

## Operational instruction relating to earnings discrepancies and applications by Tier 1 (General) migrants

<b>Subject:</b> Applications from migrants whose most recent grant of LTR was Tier 1 (General)			
<b>Start Date</b>	Immediate	<b>Expiry Date</b>	Ongoing
<b>To</b>	All CWs & SCWs	<b>Date of Issue</b>	22 November 2016

**This instruction supersedes PSC OPI 83 2015 issued on 18/12/2015**

### **Summary:**

- This instruction applies to all migrants whose most recent grant of LTR was Tier 1 (General).
- All migrants whose most recent grant of LTR was Tier 1 (General) must be given and must complete a questionnaire.
- For **all refusals** where data from HMRC is referenced;
  - The migrant must be interviewed.
  - A witness statement from HMRC must be obtained prior to the decision being made. Where the decision includes data from the bulk data-match from HMRC (on the available spreadsheet), you must ask HMRC to confirm this in the witness statements.

### **Questionnaire**

#### **[ATTACHED DOCUMENT PRESENTED AT APPENDIX A]**

The questionnaire above has been produced to assist caseworkers in the consideration of **all applications** from migrants whose most recent grant of LTR was as a Tier 1 (General) Migrant and where the applicant has claimed points for self-employment on a previous application. This would include applications for Tier 1 (General) ILR, Long Residency, Tier 2 (General), FLR(M), FLR(FP) etc.

This questionnaire should reduce the time spent interviewing an applicant as it covers a lot of the 'fact-finding' portion of the interview and should provide a sufficient amount of information from the applicant to inform an initial credibility assessment, in particular where there are discrepancies with HMRC data.

The questionnaire should be issued to the customer at the earliest opportunity, ideally by an Assistant Caseworker at the validation or case registration stage once it has been identified that an applicant's most recent grant of leave to remain was as a Tier 1 (General) Migrant.

Once the caseworker has finished their initial consideration of the application they should have already received the questionnaire back, if not it should be requested from the applicant.

### **Consideration**

When considering any application from Tier 1 (General) Migrants you should compare the amount of earnings claimed on the previous application(s) and compare this figure with the HMRC spreadsheet.

### **Please note:**

- **Previously claimed earnings may fall across two tax years**
- **The HMRC spreadsheet contains data from January 2015, the applicant may have submitted an amended tax return to HMRC after this date**

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You should also review the answers given on the questionnaire (in particular the responses to Questions 9 & 10).

Where you identify a discrepancy between the amount of income that an applicant has claimed to have earned on a previous application for LTR and the amount of income that an applicant has declared to HMRC you must establish if there is a credible explanation for this discrepancy.

Discrepancies with HMRC data are just one aspect of the genuineness assessment when dealing with applications from Tier 1 (General) Migrants. It is important to consider all other potential indicators that earnings may not be genuine, such as earnings which appear to go straight back out of a bank account, issues with an applicant's educational or business experience, missing contact details on invoices or negative responses to invoice verification, etc.

### **Evidence from HMRC**

In all cases where a refusal is based on a discrepancy between a claim made to the Home Office on a Tier 1 (General) application and a declaration made to HMRC – you must obtain a Witness Statement from HMRC before a final decision is made on the application.

- Where the decision includes consideration of data on the spreadsheet provided as part of the bulk data-match from HMRC, you must ask HMRC for confirmation of this data.
- You must request confirmation of the applicant's current HMRC records and confirmation of whether any retrospective declarations have been made.

### **Interview (HMRC discrepancies)**

The applicant must complete the questionnaire at the time of applicant and where possible, must be interviewed on the same day. Where it is not possible to conduct the interview on the same day, the applicant should be invited back at a later date.

You must use the attached template when interview and the interview must be transcribed verbatim. You must also ensure the applicant signs the interview record and is given a copy on the day of the interview.

### **[ATTACHED DOCUMENT PRESENTED AT APPENDIX B]**

The attached document includes useful tips when conducting an interview but please note that it is not an exhaustive list of questions.

### **[ATTACHED DOCUMENT PRESENTED AT APPENDIX C]**

The responses on the questionnaire combined with the answers given during the interview should help build a clearer picture of the applicant's credibility and assist in drafting a robust and defensible refusal letter if you are not satisfied with the applicant's account.

Each case has to be considered on its own merits and the overall credibility of the applicant has to be taken into account, however where no satisfactory explanation is given regarding a discrepancy you should be looking to refuse the application.

### **Appendix A - Attributes & the application of 'genuineness' Rules**

For Tier 1 (General) ILR when assessing whether the applicant qualifies for the points they have claimed for previous earnings on the current application you should consider Paragraphs 19(i) and (j) of Appendix A to fully assess if these earnings were from genuine employment (including all forms of self-employment).

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Where appropriate, these paragraphs can be used to 'discount' any earnings on the current application when calculating the points to be awarded were you are not satisfied that the earnings are from genuine employment (including all forms of self-employment).

