

ETRS/SRTL Public Ruling 2001/2

Public Ruling: The Power of the Commissioner of the East Timor Revenue Service to Cancel Taxation Obligations

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.

Powers of the Commissioner

1. The Commissioner of the East Timor Revenue (ETRS) is charged with responsibility for enforcing the provisions of Regulation 2000/18 and collecting all taxes imposed under that regulation and Regulation 1999/1.
2. The Commissioner is authorised by s 6 of Regulation 2000/18 to delegate powers granted to him by Regulation 2000/18 to certain designated persons, including other officers in the ETRS.
3. In addition, the Commissioner is allowed under s 66 and s 67 of Regulation 2000/18 to issue a public or a private ruling explaining the Commissioner's interpretation of how the law applies to circumstances, arrangements or transactions described in the rulings.
4. Where it is clear to the Commissioner that a debt owed in respect of taxes due under Regulations 2000/18 or 1999/1 can not be collected, the Commissioner can recommend to the Head of the Central Fiscal Authority (CFA) that the debt be cancelled. This may happen, for example, if the person owing taxes is insolvent and there is no prospect of collecting the debt. The Head of the CFA may cancel a debt on the recommendation of the Commissioner. The Head of the CFA cannot cancel a debt without a recommendation from the Commissioner that the debt be cancelled because the Commissioner believes the debt is not collectable.
5. Where a tax debt has been cancelled in accordance with the previous paragraph, s 8.3(e) of Regulation 2000/18 requires the Commissioner to publish in the Annual Report of the East Timor Revenue Service, the names of the persons who have had their tax debts cancelled and the amounts involved.
6. In addition to these powers, specific provisions in the legislation provide the Commissioner with particular and limited discretions necessary for the fair and efficient administration of the tax law. This includes the power to forgive additional tax (an

administrative penalty) otherwise due as a result of improper return or tax delivery where the person who would be liable for additional tax shows good reason for their failure to comply with a section of the Regulation to which the additional tax liability relates.

What the Commissioner can not do

7. The Commissioner is charged with responsibility for applying the law. The Commissioner has no general discretionary powers. His discretionary powers are limited to the particular limited discretions provided to him with respect to specific administrative matters such as extensions for time of lodging documents.

8. As noted earlier, the Commissioner may recommend to the Head of the CFA that a debt owed in respect of taxes due under Regulations 2000/18 and 1999/1 be cancelled where it is clear to the Commissioner that the debt can not be collected. The Commissioner has no authority to ever cancel a tax debt on his own initiative. He may only make a recommendation to the Head of the CFA that a debt be cancelled. Where a tax debt has been cancelled by the Head of the CFA and the Commissioner later believes it *is* possible to collect the debt, the Commissioner may reinstate the debt.

9. Under no circumstances is the Commissioner allowed to override a taxpayer's responsibility to pay or withhold tax as required by the law. Thus, the Commissioner has no powers to give a particular taxpayer or a group of taxpayers relief or abeyance from payment or withholding responsibilities stipulated in the law. Taxpayers seeking changes to the law in response to their particular circumstances should approach the government for a change to the law.

10. Since the Commissioner has no power to provide relief from a tax liability or obligation set out in the law, there is no legal basis for advice by an ETRS officer that a taxpayer's liability is cancelled or held in abeyance for a period. Accordingly, if a person were improperly provided with such advice, the person's liabilities and obligations would remain unchanged, as would their potential liability to interest, additional tax and penalties if the liability or obligation were not satisfied as required by the law.

Date of Effect

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

Thomas Story
Commissioner of East Timor Revenue Service
6 March 2001

Legislative references:

Commissioner's delegation power	Reg 2000/18	s 6
public ruling power	Reg 2000/18	s 66
private ruling power	Reg 2000/18	s 67
reporting of cancelled debts in ETRS Annual Report	Reg 2000/18	s 8.3(e)
cancellation of uncollectable tax	Reg 2000/18	s 61
reinstatement of cancelled debt	Reg 2000/18	s 61.3