



Inland Revenue Department
Hong Kong

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

NO. 31 (REVISED)

ADVANCE RULINGS

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 April 1998.

CHU Yam-yuen
Commissioner of Inland Revenue

November 2011

Our web site : www.ird.gov.hk

DEPARTMENTAL INTERPRETATION AND PRACTICE NOTES

No. 31 (REVISED)

CONTENT

	Paragraph
Introduction	
Background	1
The service	3
Objectives	5
Matters to be ruled on	
Part I of Schedule 10	7
The arrangement	8
Discretion	10
Decline and refusal to make a ruling	
Decline	11
Refusal	14
Notification of decline and refusal	15
Advance ruling requests	
Applications	16
Extent of disclosure	17
Information and documents to be provided with a ruling request	19
Quality and completeness of information	21
Class rulings	24
Fees for ruling requests	28
Lodgement of ruling requests	32
Processing of ruling requests	34
The rulings	
Finality of ruling	40

Application and effects of a ruling	
The Commissioner will apply ruling	44
Ruling shall not apply	46
Subsequent to issue of ruling	
Withdrawal of a ruling	48
Impact of legislative amendment on rulings	50
Post-implementation review	53
Incorrect information or false answer	54
Publication of rulings	55
Appendices	

INTRODUCTION

Background

Providing assistance in the form of advance ruling on the application of the Inland Revenue Ordinance, Cap. 112 (IRO) administered by the Commissioner is central to the role of the Department.

2. Since 1 April 1998, an expanded advance ruling service has been provided under section 88A of the IRO after the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 1998. Section 88A provides for the Commissioner to issue in response to an application an advance ruling on how any provision of the IRO would apply in respect of the applicant or to an arrangement. In view of the number of applications, it is appropriate that the service should come with a charge which is calculated on the basis of cost recovery.

The service

3. The service covers matters falling within sections 9A (service companies), 14 (locality of profits), 15E (stock borrowing and lending), 21A (royalty payments), 26A(1A) (collective investment schemes), 61A (the general anti-avoidance provision), 61B (sale of loss companies) and 87 (interest income exemption) of the IRO. It also includes cases where the Department has, in appropriate circumstances, been prepared to offer an informal opinion on the taxation consequences of particular matters.

4. Advance rulings are primarily provided as a service to taxpayers. The Department will be accommodating to the requests for advance ruling unless they fall within the exceptions outlined in paragraphs 11 to 14 below.

Objectives

5. The main objectives of this service are to:
- (a) provide taxpayers with a degree of certainty about the taxation treatments basing on the current tax legislation for seriously contemplated arrangements;

- (b) promote consistency in the application of the IRO; and
- (c) minimize disputes between the Department and taxpayers.

6. Schedule 10 of the IRO prescribes precisely how the advance ruling system is to operate. The ruling system is designed to clarify the tax treatment of the arrangements contemplated. It does not in itself change that treatment: it simply explains what the treatment is likely to be, so that taxpayers can make informed decisions.

MATTERS TO BE RULED ON

Part I of Schedule 10

7. Section 1 of Part I of Schedule 10 to the IRO provides generally that the Commissioner may make a ruling on how any provision of the IRO applies to the applicant or to the arrangement described in the application, whether or not reference was made to that provision in the application. However, a ruling will not be provided if the matter on which a ruling is sought involves the imposition or remission of a penalty, the correctness of a return or other information supplied by any taxpayer, the prosecution of any taxpayer or the recovery of any debt owing by any taxpayer.

The arrangement

8. The term “arrangement”, as defined in section 2 of the IRO, includes:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action or course of action or course of conduct.

9. A ruling will only be given for a seriously contemplated arrangement but not those that are hypothetical or speculative. However, no ruling will be provided for a matter where the tax involved is due and payable as at the date of the ruling request. In this regard a ruling will not normally be available once the due date for lodgement of the return in question has passed when the normal assessment and objection procedures will apply. An application for a ruling is not an acceptable ground for delaying the submission of a return.