You must also be aware that points for UK Experience are based on the amount of previous earnings an applicant demonstrates. Therefore, if previous earnings are not accepted as genuine and are 'discounted', it will often be appropriate to award 0 points for UK Experience.

If awarded 0 or less points for previous earnings and UK Experience leads to the applicant having insufficient points for Attributes (a total of less than 75 or 80 as required) to qualify for ILR then the application should be refused under Paragraph 245CD(e) or (g).

### Please note

- **The genuineness paragraphs 19(i) and (j) of Appendix A can only be used for Tier 1 (General) ILR applications and not any other applications such as Long Residence or Tier 2 (General).**
- **These Rules should not be used to assess if you consider the earnings claimed on any previous Tier 1 (G) LTR application were genuine – these Rules are only relevant to the points claimed on the current Tier 1 (G) ILR application.**

Paragraph 19(j) of Appendix A lists several factors which should be taken into account when assessing the genuineness of an applicant's earnings including.

Paragraph 19(j)(iv) states:

**"verification of previous earnings claims with declarations made in respect of the applicant to other Government Departments, including declarations made in respect of earnings claimed by the applicant in previous applications"**

This paragraph should be referenced in refusals where there is a discrepancy between the earnings claimed to UKVI and those recorded by HMRC.

In addition to Paragraph 19(j)(iv), you should still consider the other paragraphs within 19(j) even if there is no discrepancy with the data from HMRC.

For example – 19(j)(ii) states:

**"whether the money appears to have been earned through genuine employment, rather than being borrowed, gifted, or otherwise shown in the applicant's financial transactions or records without being earned"**

If you have an application where the claimed earnings are regularly transferred out of the bank account shortly after being received, the applicant should be asked to explain this. If the responses are not credible then the paragraph above can be applied to discount their self-employed earnings.

Similarly, Paragraph 19(j)(v) states:

**"the applicant's previous educational and business experience (or lack thereof) in relation to the claimed business activity"**

This can be applied in cases where the applicant has not provided satisfactory evidence that they are sufficiently qualified to undertake the employment claimed on their current application.

Where there are any additional concerns (outside of a discrepancy between the amount of income declared to HMRC) it is also be advisable to interview the applicant to obtain a response/explanation from the applicant.

### **Decision (General Grounds for Refusal)**

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**Please note that where reference is made to Para 322(5), where the application is being considered under Appendix FM Para S-LTR.1.6. will apply in the same way.**

In addition to the paragraphs above you should consider a refusal under General Grounds if you have sufficient doubts over the genuineness of an applicant's previous earnings.

For non-Tier 1 (General) ILR applications (such as Long Residency or Tier 2 (General)) you would need to refuse under General Grounds if the evidence is sufficient to prove some level of dishonesty.

Paragraph 322(5) states:

**Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused**

**(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;**

This paragraph can be applied in different circumstances, but for cases where the applicant has clearly been dishonest with either UKVI or HMRC it should be applied based on "Deception and dishonesty in dealings with Her Majesty's Government".

The following link gives more detail on this:

**[REDACTED:** Internal system link to guidance, published externally on page 99 of this document: <https://www.gov.uk/government/publications/general-grounds-for-refusal-about-this-guidance> (reference to version 29.0, page number correct at time of publication)]

### **Refusing under Paragraph 322(5)**

When refusing an application under Paragraph 322(5) you must give specific reasons to refuse under this paragraph and not include vague generalisations about a person's character, conduct or associations.

This means that when writing your Reasons for Refusal Letter (RfRL) you must provide sufficient detail to explain what behaviour/character/conduct the applicant's has demonstrated that makes a refusal under 322(5) appropriate.

1. You must set out in as much detail as possible what the applicant claimed as previous earnings on any previous Tier 1 (General) LTR applications (not only the most recent Tier 1 (General) LTR application) where you have identified a discrepancy. You should include as much of the following information as possible:
  - a. Amount of turnover/profit/dividends/salary claimed as part of an application
  - b. Amount of turnover/profit/dividends/salary claimed as part of an application declared to HMRC in the relevant tax years.
  - c. Information gained from the questionnaire/interview including accountant's details and documents submitted.
  - d. Any other genuineness concerns in addition to/in place of there being a discrepancy.
2. You must clearly highlight what the discrepancy is. It is important to assess all HMRC data and not solely refer to amounts specified as 'Income from all sources'.
3. Where a discrepancy has been identified you must use the answers given by the applicant on the credibility questionnaire/interview when making a decision on the application. You must refer to the questionnaire/interview in your RfRL and on the CCT. In the event you do not consider the applicant to have provided a credible explanation you must explain why this is the case in the RfRL.
4. It has been identified that it is common for an applicant to claim that the reason for the discrepancy was due to an error made by their accountant (this may be stated by the applicant on the questionnaire or in an interview). In cases where this is not accepted as a credible explanation, the reasons for this must be outlined (see example wording below).

