

IRAS CIRCULAR

ADVANCE RULING SYSTEM



**INLAND REVENUE
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[Footnotes 3 and 5 inserted to clarify that notwithstanding the GST rate increase from 5% to 7% with effect from 1 July 2007, the government will absorb the 2% increase in GST for a year.]

[Paragraph 12 revised to clarify the acceptable latest time frame to make an advance ruling request]

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[Footnotes 3 and 5 revised to state that the government would absorb the 2% increase in GST till 31 Dec 2008].

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[Footnotes 3 and 5 revised to state that the government would absorb the 2% increase in GST till 31 Dec 2009.

Annex revised with changes made to section C (insertion of a checklist under section C2 and a template for written submission for a ruling under Appendix 1), and to paragraph 2.1 of the section on "Important Notes to Application for Advance Ruling".]

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ADVANCE RULING SYSTEM

INTRODUCTION

1. IRAS currently provides advance rulings to taxpayers to specify the tax treatment based on the current income tax legislation for proposed business arrangements¹. Prior to the enactment of the 2005 Income Tax (Amendment) Act, the income tax legislation did not provide for the Comptroller of Income Tax ("CIT") to give such rulings. As a result, the rulings issued were not binding in law and not every taxpayer was aware that IRAS issues advance rulings. There were also no published procedures and requirements in place to govern how a taxpayer can obtain an advance ruling from IRAS.

2. To provide greater clarity and certainty to taxpayers, the advance ruling system is formalised and given legal effect in law with effect from 1 January 2006. A new section 108, together with a new Seventh Schedule, has been introduced in the 2005 Income Tax (Amendment) Act. A ruling issued under the Advance Ruling System will bind CIT to apply those statutory provisions in the manner set out in the ruling. As the rulings are private and confidential, CIT would not be releasing the rulings to the public.

3. This circular sets out the basic features of the advance ruling system and the application procedures. Other features of the advance ruling system are set out in the new Seventh Schedule.

FEATURES OF THE ADVANCE RULING SYSTEM

What is an advance ruling

4. An advance ruling is a written interpretation of how a provision or certain provision² of the ITA applies to a specific taxpayer and a proposed arrangement. The proposed arrangement for which an advance ruling is requested must be seriously contemplated by the applicant for implementation. As an advance ruling is an interpretation of the tax laws in relation to how certain issues that arise as a result of an arrangement are to be treated for tax purposes, a ruling request has to be one where there are issues that require an interpretation of the law and not one seeking to know what the law clearly provides, e.g. what is the basis period for trade income.

Binding nature of a ruling

5. A ruling will be binding in two ways:

¹ An arrangement is any contract, agreement, plan or understanding (whether enforceable or unenforceable), including all the steps and transactions that carry it into effect.

² The Comptroller of Income Tax ("CIT") may make a ruling on how any provision of the Income Tax Act ("ITA") applies to the arrangement described in an application, whether or not reference was made to that provision in the application.

- (a) A ruling will only apply to the applicant and the particular arrangement that was the subject of the ruling request and, where applicable, to the year(s) or period(s), and the provisions of the ITA stated in the ruling. The applicant will not be able to rely on a ruling given for a different arrangement, even though the circumstances may appear to be similar, nor can the applicant rely on a ruling given to someone else for a transaction similar to his.
- (b) A ruling will bind CIT to apply those statutory provisions in the manner set out in the ruling that has been issued.

Disagreement with ruling

6. An advance ruling, whether favourable to the taxpayer or not, is final and it will not be subject to the appeal process provided in the ITA. The taxpayer need not follow the ruling if he disagrees with it. However, in submitting his tax return which includes an issue that has been the subject of a ruling, the taxpayer is required to indicate that an advance ruling has been obtained (even if the ruling is not favourable to him) and whether or not, he has relied on the ruling in completing his return. Where the taxpayer has completed his return not in accordance with the ruling issued, the difference of opinion between the taxpayer and CIT will be reviewed in the course of the assessment of the return. Any assessment raised on the basis of a ruling which is not agreed to by the taxpayer can be appealed against by the taxpayer under the normal objection provisions of Section 76(2) of the ITA.

Validity Period of Rulings

7. Rulings will be issued with the condition that if the arrangement stipulated in the ruling is not carried out by the end of the time period stated in the ruling, the ruling will automatically lapse.

Who can apply for a ruling

8. An applicant may be a person in his own right or on behalf of a person who is yet to come into legal existence. Two or more person may also jointly apply. An applicant may also apply for a ruling on behalf of two or more persons who are yet to come into legal existence.

