Inland Revenue Department
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 22 (REVISED)

TAXATION OF ROYALTIES AND OTHER INCOME FROM INTELLECTUAL PROPERTIES

These notes are issued for the information of taxpayers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Taxpayers are reminded that their right of objection against the assessment and their right of appeal to the Commissioner, the Board of Review or the Court are not affected by the application of these notes.

These notes replace those issued in January 2005.

WONG Kuen-fai
Commissioner of Inland Revenue

August 2020

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

No. 22 (REVISED)

CONTENT

LEGISLATIVE PROVISIONS

Basic charge

Section 14 of the Inland Revenue Ordinance (the Ordinance) contains the main charging provision for profits tax. In short, profits tax is charged on a person in respect of the person's assessable profits arising in or derived from Hong Kong from a trade, profession or business carried on by the person in Hong Kong. Profits arising in or derived from Hong Kong include profits from business transacted in Hong Kong. Thus, royalty income derived by a person carrying on business in Hong Kong from intellectual properties through licensing operations undertaken in Hong Kong is chargeable to profits tax.

Deeming provisions

2. Section 15(1) of the Ordinance deems certain sums derived from intellectual properties, not otherwise chargeable to tax, as trading receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong. Section 15(1) does not exclude any person from chargeability to profits tax under section 14. It simply enlarges the scope of section 14. The relevant provisions are summarised as follows:

(a) Section 15(1)(a) and (b) was introduced in 1971 to deem sums received by or accrued to a person for the use, or the right to the use, in Hong Kong of certain intellectual properties as trading receipts chargeable to profits tax.

(b) Section 15(1)(ba) was added in 2004 to bring into charge sums received by or accrued to a person for the use, or the right to the use, outside Hong Kong of certain intellectual properties if the sums are deductible in ascertaining the assessable profits of a person under profits tax.

(c) Section 15(1)(bb) was added in 2018 to deem sums received by or accrued to a performer or an organizer for the assignment of, or the agreement to assign, a performer's right in relation to a performance in Hong Kong as trading receipts chargeable to profits tax.

(d) Section 15(1)(bc) was added in 2018 to deem as trading receipts chargeable to profits tax sums received by or accrued to a person for:

(i) the use, or the right to the use, outside Hong Kong of certain intellectual properties generated from any research and development (R&D) activity in respect of which a deduction is allowable under section 16B; or

(ii) imparting or undertaking to impart knowledge connected with the use outside Hong Kong of such intellectual properties.

3. Section 15F of the Ordinance was added in 2018. The effect is that a person who has contributed in Hong Kong to the development, enhancement, maintenance, protection or exploitation (DEMPE) of any intellectual property is to be taxed on such part of the sum accruing in respect of its exhibition or use or related rights as is attributable to the value creation contributions in Hong Kong even if the sum accrues to the person's associate who is a non-Hong Kong resident person.

SOURCE OF ROYALTY INCOME

The broad guiding principle

4. In determining the source of profits, the broad guiding principle is that one looks to see what the person has done to earn the profits in question and where the person has done it. In other words, the proper approach is to identify the operations which produced the relevant profits and ascertain where those operations took place. The source of profits must be attributed to the operations of the person which produce them and not to the operations of other members of the person's group.

5. The operations do not comprise the whole of the person's activities. The focus is on establishing the geographical location of the person's profit-producing transactions as distinct from activities antecedent or incidental to

those transactions. The Department's views on the locality of profits are set out in detail in the Departmental Interpretation and Practice Notes (DIPN) No. 21 *Locality of Profits*.

6. Whether royalty income derived from licensing activities is chargeable to tax in Hong Kong depends on the facts of each case. No single legal test is decisive.

Application of the broad guiding principle

Totality of facts

7. Whether royalty income derived from the licensing of intellectual properties by persons carrying on business in Hong Kong is sourced in Hong Kong and thus subject to tax under section 14 is a question of fact to be determined by the totality of the facts and circumstances in each case. Paragraphs 8 to 10 below merely illustrate how the Commissioner would apply the broad guiding principle in certain situations.