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In cases where there is a clear cut discrepancy, or if the applicant's account of a discrepancy is not credible, you should be stating in the refusal letter that the applicant has either been dishonest with UKVI by falsely inflating their earnings for the purpose of obtaining leave to remain, or they have been dishonest with HMRC by falsely representing their earnings to avoid their tax liability.

### **Refusing under Paragraph 322(2)**

If following on from an interview you have sufficient evidence to prove that deception was used on a previous application then you can refuse under Paragraph 322(2):

(2) the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave.

### **Decision letter & example refusal wording**

It is important that the decision letter must outline the whole consideration of the application and refer to all facts that have contributed to the overall decision including the questionnaire, interview, new declarations, applicant's explanations for discrepancies etc.

The attached document contains example refusal wording. These paragraphs are for reference and are intended to help in drafting a robust decision letter. Each case should be considered on its own merits and the decision letter should be tailored to the applicant's personal circumstances.

### **[ATTACHED DOCUMENT PRESENTED AT APPENDIX D]**

#### **Official sensitive: start of section**

[The information in this section has been redacted as it is restricted for internal Home Office use.]

#### **Official sensitive: end of section**

If you have any queries regarding potentially abusive Tier 1 (General) Migrants please speak to your SCW in the first instance.

<b>Author</b>	<b>[NAME REDACTED]</b>	<b>Approved by Grade 7</b>	<b>[NAME REDACTED]</b>
<b>Grade</b>	HEO/SEO	<b>Date of Approval</b>	01 November 2016

### **Premium Service Operational Instruction**

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**Appendix A: Self-employed earnings questionnaire**

Thank you for submitting an application at Croydon Premium Service Centre. As part of your application consideration process, please complete the following questions.

Full name:

.....

Date of Birth:

.....

Nationality:

.....

<p>1. During your residence in the United Kingdom, have you worked in a self-employed capacity or worked as the Director or share-holder of a Limited company?</p>	<p>Yes <input type="checkbox"/> continue to Question 2</p> <p>No <input type="checkbox"/> please sign and return this questionnaire to the desk officer</p>
<p>2. In support of any previous application for leave to remain in the United Kingdom as a Tier 1 (General) Migrant did you claim points for previous earnings in a self-employed capacity (including as the Director or share-holder of a Limited company)?</p>	<p>Yes <input type="checkbox"/> continue to Question 3</p> <p>No <input type="checkbox"/> please sign and return this questionnaire to the desk officer</p>
<p>3. Please specify the type/nature/field of business you engaged in to generate income from self-employment.</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>4. In support of your previous application(s) for leave to remain as a Tier 1 (General) Migrant, please confirm the type of documents that were submitted to evidence previous earnings.</p>	<p>Invoices <input type="checkbox"/></p> <p>Bank statements <input type="checkbox"/></p> <p>Payslips <input type="checkbox"/></p> <p>Business accounts produced by an accountant <input type="checkbox"/></p> <p>Dividend vouchers <input type="checkbox"/></p> <p>Other (please specify)</p> <p>.....</p> <p>.....</p> <p>.....</p>

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<p>5. For the financial years in which you have been registered as Self-Employed in the UK (if applicable), please confirm the financial years for which a Self-Assessment tax return was submitted to HMRC by you or on your behalf.</p> <p>(Note - This does not include a Company Tax return for a Limited Company)</p>	<p>2009-10 <input type="checkbox"/></p> <p>2010-11 <input type="checkbox"/></p> <p>2011-12 <input type="checkbox"/></p> <p>2012-13 <input type="checkbox"/></p> <p>2013-14 <input type="checkbox"/></p> <p>2014-15 <input type="checkbox"/></p> <p>2015-16 <input type="checkbox"/></p>
<p>6. Did you use an accountant to assist in submitting your Self Assessment tax return(s) to HMRC?</p>	<p>Yes <input type="checkbox"/> continue to Question 9</p> <p>No <input type="checkbox"/> continue to Question 10</p>
<p>7. Please confirm the details of any accountants which you have used the services of either to produce documents for the Home Office and/or for Her Majesty's Revenue and Customs (HMRC)</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>8. Please confirm the type of documents that were used in order for yourself or your accountant to prepare your Self Assessment tax returns.</p>	<p>Invoices <input type="checkbox"/></p> <p>Bank statements <input type="checkbox"/></p> <p>Payslips <input type="checkbox"/></p> <p>Business accounts produced by an accountant <input type="checkbox"/></p> <p>Dividend vouchers <input type="checkbox"/></p> <p>Other (please specify)</p> <p>.....</p> <p>.....</p>
<p>9. Are you satisfied that each of the Self Assessment tax returns that have been submitted to HMRC accurately reflect your Self-Employed income for the relevant period?</p>	<p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/> If not, why not and what further action have you taken to address it?</p> <p>.....</p> <p>.....</p> <p>.....</p>

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10. Have you ever amended a tax return that has previously been submitted to HMRC? If so, please provide details of which tax return(s) this relates to and your reasons for doing so.	..... ..... ..... ..... ..... ..... .....
11. Any other comments	..... ..... ..... ..... .....

