

Subsidiary Legislation made under s.72(1).

## **Income Tax (Tax Rulings) Rules 2018**

**LN.2018/227**

*Commencement*                      **25.10.2018**

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### **ARRANGEMENT OF RULES**

Rule

1. Title.
2. Commencement.
3. Overview.
4. Interpretation.
5. Scope of rulings.
6. Purpose of rulings.
7. Application.
8. Information.
9. Provision of rulings.
10. Further information.
11. Guidance.
12. Withdrawal and modification.
13. Records.
14. Time limits.
15. Anti-avoidance.
16. Audit.
17. Annual returns and other notices of change.

*In exercise of the powers conferred by section 72(1) of the Income Tax Act 2010, the Minister has made the following Rules—*

**Title.**

1. These Rules may be cited as the Income Tax (Tax Rulings) Rules 2018.

**Commencement.**

2. These Rules come into operation on the day of publication.

**Overview.**

3. These Rules set out the procedure in accordance with which the Commissioner of Income Tax may give rulings at the request of actual or potential taxpayers.

**Interpretation.**

4. In these Rules—
  - (a) “applicant” has the meaning given by rule 7(1),
  - (b) “the Commissioner” means the Commissioner of Income Tax,
  - (c) “ITA” means the Income Tax Act 2010,
  - (d) “tax ruling” means a ruling provided by the Commissioner in accordance with rule 9, and
  - (e) “transaction” includes—
    - (i) a potential or prospective transaction,
    - (ii) a series of transactions, and
    - (iii) any item or course of commercial or financial activity.

**Scope of rulings.**

- 5.(1) A tax ruling may be sought in respect of—
  - (a) the potential income tax implications of a transaction, or

(b) any other matter relating to the practical application of a provision of ITA.

(2) But a tax ruling may not be sought for the purpose of questioning or challenging a decision made or action taken by the Commissioner.

**Purpose of rulings.**

6.(1) The purpose of providing tax rulings is to ensure that the Commissioner—

- (a) is able to respond to the public's wish for clarity and guidance in advance wherever possible, in respect of the tax implications of transactions or any other matter relating to the practical application of a provision of ITA,
- (b) performs his functions in a consistent, fair and effective manner, and
- (c) performs his functions in a manner that demonstrates transparency and accountability.

(2) In providing tax rulings the Commissioner shall aim to provide clarity, guidance and consistency in the application of ITA as a whole.

(3) In particular, the Commissioner shall aim to enable potential taxpayers to seek guidance about the tax effects of transactions or any other matter relating to the practical application of a provision of ITA, so that commercial and other financial arrangements can be made with due consideration of their likely tax consequences.

(4) In considering and providing tax rulings the Commissioner shall apply the following principles—

- (a) consistency;
- (b) transparency;
- (c) accountability; and
- (d) efficiency.

(5) The purpose of providing tax rulings as set out in subrules (1) to (4) is limited to the interpretation and application of the law in specific circumstances; in providing tax rulings the Commissioner is neither required nor permitted to derogate or deviate from the provisions of any enactment.

**Application.**

7.(1) In these Rules “applicant” means a person who wants the Commissioner to provide a tax ruling in respect of a transaction or matter in connection with which the person has an interest.

(2) The applicant may apply to the Commissioner for a tax ruling in respect of the transaction or matter.

(3) The application must be made in any standard form issued by the Commissioner from time to time.

(4) The application must specify the name of the applicant, together with full details of ownership of the applicant.

(5) The application must be accompanied by any fee specified by the Commissioner from time to time (and different fees may be specified for different purposes or circumstances).

**Information.**

8.(1) An applicant must include in the application—

- (a) a comprehensive description of the facts and circumstances which give rise to the request for a tax ruling;
- (b) a statement of the question on which a tax ruling is sought;
- (c) information sufficient to demonstrate the applicant’s interest in obtaining a tax ruling;
- (d) a description of the underlying business activities to which the tax ruling relates including, in particular—
  - (i) the nature and place of the activities;
  - (ii) the place of effective management of the business;
  - (iii) the human and technical means used (or intended to be used) by the applicant in pursuing the business activities;
  - (v) the classes of customer at which the business activities are targeted (or intended to be targeted); and

- (e) any other information that the Commissioner is likely to need in order to provide the tax ruling or for the purposes of administrative cooperation with other countries in relation to the matters addressed in the tax ruling.