FEE STRUCTURE

9. An applicant will be charged a fee for the provision of an advance ruling based on cost recovery. The fee structure is as follows:

- (a) **Application fee** of \$525 (inclusive of GST³) is payable upon application and is non-refundable even if the ruling request is rejected (e.g. where the arrangement is hypothetical). This non-refundable charge of \$525

³ Notwithstanding the GST rate increase from 5% to 7% with effect from 1 July 2007, the government will absorb the 2% increase in GST till 31 Dec 2009.

takes into account the time to be taken to determine if CIT would accede to the request;

- (b) **Further time-based fee** of \$131.25 (inclusive of GST³) per hour for each hour or part-hour subsequent to the first four hours taken to provide the ruling;
- (c) **Reimbursement fee** for any costs and reasonable disbursements incurred by CIT in relation to the ruling, and any fees paid by CIT for external professional advice with the agreement of the taxpayer; and
- (d) **Additional fee**⁴ of up to two times the aggregate of the fees stated under (a) and (b) if CIT agrees to give priority to the application and to expedite his processing of the ruling request.

10. Where a request for ruling is accepted, the applicant will be informed of when he can expect the ruling to be issued and the estimated amount of total fees payable. The applicant is required to confirm in writing his acceptance of the terms under which the ruling is to be issued. Following the confirmation, if an applicant withdraws his request for advance ruling before the ruling is issued, the further time-based fee, reimbursement fee (if any) and additional fee (if applicable) chargeable for the time spent on the review of the ruling request up to the time of receipt of the letter of withdrawal of request shall be payable by the applicant.

PROCESSING TIME

11. IRAS will ensure as far as is reasonably practicable that every effort is made to minimize the fees to which an applicant is liable in respect of an application for a ruling. Generally, IRAS will endeavor to provide a ruling within eight weeks. However, if the request is a complex one, IRAS will inform the applicant upfront that the time frame may be longer than 8 weeks.

APPLICATION PROCEDURES

12. An applicant requesting for an advance ruling will have to submit an application form (see Annex), the application fee (a cheque for \$525 inclusive of GST drawn in favour of "Inland Revenue Authority of Singapore") and a written ruling request not later than 2 months before the date of the proposed arrangement, except where CIT accepts the taxpayer's application for an express advance ruling. For an express ruling, these should be submitted not later than 1 month before the date of the proposed arrangement. Please note that additional fees are payable for express rulings [see paragraph 9(d)]. The following information should be given in the application:

⁴ Applications for rulings will generally be processed on a first-come-first-serve basis. Only in exceptional circumstances where there are good and valid reasons why a ruling need to be obtained on an urgent basis would CIT agree to expedite the processing of the ruling request.

- a) full particulars of the arrangement in question comprising:
 - comprehensive description of the arrangement and the period concerned;
 - business reasons for the arrangement, if applicable; and
 - copies of all relevant documents with the relevant parts or passages identified;
- b) the issue(s) to be considered;
- c) the propositions of the law that relate to the issues raised in the request. These should include:
 - sections of the ITA that are relevant to the request;
 - appropriate case laws, if any, and legal reasons that support the applicant's interpretation of the section(s) involved; and
 - possible argument contrary to the interpretation proposed and legal reasons and authoritative support, if any, for these arguments;
- d) whether a previous request has been made on the same or a similar arrangement. If so, the outcome of the request and reference of the ruling issued, if applicable; and
- e) a draft ruling.

13. Where it is unreasonable to require the applicant to furnish any of the information in paragraph 12(c) to 12(e), CIT may, in his discretion, waive the relevant requirement(s).

14. Applicants making the ruling requests in their own rights or on behalf of a person or persons may submit their applications to:

- a) Assistant Commissioner (Individual Income Tax Division), IRAS – if the arrangement concerns individual income tax; or
- b) Assistant Commissioner (Corporate Tax Division), IRAS – if the arrangement concerns corporate income tax.

15. For applicants who are making the ruling requests on behalf of a person or two or more persons who is or are yet to come into legal existence, or applicants who are foreign entities/persons, the applications for rulings may be submitted to Assistant Commissioner (Tax Policy & International Tax Division), IRAS.

ENQUIRIES

16. For any enquiry or clarification, please call:

- (a) 6351-3833 in respect of individual income tax ruling requests by persons in their own rights or on behalf of a person or persons;

- (b) 6351-3756 in respect of corporate income tax ruling requests by persons in their own rights or on behalf of a person or persons; or
- (c) 6351-2123 in respect of income tax ruling requests by persons on behalf of a person or two or more persons who is or are yet to come into legal existence, or by a foreign entity/person.