Discretion

10. The Commissioner may make a ruling on how he will exercise the discretion under any of the provisions of the IRO. However, the Commissioner may decline to rule on a matter relating to the exercise of a discretion if, in the circumstances of the applicant's case, it would be more appropriate to exercise the discretionary power under that provision, or to inform the applicant that the discretionary power will not be exercised. Generally, applicants seeking the exercise of a discretionary power should request the exercise of that power rather than apply for an advance ruling on how that power might be exercised. For example, in relation to a discretion to defer the time for payment of tax, the Commissioner may just decide to defer the time at which an amount is payable by the applicant rather than make an advance ruling.

DECLINE AND REFUSAL TO MAKE A RULING

Decline

11. Pursuant to section 2 of Part I of Schedule 10, the Commissioner may decline to make a ruling if:

- (a) the application seeking the ruling would require him to determine or establish any question of fact. In this regard a ruling will not be available on matters that are a pure question of fact, for example, whether or not the gain arising from the disposal of property is chargeable to tax;

- (b) he 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; or
- (d) the matter on which a ruling is sought is the subject of a return which has been or is due to be lodged.

12. Despite not specifically stipulated in the provisions in Part I of Schedule 10, an application for a ruling would generally be declined in the following circumstances:

- (a) the matter on which a ruling is sought is the same in character as a completed transaction entered into by the applicant in an earlier year and the tax effect of that earlier transaction is the subject of discussion with the applicant or is subject to an objection or appeal, whether in relation to the applicant or any other person;
- (b) the central issue concerns a matter that is before a board, a tribunal or the courts or, if a judgement has been issued, an appeal is under consideration;
- (c) the request contains alternative proposals or courses of action on the part of the applicant;
- (d) the matter is primarily one of fact and the circumstances are such that all the pertinent facts cannot be established at the time of the request for the ruling;
- (e) the ruling requires an opinion as to generally accepted accounting principles or commercial practices;
- (f) the matter is the law concerned with the administration of the tax system; or
- (g) the issue involves the interpretation of a foreign law.

13. It must also be stressed that the Department will not help with tax planning, give advice as a purely academic exercise or allow any persons to divert the Department's resources to meet their needs to the detriment of others and the robustness of the system as a whole.

Refusal

14. Under section 3 of Part I of Schedule 10, the Commissioner shall not make a ruling if:

- (a) he considers that the arrangement in relation to which the ruling is sought is not seriously contemplated by the applicant;
- (b) the application is frivolous or vexatious;
- (c) he is undertaking an audit on how any provision of the IRO 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;
- (d) he considers that the applicant has not provided sufficient information in relation to the application; or
- (e) he considers that it would be unreasonable to make a ruling in view of the resources available to him.

Notification of decline and refusal

15. In a case where an application for a ruling has been declined or a ruling is not made, the applicant will be notified in writing with the reasons therefor pursuant to section 4 of Part I of Schedule 10.

ADVANCE RULING REQUESTS

Applications

16. Any taxpayer may apply for a ruling on the way in which a provision of the IRO applies to the taxpayer and to any particular arrangement which falls within the purview of the ruling system. The applicant is allowed to withdraw the ruling request in writing at any time before the ruling is made.

Extent of disclosure

17. When seeking a ruling, the applicant must disclose all relevant information known to him. The applicant has to “put all his cards face upwards on the table” as explained in *R v. IRC ex parte MFK Underwriting Agencies Ltd & Others* 62 TC 607. The applicant is responsible for ensuring that the information provided is correct, accurate and complete. In *R v. IRC ex parte Matrix Securities Ltd* 66 TC 587, at the House of Lords it was held that the revocation of assurances was proper because the information submitted by the company in respect of a proposed trust which was a tax avoidance scheme had been inaccurate and misleading.

18. Furthermore, it is not enough to merely disclose sufficient information so that appropriate inferences could be drawn. Apart from setting out all the relevant facts, the taxpayer is expected to draw the Commissioner’s attention to all the crucial issues and questions of the arrangement. The Commissioner should also be made aware of relevant materials, matters or sources of information so as to ensure access to all the pertinent facts and law. The Commissioner shall not make a ruling where the information is not sufficient or the disclosure is inadequate.