Licensing of intellectual properties created or developed by licensor

8. If an intellectual property is created or developed by a person carrying on business in Hong Kong and is licensed by the person to another person, the royalty income so derived will generally be regarded as Hong Kong sourced income and hence will be subject to profits tax. The place where the licensee uses the intellectual property is not a relevant factor to determine the source of the royalty income. Accordingly, even if the intellectual property is used outside Hong Kong, the income derived from the licensing of such property will still be considered as having a source in Hong Kong. This is because the royalty income is primarily generated by the person using the person's wits and labour to create or develop the intellectual property in Hong Kong.

Licensing of intellectual properties purchased by licensor

9. If a person has purchased the proprietary interest of an intellectual property outside Hong Kong and licenses it to another person outside Hong Kong for use outside Hong Kong, the royalty income so derived will generally be

regarded as non-Hong Kong sourced income and hence will not be subject to profits tax. Accordingly, if the intellectual property is a patent right, right to know-how or specified intellectual property right (SIPR), no deduction will be allowed for the capital expenditure incurred on acquiring the patent right, right to know-how or SIPR in accordance with section 16EC(4)(b). Section 16EA(11) defines SIPR to mean a copyright, performer's economic right, protected layout-design (topography) right, protected plant variety right, registered design or registered trade mark.

Sublicensing of intellectual properties

10. If a person only obtains a licence to use an intellectual property from its owner (i.e. the person has not obtained the proprietary interest of the intellectual property) and then sub-licenses the intellectual property to another person for use outside Hong Kong, the Commissioner will, in ascertaining whether the royalty income so derived is sourced in Hong Kong, take the place of acquiring and granting the licence as the location of income. As such, if the person acquires in Hong Kong the licence for use of the intellectual property and grants a sub-licence in Hong Kong, the royalty income derived from sub-licensing the intellectual property will be regarded as having been derived from Hong Kong. As the person has not acquired the proprietary interest of the intellectual property, including a patent right, right to know-how or SIPR, the person is not eligible to obtain the deduction for the capital expenditure incurred on the intellectual property. The licence fee incurred by the person will be deductible if it satisfies the conditions provided under the general deduction provisions of section 16(1).

Application of the deeming provisions

Exhibition or use of cinematograph films, etc. in Hong Kong

11. Section 15(1)(a) brings into chargeable income the sums, not otherwise taxable, received by or accrued to a person from the exhibition or use in Hong Kong of cinematograph or television film or tape, any sound recording, or any advertising material connected with such items. In *Turner Entertainment Networks Asia Inc v CIR* [2015] 3 HKLRD 295, the Court of Appeal interpreted the phrase "exhibition or use" as meaning "exhibition or other use". Thus,

exhibition is simply a form of use of intellectual property for the purpose of interpreting section 15(1)(a).

Use or right to the use of patents, trade mark, etc. in Hong Kong

12. Section 15(1)(b) deems as trading receipts sums received by or accrued to a person for the use, or the right to the use, in Hong Kong of any patent, design, trade mark, copyright material, layout-design (topography) of an integrated circuit, performer's right, plant variety right, secret process or formula, or other property or right of a similar nature, and sums for imparting or undertaking to impart knowledge directly or indirectly connected with the use in Hong Kong of such property or right.

13. In the case of layout-design (topography) of an integrated circuit, performer's right and plant variety right, section 15(1)(b) does not apply to sums received or accrued before 29 June 2018.

Use or right to the use of patents, trade mark, etc. outside Hong Kong

14. For the purposes of section 15(1)(b), an intellectual property will not be regarded as "used in Hong Kong" if a person carrying on a business in Hong Kong pays royalty fees for the use, or right to the use, of the intellectual property outside Hong Kong, even though profits derived by the person from goods manufactured or sold outside Hong Kong are chargeable to profits tax. The Court of Final Appeal in *CIR v Emerson Radio Corporation* (1999) 2 HKCFAR 501 held that:

(a) The rights conferred by registration of trade marks are territorial. Section 15(1)(b) had no application on royalty receipts paid for the use of trade marks registered outside Hong Kong in respect of sales outside Hong Kong.

(b) The application of a trade mark to goods by a manufacturer constitutes "use" of that mark. Only royalty income relating to goods manufactured in Hong Kong could be chargeable to tax under section 15(1)(b) and royalty income paid in respect of goods manufactured outside Hong Kong was not chargeable.

