
HM GOVERNMENT OF GIBRALTAR

COMMISSIONER OF INCOME TAX

GUIDANCE ON TAX RULINGS (PROCEDURE) 2018

Introduction

1. This Guidance is issued by the Commissioner of Income Tax¹ (“the Commissioner”) in relation to the provision of tax rulings at the request of taxpayers or potential taxpayers.
2. This Guidance is intended to complement and be read alongside the provisions of—
 - (a) the Income Tax Act 2010 (“ITA”), and
 - (b) the Income Tax (Tax Rulings) Rules 2018 (“ITTRR”).
3. The purpose of this Guidance is to inform the interpretation and application of the law to specific factual situations. Nothing in this Guidance derogates, or requires or permits the Commissioner to derogate or deviate, from the provisions of any enactment. (See further paragraphs 4 to 11 below.)

Basis of issue

4. The Commissioner issues this Guidance—
 - (a) in pursuance of the duty under section 2(2) of ITA², and
 - (b) in accordance with rule 11 of ITTRR.
5. The Commissioner approaches the performance of the duty under section 2(2) of ITA intending—

“to set about this task pragmatically and to have regard to principles of good management”³.

¹ The Commissioner of Income Tax is a public officer designated under section 2(1) of the Income Tax Act 2010.

² “The Commissioner shall be responsible for the assessment and collection of Income Tax ...”.

³ *R. (on the application of Wilkinson) v Inland Revenue Commissioners* [2003] EWCA Civ 814, at [45].

6. The Commissioner’s best-practice aims include engaging with an individual taxpayer (actual or potential) to the extent that the taxpayer desires engagement and the Commissioner is satisfied that the engagement—
 - (a) enhances transparency and accountability in the exercise of his functions,
 - (b) aids clarity for the mutual benefit of taxpayers and the revenue of Gibraltar,
 - (c) does not fetter the Commissioner’s discretion⁴, and
 - (d) does not purport to vary the effect of fiscal legislation⁵.

Relevant strategies

7. This Guidance is issued under ITTRR as part of the Commissioner’s public service strategy.
8. This Guidance also forms part of the Commissioner’s approach to performing his functions in a transparent manner.

Scope

9. In accordance with rule 11 of ITTRR this Guidance is a statement of the principles which are implemented by the Income Tax Office⁶ (“ITO”) in the provision of tax rulings.

⁴ See, in particular, paragraphs 15 to 19 below.

⁵ In providing tax rulings in accordance with this Guidance, the Commissioner will follow the principles laid out by the England and Wales Court of Appeal in *Wilkinson* (supra), and will perform the collection and management functions in an open and transparent manner, but not in any way purport to provide rulings that change the effect of provisions of fiscal legislation (whether by way of granting concessions or by way of addressing potential shortcomings).

⁶ The staff of the Commissioner of Income Tax are referred to collectively as the Income Tax Office.

10. This Guidance is not intended as a summary of any provision of ITA or ITTRR.
11. Neither this Guidance, nor any tax ruling provided in accordance with it, purports to alter, or has the effect of altering, the meaning and effect of any provision of ITA or ITTRR (or of any other enactment).

Duration

12. This Guidance comes into force on issue and remains in force until replaced or revoked by later Guidance.

Citation

13. This Guidance may be cited as the **Guidance on Tax Rulings (Procedure) 2018**.

List of Abbreviations

14. The following abbreviations are used in this Guidance:

<i>Abbreviation</i>	<i>Meaning</i>	<i>Source</i>
Commissioner	Commissioner of Income Tax	ITA s.2(1)
ITA	Income Tax Act 2010	/
ITO	Income Tax Office	/
ITTRR	Income Tax (Tax Rulings) Rules 2018	/
SAF	Standard Application Form	Appendix

Nature of Rulings

15. Tax rulings are necessarily individual and fact-specific. They are designed to reflect all the facts of the question put by the applicant to ITO, and are therefore confined to the

relationship between ITO and the applicant in relation to the specific transaction, proposed transaction or other matter concerned.

16. It follows that tax rulings are not treated by ITO as constituting precedents, whether of a binding or a persuasive nature.
17. An applicant seeking a ruling from ITO may wish to include in their request references to previous rulings given by ITO to that applicant or to another applicant.
18. In so far as the facts and circumstances of any previous ruling may help to elucidate the application of the general principles discussed in this Guidance to a subsequent case, ITO will take it into account. ITO will not, however, start from a presumption that because a ruling was provided in a particular direction in relation to one set of facts, a similar ruling will be provided in relation to another set of facts.
19. The tax ruling system is also designed to support consistency in the performance of the Commissioner's functions under ITA. Having regard to that principle, therefore, ITO will be prepared to consider the facts and circumstances of previous rulings in order to be satisfied that rulings are being given in a consistent manner and in accordance with the other principles set out in rule 6(4) of ITTRR.

