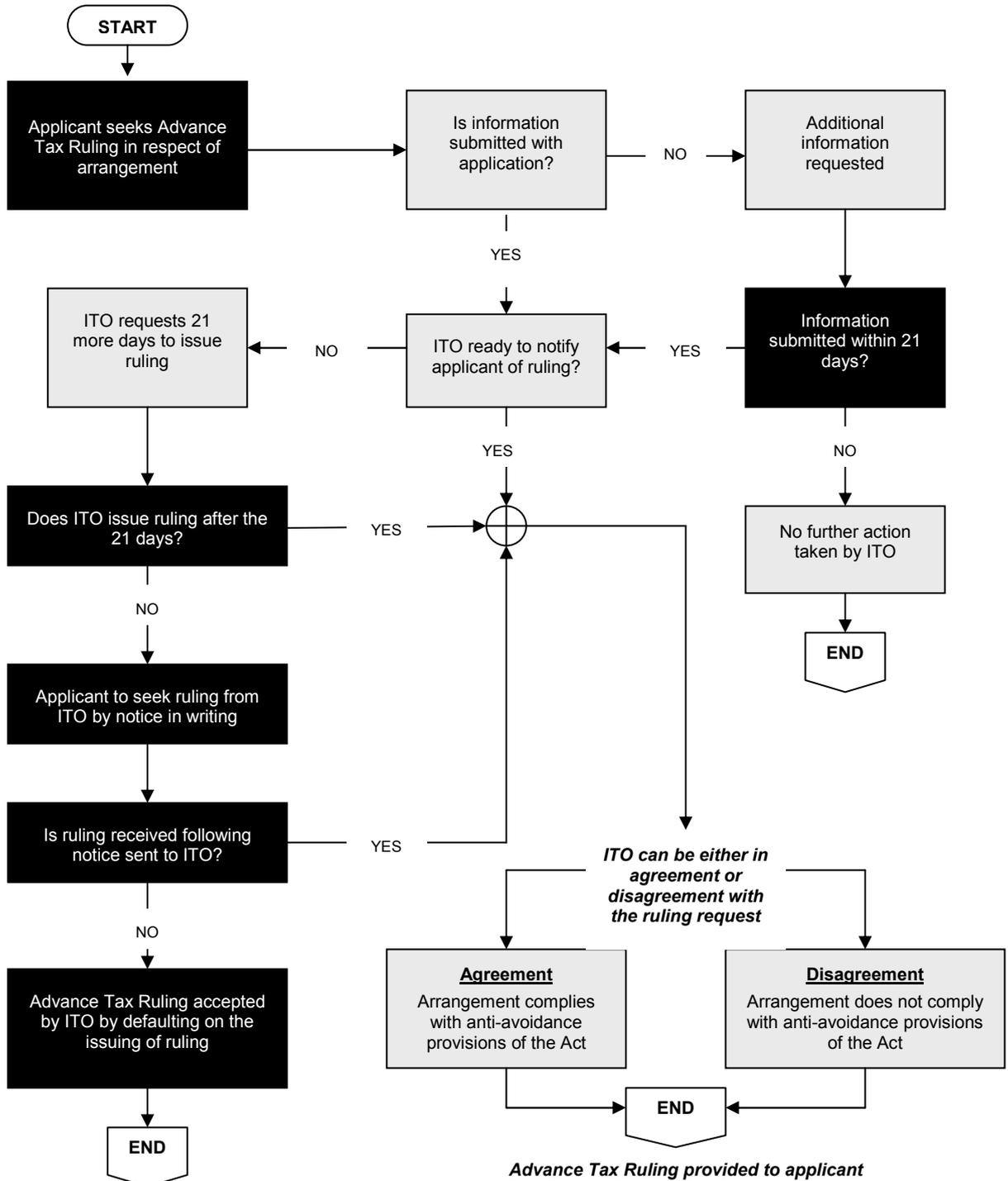
These notes are issued for guidance purposes and therefore any enquiries on these should be directed to this Office. Contact details are provided below.

The Commissioner Of Income Tax
St. Jago's Stone Block
331 Main Street
Gibraltar

Tel. No. +350 20075260
Fax No. +350 20042398
Email incometax@gibraltar.gov.gi

Appendix 1 - Flowchart on the operation of the advanced clearance procedures

In the following flow chart the lightly shaded boxes represent decisions or areas of responsibility for the Income Tax Office (“ITO”), whereas the dark shaded boxes represent decisions or areas of responsibility for the applicant.



Appendix 2 – Disclosure of notifiable arrangement or proposal form (N1)



Ministry of Finance
Income Tax Office

Page 1
Form N1

Disclosure of notifiable arrangement or proposal

Important notes and guidelines

This form is for the use of any person notifying the Income Tax Office of an arrangement or proposal in accordance with the provisions of Section 41 of the Income Tax Act 2010.

This form can either be downloaded from the Government of Gibraltar's website - www.gibraltar.gov.gi - or collected from the Income Tax Office situated at St. Jago's Stone Block, 331 Main Street, Gibraltar.

All the information requested in this form is required in order to enable the disclosure to be processed.

REFERENCE NUMBER OF ARRANGEMENT OR PROPOSAL

Please provide the reference number allocated by the Income Tax Office to the particular arrangement or proposal previously disclosed

SECTION A - Promoter to make disclosure

If you are not a promoter but are obligated to make a disclosure of an arrangement or proposal, please put an 'X' in the box provided and complete Section B.

Name

Address *(if a corporate entity then please enter registered address)*

Telephone number

Fax number

Email

If there is more than one promoter then please put an 'X' in the box provided, and enter their full name and address below.

Co-promoter's details

SECTION D - Declaration

I declare that the information presented in this form is correct and complete to the best of my knowledge and belief.

Signature

A photocopy of a signature is not acceptable

Full name of individual completing this form

Capacity in which the form has been completed

Date