(2) An application must include any evidence required to support any assertion made in the application (including benchmarks or thresholds applied for determining arms-length equivalence or other matters).

(3) An application must also include sufficient explanation of the operation to which the application relates to satisfy the Commissioner as to the commercial plausibility of the operation.

(4) If the Commissioner thinks that he needs additional information in order to provide a tax ruling, he may—

- (a) issue a notice under section 6(1) of ITA, or
- (b) request the applicant to provide the information.

#### **Provision of rulings.**

9.(1) If the Commissioner is satisfied that he has all the necessary information to respond to an application he may provide a ruling.

(2) A tax ruling must be given in writing, with a full statement of the reasons for which it is given; and the reasons must, in particular, explain the impact on the ruling of each of the classes of information supplied in the application in accordance with rule 8. If the request for a tax ruling relates to a transfer pricing matter then the tax ruling shall include a comprehensive transfer pricing analysis.

(3) A tax ruling must specify a period, not exceeding three years, during which it may be relied on.

(4) A tax ruling must include a provision drawing the attention of the person to whom the ruling is given that the Commissioner reserves the right to exercise powers of cancellation, withdrawal and modification in accordance with these rules if it appears to the Commissioner that—

- (a) the ruling was given erroneously, or
- (b) facts or assumptions relied on in relation to the ruling were falsified or have changed (including facts or assumptions about the activity of the operation as described in the application or in further information).

- (5) A tax ruling may state that it applies subject to specified conditions.
- (6) The Commissioner may refuse to provide a tax ruling if—
- (a) he is not satisfied as specified in subrule (1);
  - (b) he thinks that the information provided by the applicant is too liable to change, or is insufficiently clear, to allow a tax ruling to be provided;
  - (c) a similar application is pending determination;
  - (d) he thinks it too difficult to ascertain the necessary issues of fact with the necessary degree of clarity;
  - (e) issues of foreign law arise; or
  - (f) he considers the application frivolous or vexatious.
- (7) The Commissioner shall operate a system for auditing the processes applied for the purpose of this rule, including provision for testing the accuracy of information provided and assumptions applied, and for any further application required of rule 8(4).

**Further information.**

10.(1) The Commissioner may require the submission of information about the transaction or matter in respect of which a tax ruling was provided.

- (2) A requirement (or further requirement) under subrule (1) may be imposed—
- (a) at any time after the provision of the tax ruling;
  - (b) by notice under section 6(1) of ITA or otherwise.

(3) Compliance with any requirement imposed under this rule is an implied condition of each tax ruling.

**Guidance.**

11.(1) In responding to an application for a tax ruling the Commissioner shall have regard to any guidance issued by him from time to time as to the principles to be applied in providing tax rulings.

(2) The Commissioner shall issue guidance, in particular, as to the principles to be applied in determining, for the purposes of a tax ruling, whether income is accrued in and derived from Gibraltar.

(3) The Commissioner may issue guidance about the procedure to be followed in relation to tax rulings.

**Withdrawal and modification.**

12.(1) This rule applies if the Commissioner suspects (as a result of information submitted in pursuance of rule 10 or otherwise) that a tax ruling may not reflect, or may no longer reflect—

- (a) the nature or circumstances of the transaction or matter, or
- (b) the state of the law.

(2) The Commissioner may notify the applicant or any other person with an interest in the transaction or matter that the tax ruling—

- (a) will cease to apply as from a specified date (which may be before the date of the notice);
- (b) will apply in a modified form as from a specified date (which may be before the date of the notice).

(3) Before issuing a notification under subrule (2) the Commissioner shall consult the applicant and any other person whom the Commissioner knows to have an interest in the transaction or matter.