Evidence-based decision-making

20. In order to ensure that the operation of the tax ruling system advances the objectives listed in rule 6(4) of ITTRR, it is important that decisions relating to tax rulings are entirely and demonstrably evidence-based.
21. In particular, a decision of the Commissioner in relation to whether to provide a tax ruling on an application, and its content, must be based on the submission by the applicant for the ruling of full particulars of the subject matter in respect of which the ruling is requested, in writing, in accordance with rule 8 of ITTRR.
22. In determining whether sufficient evidence has been provided in accordance with rule 8(2) of ITTRR to support assertions made in the application, the Commissioner must have regard to any relevant OECD or other international benchmarks or standards.

Standard form applications

23. Consistency will be further enhanced by ensuring that all applicants for tax rulings provide information complying with standard forms and specifications, in accordance with rule 7(3) of ITTRR.
24. Although it is important that each applicant should be able to provide any additional information that it considers relevant or potentially relevant, the use of a common format for basic information will ensure parity of applications and consistency of decisions.
25. Each application must be made by a specific identified taxpayer: the name of the taxpayer, and full details of its ownership, must be included in the application and in the tax ruling.
26. A standard form for the provision of information in accordance with rule 7(3) of ITTRR (Standard Application Form – “SAF”) is attached to this Guidance as the Appendix.

Additional information

27. Rule 8(4) of ITTRR allows ITO to require or invite the provision of additional information following the submission of the SAF.
28. The power to require or invite additional information will not be used to vary the provisions of the SAF in individual cases in such a way as to confer an advantage or impose a disadvantage on individual applicants.
29. The purpose of the power to require or invite additional information is to permit amplification or clarification of information already provided or referred to, where the information as set out in the SAF is incomplete or obscure⁷.

⁷ Which may include cases where the potential relevance of information is unclear.

Anti-avoidance audit

30. The audit and verification systems required by rules 16 and 17 of ITTRR must include determination—
- (a) whether assumptions made in respect of a tax ruling were accurate;
 - (b) whether any conditions have been complied with;
 - (c) whether there is any reason to believe that the ruling has been relied upon for the purposes of tax avoidance contrary to ITA.

Issued by the Commissioner for Income Tax

25 October 2018

APPENDIX

STANDARD APPLICATION FORM FOR TAX RULINGS



Ministry of Finance

Income Tax Office

St Jago's Stone Block, 331 Main Street, Gibraltar

Enquiry telephone number: (350) 20075260

Application for Advance Tax Ruling

Note: Please read the section on "Notes on Application for Advance Tax Ruling" and ensure that this application is fully completed and duly signed before submitting.

General Details

1. Requesting Party

2. Address

3. Tax reference number

4. Date of request

5. Does the request relate to an established company

Go Q6

Go Q9

Yes

No

6. Name of Company

7. Address

8. Tax reference number

9. This ruling is prospective for a company (or companies) that has not yet been incorporated. The requesting party hereby undertakes to provide the Income Tax Office with the name of the company (or companies) within one month following incorporation. Failure to do so may result in the revocation of the ruling issued by the Commissioner of Income Tax.

10. Details of Ownership

11. Facts

Please provide a comprehensive description of the facts and circumstances.

12. Technical Questions

Please set out below technical points you require clarification on, including any relevant evidence.

13. Type of Ruling Request

Please tick one or more as appropriate that best summarises this request.

- | | | |
|---|--|--|
| <input type="checkbox"/> Accrual & derivation of Income | <input type="checkbox"/> Dividends | <input type="checkbox"/> Interest |
| <input type="checkbox"/> Royalties | <input type="checkbox"/> Deduction of expenses | <input type="checkbox"/> Capital gains |
| <input type="checkbox"/> Withholding tax | <input type="checkbox"/> Double tax relief | <input type="checkbox"/> Residency |
| <input type="checkbox"/> Benefits in kind | <input type="checkbox"/> Trust | <input type="checkbox"/> Other |

If you ticked Other, please specify:

14. Confirmation Required

Please set out below the specific confirmation(s) you require.

Declaration

I/We certify that the facts contained in this Advance Tax Ruling request are true and correct. By signing this confirmation I/we hereby accept (and the company named in 6 or 9 accepts) that the Income Tax Office:

- 1) may require further evidence to confirm the facts stated, and
- 2) are entitled to carry out checks in the future to substantiate these facts.

Signature

Name (in capitals)