I am aware that it is an offence under the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002, to make to a person acting in execution of any of those Acts a statement or representation which I know to be false or do not believe to be true, or to obtain or to seek to obtain leave to remain in the United Kingdom by means which include deception.

Signed:  
.....  
Print name:  
.....  
Date:  
.....



## Appendix B: Interview template

 Home Office	<h1 style="margin: 0;">Application for Further Leave (Interview Record)</h1>
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### A. INTRODUCTORY INFORMATION

(To be completed prior to the interview start)

	HO Reference	
	Name	
	Other Names	
	Nationality	
	Date of Birth	
	Current Address	
	Interview Location	
	Interview Date &	
	Interviewing Officer	

To be completed once interview has commenced.

<b>Introduction</b> [Introduce yourself and the interpreter]	Yes <input type="checkbox"/>
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	Are you happy to be interviewed in English? Or Language of Interview	
	Dialect of Interview (where relevant)	
	Home Office Interpreter (if not in English)	
	Actual Start Time (If start is delayed add reason)	

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	Confirm Identity of Interviewee	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Do not proceed if the applicant is not the correct interviewee
	Name of Representative/Firm			
	Interpreter (where relevant)			

#### EXPLANATION OF PROCEDURES

**FLR application form/other information has been submitted –explain the following:**

I have read all the information in the application form/other written evidence you sent us. There is no need to repeat this information today unless I ask you questions related to the form. This interview gives me the opportunity to ask you for some further details on the information you have already provided. You will also have the opportunity to add to, amend or clarify the information which you provided.

**Statement of confidentiality – to be read in all interviews**

The information you give us will be treated in confidence. If your application for further leave to remain in the United Kingdom is unsuccessful and you are removed it may be necessary for us to provide information about your identity to the authorities in your own country in order to obtain travel documentation.

**Verbatim Account (To be read at all interviews)**

I have to record everything that is said during this interview. I will be writing down the questions that I ask and the responses that you give in order to make an accurate/verbatim record of the interview. I may ask you to slow down or repeat what you have said. If you do not understand any of the questions or anything else that is being asked of you, you must tell me immediately and the question will be clarified or rephrased. After the interview you will be given a copy of the interview record.

Do you understand this?	
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**Applicant's Declaration**

I have been informed that the purpose of this interview was to obtain further details on the information which I provided in my application for further leave to remain in the UK. I have understood everything explained to me so far.

Signature of Applicant:	
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	Have you any further comments about your application or this interview?

	Are you still feeling fit and well? (If the answer is no ask additional clarification questions below)	
	Have you understood all of the questions put to you today? (If the answer is no ask additional clarification questions below)	
	Have you understood the Home Office Interpreter/everything that I have said? (Delete as applicable) (If the answer is no ask additional clarification questions below)	
(If the answer is no to any of the above questions ask for further information- continue on a separate sheet if necessary)		

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**D. FINAL PAGE**

	Has your representative or your interpreter any comments about the interview? (where appropriate)

<b>Interviewing Officer's comments (if any – continue on a separate sheet if necessary):</b>
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<b>Interviewing Officer's declaration:</b> I confirm that I have recorded verbatim the questions that I have asked the applicant and to the best of my ability recorded verbatim his/her answers as interpreted by the HO interpreter (where applicable) and that I have recorded the pertinent details of events/incidents which occurred during the course of the interview, including documents presented by the applicant for consideration.  <p style="text-align: right;">Signed: _____</p>
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One copy of the interview record has been provided.	Yes <input type="checkbox"/>
Interview concluded at:	

## Appendix C: Interview tips

The example questions in this document are for reference only and are intended to help in drafting a robust decision letter.

Each case should be considered on its own merits and the questions asked in the interview should be tailored to the applicant's personal circumstances.

1. During an interview you should ask the applicant to confirm the amount of self-employed earnings claimed on their previous application(s). This information should be available from the previous GCID casenotes without necessarily needing to request the HO file or CRS bundle.

For example:

*“On your last application for leave to remain you claimed points for self-employed earnings of £30,000, is this correct?”*

If the applicant disputes this figure you may need to call the HO file or CRS bundle to clarify.

2. If the applicant confirms this figure you should then ask (with regards to Question 9) how the applicant was satisfied that the tax returns accurately reflected their income (if they have answered 'Yes' to this question).

For example:

*“You declared on the questionnaire that you were satisfied that the Self Assessment tax returns submitted to HMRC accurately reflected your Self-Employed income. Can you tell me exactly how you were satisfied of this?”*

Where an applicant has indicated on the questionnaire that they had issues or concerns with their tax affairs or accountant, and there are discrepancies between the amount claimed on a previous application and the amount recorded as declared to HMRC on the spreadsheet, you should be asking the applicant to provide a satisfactory explanation regarding the discrepancy.

