

Date of Publication: 26 May 2017

Taxes Office's policy on tax rulings

1. As a result of the Island becoming an associate of the OECD's Base Erosion and Profit Shifting ("BEPS") initiative in June 2016, from 1 April 2017 Jersey will be required to spontaneously exchange details of certain tax rulings¹ with tax authorities of other jurisdictions potentially affected by the ruling.
2. As a consequence the Taxes Office has reviewed its policy regarding the granting of tax rulings and details of the updated policy are provided below.
3. The relative simplicity of the Jersey tax system means that tax rulings are infrequently required. It is recognised however that there may be circumstances in which there is genuine uncertainty regarding the application of tax law and practice to a set of specific circumstances. The Taxes Office will give tax rulings in such cases.
4. From the date of publication of this policy the Taxes Office will no longer be providing confirmation letters in respect of requests for clearance where we do not consider that there are genuine points of uncertainty with regard to the interpretation of tax law and published concession and practice. Where appropriate, we will explain why we think this and where relevant guidance can be found.

What is a tax ruling?

5. A "tax ruling" is any advice, information or undertaking provided by the Taxes Office to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely, and broadly includes:-
 - Where a taxpayer/group of taxpayers seeks an advance agreement in respect of the future tax treatment of a transaction
 - Where the Taxes Office has decided it is right to give certainty on the interpretation of the tax law in respect of a taxpayer's/group of taxpayers' income and/or activities
6. A tax ruling can be general (applicable to all similar taxpayers and circumstances) or specific (to one taxpayer or a group of named taxpayers) and can be solely domestic or have an international dimension, depending on the facts.
7. A specific tax ruling can be requested pre- or post-transaction. Where, however, a determination of tax treatment arises as a result of the Taxes Office carrying out an audit or review of a return or set of accounts submitted, this will not normally be considered a tax ruling.

¹ Refer paragraph 22

An exception would be where the taxpayer is entitled to rely on the determination of tax treatment in future years in relation to one of the following areas:-

- (a) The pricing applied to transactions with connected parties
- (b) Downward adjustments to taxable profits which are not based on figures disclosed in the taxpayer's accounts
- (c) The existence or otherwise of a permanent establishment and/or the amount of profits attributable to a permanent establishment, where the audit establishes principles to be applied to the calculation of future profits and does not merely cover computational adjustments
- (d) To the extent not covered by (a) above, income flows between connected parties.

8. Tax rulings will only be granted within the limits of, and in accordance with, relevant Jersey law.

How to request a specific tax ruling

9. To request a specific tax ruling a formal application, in writing, must be made to the Comptroller of Taxes². The request must include:-

- (a) The full name and address of the taxpayer(s) requesting the specific tax ruling, together with the Jersey tax reference number(s) if available
- (b) Full information regarding all related parties to the transaction(s) covered by the specific tax ruling including: the name, address, jurisdiction of tax residence and taxpayer identification number ("TIN") of all the related parties to the transaction(s) covered by the specific tax ruling
- (c) To the extent that it is not provided under (b) above, the application must include, where applicable, the name, address, jurisdiction of tax residence and TIN of the immediate and ultimate parent companies of the taxpayer(s) requesting the specific tax ruling
- (d) A group structure which outlines how the taxpayer(s) seeking the specific tax ruling is connected with its ultimate parent company and with the related parties to the transaction(s) covered by the specific tax ruling
- (e) Where any related parties to the transaction(s) covered by the specific tax ruling are permanent establishments, the information outlined in (b) above should be provided in relation to both the permanent establishment and its head office

² Addressed for the attention of the Assistant Comptroller of Taxes.

- (f) A full explanation of the circumstances and facts relating to the specific tax ruling requested including copies of all relevant documents (e.g. documents demonstrating commerciality for the purposes of Art 90AE(2A))
 - (g) The reason(s) for undertaking the transaction(s) covered by the specific tax ruling
 - (h) The reason(s) that uncertainty exists when considered against tax law and existing practice and a view on how the law and published practice should be applied in the circumstances
 - (i) The period of time to which the specific tax ruling is intended to apply³
10. The Taxes Office will respond as quickly as possible to the request and ordinarily this will be within 20 working days. If the specific tax ruling is time critical and a shorter timeframe than 20 days is required please indicate this clearly within the request⁴.
11. Where difficult or complicated issues are involved it may take the Taxes Office longer to respond. If this is the case, the Taxes Office will acknowledge your request and tell you when you can expect a full response. Sometimes it may be necessary to ask for more information before a response can be sent. If so, the Taxes Office will suspend the 20 working day review period until the additional information is made available

Effect of specific tax rulings

12. A taxpayer will be entitled to rely on a specific tax ruling for a defined period of time, as set out in the tax ruling⁵.
13. A specific tax ruling is only binding in respect of the taxpayer(s) who requested the ruling. In particular where an agent assists a taxpayer in obtaining a specific tax ruling, other clients of that agent cannot place reliance on that specific tax ruling.
14. Where domestic law or published practice are subsequently amended in a manner that could impact on the continuing validity of a specific tax ruling, the obligation to clarify the continuing validity of the tax ruling rests with the taxpayer(s).
15. Tax rulings are based on the understanding of the law at the time the ruling was granted. Where this understanding is changed by the courts or following the receipt of legal advice, the Taxes Office must collect the correct amount of tax as required by the new understanding of the law. This means that there are circumstances in which the Taxes Office's primary duty to collect tax

³ A specific tax ruling will not normally be granted for a period exceeding 4 years of assessment.

