

ETRS/SRTL Public Ruling 2001/10

Public Ruling: Auditing, Access and Information Collection

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.

Introduction

1. The East Timor taxation system is based on a self-assessment system. Taxpayers maintain their own financial records and make computations relevant to the determination of their tax liability. The results of their computations are included on tax returns that are delivered to a person specified by the East Timor Revenue Service along with any tax payable.

2. A key function of the East Timor Revenue Service (the "Revenue Service") is to assist taxpayers to comply with their obligations under the revenue laws. Most communications with taxpayers are designed to provide that assistance. Initially, the East Timor Revenue Service provides this assistance by means of Public Rulings such as this ruling and through various information publications. A second stage of assistance is provided after the Service has reviewed the tax returns it has received and on the basis of information in those returns has identified taxpayers who might require further assistance.

3. To ensure compliance with the taxation laws and to identify taxpayers who may require assistance to comply, the Revenue Service conducts audit activities. This involves collecting additional information from taxpayers to ensure returns have been completed correctly. In addition to regular audits, the Revenue Service collects information and conducts compliance audits where there is information available to the Revenue Service that leads it to believe there may not be compliance with the law.

4. This Public Ruling explains the procedures followed by the Revenue Service to help taxpayers comply with the law and the procedures it follows to collect information where it believes there has not been compliance with the law. The tax law provides the Commissioner of the East Timor Revenue Service (or an officer of the Revenue Service authorised by the Commissioner) with powers to collect information both from persons who may have a liability to pay

tax under the law and from persons who may have information relevant to the tax liability of other persons.

5. The following (second) part of this ruling explains the procedures that will be followed for normal audit activities and for normal information collection from taxpayers. The third part of the ruling explains the procedures that may be used by the Commissioner to secure information from persons other than the taxpayer where the information is needed to supplement information for the audit of particular persons or where the information is needed for the fair application of the tax laws generally. The fourth part of the ruling explains how the Commissioner may enter premises and collect information where other methods of collection have not succeeded or where the Commissioner believes there is a serious risk of non-collection of tax if the ordinary information processes are followed.

Initial collection of information from taxpayers

6. In most cases, an initial inquiry from the Commissioner will come as a letter seeking further information from a taxpayer. The inquiry will often arise out of something on the tax return delivered by the taxpayer or it may arise because the taxpayer has not delivered a return that the Commissioner expected to be delivered.

7. An inquiry letter of this sort will usually be delivered by a tax officer. This will happen in cases where the information that is available to the Commissioner indicates that a visit by an officer can help clarify an issue identified in the letter. In some cases, the letter may indicate that a further visit will be organised.

8. Visits of the type described in the previous paragraph will be made during ordinary working hours. However, the taxpayer will be invited to suggest another time if the visit time is not convenient.

Collection of information from other persons

9. To ensure fair application of the taxation law and to ensure compliance with the law, the Commissioner is entitled to seek information not only from taxpayers but also from any other person who might have information relevant to a person's tax liability. The information sought may relate to the tax liability of a specific person or to a class of persons. For example, the Commissioner may seek information from a bank about the accounts of a named person or may ask a business to provide details of all contractors who derive income from contracts with the person.

10. The system for collecting information from persons other than taxpayers is similar to that used to collect information from taxpayers. In most cases, information will be sought first by way of a letter delivered by a taxation officer. Any such visit would be scheduled for normal business hours and the person from whom information is sought would be invited to nominate an alternative time if the visit time is not convenient.

11. Sometimes, the Commissioner may wish to inspect books or records or information stored on a computer relevant to the tax liability of a named taxpayer rather than rely on a description of the information by the person holding the information. In this case, the Commissioner may request the person to make the materials available to the Commissioner or an authorised officer. A letter requesting a person to make the information available will suggest a time at which materials are to be made available to an authorised ETRS officer. That person will be invited to suggest an alternative time if the time proposed is not convenient.