*“Please confirm the amount of profit/turnover/dividends etc that you declared to HMRC for the financial year 20xx/20xx”*

Before requesting/receiving a witness statement, you should ask the applicant to confirm the amount they declared to HMRC for the relevant year based on the evidence available on the spreadsheet from HMRC – you should ask the applicant to state the amounts.

3. Where the applicant indicates that the reason for the discrepancy and an apparently incorrect tax return being submitted was the fault of their accountant you should seek to find out how this discrepancy was identified.

For example:

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*“When your original tax returns were submitted to HMRC for the financial years 20xx-xx and 20xx-xx, how were you satisfied that your accountant had accurately calculated your turnover/profit/dividends?”*

*“You have now submitted a retrospective declaration to HMRC to declare that your earnings for the financial years 20xx-xx and 20xx-xx were different. You have now declared a turnover of £xxxx and a profit of £xxxx / dividends of £xxxx.  
How did you identify that the original submission to HMRC was not correct?  
How are you satisfied that this declaration is correct?”*

*“You have confirmed on the questionnaire that you completed at PSC xxxx that you submitted invoices/bank statements/dividend vouchers to your accountant. In order for your accountant to submit an amended, retrospective declaration to HMRC did you provide them with any different documentation than the documents provided in the first instance?”*

*“Have you taken any action against the accountant that you claim submitted your initial declaration to HMRC inaccurately?”*

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### Appendix D: Example refusal wording

In your application for leave to remain as a Tier 1 (General) Migrant that was submitted on 01 July 2012 you claimed points for the following earnings:

Source	Total amount claimed	Period claimed	Financial years
Employment with Tesco	£15,000.00	18 June 2011 to 17 June 2012	2011-12 2012-13
Self-employment as a sole trader	Turnover of £40,000 (if known)  Profit of £30,000	18 June 2011 to 17 June 2012	2011-12 2012-13
Dividends	£xx,xxx.xx	DD MONTH YYYY to DD MONTH YYYY	20xx-xx  20xx-xx

In support of this application for leave to remain you have confirmed **on the questionnaire that you completed on 18 June 2016 as part of your application for indefinite leave to remain/in an interview on 18 June 2016** that you submitted the following documents to evidence your previous earnings:

- Invoices
- Bank statements (personal and business)
- Payslips
- Dividend vouchers
- Business accounts produced by [Details of the accountant that produced the business accounts].

HMRC data from January 2015 confirms that you declared to HMRC the following amounts:

Financial year	Turnover from self-employment	Profit from self-employment.	Dividends	PAYE
2011-12	£10,000	£2,000	n/a	£15,000
2012-13	£10,000	£5,000	n/a	£14,000

As part of your application consideration process you completed a questionnaire. You have confirmed that you used the services of **ACCOUNTANT** in producing both the documents that were submitted in support of your application for leave to remain as a Tier 1 (General) Migrant that was submitted on **DD MONTH YYYY** to submit your tax returns for the financial years **20xx-xx**. It is noted that **ACCOUNTANT** is/was a member of a recognised supervisory body, namely **The Institute of Chartered Accountants in England and Wales (ICAEW)/The Institute of Chartered Accountants in Scotland (ICAS)/The Institute of Chartered Accountants in Ireland (ICAI)/The Association of Chartered Certified Accountants (ACCA)/The Chartered Institute of Public Finance and Accountancy (CIPFA)/The Institute of Financial Accountants (IFA)/The Chartered Institute of**



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Management Accountants (CIMA)/The Association of International Accountants (AIA)/The Association of Accounting Technicians (AAT).

You have indicated on your questionnaire that you submitted the following documents to your accountant in order to prepare your Self Assessment tax returns to HMRC:

- Invoices
- Bank statements (personal and business)
- Payslips
- Dividend vouchers

You have also confirmed that you submitted the same types of documents in support of your application for leave to remain.

As detailed above, it is noted that you claimed a profit of £30,000.00 on your application for leave to remain that was submitted on 01 July 2012 during the period 18 June 2011 to 17 June 2012 (financial years 2011-12 and 2012-13). However, you declared a profit of £2,000 for the financial year 2011-12 and a profit of £5,000 for the financial year 2012-13.

In answer to Question 9 on the questionnaire which you completed which asks '*Are you satisfied that each of the Self Assessment tax returns that have been submitted to HMRC accurately reflect your Self-Employed income for the relevant period?*' you answered 'No'. You also stated that '*My accountant made an error and this has now been rectified.*'

It is noted that you have provided a SA302 dated DD MONTH YYYY which indicates that you have retrospectively declared self-employed earnings to HMRC. You have now declared a turnover of £xx,xxx and a profit of £xx,xxx for the financial year 20xx-xx and a turnover of £xx,xxx and a profit of £xx,xxx for the financial year 20xx-xx. The fact that you have retrospectively declared these claimed earnings to HMRC is not sufficient to satisfy the Secretary of State that you have not previously been deceitful or dishonest in your dealings with HMRC and/or UK Visas & Immigration.

