

IRAS e-Tax Guide

**Qualifying Conditions for Pension/Provident
Funds to be approved under Section 5 of the
Income Tax Act**



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Qualifying Conditions for Pension/Provident Funds to be approved under Section 5 of the Income Tax Act

1 Aim

- 1.1 This guide sets out the qualifying conditions that a pension/provident fund must meet in order to obtain approval under Section 5 of the Income Tax Act¹ (ITA).
- 1.2 You should read this guide if you are:
 - (a) an employer participating in a pension/ provident fund approved under Section 5 of the ITA (hereafter referred to as “an approved Section 5 fund”); or
 - (b) a trustee of an approved Section 5 fund.

2 At a glance

- 2.1 Companies can make applications to the Comptroller of Income Tax with details of the rules of the Pension/Provident Funds. To qualify as an approved Section 5 fund, the fund must meet all the qualifying conditions as detailed in paragraphs 5.1 to 5.4 of this guide.
- 2.2 Upon approval, the Trustee(s) of an approved Section 5 fund must discharge all the responsibilities as detailed in paragraph 5.5 of this guide.

¹ This Guide replaces the IRAS e-Tax Guide published on 15 Jul 2011

3 Glossary

3.1 Trustee

An individual or organization which holds or manages and invests assets for the benefit of another.

3.2 Trust Deed

A formal document which outlines the terms of a trust agreement.

3.3 Tax Deduction

An expenditure that is deducted from taxable income

3.4 Tax Clearance

Tax clearance is a process of ensuring that your non-citizen foreign employees pay all his taxes when he ceases employment with you in Singapore or plans to leave Singapore for more than three months.

Tax clearance obligations apply to all work pass holders including PEP holders.

3.5 Remuneration

Includes any wage, salary, leave pay, fee, commission, bonus, gratuity, allowance and other emoluments paid in cash by the employer.

3.6 Ordinary Wage

Ordinary Wages are wages due or granted wholly and exclusively in respect of an employee's employment in that month and payable before the due date for payment of CPF contributions for that month.

4 Background

- 4.1 An employer whose pension/provident fund is an approved Section 5 fund is allowed a tax deduction on his contribution to the fund.² The investment income derived by the fund is tax exempt.³ All benefits paid out of the fund to his employees, other than the amount of tax-exempt benefits accrued up to 31 December 1992⁴ paid upon retirement, are taxable at the time of their entitlement to such benefits.
- 4.2 An employer who wishes to set up a pension/provident fund as an employee retention incentive may apply to the Comptroller of Income Tax (“the Comptroller”) for the fund to be an approved Section 5 fund. The employer must provide details such as the purpose of setting up the fund, draft trust deed and rules of the proposed fund in the application.

5 Qualifying Conditions

- 5.1 The Comptroller may approve a pension/provident fund as an approved Section 5 fund, provided the following qualifying conditions are met:
- (a) contributions to the fund must be alienated to a third party, i.e. trustee(s) of the fund. This effectively means that the employer must make cash contribution for his employees to a fund which is set up under a trust;
 - (b) benefits provided under the fund must be made available to all employees, both bargainable and executive;
 - (c) the same formula for computing the benefits under the fund must be applied to all employees;
 - (d) the level of benefits payable to each employee must not exceed the following formula (hereafter referred to as the “benefit limit formula”)⁵:
$$(2.25 \times \text{last drawn salary}^6 \times \text{number of years of service}) \text{ less total employer contributions to the Central Provident Fund (CPF) account of that employee;}$$

² This is provided under Section 14(1)(e) of the ITA.

³ This is provided under Section 13(1)(q) of the ITA.

⁴ This is applicable only to schemes/funds which were set up prior to 1 January 1993. More information on the tax treatment of retirement benefits for employees can be found at <https://www.iras.gov.sg/IRASHome/Individuals/Locals/Working-Out-Your-Taxes/What-is-Taxable-What-is-Not/Retrenchment-and-Retirement-Benefits/>

⁵ This benefit limit formula is applicable to both defined benefit and defined contribution funds.