⁴ The Taxes Office will seek to work to the shorter timeframe wherever possible but cannot guarantee that it will respond within less than 20 working days.

⁵ A specific tax ruling will not normally be granted for a period exceeding 4 years of assessment. The obligation to renew any expiring specific tax ruling falls on the taxpayer.

according to law may mean that it can no longer be bound by a specific tax ruling it has previously given.

16. Where this occurs the Taxes Office will honour a specific tax ruling for years of assessment up to the year prior to the year in which the understanding of the law was changed, providing the taxpayer can demonstrate that:-
 - they reasonably relied on the specific tax ruling
 - they made full disclosure of all the relevant facts
 - applying the new understanding would result in financial detriment to the taxpayer
17. Specific tax rulings may also be subject to revision, revocation or cancellation in circumstances where:-
 - The taxpayer(s) makes a misrepresentation or omission in applying for the tax ruling that calls into question its validity
 - If there is a relevant and significant change in (i) the facts or circumstances on which the ruling was based; or (ii) the validity of any of the assumptions made in reaching the ruling
18. Where relevant information is withheld or false information is provided by the taxpayer in the application for a tax ruling, not only will any tax ruling granted be void but any sanctions and penalties available under the law may be applied.

International exchange of specific tax rulings

19. Jersey is required to exchange details of specific tax rulings with other jurisdictions potentially affected by the tax ruling within three months of the ruling being granted.
20. Details of specific tax rulings will be exchanged with jurisdictions covered by a valid agreement providing for spontaneous exchange of tax information. These agreements may be bilateral (e.g. DTAs, TIEAs) or multilateral (e.g. Convention on Mutual Administrative Assistance in Tax Matters). Details of those jurisdictions with which a valid agreement is in place are provided on the international tax pages of www.gov.je.
21. All specific tax rulings given will be considered by a panel of at least two senior officers within the Taxes Office to determine whether they meet the criteria for exchange. Where the criteria are met, exchange shall take place immediately following that decision.
22. Rulings are subject to exchange if they are international in nature (i.e. where any of the parties to the transaction(s) are not resident in Jersey or where the immediate or ultimate parent company of the taxpayer(s) are not resident in Jersey) and where the ruling is of a nature which falls within the six categories outlined in the 2015 Final Report on Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance (Action 5) (see:

http://www.keepeek.com/Digital-Asset-Management/ocd/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en#.WQnD4NKGnes).

Exchange of Historical Tax Rulings

23. The Taxes Office is also required under its BEPS commitments to exchange details of specific tax rulings granted between 1 January 2012 and 31 March 2017 with other jurisdictions potentially affected by the ruling. These details must be exchanged by the end of 2017.
24. The Taxes Office will, therefore, be carrying out a review to ensure specific tax rulings granted within this time period are identified and exchanged where required. This work is expected to be completed by [31 August 2017] and taxpayers and/or their agents will be notified where exchange is being proposed and the other jurisdiction(s) involved. If, in exceptional circumstances, the taxpayer considers that the exchange being proposed is not appropriate, the taxpayer(s) should indicate this in writing within 30 days of the notification being issued.

Summary of the process for requesting a specific tax ruling

25. In summary, and in practical terms, where a taxpayer requires a specific tax ruling the following procedure should be followed:-
 - The taxpayer should ensure that it is a specific tax ruling that is being sought and not a confirmation of the application of tax law and practice where there is no genuine uncertainty regarding the appropriate tax treatment.
 - A written request for the ruling should be submitted to the Comptroller of Taxes (addressed for the attention of the Assistant Comptroller of Taxes and clearly marked as a “request for a specific tax ruling” in the body of the letter). The request must provide all of the information outlined in paragraph 9 above.
 - The request will be reviewed by the Taxes Office and they will ordinarily respond in writing to the request within 20 working days.
 - If any material information is omitted from the request the taxpayer will be notified as quickly as possible. The 20 working day review period will recommence from the date on which the material information is provided.
 - Where difficult or complicated issues are involved it may take the Taxes Office longer than 20 working days to respond. If this is the case, the Taxes Office will acknowledge your request and tell you when you can expect a full response.

- Sometimes it may be necessary to ask for more information before a response can be sent. If so, the Taxes Office will suspend the 20 working day review period until the additional information is made available
- Any specific tax ruling granted is prima facie binding on the Taxes Office. The specific tax ruling will include the timeframe for which it will apply.
- Where a specific tax ruling is granted it will be reviewed by a panel of at least two senior officers within the Taxes Office. This panel will determine whether details of the specific tax ruling are to be exchanged with another jurisdiction(s); where the panel determines that exchange is to take place, that exchange will take place immediately.

General tax rulings

26. General tax rulings apply to groups or types of taxpayers or may be given in relation to a defined set of circumstances or activities, rather than applying to a specific taxpayer(s).
27. They typically provide guidance on the position of the Taxes Office on such matters as interpretation of law and administrative practice and on their application to taxpayers generally, to a specified group of taxpayers or to specified activities.
28. All general tax rulings will be published on the Taxes Office website as soon as possible after being granted (and no later than 6 months after being granted) and can be applied by taxpayers to their relevant activities or transactions without the taxpayer needing to contact the Taxes Office or making an application for a specific ruling.
29. Current extra-statutory concessions and statements of practice are available on www.gov.je. These are kept under review and will be updated as appropriate.