You were asked at interview 'xxxxx?'. You answered 'xxxxx'

You were asked at interview 'xxxxx?'. You answered 'xxxxx'

[The following wording is applicable to Tier 1 (G) ILR applications only.]

With regard to the income that you claim to have earned from self-employment on your application for indefinite leave to remain, Paragraph 19(i) of Appendix A of the Immigration Rules states:

*The Secretary of State must be satisfied that the earnings are from genuine employment. If the Secretary of State is not satisfied, points for those earnings will not be awarded.*

On your application for indefinite leave to remain you claim to have received self-employed income of £25,000 and income from employment of £15,000 between 01 June 2015 and 31 May 2016, however as stated above the income you have previously declared to UKVI has not been the same as the income you have declared to HMRC. In light of concerns over the genuineness of previous self-employment income declared to UKVI, the Secretary of State does not accept that the self-employed earnings of £25,000 with this application are from

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genuine employment and you have therefore been awarded 0 points for your previous earnings.

Your application for indefinite leave to remain in the United Kingdom as a Tier 1 (General) Migrant has therefore been refused under Paragraph 245CD as the requirements of Paragraph 245CD(e)/(g) have not been met, with reference to Paragraphs 19(i) and (j) of Appendix A of the Immigration Rules.

Paragraph 322(5) of the Immigration Rules (<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal>) states:

*Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused*

*(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;*

It is acknowledged that Paragraph 322(5) of the Immigration Rules is not a mandatory refusal, however the evidence submitted does not satisfactorily demonstrate that the failure to declare to HMRC at the time any of the self-employed earnings declared on your previous application for leave to remain in the United Kingdom as a Tier 1 (General) Migrant was a genuine error. It is noted that there would have been a clear benefit to yourself either by failing to declare your full earnings to HMRC with respect to reducing your tax liability or by falsely representing your earnings to UK Visas & Immigration to enable you to meet the points required to obtain leave to remain in the United Kingdom as a Tier 1 (General) Migrant.

The Secretary of State considers that it would be undesirable for you to remain in the United Kingdom based on the fact that you have been deceitful or dishonest in your dealings with HMRC and/or UK Visas & Immigration by failing to declare your claimed self-employed earnings to HMRC at the time and/or by falsely representing your self-employed income to obtain leave to remain in the United Kingdom. Your application for indefinite leave to remain in the United Kingdom as a Tier 1 (General) Migrant is therefore refused under Paragraph 322(5) of the Immigration Rules.

It is noted that **after being asked to provide an explanation of the discrepancies/prior to submitting your application for indefinite leave to remain that** you have since declared these claimed self-employed earnings to HMRC. The fact that you have retrospectively declared these claimed earnings to HMRC is not sufficient to satisfy the Secretary of State that you have not previously been deceitful or dishonest in your dealings with HMRC and/or UK Visas & Immigration.

It is not considered a credible explanation that a registered accountant would submit a self-assessment tax return for the period **06 April 2011 to 05 April 2012** declaring earnings which are considerably lower than the actual amount you claimed on your previous application. It was your responsibility to ensure that your tax return was submitted on time with the correct information and by failing to do so it is considered that you have been deceitful or dishonest in your dealings with HMRC.

### Appendix E: Extracts from Long Residence guidance

The following extracts are taken from guidance titled “Consideration of SET(LR)<sup>1</sup> applications - with previous leave under various Tier 1 categories” Version 1.0, dated 12 April 2017. The guidance covers Long Residence applications made by individuals in a variety of Tier 1 categories, including Tier 1 dependants, and under a variety of situations. The relevant extracts specifically relating to applications by Tier 1 (General) migrants are set out below.

The following background section appears at the start of the document:

#### “Backgrounds to Concerns

Following an exercise in conjunction with HMRC in late 2015, it was found that several thousand **Tier 1 – General Migrants** had declared less income to HMRC for tax purposes, than to UKV&I in-order to obtain the leave to remain. UKV&I provided a list of all the Tier 1 – General Migrants’ names to HMRC and they provided evidence back re-the applicants’ income from PAYE, Self-employment and Dividends in the spreadsheet which can be found at: **[LINK REDACTED]** Please Note. The evidence in this spreadsheet **cannot** be referred to in any refusals, as it now out of date, with some applicants have submitted revised figures.

A lot of the Tier 1 – General Migrants had initial grants of leave for 2 years which were issued in 2011 and have already been granted an extension of Tier 1 leave to remain in 2013 for a further three years, based on the evidence of Accounts and an Accountant’s letter regarding their claimed self-employment. It was found that a lot hadn’t declared any self-employment or dividends to HMRC, or had substantially under-declared. Claiming to have had a total income of over £50,000 in most cases, in order to obtain 30 points under the Tier 1 General migrant requirements, in order to achieve the required total points of 80, as explained in Annex A of this document.