Inland Revenue Authority of Singapore

Section C : Other Information**C1.** To which period does this application relate?

Period from to
 Day Month Year Day Month Year

C2. Complete the table below:

	Yes	No
a. Is the issue on which the ruling is sought under review or subject to an objection, appeal, audit or investigation?	<input type="checkbox"/>	<input type="checkbox"/>
b. Has an assessment (excluding an estimated assessment) been made for the year of assessment to which the proposed ruling would apply?	<input type="checkbox"/>	<input type="checkbox"/>
c. Does the issue on which the ruling is sought involve the interpretation of a foreign law or any avoidance of double taxation agreement (DTA)?	<input type="checkbox"/>	<input type="checkbox"/>
d. Have you/ your agent sought any written advice (e.g. email, previous ruling) from CIT on the same or a similar arrangement? If so, please furnish a copy of the written advice.	<input type="checkbox"/>	<input type="checkbox"/>
e. Have you/ your agent enclosed a written submission (using the attached template at Appendix 1) providing the following details? <ul style="list-style-type: none"> ▪ The tax issue(s) to be addressed by the ruling ▪ Full particulars of the proposed arrangement and parties to the arrangement ▪ All standard supporting information required for specific topics (see the Advance Ruling Web page at www.iras.gov.sg) 	<input type="checkbox"/>	<input type="checkbox"/>

C3. Is CIT requested to expedite the processing of the ruling request? No Yes. State the reasons for the request to expedite the processing of the ruling request:
C4. Indicate the person to whom the fees chargeable for the ruling should be billed: Applicant Agent**Section D : Applicant's Declaration****D1.** Authorisation for agent (if applicable)

We authorise _____ (name of agent) to make this ruling request on our behalf.

D2. Declaration of information furnished

We certify that the details contained in this application, the ruling request and any other information given by us and/or our agent in connection with this ruling request are true and correct.

Full name and signature of person making the declaration Designation of person making the declaration Date

TEMPLATE FOR WRITTEN SUBMISSION FOR A RULING**Confirmation(s) Sought**

State the confirmation(s) that you would like the Comptroller of Income Tax to provide.

1. Background

Provide background details of the applicant and all other entities involved in the arrangement, including:

- i) Name of entity
- ii) Singapore income tax reference number (if applicable)
- iii) Principal activities
- iv) Country of incorporation
- v) Country of tax residence
- vi) Relationship with other parties to the arrangement, if any. Illustrate the relationship with a diagram.

2. Proposed Arrangement

Provide all relevant facts and documents relating to the arrangement for which the ruling is sought. These should include:

- i) Comprehensive description of the arrangement and the period concerned
- ii) Business reasons for the arrangement
- iii) Copies of all relevant documents with the relevant parts or passages identified
- iv) The financial period(s) and Year(s) of Assessment to which the application relates
- v) Other material or relevant matters or sources of information the Comptroller should be made aware of to ensure access to all the pertinent facts and law.

3. Issue(s) to be considered

List and elaborate on the issues to be addressed by the ruling.

4. Propositions of the law

State the propositions of law relevant to the issue(s) raised, including:

- i) Relevant section(s) of the Singapore Income Tax Act
- ii) Your interpretation of the said sections in relation to the issue(s)
- iii) Appropriate case laws and legal reasons that support your interpretation
- iv) Possible arguments contrary to the interpretation proposed and legal reasons and authoritative support, if any, for these arguments

5. A draft ruling

IMPORTANT NOTES TO APPLICATION FOR ADVANCE RULING

1. CIT's Power to Rule

1.1 CIT may decline to make a ruling in the following scenarios:

- a. the application for the ruling would require CIT to determine any question of fact;
- b. CIT considers that the correctness of the ruling would depend on the making of assumptions, whether in respect of a future event or any other matter;
- c. the matter on which the ruling is sought is subject to an objection or appeal, whether in relation to the applicant or any other person;
- d. the applicant has outstanding debts relating to earlier ruling applications; or
- e. the matter on which the ruling is sought is the subject of a return which has been or is due to be lodged under the Income Tax Act ("ITA").