Information and documents to be provided with a ruling request

19. A checklist for making a ruling request is attached at Appendix 1. The checklist should be cross-referenced with the supporting documents where applicable. A request for a ruling should be made on a specified application form: “Application for Advance Ruling” (Form IR1297) in duplicate together with supporting information. What information and documents are required will depend on the circumstances of the ruling request and may be specified by

the Commissioner (see paragraph 20 below). In any case, the request must contain the following:

- (a) the taxpayer's name, address and tax file number and similar information in respect of all other parties to the arrangement (any information not on hand at the time of application should be supplied as soon as it is available);
- (b) if the request is made by a representative of the taxpayer, written evidence showing that the representative is authorized to act for the taxpayer;
- (c) a cheque for the application fee and an undertaking to pay such further fees as may be payable in respect of the ruling request;
- (d) a statement as to whether any of the matters involved in the ruling request are, to the best of the taxpayer's knowledge, being considered in connection with a tax return already filed or any of the matters are under objection or appeal;
- (e) an indication of the subject matter of the ruling request together with a complete description of all relevant facts and documents relating to the arrangement for which the ruling is sought and a complete description of each proposed transaction therein by setting out chronologically all transaction steps;
- (f) with regard to each proposed transaction covered by the ruling request:
 - (i) a statement of its purposes;
 - (ii) the taxpayer's interpretation of the application of the provisions of the IRO that are relevant;
 - (iii) the reasons why the particular way or method of implementation has been adopted;
 - (iv) details of how the transaction will be accounted for where relevant to the tax consequences;
 - (v) a description of the tax concern that is the cause of the request for ruling; and

- (vi) statements or reasons and draft answers to the issues and questions identified to show clearly what ruling is being sought and why it is sought.
- (g) copies of any supporting documents, such as draft agreements or contracts, together with a summary of relevant facts contained therein;
- (h) the provision of the IRO in respect of which the ruling is sought;
- (i) the proposition of law, if any, which is relevant to the issues raised in the ruling request;
- (j) the assumptions made by the taxpayer in respect of the arrangement;
- (k) the years of assessment or period to which the request relates;
- (l) whether a request or similar request has been lodged about the arrangement for any other years of assessment or period;
- (m) where appropriate, a complete description of significant transactions completed by the taxpayer prior to the time of submission of the ruling request or that may be undertaken after the completion of the arrangement, which may be part of a series of transactions;
- (n) where the ruling request concerns the application of the general anti-avoidance rule (i.e. section 61A of the IRO) to the arrangement or any part thereof, submissions to establish that the arrangement or any part thereof would not directly or indirectly result in or amount to a misuse of the provisions of the IRO or an abuse having regard to the provisions of the IRO read as a whole;
- (o) where relevant to the ruling request, an analysis of authorities known to the taxpayer or the representative which support the taxpayer's position, and those that do not, with submissions why the authorities in support of the taxpayer's position should prevail;

- (p) copies of any legal opinions, professional or other advice obtained in relation to the arrangement; and
- (q) a draft ruling in the format as outlined in Appendix 2.

20. The legislation detailing the information to be provided in relation to an application for a ruling in section 8 of Part I of Schedule 10 also provides that the Commissioner may specify in writing that further information be provided for the purposes of the section. In this regard, it is hereby specified that where a ruling relates to a matter falling within DIPN No. 15 (leveraged lease transactions, general anti-avoidance provision or loss companies), DIPN No. 20 (collective investment schemes), DIPN No. 22 (royalty payments) or DIPN No. 27 (stock borrowing and lending), the application should include, in addition to the items listed in paragraph 19 above, any further information which is specified in the relevant DIPN. It is also hereby specified that where an application for a ruling is in relation to a matter of the kind listed below, additional information should be provided as detailed in the corresponding Appendix.