This issue has only really come to light in the last year and has therefore affected Tier 1 indefinite leave to remain and Long Residency indefinite leave to remain SET(LR) applications. The Tier 1 General Migrant leave to remain route has been closed down. A number of applicants have tried to make Tier 1 General I.L.R.<sup>2</sup> applications, but have varied to SET(LR) when they have been asked to provide evidence or attend an interview.

In order to save time having to request HMRC referrals, a new Tax questionnaire has been developed along with appropriate covering letter(s) for sending to the I.L.R. applicant in-order to obtain the necessary evidence that their Tier 1 leave was obtained correctly. These should be sent out in appropriate cases (as explained in this document) and the applicant given 28 days to complete and provide any evidence. This is the same questionnaire that Tier 1 will be issuing for their I.L.R. applications.”

The following guidance in the document is similar for the sections of the guidance covering similar scenarios relating to Tier 1 (General) migrants with earnings discrepancies. To avoid duplication, it is presented here as a core text, in a table, rather than as individual scenarios. The first column can be read as the continuous text of the guidance. The

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<sup>1</sup> The SET(LR) form for applications for SETtlement on the basis of Long Residence

<sup>2</sup> I.L.R. = Indefinite Leave to Remain

## Tier 1 (General) operational instruction

second column of the table indicates which sections are core text covered in the guidance for all scenarios, and which appear for particular individual scenarios only. Abbreviations and paragraphs referred to in the Immigration Rules are explained or quoted in footnotes.

Extract from guidance	Core text or scenario(s) text applies to
<p>“Check the notes on CID<sup>3</sup> and see why the applicant withdrew/cancelled their appointment. Check to see if the applicant was asked to provide more information and/or was going to be interviewed (and why they withdrew, e.g. travel – did this happen).”</p>	<ul style="list-style-type: none"> <li>- Tier 1 application withdrawn (or cancelled) at PSC<sup>4</sup></li> <li>now applying for (maybe varying to) SET(LR)</li> <li>- SET(LR) application withdrawn at PSC now applying by post</li> </ul>
<p>“Check the Tier 1 application details on CID. If the applications was granted after an initial refusal and subsequently granted following an Appeal or Re-con, then it is Ok to consider as per normal, unless later subsequent flags.</p> <p><b>Otherwise...</b>”</p>	<ul style="list-style-type: none"> <li>- One grant of leave, now under leave in another category</li> </ul>
<p>“...Check the applicant’s details via the CID ID relating to the Tier 1 application in the ‘old’ HMRC spreadsheet - <b>[LINK REDACTED]</b> which will give you some idea of the level of discrepancy between the amount declared to HMRC for Tax purposes and to UKV&amp;I in order to obtain the Tier 1 leave to remain (see the notes on the Tier 1 case on CID).”</p>	Core text
<p>“If there is no discrepancy or it is minimal, i.e. would not have affected the points awarded for Tier 1 leave (see the Tier 1 rules archive in Note 1 below re-points for claimed salary) then the case can be considered as per normal.”</p>	<ul style="list-style-type: none"> <li>- Two grants of leave, now applying directly for SET(LR)</li> </ul>
<p>“If the applicant is either not in the ‘old’ HMRC spreadsheet or has no specific figures on sheet 2 of the spreadsheet then we will need to follow the process for a discrepancy below.”</p>	<ul style="list-style-type: none"> <li>- Two grants of leave, now applying directly for SET(LR)</li> <li>- Tier 1 application withdrawn (or cancelled) at PSC</li> <li>now applying for (maybe varying to) SET(LR)</li> <li>- SET(LR) application withdrawn at PSC now applying by post</li> </ul>
<p>“If a discrepancy in the £1000’s of pounds is highlighted that would have affected the number of points awarded to the applicant, then...”</p>	<ul style="list-style-type: none"> <li>- Two grants of leave, now applying directly for SET(LR)</li> </ul>
<p>“...As we cannot use the information in the ‘old’ HMRC spreadsheet for any refusals, you will need to send out the <b>Tax Questionnaire ([LINK REDACTED – to questionnaire shown at Appendix A of this document])</b> under cover of the <b>10 years long residency covering letter</b></p>	<p>Core text</p> <p>Core text</p>

<sup>3</sup> CID = Case Information Database, the main system used by caseworkers for applications made in the UK