**Records and publication.**

13.(1) The Commissioner shall keep records of—

- (a) applications for tax rulings;
- (b) requests for further information;
- (c) responses to requests for further information (including minutes of any information provided orally, together with the details of when, how and by whom it was provided);
- (d) companies audited under rules 9(7), 16 and 17(4);

- (e) tax rulings provided;
- (f) withdrawals and modifications of tax rulings;
- (g) any other correspondence between the Commissioner and applicants in respect of tax rulings or applications for tax rulings (including statements and notices under rule 17).

(2) In determining the form and method of maintaining records in accordance with subrule (1), the Commissioner shall have regard to the desirability of facilitating compliance with any European Union legislation on the automatic exchange of information about tax rulings.

(3) The Commissioner shall make arrangements for the publication of anonymised compilations of tax rulings, or anonymised summaries of tax rulings, at such times and in such form as the Commissioner believes provide the greatest transparency for the public without breaching commercial or taxpayers' confidentiality and, in any event, shall make such publications at least once every fiscal year.

**Time limits.**

14.(1) A notice or request under rule 8(4) for further information in respect of an application must be issued or made within 21 days of the date of the receipt of the application.

(2) A request under rule 8(4)(b) must be complied with within 21 days of the date of receipt.

(3) The Commissioner shall give a decision on an application—

- (a) within 21 days of the date of receipt of the application, or
- (b) where a notice or request is issued or made under rule 8(4), within 21 days of the date of receipt of the further information sought.

(4) But the Commissioner may notify the applicant (once only) that the Commissioner requires a further 21 days to consider the application.

(5) If the Commissioner has not given a decision in writing by the end of the 21 days specified in subrule (3)(a) or (b) or (4), the applicant may by notice in writing seek a decision from the Commissioner within 21 days of the date of receipt of the notice; and the Commissioner shall comply with the notice.

(6) The Commissioner may specify other time limits in respect of provisions of these Rules.

**Anti-avoidance.**



15. If the Commissioner suspects that fraudulent, negligent or inadvertent avoidance activity (including negligent misrepresentation or omission of facts) may have taken place in connection with a tax ruling he shall consider engaging the application of—

- (a) section 6 of ITA (information powers);
- (b) section 9 of ITA (entry with warrant to obtain documents);
- (c) section 40 of ITA (anti-avoidance);
- (d) 67 of ITA (offences);
- (e) any other enactment.

**Audit.**

16.(1) The Commissioner shall operate a system for auditing reliance on tax rulings, including provision for testing the accuracy of assumptions applied.

(2) The Commissioner shall, in particular, make arrangements to monitor reliance on tax rulings.

(3) If as a result of the audit process the Commissioner considers that additional information is required in order to determine the extent of reliance on tax rulings and the accuracy of assumptions applied, the Commissioner shall exercise such powers as are available under these Rules or under any other enactment for the purpose of ensuring that the required information is supplied.

**Annual returns and other notices of change.**

17.(1) Where a tax ruling has been provided on the application of a company, so long as it remains in force the company's returns under section 29 of ITA must—

- (a) record that a tax ruling has been provided and is in force, and
- (b) state whether there has been a material change in any information provided with the application for the tax ruling or any other change of circumstances that is likely to be relevant to the tax ruling.

(2) If the information provided with an application for a tax ruling materially changes or there is any other change of circumstances that is likely to be relevant to the tax ruling, the applicant must notify the Commissioner.

**2010-21**

**Income Tax**

**2018/227**

**Income Tax (Tax Rulings) Rules 2018**

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(3) The Commissioner shall consider whether it is necessary to withdraw or modify a tax ruling where —

- (a) the company's return states a change under subrule (1)(b); or
- (b) a change is notified under subrule (2).

(4) The Commissioner shall operate a system for verifying the accuracy of statements in company's returns that no relevant changes have taken place; and the system may be combined with the audit system under rule 16 to the extent that the Commissioner considers appropriate.