- (a) On whether profits are to be treated as chargeable to profits tax under section 14 of the IRO as arising in or derived from Hong Kong for:
 - (i) trading profits from the purchase and sale of goods - Appendix 3
 - (ii) profits from a manufacturing business - Appendix 4
 - (iii) commission income - Appendix 5
- (b) On whether remuneration under certain arrangements is to be treated as chargeable to salaries tax under section 9A of the IRO - Appendix 6 (see also DIPN 25)

Quality and completeness of information

21. In addition to the hard copies, the applicant can provide diskettes or CD-ROMs containing copies of the proposed draft ruling and, where available, other relevant documents, including all draft agreements and the draft public offer document.

22. Where an incomplete application is submitted, the applicant will be contacted and advised that the application is invalid and that work will not begin on it until the missing information has been provided. This ensures that applicants who do comply with all documentary and information requirements are not disadvantaged.

23. If the applicant cannot provide all the information required above, request can be made to the Commissioner for waiver of any of the requirements. An explanation of why the information cannot be furnished, together with any supporting evidence, must accompany the request.

Class rulings

24. Where appropriate, the Commissioner will issue a class ruling in response to a request seeking advice about the application of a relevant provision to a specific class of persons in relation to a particular arrangement. The purpose of a class ruling is to provide certainty to participants (e.g. employees participating in a share award scheme) and obviate the need for individual participants to seek rulings.

25. A class ruling describes the relevant details of a particular arrangement. It contains the Commissioner's opinion about the application of the relevant provisions to a specific class of persons in relation to the particular arrangement. The following are examples of situations where such a ruling may be given:

- (a) an employer seeks ruling about the tax consequences of redundancy plan for a class of employees;
- (b) an employer seeks ruling about the tax consequences of an employee share acquisition plan for individual employees;
- (c) a company seeks ruling about the tax consequences for its shareholders of a restructure of the company, a split or consolidation of its shares, or any other proposed transaction of the company affecting the tax affairs of its shareholders.

26. The Commissioner will apply a class ruling to all persons in the specific class concerned, although such persons might not be a party to, or might have not authorized, the application. Such treatment, however, does not affect their objection and appeal rights. The applicant should ensure that all concerned persons are informed of the application and the ruling made.

27. It has to be made explicitly clear that class rulings will not be issued in relation to “tax products” or “tax schemes” designed to obtain tax benefits for the participants, whether identified or not.

Fees for ruling requests

28. The fees (including any reimbursement) payable in respect of an application for a ruling are set out in Part II of Schedule 10 of the IRO and may, by notice published in the Gazette, be amended from time to time. Appendix 7 sets out details of those fees.

29. In particular, the applicant shall reimburse the Commissioner in relation to the ruling any fees incurred for external advice and any costs and reasonable disbursements.

30. Where an application for a ruling is withdrawn, the applicant is still liable to pay all the fees specified in Part II of Schedule 10 and incurred in respect of the application before the Commissioner receives notice of the withdrawal.

31. Pursuant to subsection (5) of section 88A, the Commissioner may in exceptional cases at his discretion waive in whole or in part any fees payable by an applicant for a ruling request.

Lodgement of ruling requests

32. Applicants are encouraged to submit applications early in the year of assessment to which the proposed ruling relates. This should ensure sufficient time to finalise the ruling.

33. Ruling requests, together with cheques for the application fee, should be forwarded to:

The Deputy Commissioner of Inland Revenue (Technical)
36/F, Revenue Tower
5 Gloucester Road
Hong Kong

Crossed cheques should be made payable to “The Government of the Hong Kong Special Administrative Region”.

Processing of ruling requests

34. Ruling requests will normally be dealt with in the order in which they are received. The Department will, provided all relevant information is furnished with the request and further consultation with the applicant is unnecessary, endeavour to respond within 6 weeks of the date of receipt of the request. In case additional information is required, the 6-week response period will count from the date when full information is received by the Department. Obviously, an early submission of all information could speed up the processing. Whilst every effort will be made to deal with the requests for ruling as expeditiously as possible, there may be instances, like where an arrangement involves complex issues, that the Department will require additional time to fully consider a request. Applicants will be advised at the earliest possible time when any unusual delay is foreseen.

35. Any request for processing a ruling request ahead of its regular order will only be considered in exceptional circumstances. Such request should be made in writing to the Deputy Commissioner of Inland Revenue (Technical) outlining the reasons for special consideration.

