

IRAS CIRCULAR

INCOME TAX TREATMENT OF A TRUST REGISTERED UNDER THE BUSINESS TRUSTS ACT 2004



**INLAND REVENUE
AUTHORITY
OF SINGAPORE**

Published by
Inland Revenue Authority of Singapore

Published on 14th December 2004

© Inland Revenue Authority of Singapore

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

CIRCULAR ON INCOME TAX TREATMENT OF A TRUST REGISTERED UNDER THE BUSINESS TRUSTS ACT 2004

Introduction

1 The purpose of this Circular is to set out the income tax treatment of a trust which is registered under the new Business Trusts Act 2004¹ (hereinafter referred to as “registered business trust”). For a trust other than one registered under the Business Trusts Act 2004, the present tax treatment of trusts² remains applicable to such a trust, whether or not the trustee carries on a trade or business.

Income Tax Treatment of A Trust Registered Under the Business Trusts Act 2004

2. For any trust which is registered under the new Business Trusts Act 2004, the present tax treatment of trusts will not apply to such a trust. Instead, it will be treated like a company under the one-tier system with effect from the first year such a trust commences operation as a registered business trust. This is because the economic purpose, structure and operation of a registered business trust are similar to those of a company. As it will be treated like a company under the one-tier system, the partial tax exemption applicable to companies will similarly apply to a registered business trust.

3. Based on this treatment, the income of a registered business trust will continue to be taxable at the trustee level. However, the unitholders of the registered business trust will not be taxed on their share of the statutory income of the trustee to which they are entitled (whether distributed or not) and no credit will be allowed to the unitholders for the tax paid by the trustee of the registered business trust.

4. The rest of the Circular explains how the following features of the tax system that are applicable to a company will apply to a registered business trust:

- (a) Group relief;
- (b) Application of “shareholding test”;
- (c) Election of section 24 for the sale of property; and
- (d) Double taxation relief for tax suffered overseas on foreign sourced income.

¹ The Business Trusts Act 2004, which provides for the regulation of business trusts, was introduced in Parliament on 20th July 2004 and passed by Parliament on 1st September 2004.

² Under the Income Tax Act, the tax on any income chargeable with tax that the trustee of a trust derives from trust properties is assessable on him. A beneficiary of the trust is taxed on the share of the statutory income of the trustee for any year of assessment which corresponds to the share of the trust income to which the beneficiary is entitled for the year preceding that year of assessment. However, he will be allowed to claim a credit for the tax paid by the trustee on his share of the trustee’s income to which he is entitled.

Group Relief

5. Under section 37C of the Income Tax Act (“ITA”), group relief is available to companies belonging to the same group of companies. Full details of this loss transfer system of group relief are set out in IRAS Circular issued on 23rd October 2002. All requirements applicable to a company for the purposes of group relief, as elaborated in the said IRAS Circular, will similarly apply to a registered business trust. However, for the purposes of applying the group relief provisions to a registered business trust, units of the registered business trust will be used in lieu of the ordinary shares of the company. In addition, the registered business trust must be established in Singapore and its trust deed must be executed in Singapore and governed by Singapore laws.

“Shareholding Test”

6. A company can claim deductions of unabsorbed capital allowance (“CA”), industrial building allowance (“IBA”), trade loss and donation³, provided that the shareholders of the company on the last day of the year in which the unabsorbed CA or IBA arose or in which the unabsorbed trade loss or donation was incurred must be substantially the same as the shareholders of the company on the first day of the year of assessment in which such unabsorbed CA, IBA, trade loss or donation is allowed to be deducted against the company’s income. This requirement for set-off of unabsorbed CA, IBA, trade loss or donation is commonly known as the “shareholding test”. In addition to the “shareholding test”, the company must meet the “business continuity test”⁴ before unabsorbed CA and IBA can be carried forward for deductions against future income. A registered business trust will similarly be allowed to claim deduction of unabsorbed CA, IBA, trade loss and donation provided it satisfies the “unitholding test” instead of the “shareholding test”.