15. In view of the court decision, section 15(1)(ba) was added in 2004 to bring into charge sums, not otherwise taxable, received by or accrued to a person for the use, or the right to the use, outside Hong Kong of any intellectual property enumerated in section 15(1)(b), which are deductible in ascertaining the assessable profits of a person for the purposes of profits tax. Section 15(1)(ba) was enacted to maintain a tax symmetry to avoid possible loss of revenue. The effect is that section 15(1)(b) applies to cases where the use, or the right to the use, of an intellectual property is in Hong Kong whereas section 15(1)(ba) applies when the use, or the right to the use, of an intellectual property is outside Hong Kong.

16. Section 15(1)(ba) does not apply to sums received or accrued before 29 June 2018 for the use, or the right to the use, of any layout-design (topography) of an integrated circuit, performer's right and plant variety right.

Example 1

Company-F1 was the owner of a trade mark registered in Hong Kong, Jurisdiction-F1, Jurisdiction-F2 and several other jurisdictions. During the year of assessment 2018/19, Company-HK, which was carrying on a manufacturing business in Hong Kong, paid royalty fee of $500,000 to Company-F1 for the use of the trade mark on goods manufactured in Jurisdiction-F2 under a processing arrangement. The manufactured goods were directly shipped to overseas markets without passing through Hong Kong. Company-HK was allowed full deduction of the royalty fee paid.

Section 15(1)(b) had no application on the royalty fee received by Company-F1 because the royalty fee was not paid for the use of the trade mark in Hong Kong. However, section 15(1)(ba) would apply to deem the whole of the royalty fee, which was deductible in ascertaining Company-HK's assessable profits, as trading receipts arising in or derived from Hong Kong by Company-F1 notwithstanding that the trade mark was used outside Hong Kong.

Example 2

Facts are the same as Example 1 except that the goods manufactured in Jurisdiction-F2 were shipped back to Hong Kong for domestic sales and for re-export.

Since the trade mark was attached to the goods, the import of the goods into Hong Kong, the sale of the goods in Hong Kong and the re-export of the goods from Hong Kong would constitute the use of the trade mark in Hong Kong within the meaning of section 15(1)(b). The royalty fee for the use of the trade mark in Hong Kong received by Company-F1 would be chargeable under section 15(1)(b).

If the royalty fee paid by Company-HK was partly attributable to the use of the trade mark in Jurisidction-F2, that part of the royalty fee received by Company-F1 would be chargeable under section 15(1)(ba).

Use or right to the use of intellectual properties generated from research and development activities in Hong Kong

17. Section 15(1)(bc) was added in 2018 to deem as trading receipts sums, not otherwise taxable, received by or accrued to a person for the use, or the right to the use, outside Hong Kong of any intellectual property or know-how generated from any R&D activity in respect of which a deduction is allowable under section 16B in ascertaining profits of the person, or for imparting or undertaking to impart knowledge directly or indirectly connected with the use outside Hong Kong of any such property or know-how.

18. For the purposes of section 15(1)(bc), the term "intellectual property" includes copyright material, design, layout-design (topography) of an integrated circuit, patent, plant variety right, secret process or formula, and any other property or right of a similar nature. The term "know-how" is defined to mean any industrial information or techniques likely to assist in the manufacture or processing of goods or materials. Section 15(1)(bc) does not apply to sums received or accrued before 2 November 2018. Detailed reference can be found in paragraphs 113 to 115 of DIPN No. 55 *Deduction for Research and Development Expenditure*.

Use or right to the use of intellectual properties with value creation contributions in Hong Kong

19. Section 15F was added in 2018 to give effect to the guidance in Chapter VI of the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* in relation to intangibles. The guidance aims to address base erosion and profit shifting (BEPS) issues resulting from the transfer of intangibles among members of a multinational enterprise (MNE) group. In gist, profits associated with the transfer and use of intangibles should be appropriately allocated among MNE group members on the basis of their contributions to value creation.