36. Upon processing a ruling request, further relevant information and documents or an on-site inspection may be requested in appropriate circumstances. Depending on the merits, the Department may permit an applicant to have a meeting to provide new information, to clarify the facts or to clear up any misunderstandings or information previously provided. The applicant may also be given an opportunity to consult clients or practitioners if the ruling the Commissioner proposes to issue differs from that requested by the applicant.

37. All documentation provided by the applicant in support of the ruling request will be retained by the Department, irrespective of whether a ruling is issued or the request is subsequently withdrawn.

38. If the Commissioner considers that the correctness of a ruling would depend on assumptions being made about a future event or any other matter, he may:

- (a) make any assumptions that he considers to be most appropriate under section 10 of Part I of Schedule 10; or
- (b) decline to make the ruling under section 2 of Part I of Schedule 10.

39. Pursuant to section 11 of Part I of Schedule 10, the Commissioner may not make assumptions about information which the taxpayer can provide.

THE RULINGS

Finality of ruling

40. A ruling made by the Commissioner, whether advantageous to the applicant or not, is final. Once a ruling has been issued, no further correspondence will be entertained and it will not be subject to objection or appeal. However, a taxpayer's right of objection against an assessment subsequently issued in accordance with the Commissioner's unfavourable ruling is not affected.

41. The ruling made by the Commissioner will state:

- (a) the identity of the taxpayer, the taxation law and the arrangement to which the ruling applies;
- (b) the period for which the ruling applies; and
- (c) any material assumptions about future events or other matters made by the Commissioner.

42. Generally, the period(s) for which the ruling is valid will be the period to which the particular arrangement relates. A ruling in respect of an arrangement that is intended to apply to similar arrangements that are capable of application over an extended period of time will generally only be valid for the current year of assessment. In general, such a ruling will not be valid for more than two years of assessment from the year of issue of the ruling.

43. Where -

- (a) a taxpayer has obtained a ruling;
- (b) the taxpayer is required to provide a return; and
- (c) in preparing the return the taxpayer is required to take into account the way in which a provision of the IRO applies to the arrangement identified in the ruling,

the taxpayer must disclose in the return:

- (i) the existence of the ruling;
- (ii) whether or not the taxpayer has relied on the ruling in preparing and providing the return; and
- (iii) any material changes to the arrangement identified in the ruling.

APPLICATION AND EFFECTS OF A RULING

The Commissioner will apply ruling

44. According to section 5 of Part I of Schedule 10, where the Commissioner has made a ruling to a taxpayer on the application of any provision of the IRO in relation to an arrangement, and:

- (a) the ruling applies in relation to the arrangement during the whole or any part of the period specified in the ruling; and
- (b) the taxpayer has disclosed in the return provided under the IRO that he has relied on the ruling in preparing and providing the return,

the Commissioner shall apply the provision in relation to the person and the arrangement in respect of the whole of the period or the part of the period, as the case may be, in accordance with the ruling.

45. A ruling on a provision of the IRO only applies to a taxpayer in relation to an arrangement if the provision is expressly referred to in the ruling and only for the period specified in the ruling. It is important to note that each ruling is confined to its specific terms and it cannot be relied upon as a precedent for similar arrangements or for a future ruling application regardless of how similar the facts of that application may be to the issued ruling.

Ruling shall not apply

46. A ruling is given subject to the condition that the arrangement will be implemented in the way stated in the application and the ruling. Section 7 of Part I of Schedule 10 states that a ruling shall not apply to a taxpayer in relation to an arrangement if:

- (a) the arrangement is materially different from the arrangement identified in the ruling;
- (b) there was a material omission or misrepresentation in, or in connection with, the application for the ruling; or
- (c) any assumption of the Commissioner about a future event or any other matter that is stated in the ruling is incorrect.

47. A ruling has no binding effect on the Commissioner if the arrangement entered into is materially different from the arrangement ruled upon: see *Bellinz Pty Ltd v. FCT 39 ATR 198*. The word “material” is not defined in the IRO. For the purpose of ascertaining whether there is material difference, omission or misrepresentation, the Commissioner will look at the arrangement on a case-by-case basis, having regard to the individual circumstances of the taxpayer. A difference will be material if it results in a tax outcome being different to that set out in the ruling: see *Carey v. Field 51 ATR 40*.