12. Where the Commissioner requests information from a person that is relevant to the tax liability of a specific taxpayer and the information is not provided as requested, the Commissioner has power to require the person to be questioned under oath about the tax liability of the named taxpayer (Regulation 2000/18, section 64). If this happens, the Commissioner will send a letter to the person requiring that person to attend at a designated time and place for the purpose of being examined under oath before the Commissioner or any officer authorised by the Commissioner.

13. Failure to comply with either the request to be questioned under oath or the request to produce written or computer-stored information is an offence and a person found guilty of this offence may be liable upon conviction to a penalty of up to \$1,000 and imprisonment for a period up to three years (Regulation 2000/18, section 80).

Search and seizure powers

14. In almost all cases, collection of information by the Commissioner will be by way of letter, usually delivered by a taxation officer. In exceptional cases, the Commissioner may rely upon further information collecting powers. These cases may arise where, for example:

- a person fails to answer letters;
- refuses to provide requested information;
- fails to deliver tax returns as required despite requests by the Commissioner; or
- fails to pay taxes that are due.

15. In any of these circumstances, the Commissioner or an authorised agent may enter any premises and copy or seize records, books or other sources of information, if the Commissioner concludes this is necessary to collect information relevant to tax due (Regulation 2000/18, section 63). Tax due can be a tax liability of a person or tax collected by another person in consequences of a withholding tax obligation.

16. These entry and seizure powers relate to a liability to pay tax of *any* person and the Commissioner is not restricted to seeking information regarding the liability of any particular person.

17. Although the Commissioner is not required to provide notice prior to exercising his right to enter premises or to seize information, as indicated earlier, the Commissioner will normally provide prior notice and first request information by way of letter. These powers will only be exercised without prior notice in extreme cases where the Commissioner has reason to believe that there would be a serious risk to the collection of information if prior notice were given. This could arise where the Commissioner believes that, given prior notice, the taxpayer would act to destroy their records or at least to ensure that their records were no longer accessible e.g. where they would conveniently “disappear” or be taken out of the country.

18. Where the Commissioner has obtained access under section 63 of Regulation 2000/18 and the owner of any materials collected believes there were no reasonable grounds for concluding that access provided the Commissioner with materials relevant to an understatement of tax due, the owner may apply to a court for the return of the original and all copies of those materials.

19. Unlawfully obstructing or hindering the Commissioner or an ETRS officer authorised to enter a premises or seize information is an offence and a person found guilty of this offence may be liable upon conviction to a penalty of up to \$1,000 and imprisonment for a period up to three years (Regulation 2000/18, section 79).

20. The Commissioner is required by section 8.3 (g) of Regulation 2000/18 to include in the Annual Report of the East Timor Revenue Service information on the ETRS use of these search and seizure powers, including the number and nature of any complaints about the use of these powers, but not naming the persons involved.

Identification of ETRS taxation officers

21. Officers of the East Timor Revenue Service are required by Regulation 2000/18 section 7.2 to wear an official ETRS identification card while conducting business. When exercising either the information collection or search and seizure powers described in this

ruling, taxation officers will have with them their official identification card as well as evidence of their authorisation to exercise those powers. If a person is in any doubt that a visitor is a taxation officer, they should ask to see the taxation officer's identification card and evidence of their authorisation to exercise information collection or search and seizure powers.

Date of effect

22. This Public Ruling has effect from 31 March 2001.

Thomas Story
Commissioner of East Timor Revenue Service
31 March 2001

Legislative references:

information collection power	Reg 2000/18 s 64
penalties for failure to provide information to ETRS	Reg 2000/18 s 80
search and seizure power	Reg 2000/18 s 63
return of information collected	Reg 2000/18 s 63.7
penalties for impairing access to information or premises	Reg 2000/18 s 79
publishing details of use of search and seizure powers	Reg 2000/18 s 8.3(g)
officers of ETRS to wear official identification cards	Reg 2000/18 s 7.2