⁶ ‘Last drawn salary’ refers to 1/12 of total remuneration for the last calendar year immediately before retirement, resignation, physical or mental incapacity and unable to continue with employment or death during employment. Remuneration includes any wage, salary, leave pay, fee, commission, bonus, gratuity, allowance and other emoluments paid in cash by the employer.

- (e) employees cannot contribute to the fund; and
 - (f) the trustee(s) of the fund must exercise statutory duty of care according to the prevailing Trustees Act (Cap. 337) with regard to the management and investment of monies in the fund.
- 5.2 Notwithstanding the above, depending on the specific provisions in the draft trust deed and rules submitted, the Comptroller may impose additional conditions where appropriate.⁷
- 5.3 The above qualifying conditions are imposed to reinforce the use of approved Section 5 funds by employers to retain their employees. Only employers could make contributions to approved Section 5 funds.
- 5.4 The qualifying conditions are also designed to prevent funds being set up to benefit only a selected group of employees. An approved Section 5 fund must be a fund that applies to all employees in the organization regardless of rank, seniority or nationality.

Requirements upon obtaining approval under Section 5 of the ITA

- 5.5 Trustee(s) of an approved Section 5 fund must comply with certain requirements, including but not limited to the following:
- (a) submit an annual actuary's certification confirming that the rate of contribution or benefits provided under the fund does not exceed the benefit limit formula mentioned in paragraph 5.1(d) above. If the stipulated level of benefits has been exceeded, the trustee(s) of the fund must inform the Comptroller of this immediately;
 - (b) furnish a valuation report determining the amount of contributions required in the case where the fund is a defined benefit fund. Such valuation must be done at least once every 3 years;
 - (c) seek tax clearance from the Comptroller before paying any benefits to members who are not residents of Singapore for income tax purposes;
 - (d) obtain approval from the Comptroller before altering or amending the Trust Deed and rules of the fund;
 - (e) file returns on the investments made by the fund to the Comptroller on a semi-annual basis. The format of the Investment Return is provided in **Annex 1**. It can be downloaded from the IRAS

⁷ For instance, the draft trust deed of a new fund may provide that any surplus monies are to be returned to the employer. As such a provision is considered inconsistent with the objective of setting up the fund, i.e. to retain and reward long serving employees, the Comptroller may impose an additional condition in such a case, to require the employer to distribute any surplus monies to all remaining employees who are members of the fund, if approval under Section 5 of the ITA is granted.

website⁸; and

- (f) file annual income tax return, Form P1 with the fund's audited statements of accounts by 15 April each year.

⁸ Under [https://www.iras.gov.sg/IRASHome/QuickLinks/Forms/Other taxes & services/Pension and Provident Funds approved under Section 5 of the Income Tax Act/Investment Return Form](https://www.iras.gov.sg/IRASHome/QuickLinks/Forms/Other%20taxes%20&%20services/Pension%20and%20Provident%20Funds%20approved%20under%20Section%205%20of%20the%20Income%20Tax%20Act/Investment%20Return%20Form).

6 Frequently Asked Questions

6.1 How to apply for the pension fund to be approved under Section 5 of the Income Tax Act (ITA)?

The employer can mail his application to the Comptroller of Income Tax (“the Comptroller”) at the address below. The application must provide full details of the proposed fund, such as the purpose of setting up the proposed fund, draft trust deed and rules.

Comptroller of Income Tax
Inland Revenue Authority of Singapore
55 Newton Road
Revenue House
Singapore 307987

Attention: Corporate Tax Division - Compliance, Clubs, Trusts & Gaming Branch

6.2 What happens after an employer has submitted an application for approval of his pension fund under Section 5 of the ITA?