SUBSEQUENT TO ISSUE OF RULING

Withdrawal of a ruling

48. Section 13 of Part I of Schedule 10 provides that the Commissioner may at any time withdraw a ruling by notifying the person to whom it applies in writing of the withdrawal and the reasons therefor.

49. If an arrangement is entered into or effected after the date of withdrawal of a ruling, the ruling shall cease to apply in relation to the arrangement. If the arrangement has been entered into or effected on or before the date of the withdrawal:

- (a) and the person to whom the ruling applies has disclosed in the return provided under the IRO that he has relied on the ruling in preparing and providing the return, the ruling shall, after the date of the withdrawal, continue to apply in relation to the arrangement for the remainder of the period specified in the ruling;
- (b) in any other case, the ruling shall cease to apply in relation to the arrangement.

Impact of legislative amendment on rulings

50. If any provision of the IRO that is the subject of or affects a ruling is repealed, the ruling ceases to apply to the extent of, and from the effective date of, that repeal.

51. If any provision of the IRO that is the subject of a ruling is amended, or repealed in part only, in a manner that alters the way in which the taxation law applies, the ruling ceases to apply to the extent of, and from the effective date of, the amendment or partial repeal.

52. If an interpretation of the law, on which a ruling is based, is changed by the Department as a result of a court decision, the ruling ceases to apply to the extent of, and from the date of, the court decision.

Post-implementation review

53. The Department reserves the right to call for documents and other information in respect of the completed arrangement to ensure that it has been carried out in the way stated in the ruling request and the ruling.

Incorrect information or false answer

54. If an applicant of a ruling gives any incorrect information in relation to any matter or thing affecting his own liability to tax or the liability of any other person or gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of the IRO, including section 9 of Part I of Schedule 10, the Commissioner will consider to take penal action under Part XIV of the IRO. Thus the applicant of a ruling should make an immediate disclosure if an arrangement has been carried out on the basis that it conforms with a ruling but which is instead implemented in a way that is materially different to that described in the relevant ruling.

Publication of rulings

55. In appropriate circumstances the Department may publish selected rulings on the Department's website (www.ird.gov.hk) where they are considered to be of general interest. Accordingly, any ruling made by the Commissioner may become a published ruling. The Department will preserve the confidentiality of the applicant and entities covered by the ruling. The selected rulings will be edited prior to publication. All information that may enable identification of the applicant will be removed from the edited version.

56. Rulings will be published for general reference only. The published rulings are non-binding and provide no protection to any persons other than the applicants. Taxpayers should exercise caution in relying upon them. Reference can only be made to a ruling if the facts are identical to the proposed transactions. To that end it should be borne in mind that similar transactions often have different facts. If there are any doubts as to the similarity of the proposed transactions, the taxpayer should request a ruling.

57. The Department will not update the published rulings to reflect any subsequent changes of the tax law. Caution should thus be exercised to ensure that the relevant provisions of the IRO or the relevant case law interpretation and practice of those provisions have not changed as the Department is bound to apply the current taxation law. Similarly, a ruling may no longer be appropriate if an administrative practice outlined therein turns out to be used as a tax avoidance device.

Checklist for a Ruling Request

1. Obtain an application form [Form IR1297] from the IRD, by downloading the form from the IRD website (www.ird.gov.hk), by writing to the Chief Assessor (Special Duty), IRD, GPO Box 11234 or by telephone at no. 2594 5028.
2. Explain the issue(s) in question and give a full description of the facts.
3. State the law, including the relevant section(s) of the Inland Revenue Ordinance (Cap 112), in respect of which a ruling is required.
4. State the propositions of law (if any) that relate to the issue(s) raised in the ruling request.
5. State the period(s) to which the ruling request relates.
6. Indicate whether a ruling request has been lodged about the arrangement for any other period.
7. If the application is made by a representative or on behalf of more than one taxpayer, indicate that the consent of the taxpayer(s) has been obtained.
8. Include copies of all relevant documents that relate to the question(s) raised.
9. Include copies of any legal or other opinions that have been obtained on the question(s) raised.
10. Include a draft ruling.
11. Include the relevant application fee.
12. Mail the ruling request to the Deputy Commissioner of Inland Revenue (Technical), 36/F Revenue Tower, 5 Gloucester Road, Hong Kong.