20. Section 15F aligns taxation of income from intellectual properties with value creation contributions in Hong Kong. It provides that:

> Where—
>
> (a) a person has contributed to the value creation of an intellectual property in Hong Kong through
>
> (i) performing the functions of and assuming risks relating to the DEMPE of the intellectual property; or
>
> (ii) providing assets in and assuming risks relating to the DEMPE of the intellectual property; and
>
> (b) a sum is derived by the person's non-Hong Kong resident associate for the exhibition or use of, or a right to exhibit or use, the intellectual property; or for the imparting or undertaking to impart knowledge connected with the use of such intellectual property,
>
> the part of the sum that is attributable to the value creation contributions in Hong Kong will be regarded as a Hong Kong sourced trading receipt and the person will be taxed accordingly in respect of the attributable sum.

21. The rationale is that a person who performs any part of the DEMPE functions in Hong Kong in relation to an intellectual property can be regarded as the economic owner (in part or in whole) of the intellectual property so created, rather than purely looking at the matter from the legal ownership perspective. Section 15F applies in relation to a year of assessment beginning on or after 1 April 2019. Detailed reference can be found in paragraphs 17 to 22 of Appendix 5 to DIPN No. 59 *Transfer Pricing between Associated Persons*.

Meaning of "use" and "right to the use"

22. Section 15(1)(a) imposes charge of profits tax on sums received from the exhibition or use in Hong Kong of copyright materials. Sections 15(1)(b), (ba) and (bc) and 15F impose charge on sums received for the "use" or the "right to the use" of intellectual properties.

23. The meanings of the words "use" and "right to the use" have been deliberated in *Turner*. Barma JA, who delivered the main judgment in the Court of Appeal, expressed the view that section 15(1)(a) requires an actual exhibition or use of copyright materials whereas there is no such requirement in section 15(1)(b) or (ba). It was held that the word "use" in section 15(1)(b) and (ba) should generally be given an ordinary and non-technical meaning and should include "exhibition". Even if there was no actual exhibition of the "media works" or use of the intellectual property as required under section 15(1)(a), the fees paid for the "right" to exhibit or use them are assessable under section 15(1)(b) or (ba). The Commissioner considers that the same interpretation should equally apply to sections 15(1)(bc) and 15F.

Assignment of performer's right

24. Sums, not otherwise taxable, received by or accrued to a performer or an organizer for an assignment of, or an agreement to assign, a performer's right in relation to a performance given by the performer in Hong Kong are deemed under section 15(1)(bb) to be trading receipts arising in or derived from Hong Kong from a trade, profession or business carried on in Hong Kong.

25. For the purposes of section 15(1)(bb), "performance", "performer" and "organizer" have the following meanings:

(a) "performance" has the meaning given by section 200(2) of the Copyright Ordinance (Cap. 528) – a dramatic performance, a musical performance, a reading or recitation of a literary work, a performance of an artistic work, an expression of folklore or a performance of a variety act or any similar presentation which is, or so far as it is, an unfixed performance given by one or more individuals;

(b) "performer" has the meaning given by section 200(2) of the Copyright Ordinance – an actor, singer, musician, dancer or any other person who acts, sings, delivers, declaims, plays in, interprets, or otherwise performs a performance;

(c) "organizer" means a person who obtains a performer's right in a performance in Hong Kong through arranging the participation of the performer in the performance or managing the performance.

26. Section 15(1)(bb) seeks to ensure that receipts which arise from or are in connection with a performance given in Hong Kong by a performer are chargeable to tax here. Sums received for an assignment of, or an agreement to assign, a performer's right are trading receipts of a performer. Such sums are no different from the performance fees received by the performer since they are derived directly or indirectly from giving the performances. Where the performances are given in Hong Kong, section 15(1)(bb) makes it clear that such sums are trading receipts chargeable to profits tax in Hong Kong.

COMPUTATION OF ASSESSABLE PROFITS UNDER SECTION 21A

Application of the 30% rate

27. Under section 21A, the assessable profits in respect of a sum specified in section 15(1)(a), (b) or (ba) are deemed to be 30% of the sum received or accrued except where the intellectual property was previously "owned" by a person carrying on a trade, profession or business in Hong Kong and the sum is

paid or accrues to an "associate". In the latter case, 100% of the sum paid or accrued is taken as the assessable profits.