1.2 CIT shall not make a ruling if:

- a. at the time application is made or at any time before the ruling is issued, CIT considers that the person to whom the ruling is to apply is not seriously contemplating the arrangement for which the ruling is sought;
- b. the application is frivolous or vexatious;
- c. the matter on which the ruling is sought –
 - (i) concerns tax (excluding estimated tax) that is due and payable, unless the application is received before the tax is due and payable;
 - (ii) involves the interpretation of a foreign law; or
 - (iii) is being dealt with, or in the CIT's opinion should be dealt with, by one or both competent authorities of the parties to an Agreement for the avoidance of double taxation;
- d. a ruling already exists on how the relevant provision of the ITA applies to the applicant and the arrangement, and the proposed ruling would apply to a period or a year of assessment to which the existing ruling applies;
- e. an assessment (excluding an assessment of any estimated tax) relating to the applicant, the arrangement, and a year of assessment to which the proposed ruling would apply has been made, unless the application is received by CIT before the date of assessment is made;
- f. CIT is undertaking an audit or investigation on how any provision of the ITA applies to the applicant, or to an arrangement similar to the arrangement which is the subject of the application, during any period for which the proposed ruling would apply were the ruling to be made;
- g. in CIT's opinion, insufficient information has been provided despite a request by the CIT for additional information;
- h. in CIT's opinion it would be unreasonable to make a ruling in view of the resources available to CIT; or
- i. the ruling would require CIT to form an opinion as to a generally accepted accounting principle or a commercial practice.

1.3 In addition, CIT shall not make a ruling on a provision of the ITA that authorises or requires CIT to:

- a. impose or remit a penalty;
- b. inquire into the correctness of any return or other information supplied by any person;
- c. prosecute any person; or
- d. recover any debt owing by any person.

1.4 If CIT considers that the correctness of a ruling would depend on assumptions being made about a future event or other matter, CIT may make the assumptions that CIT considers to be most appropriate.

1.5 When CIT declines to or cannot provide a ruling as requested, the CIT will inform the applicant in writing of the reason(s) why the ruling will not be issued.

2. Procedures for Application

2.1 You are required to complete and submit sections A to D of this application form with your written request for a ruling (please see the attached template at Appendix 1 for the written submission). The application should be made not later than 2 months before the date of the proposed arrangement, except where CIT accepts your application for an express advance ruling. A request for express ruling should be submitted not later than 1 month before the proposed arrangement.

3. Fees Chargeable for Rulings

- 3.1 An initial application fee of \$525 (inclusive of GST*) is payable upon application and is non-refundable even if the ruling request is rejected (e.g. where the arrangement is hypothetical). This non-refundable charge of \$525 takes into account the time to be taken to determine if CIT would accede to the request. Cheque is to be drawn in favour of *Inland Revenue Authority of Singapore*.
- 3.2 After the first 4 hours taken to provide the ruling, you will be charged an hourly rate of \$131.25 (inclusive of GST*) for each subsequent hour or part thereof taken.
- 3.3 You will also be charged with reimbursement fee for any costs and reasonable disbursements incurred by CIT in relation to the ruling, and any fees paid by CIT for external professional advice. Your agreement will be sought before CIT obtains any external professional advice.
- 3.4 Applications for rulings will generally be processed on a first-come-first-serve basis. Only in exceptional circumstances where there are good and valid reasons why a ruling need to be obtained on an urgent basis would CIT agree to expedite the processing of the ruling request. If CIT agrees to give priority to the application and to expedite the processing of the ruling request, you will be charged an additional fee of up to two times the fees stated under paragraphs 3.1 and 3.2 above.
- 3.5 Where a request for ruling is accepted, you will be informed of when you can expect the ruling to be issued and the estimated amount of total fees payable. You are required to confirm in writing your acceptance of the terms under which the ruling is to be issued.

4. Withdrawal of Request

- 4.1 Following your written confirmation, you may withdraw your request for advance ruling before the ruling is issued. However, you will be charged for the hourly fees, reimbursement fee (if any) and additional fee (if applicable) in respect of the time spent on the review of the ruling request up to the time of receipt of your letter of withdrawal of request.

Please address your application and ruling request to:

a) Assistant Commissioner (Corporate Tax Division):

- for applicants making the ruling requests in their own rights or on behalf of a person or persons with regard to arrangements concerning Corporate Income Tax matter;

b) Assistant Commissioner (Individual Income Tax Division):

- for applicants making the ruling requests in their own rights or on behalf of a person or persons with regard to arrangements concerning Individual Income Tax matter; or

c) Assistant Commissioner (Tax Policy & International Tax Division):

- for arrangements concerning a person, or two or more persons who is or are yet to come into legal existence, or concerning a foreign entity/person.

* Notwithstanding the GST rate increase from 5% to 7% with effect from 1 July 2007, the government will absorb the 2% increase in GST till 31 Dec 2009.