Format for Draft Rulings

There is no set format for a draft ruling to be submitted with the request for ruling. It should contain all information required to be stated in a ruling and answer the questions raised in the request for ruling. They could take the following form:

Ruling

This is a ruling made under section 88A of the Inland Revenue Ordinance (Cap 112)

Person to whom the ruling applies

This ruling applies to (*name and file number of the taxpayer*).

Taxation provision

This ruling applies in respect of section(s) (*number*) of the Inland Revenue Ordinance (Cap 112).

Arrangement

This arrangement is (*describe the arrangement to which the ruling is to apply*).

Assumptions

This ruling is based on the assumption(s) that (*list the assumption(s) made*).

How the taxation law applies to the arrangement

The taxation law applies to the arrangement as follows (*state the proposed ruling*).

The period for which the ruling applies

This ruling applies for the period (*state the relevant period or year(s) of assessment*).

**Information to be supplied in respect of
Trading Profits from the Purchase and Sale of Goods**

- (1) Provide an organisation chart with full details of the applicant's organisation both in Hong Kong and outside Hong Kong. This should include the location and size of the office(s), the number of personnel to be employed, their full names, post titles, duties and responsibilities and remuneration package.
- (2) Provide details of the business and its functions both in Hong Kong and outside Hong Kong for the applicant. Provide documents relating to its establishment, such as certificate of incorporation, shareholders agreements, joint venture agreements, registration with government authorities, memorandum and articles of association and its issued and paid up capital.
- (3) If the applicant is part of a group, provide details of the group. This should include the names of the group companies with which the applicant has trading transactions, the normal places of business of these companies, their management and the nature of their business. Provide similar documents relating to the establishment of these group companies as set out in (2) above.
- (4) Provide details of the purchase and sale transactions including:
 - (a) the type of goods to be purchased/sold;
 - (b) the name and location of each supplier; how, where and by whom the suppliers are contacted or procured;
 - (c) the name and location of each customer; how, where and by whom the customers are first contacted or procured;
 - (d) how, where and by whom the purchase orders are initiated, processed and placed with the suppliers;
 - (e) how, where and by whom the purchase orders from customers are initiated, processed and placed with the applicant, and the names of staff members who have the ultimate authority to accept the orders;
 - (f) how the purchase/sale prices of the goods are determined; if by negotiation, how, where and by whom the negotiations are carried out;

- (g) whether formal contracts in respect of the purchase/sale are entered into for every order/repeated order; how, where and by whom the contracts are prepared and signed; provide samples of the contracts used;
 - (h) the routing of the purchase/sale orders; particulars of the personnel involved in handling the orders; provide samples of the orders used;
 - (i) if goods are stored in Hong Kong, how, where and by whom the arrangements are made;
 - (j) how, where and by whom shipment, including inspection before shipment, of the goods is made; and
 - (k) how, where and by whom payments for the goods are received/paid.
- (5) If any overseas establishment/office of the applicant is involved in the negotiation with the suppliers and/or customers, describe in detail its functions and specify its authorities.
- (6) If the applicant is deriving profits from the purchase/sale of goods to/from related companies, provide the following additional information in respect of the transactions with the related companies:
- (a) the type of goods purchased/sold;
 - (b) how the purchase/sale prices are determined; how these prices compare with the prices for similar goods purchased from or sold to unrelated parties; and
 - (c) the relative volume/amount of transactions with related companies as compared to those with unrelated parties, if any.
- (7) If the applicant is deriving trading profits outside Hong Kong, justify how the offshore transactions are distinguished from the onshore transactions, if any.