7. For a company, the shareholders are deemed to be substantially the same on the relevant dates⁵ if

- (a) not less than 50% of the paid up capital of the company is held by or on behalf of the same persons; and
- (b) not less than 50% of the nominal value of the allotted shares in the company is held by or on behalf of the same persons.

8. For a registered business trust, the “unitholding test” is satisfied if, on the relevant dates⁵,

³ For donations, carry-forward is allowed up to a maximum of five years from the first year of assessment in which it is allowable. For carry-forward of unabsorbed CA, IBA and trade loss, there is no such time limit.

⁴ A person is said to meet the business continuity test if he continues to carry on the trade, business or profession in respect of which the CA or IBA is granted.

⁵ Relevant dates are the dates referred to in paragraph 6, relating to the date on which the unabsorbed CA or IBA arose or the date on which the unabsorbed trade loss or donation was incurred and the first day of the year of assessment in which the unabsorbed CA, IBA, trade loss or donation is allowed to be deducted against the company’s income.

- (a) the same unitholders are entitled to no less than 50% of any residual profits available for distribution; and
- (b) the same unitholders are entitled to no less than 50% of any residual assets available for distribution on a winding up.

9. Where each unit of a registered business trust carries the same beneficial interest in terms of the entitlement of the residual profits available for distribution and residual assets available for distribution on a winding up, the “unitholding test” is satisfied if, on the relevant dates⁵, the same unitholders hold no less than 50% of the units of the registered business trust.

Election of Section 24 for Sale of Property

10. Under section 24 of the ITA, when there is a sale of property and

- (a) the buyer has control over the seller; or
- (b) the seller has control over the buyer; or
- (c) a third party has control over both the seller and buyer;

the parties involved can make a section 24 election so that the property is regarded as being transferred, for income tax purposes, at the tax written down value from the seller to the buyer.

11. Since a registered business trust is to be treated no differently from a company for income tax purposes, section 24 will be amended to allow the election of this section where the relationship between the seller and buyer (denoted by “A” or “B” as the case may be) is as follows:

- (a) company A owns more than 50% units in registered business trust B;
- (b) trustee of registered business trust A holds more than 50% units in registered business trust B on trust for the unitholders of registered business trust A;
- (c) unitholders of registered business trust B own more than 50% shares of company A;
- (d) trustee of registered business trust B holds more than 50% shares of company A on trust for the unitholders of registered business trust B;
- (e) another company C owns more than 50% shares of company A or more than 50% units in registered business trust A, and more than 50% units in registered business trust B or;
- (f) trustee of another registered business trust C holds, on trust for its unitholders, more than 50% shares of company A or more than 50% units in registered business trust A, and more than 50% units in registered business trust B.

Double Taxation Relief for Tax Suffered Overseas on Foreign Sourced Income

12. Double taxation relief will be granted to a Singapore resident registered business trust⁶ for the tax suffered overseas on its foreign sourced income. Where the foreign sourced income is from a country where Singapore does not have an Avoidance of Double Tax Agreement with, unilateral tax credits will be granted in accordance with the provisions of section 50A of the ITA.

Tax Residence of a Registered Business Trust

13. A registered business trust is considered a resident of Singapore if -
- (a) the trustee of the registered business trust in his capacity as such carries on a trade or business in Singapore; and
 - (b) the control and management of the business is in Singapore.

Relief under the Stamp Duties Act for Transfer of Assets to a Registered Business Trust

14. Relief under section 15 of the Stamp Duties Act which is applicable to companies, will be extended to the transfer of assets to a registered business trust. The conditions for the relief to apply to companies will apply accordingly to registered business trusts⁷.

15. For any enquiry or clarification on this Circular, please call 1800-3568622.

INLAND REVENUE AUTHORITY OF SINGAPORE

⁶ Please refer to paragraph 13 for the definition of tax residence of a registered business trust.

⁷ Please refer to the following Rules for more details:

- Stamp Duties (Relief from Stamp Duty Upon Reconstruction or Amalgamation of Companies) Rules 2000
- Stamp Duties (Relief from Stamp Duty Upon Transfer of Assets Between Associated Companies) Rules 2000