

ETRS/SRTL

Public Ruling 2001/1

EAST
TIMOR
REVENUE
SERVICE

Public Ruling: The Public and Private Rulings Programs

Relying on this Ruling

This is a public ruling within the meaning of Section 66 of Regulation 2000/18. Information in this ruling may be relied upon by taxpayers as the basis for determining their tax liability.

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Introduction

1. Section 66 of Regulation 2000/18 (“On a Revenue System for East Timor”) authorises the Commissioner of the East Timor Revenue Service (ETRS) to issue public rulings that explain how the ETRS will interpret that Regulation.
2. The explanation of how the ETRS will interpret the Regulation includes explanations of how the ETRS interprets any Directives issued under the Regulation where those Directives provide rules on the application of the Regulation.

Public rulings are binding on the ETRS

3. A public ruling issued by the Commissioner of the ETRS is “binding” on the Commissioner and the whole of the ETRS. This means that the Commissioner is not able to use a position that conflicts with a position he has taken in a public ruling as the basis for assessing a person for a liability to pay tax. (However, as explained below, the Commissioner can repeal a public ruling and replace it with a new one that is based on a revised interpretation of the law.)
4. A person who adheres to a position taken by the Commissioner in a public ruling will not be liable to additional tax or to any penalties even if that position is subsequently held by a court not to be a correct interpretation of the law.

Public rulings are not binding on taxpayers

5. A public ruling is not binding on a person liable to pay tax. If a person believes the Commissioner’s interpretation of the law is incorrect, the person may appeal an assessment made on the basis of the position taken by the Commissioner in a public ruling.
6. If a person takes a position contrary to a position taken by the Commissioner in a public ruling and it is subsequently determined that the Commissioner’s view is a correct interpretation of the law, the

person will be liable for tax due under the Commissioner's interpretation. In addition, depending on the circumstances behind the person's decision to adopt a position contrary to the Commissioner's interpretation of the law, the person may be liable to additional tax or penalties. Factors that will affect possible liability include:

- whether the taxpayer disclosed to the Commissioner in his return that the taxpayer was taking a position that conflicted with the Commissioner's interpretation of the law;
- whether the taxpayer's position was based on contrary interpretation in the law that a court would consider to be an arguable position;
- whether the taxpayer took a contrary position:
 - unaware of the Commissioner's position through inadvertence;
 - unaware of the Commissioner's position through negligence;
 - aware of the Commissioner's position but having grounds to believe it may not have been correct; or
 - aware of the Commissioner's position and having no reasonable grounds to believe it may not have been correct.

Replacement of a public ruling

7. The Commissioner may repeal a public ruling at any time by issuing a new public ruling. Where a public ruling repeals or replaces a previous one, the latter ruling will explicitly indicate that taxpayers may rely on the new ruling and that the former ruling may no longer be relied upon by taxpayers.

8. A ruling that replaces another ruling will also provide transitional rules for taxpayers who had sought to rely upon the former ruling. A replaced ruling will continue to be valid and binding on the Commissioner for all years of assessment that have concluded at the time of the new ruling. The replacement ruling will indicate under what circumstances if any taxpayers may rely on the replaced ruling for the year of assessment in which the replacement ruling is issued or for future years.

Private rulings

9. Section 67 of Regulation 2000/18 authorises the Commissioner of the ETRS to issue a private ruling to a particular taxpayer based on that taxpayer's particular circumstances.

10. Like a public ruling, a private ruling is binding on the Commissioner and the whole of the ETRS. This means that the Commissioner is not able to use a position that conflicts with a position he has taken in a private ruling as the basis for assessing the recipient of the private ruling for a liability to pay tax. However, a private ruling given by the Commissioner will only be binding in respect of the particular transaction or arrangement or year of assessment for which a person requests a ruling unless there is an explicit indication to the contrary in the ruling.

11. Also, a private ruling is only binding on the Commissioner and the ETRS if the person seeking the ruling has provided a full and true disclosure of all aspects of the planned transaction or arrangement relevant to the ruling.

12. Because a private ruling is binding on the Commissioner and the ETRS only if the person seeking the ruling has provided a full and true disclosure of all aspects of the planned transaction or arrangement relevant to the ruling, a private ruling cannot be relied upon by any person other than the person to whom it was issued.

Publication of Rulings

13. Public rulings will be published on the ETRS ETTA website, <http://www.gov.east-timor.org/fbea/>, and they will be available at ETRS offices. A notice advising their promulgation will also be placed in the Official Gazette of East Timor.

14. Private rulings will not be published.

Date of Effect

15. This Public Ruling has effect from 6 March 2001.

Thomas Story
Commissioner of East Timor Revenue Service
6 March 2001

Legislative references:

public rulings	Reg 2000/18	s 66
private rulings	Reg 2000/18	s 67