

IRAS CIRCULAR

**SIMPLIFICATION OF INCOME TAX RULES AND
PROCEDURES FOR COMPANIES –**

**SET-OFF OF CARRY-FORWARD LOSSES, DONATIONS
AND ALLOWANCES UNDER SECTIONS 37(12) AND
23(4) OF THE SINGAPORE INCOME TAX ACT
(REVISED EDITION 2004)**



**INLAND REVENUE
AUTHORITY
OF SINGAPORE**

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INTRODUCTION

- 1 This Circular sets out the revised administrative procedure with regard to the carry forward of losses, donations and capital allowances under section 37(12) and 23(4) of the Singapore Income Tax Act (revised edition 2004) (“SITA”).
- 2 The current administrative procedure (set out in a Circular¹ issued by IRAS on 28 December 1995) provides for circumstances under which a company secretary’s certificate may be accepted in lieu of an external auditor’s certificate for purposes of sections 37(5) and 23(2) of the Singapore Income Tax Act (revised edition 2001)².

REVISED ADMINISTRATIVE PROCEDURE

- 3 As part of IRAS’ continuing efforts to streamline and simplify its administrative procedures so as to make them easier for taxpayers to comply, IRAS has recently reviewed the above-mentioned current administrative procedure and adopted the following revised procedure:

For a Public Listed Company (PLC)

In the case where the “loss” company (i.e. the company with prior years’ unutilized losses, donations or capital allowances) or its ultimate parent company is a public listed company (PLC) whose shares are actively traded on a recognised Stock Exchange (whether local or foreign), the “loss” company would be allowed to set-off the prior years’ losses, donations and capital allowances in any subsequent year if the external auditor or the company secretary of the PLC can confirm that no merger or takeover of the PLC has taken place between the relevant comparison dates³ (both dates inclusive).

Provided that in the absence of both the external auditor and the company secretary of the PLC, confirmation by the audit committee⁴, the person holding the position of Financial Controller or the director of the PLC that no merger or takeover of the PLC has taken place between the relevant comparison dates (both dates inclusive) could be accepted.

¹ 1995/IT/6 - “Set-Off of Carry-Forward Losses and Allowances under Sections 37(5) and 23(2) of the Singapore Income Tax Act – Circumstances under which a Company Secretary’s Certificate may be Accepted in lieu of an External Auditor’s Certificate”.

² Section 37(5) and 23(2) of the Singapore Income Tax Act (revised edition 2001) has been renumbered as section 37(12) and 23(4) of the Singapore Income Tax Act (revised edition 2004).

³ Per paragraph 2 of the Circular 1995/IT/6 where the “relevant comparison dates” refers to the dates specified in sections 37(5) and 23(2) of the Singapore Income Tax Act (revised edition 2001).

⁴ Under section 201B of the Companies Act, every listed company in Singapore shall have an audit committee. For companies not incorporated in Singapore, an equivalent committee or person as required under the law of that foreign country, if any, would be accepted.

For a non-Public Listed Company (Non-PLC)

In the case where the “loss” company and its ultimate parent are both not a public listed company, i.e. a Non-PLC, the “loss” company would be allowed to set-off the prior years’ losses, donations and capital allowances in any subsequent year if:

- (i) the “loss” company can provide a list of its ultimate shareholders and their respective shareholdings on the relevant comparison dates (both dates inclusive) showing that there has been no substantial change in their ultimate shareholders on those dates, or
- (ii) the external auditor or the company secretary of the “loss” company can confirm that there has been no substantial change in their ultimate shareholders on the relevant comparison dates (both dates inclusive).

Provided that in the absence of both the external auditor and the company secretary of the “loss” company, confirmation by the audit committee, the person holding the position of the Financial Controller or the director of the “loss” company that there has been no substantial change in their ultimate shareholders on the relevant comparison dates (both dates inclusive) could be accepted.

- 4 The revised procedure vis-à-vis the current procedure is as summarised in Annex A.
- 5 It is to be noted that acceptance of the required confirmation by the company’s audit committee, the person holding the position of the company’s Financial Controller or the company’s director (for both the PLC and non-PLC) is permitted only if such a confirmation could not be obtained from the company’s external auditor or company secretary. In such a case, the company would have to provide an explanation as to why the said confirmation could not be obtained from the company’s external auditor or company secretary for the consideration of the Comptroller.
- 6 Companies which have any enquiries concerning the revised administrative procedure may call the IRAS Corporate Tax Helpline at 1800-356 8622 for clarification.

Annex A

	Current Procedure	Revised Procedure
For public listed company (PLC)	<p>As per e-tax guide – 1995/IT/6,</p> <p>Confirmation from:</p> <p>(i) external auditor of the PLC; or</p> <p>(ii) company secretary of the PLC,</p> <p>that there was no merger or takeover of the PLC between the relevant comparison dates (both dates inclusive) would be accepted for purposes of section 37(12) and 23(4) of the SITA.</p>	<p>Confirmation from:</p> <p>(i) external auditor of the PLC; or</p> <p>(ii) company secretary of the PLC; or</p> <p><u>NEW</u></p> <p>(iii) provided that in the absence of both the external auditor and company secretary of the PLC, from:</p> <ul style="list-style-type: none"> ▪ <u>audit committee of the PLC</u>; or ▪ <u>person holding the position of the Financial Controller of the PLC</u>; or ▪ <u>the director of the PLC</u>, <p>that there was no merger or takeover of the PLC between the relevant comparison dates (both dates inclusive) would be accepted for purposes of section 37(12) and 23(4) of the SITA.</p>
For non-PLC	<p>As per e-tax guide – 1995/IT/6, no concession, i.e.</p> <p>(a) “loss” company must provide a list of its ultimate shareholders and their respective shareholdings on the relevant comparison dates (both dates inclusive) showing that there has been no substantial change in their ultimate shareholders on those dates; or</p> <p>(b) “loss” company must produce an external auditor’s certificate to substantiate that there has been no substantial change in company’s ultimate shareholders on the relevant comparison dates (both dates inclusive);</p> <p>for purposes of section 37(12) and 23(4) of the SITA.</p>	<p>“Loss” company must provide a list of its ultimate shareholders and their respective shareholdings as at the relevant comparison dates (both dates inclusive) showing that there has been no substantial change in their ultimate shareholders on those dates; or</p> <p>Confirmation:</p> <p>(i) from external auditor of the “loss” company; or</p> <p><u>NEW</u></p> <p>(ii) from <u>company secretary of the “loss” company</u>, or</p> <p>(iii) provided that in the absence of both the external auditor and company secretary of the “loss” company, from -</p> <ul style="list-style-type: none"> ▪ <u>the audit committee of the “loss” company</u>; or ▪ <u>person holding the position of the Financial Controller of the “loss” company</u>; or ▪ <u>the director of the “loss” company</u>, <p>that there is no substantial change in “loss” company’s ultimate shareholders on the relevant comparison dates (both dates inclusive) would be accepted for purposes of section 37(12) and 23(4) of the SITA.</p>