<sup>4</sup> PSC = Premium Service Centre, where in-person applications are made

## Tier 1 (General) operational instruction

Extract from guidance	Core text or scenario(s) text applies to
<p>(<b>[LINK REDACTED]</b>) and give the applicant 28 days to return the information.</p> <p>If the applicant does not provide the information, the application must still be considered on the basis of the original information provided. If it falls for refusal, we can also refuse under 322(9) re-GGfR<sup>5</sup> and 276B(iii)<sup>6</sup> re-SET(LR).</p> <p>If they provide some information, which confirms they were deceitful/less than honest with their declarations to obtain the Tier 1 leave, then we can refuse under paragraphs 276B(ii)<sup>7</sup> &amp; (iii) and 322(5) of GGfR re-their character and conduct, including where they may have amended their declaration to HMRC at a later date* (see example wording in: <b>[LINK REDACTED – to similar guidance to that shown at Appendix D of this document]</b>) Note. Can include 322(2) where there is clear documentary evidence of deceit/making of false representations to UKV&amp;I, otherwise if not clear whether the deception was against us or HMRC then refuse under 322(5).”</p>	
<p>“If refusing again under 322(2), then can also include 322(1A) re-deception with regard to the current application, as the applicant is aware of the claimed deception from the previous refusal”</p>	<p>- SET(LR) previously refused under GGfR, either 322(2) or 322(5)</p>
<p>“If the evidence provided is not conclusive or it could possibly be a grant, if they had no details in the 'old' HMRC spreadsheet, then please make a HMRC referral for a Witness Statement, to either confirm their evidence or for use in any refusal. Ensure that when you request the HMRC information, that you ask for the last six years information, plus any details re-accountants, amendments to figures submitted and any penalties as a result (<b>[LINK REDACTED]</b>). B/F the case for 28 days and upon receipt of the HMRC information, completed the consideration of the application. If discrepancies are highlighted then we can refuse under paragraphs 276B(ii) &amp; (iii) and 322(5) of GGfR re-their character and conduct, including where they may have amended their declaration to HMRC at a later date* (see example wording in: <b>[LINK REDACTED – to similar guidance to that shown at Appendix D of this document]</b>)</p>	<p>Core text</p>

<sup>5</sup> General Grounds for Refusal, set out in [Part 9 of the Immigration Rules](#). This section of the rules includes paragraph 322 and all its sub-paragraphs referred to in this guidance.

<sup>6</sup> 276B(iii): “the applicant [for ILR on the basis of Long Residence] does not fall for refusal under the general grounds for refusal.”

<sup>7</sup> 276B(ii): “having regard to the public interest there are no reasons why it would be undesirable for [the applicant] to be given indefinite leave to remain on the ground of long residence, taking into account his:

- (a) age; and
- (b) strength of connections in the United Kingdom; and
- (c) personal history, including character, conduct, associations and employment record; and
- (d) domestic circumstances; and
- (e) compassionate circumstances; and
- (f) any representations received on the person’s behalf;”

## Tier 1 (General) operational instruction

Extract from guidance	Core text or scenario(s) text applies to
<p><b>Note.</b> When referring to the points claimed on the basis of their income you must refer to the Tier 1 General immigration rules that were appropriate at the time of the Tier 1 application – these can be found in the PBS archive area at: <b>[LINK REDACTED]</b> Where the Immigration Instructions for between May11 and 9May14 can be found.”</p> <p><b>Official sensitive: start of section</b></p> <p>[The information in this section has been redacted as it is restricted for internal Home Office use.]</p> <p><b>Official sensitive: end of section</b></p>	<p>Core text</p>

The extract below sets out how to handle SET(LR) applications from Tier 1 (General) migrants who have previously been refused under paragraph 322(2) or 322(5):

“Check the case notes on CID and the previous refusal letter(s) to see what grounds the application was refused under.

It may well be that we have enough information to re-refuse without the need to contact the applicant again. Hopefully on the Home Office file there will be the documents they provided in support of their application and anything we have previously requested from HMRC.

If there is no HMRC Witness Statement on file, then the refusal was probably done purely on reference to the ‘old’ HMRC spreadsheet which we cannot use in refusal letters, so you will need to make a HMRC referral requesting a Witness Statement, so that this can be used to refer to in your refusal letter. Ensure that when you request the HMRC information, that you ask for the last six years information, plus any details re-accountants, amendments to figures submitted and any penalties as a result (**[LINK REDACTED]**)

The application can then be refused again, currently using 322(5) re-Character and Conduct and 276B(ii) and 276B(iii) due to their interactions with HMRC and ourselves in declaring different amounts (see example wording in: **[LINK REDACTED – to guidance shown at Appendix D of this document]**)

**Note.** Can include 322(2) where there is clear documentary evidence of deceit/making of false representations to UKV&I, otherwise if not clear whether the deception was against us or HMRC then refuse under 322(5). If refusing again under 322(2), then can also include 322(1A) re-deception with regard to the current application, as the applicant is aware of the claimed deception from the previous refusal.

**Note.** When referring to the points claimed on the basis of their income you must refer to the Tier 1 General immigration rules that were appropriate at the time of the Tier 1 application – these can be found in the PBS archive area at: **[LINK REDACTED]** where the Immigration Instructions/policy guidance documents from Feb2008 onwards can be located.”