The Comptroller may seek clarification with the employer on certain provisions of the draft trust deed and rules. Once the Comptroller determines that the draft trust deed and rules are acceptable, an in-principle approval will be granted. Thereafter, the trust deed and rules must be signed by the trustee(s) of the fund and submitted with an actuary’s certification (as mentioned in paragraph 5.5 (a) of the e-Tax Guide) to the Comptroller for formal approval to be granted.

6.3 Can my pension fund meet the condition that the benefits provided under the fund must be made available to all employees, if the proposed monthly contribution formula is:

10% x monthly ordinary wages (OW) as per the Central Provident Fund Act capped at \$5,000⁹ less employer’s Central Provident Fund (CPF) contribution on OW?

Yes. The condition is met even though the proposed contribution formula may result in nil contribution in respect of an employee who receives employer CPF contribution of 16% of his OW.

⁹ With effect from 1st September 2011.

- 6.4 If an employee retires on 30 June 2011, what is the 'last drawn salary' for the purpose of determining whether the benefit limit (as determined by the benefit limit formula) has been exceeded?**

The benefit limit formula is:

(2.25 x last drawn salary x number of years of service) less total employer contributions to the CPF account of the employee.

The 'last drawn salary' in this case is:

1/12 x the employee's total remuneration for the months of January to December 2010.

- 6.5 An employee joined his employer on 1 January 1994 and retired on 31 December 2010. On 1 January 1996, his employer set up an approved Section 5 fund which provides benefits for all employees' service rendered on or after 1 January 1996. What is the 'number of years of service' and 'total employer contributions to the CPF account of the employee' in applying the benefit limit formula to this employee?**

The 'number of years of service' is 15 years (i.e. 1 January 1996 to 31 December 2010). The 'total employer contributions to the CPF account of the employee' refers to the employer contributions to the employee's CPF account for the same period.

7 Contact Information

- 7.1** If you have any enquiries or need clarification on this Guide, please contact:

Corporate Tax Division
Compliance, Clubs, Trusts and Gaming Branch
Inland Revenue Authority of Singapore
55 Newton Road
Revenue House
Singapore 307987

Tel: 6351 3882
Fax: 6351 3388
Email: ca@iras.gov.sg

Annex 1 - Format of Investment Return

REPUBLIC OF SINGAPORE
Income Tax Act
(Cap.134, 2008 Edition)

Tax Reference Number _____

PENSION AND PROVIDENT FUNDS APPROVED
UNDER SECTION 5 OF THE INCOME TAX ACT

INVESTMENT RETURN

in respect of

(Name of Pension / Provident Fund)

as at _____
(date)

| Type of Investment | Singapore S\$ | Malaysia S\$ | Other Countries * S\$ | Total S\$ |
|-----------------------|------------------|-----------------|--------------------------------|--------------|
| | | | | |
| Government Securities | | | | |
| Bank Deposits | | | | |
| Fixed deposits | | | | |
| Shares | | | | |
| Corporate Bonds | | | | |
| Insurance | | | | |
| Others * | | | | |
| Total | | | | |

* to furnish full details.

Rate of Return of Investment of the Fund for the period _____ to _____: _____%

I HEREBY DECLARE THAT THE PARTICULARS GIVEN ABOVE ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THE ABOVE INVESTMENTS HAVE BEEN MADE IN COMPLIANCE WITH THE PROVISIONS OF THE TRUSTEES ACT (CAP. 337).

Full name
& Signature of Trustee

Date: _____ Making the Return: _____ Contact Number: _____

- NOTE:**
1. This form is to be completed by the Trustee of the Pension/Provident Fund and returned to the Comptroller of Income Tax, 55 Newton Road, Revenue House, Singapore 307987 within 14 days after 30 Jun and 31 Dec of each year.
 2. The investment position shall be declared at market value.
 3. The word 'NIL' should be written in any space not applicable. No space is to be left BLANK.

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