Application of the 100% rate

28. The purpose of deeming 100% of the sum as assessable profits is to counter attempts made to abuse section 21A by entering into arrangements with overseas associates. Typically, a section 21A "scheme" involved a Hong Kong company making use of an intellectual property it had developed "in-house". Whilst the Hong Kong company retained ownership of the intellectual property, it did not incur any deductible expense in respect of its use. The scheme was for the Hong Kong company to enter into a "sale and license back" arrangement with a subsidiary operating outside Hong Kong. The Hong Kong company transferred ownership of the intellectual property of a kind referred to in section 15(1)(a), (b) or (ba) to the subsidiary operating outside Hong Kong which then granted back to the Hong Kong company, for a substantial royalty, the right to continue to use the intellectual property in Hong Kong. The tax purpose was for the Hong Kong company to obtain a deduction under section 16(1) of the Ordinance, for the full amount of the royalty, with the subsidiary operating outside Hong Kong being taxed under section 21A on only 30% of the royalty it received. In other words, funds remained within the group but a 70% deduction was created in respect of the royalty involved.

29. However, straightforward application of the 100% rate would be restrictive, in the sense that if the 100% rate were to apply to all payments to associates, it could have an adverse bearing on the importation of technologies into Hong Kong by MNEs. In the absence of any indication that section 21A had been exploited by MNEs in respect of technologies developed overseas, a provision was added to exclude the relevant payments from the application of the 100% rate under a certain circumstance. Proviso to section 21A(1)(a) provides that the 100% rate would not apply in respect of any sum derived from an associate "where the Commissioner is satisfied that no person carrying on a trade, profession or business in Hong Kong has at any time wholly or partly owned the property in respect of which the sum is paid". In such cases, and also where a relevant sum is derived from a person who is not an associate, the 100% rate would not apply.

Meaning of "owned"

30. For the purposes of section 21A, the Commissioner accepts that "owned" refers to direct ownership. For example, although a shareholder is a proportionate owner of a company, the shareholder does not own the assets of the company – they are owned by the company itself as a separate and independent legal entity.

31. If a sum is to be paid to an associate and either the person responsible for making the payment or the recipient considers that the ownership history of the relevant intellectual property is such that the Commissioner would be satisfied in terms of the proviso referred to above, confirmation may be obtained by way of an advance ruling from the Commissioner as to whether the lower rate of 30% is applicable. It should, however, be noted that rulings will not be provided in respect of hypothetical situations.

Meaning of "associate"

32. Generally, in considering whether the assessable profits in respect of a relevant sum should be taken to be 30% or 100%, the first question to be determined is whether the sum was derived from an associate. The term "associate" is defined widely in section 21A(3) in order to prevent circumvention of the provisions by the interposition of third parties. For the purpose of ascertaining whether a sum was derived from an associate, regard must also be had to section 21A(2), which covers the situation where a sum was derived from or by a trustee of a trust estate or a corporation controlled by such a trustee. In such cases, the sum is deemed to have been derived from or by, as the case may be, each of the trustee, the corporation and the beneficiary under the trust.

33. The provisions concerning "associate", and the related definitions in section 21A(3) of "associated corporation", "beneficiary under the trust", "control", "principal officer" and "relative", are along similar lines to those contained in sections 16EC and 39E of the Ordinance.

Recipient carrying on business in Hong Kong

34. If the sums for the use of an intellectual property are received by or accrue to a person carrying on a business in Hong Kong, the assessable profits on the recipient's income are subject to profits tax under section 14, and section 21A does not apply: see *Lam Soon Trademark Limited v CIR* (2006) 9 HKCFAR 391. The primary function of section 15(1) is "to bring in something which would otherwise be excluded". Section 15 does not exclude any person from chargeability to profits tax under section 14. If a person is chargeable to profits tax under section 14, there is simply no need to resort to section 15(1). Where an assessment was originally made on the basis of sections 15 and 21A, an additional assessment under section 60 can be made if it was subsequently found that the proper charging section should be section 14.

DTA TERRITORY RESIDENT PERSON

Royalties Article of DTA

35. Royalties arising in Hong Kong and beneficially owned by a DTA territory resident person will be taxed at the rate specified in the DTA. The rate specified in the DTA will not apply if the person is not the beneficial owner of the royalty income. A person will be regarded as the beneficial owner of the income if the person enjoys the full privilege to directly benefit from that income. In *Indofood International Finance Ltd v JP Morgan Chase Bank CA* [2006] STC 1195, it was confirmed that, in line with the OECD Commentary, beneficial ownership should be understood in its context and in light of the object and purposes of the DTA, including avoiding double taxation and the prevention of fiscal evasion and avoidance.

36. If the rate specified in the DTA is higher than that provided in the Ordinance, the DTA territory resident person is liable to tax on the deemed trading receipts under section 15(1) at the lower rate. However, the business profits article, and not the royalties article, will apply if the DTA territory resident person carries on business in Hong Kong in which the royalties arise through a permanent establishment situated in Hong Kong and the right or property in respect of which the royalties are paid is effectively connected with

such permanent establishment. In such case, the royalty income will form part of the business income of the permanent establishment and be chargeable to profits tax under section 14.

Example 3

In the year of assessment 2018/19, Company-HK paid royalties of $1 million to Company-F, a company incorporated in Jurisdiction-F. The royalty payment was accepted as a deductible expenditure. The DTA entered into between Hong Kong and Jurisdiction-F provided that the tax charged on royalties should not exceed 3%. Company-F did not carry on business in Hong Kong and a connected entity of Company-F was nominated to be chargeable at the two-tiered rates.

If the Commissioner was satisfied that the 100% tax rate under section 21A(1)(a) should not be applied, the tax payable would be the lower of:

(a) Tax payable under section 14(3) as modified by section 14AAC(3)(b) of the Ordinance:
$1,000,000 × 30% × 16.5% − $20,000 (tax reduction)
= $29,500

(b) Tax payable per DTA:
$1,000,000 × 3% = $30,000

The lesser of (a) and (b) would be $29,500.

Example 4

Facts are the same as Example 3 except that the royalty payment made by Company-HK was $2 million.

If the Commissioner was satisfied that the 100% tax rate under section 21A(1)(a) should not be applied, the tax payable would be the lower of:

(a) Tax payable under section 14(3) as modified by section 14AAC(3)(b) of the Ordinance:
$2,000,000 × 30% × 16.5% – $20,000 (tax reduction)
= $79,000

(b) Tax payable per DTA:
$2,000,000 × 3% = $60,000

The lesser of (a) and (b) would be $60,000.

Rate in DTA not applied

37. Where general anti-avoidance provisions are invoked or the royalty income derived from an associate is assessed under the specific anti-avoidance provisions in section 21A(1)(a), the DTA territory resident person cannot take the benefit of paying tax at the lower rate specified in the DTA.

38. The principal purpose of a DTA is clear: elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. Hence, a proper construction of a DTA would allow the Commissioner to disregard abusive transactions entered into with a view to obtaining unintended benefits under the provisions of the DTA.

Example 5

Facts are the same as Example 3 except that the Commissioner considered that section 21A(1)(a) should be invoked to take 100% of the royalty income as assessable profits.

Tax payable under section 14(3) as modified by section 14AAC(3)(b) of the Ordinance:
$1,000,000 × 16.5% – $20,000 (tax reduction)
= $145,000

Since section 21A(1)(a) was invoked by the Commissioner, the rate specified in the DTA would not apply. In this case, the tax payable would be $145,000.

ADVANCE RULINGS

Application for advance ruling

39. Section 88A of the Ordinance provides that the Commissioner may, on an application made by a person, make a ruling on any of the matters specified in Schedule 10. A person may apply to the Commissioner for an advance ruling concerning the application of section 21A. When seeking for a ruling, the applicant must disclose all relevant information known to him and provide the information specified by the Commissioner. DIPN No. 31 *Advance Rulings* sets out in detail the procedures of applying for a tax ruling and the documents required.

40. Given the nature of the intellectual property involved, cases with a complicated history of ownership should be the exception rather than the rule. The current owner of the intellectual property should know the details of the person, if any, from whom the intellectual property had been purchased. In many cases, the relevant intellectual property would have been developed by the current owner and, as such, there would not be a previous owner.

41. Generally, where the information referred to above is provided, it should be sufficient to allow a ruling to be made by the Commissioner or an authorised officer. In some cases, however, it may be necessary for the Commissioner to seek further information from the applicant or a third party before a ruling can be given.

42. A case by case approach will be adopted by the Commissioner in relation to the issue of rulings. Accordingly, a ruling given in one case should not be regarded as requiring the Commissioner to issue a like ruling in a subsequent similar case.