**Information to be supplied in respect of
Profits from a Manufacturing Business**

- (1) Provide an organisation chart with full details of the applicant's organisation both in Hong Kong and outside Hong Kong. This should include the location and size of the office(s), the number of personnel to be employed, their full names, post titles, duties and responsibilities and remuneration package.
- (2) Provide details of the business and its functions both in Hong Kong and outside Hong Kong for the applicant. Provide documents relating to its establishment, such as certificate of incorporation, shareholders agreements, joint venture agreements, registration with government authorities, memorandum and articles of association and its issued and paid up capital.
- (3) If the applicant is part of a group, provide details of the group. This should include the names of the group companies with which the applicant has trading transactions, the normal places of business of these companies, their management and the nature of their business. Provide similar documents relating to the establishment of these group companies as set out in (2) above.
- (4) If the applicant is deriving profits from the sale of goods manufactured outside Hong Kong, provide details of the manufacturing activities, both in Hong Kong and outside Hong Kong in connection with those profits. Also, justify how the offshore transactions are distinguished from the onshore transactions, if any.
- (5) If the goods are manufactured by an entity outside Hong Kong ("the Entity"), provide details of the Entity and its activities, including:
 - (a) the name and address of the Entity;
 - (b) documents relating to its establishment such as certificate of incorporation, shareholders agreements, joint venture agreements, registration certificates with government authorities, memorandum and articles of association and issued and paid up capital;
 - (c) an organisation chart and details of the Entity's overseas establishment. This should include the location and size of the office and factory, the number of employees, their respective name, post title and duties. (Details of the factory workers employed by the Entity could be excluded);
 - (d) the nature of the goods to be manufactured;

- (e) which party, the applicant or the Entity, will be responsible for procuring raw materials for the manufacture of the goods;
 - (f) details of the manufacturing activities to be carried out by the Entity; the state of the goods (finished or semi-finished) before their shipment to Hong Kong;
 - (g) details of the machinery to be installed for the Entity and the party responsible for the supply of the machinery;
 - (h) the fees, sub-contracting charges, etc., to be paid to the Entity and the basis of calculation of the fees, charges, etc.;
 - (i) the involvement of the applicant in the activities of the Entity, if any; details of that involvement including the extent and nature of work performed, personnel engaged, etc.; and
 - (j) subcontracting agreements or any other agreements between the applicant and the Entity reflecting the information and arrangements in (e) to (i) above.
- (6) In case where the applicant is responsible for the supply of raw materials and/or sale of the manufactured goods, provide the following details:
- (a) the nature of the raw materials supplied and the goods manufactured and sold;
 - (b) the name and location of each supplier of raw materials/each customer; how, where and by whom they are first contacted or procured;
 - (c) how, where and by whom the purchase orders are initiated, processed and placed with the suppliers of raw materials;
 - (d) how, where and by whom the purchase orders from customers are initiated, processed and placed with the applicant, and the name of staff members who have the ultimate authority to accept the orders;
 - (e) how the purchase price of the raw materials and the sale price of the manufactured goods are determined;
 - (f) whether there will be formal contracts for every purchase/sale order; how, where and by whom the contracts are prepared and signed; provide samples of the contracts used;

- (g) the routing of the purchase/sale orders; particulars of the personnel involved in handling the orders; provide samples of the orders used;
 - (h) if raw materials/goods are stored in Hong Kong, how, where and by whom the arrangements are made;
 - (i) how, where and by whom shipment, including inspection before shipment, of the raw materials/goods is made; and
 - (j) how, where and by whom payments/receipts for the raw materials/goods are received/paid.
- (7) If the applicant obtains the raw materials from or sells the manufactured goods to related companies, provide the following additional information in respect of transactions with related companies:
- (a) the type of raw materials/manufactured goods purchased/sold;
 - (b) how the purchase price of the raw materials and the sale price of the manufactured goods are determined; how these prices compare with the prices for similar raw materials or goods purchased from or sold to unrelated parties; and
 - (c) the relative volume/amount of transactions with related companies as compared to those with unrelated parties, if any.

**Information to be supplied in respect of
Commission Income Received**

- (1) Provide an organisation charts with full details of the applicant's organisation both in Hong Kong and outside Hong Kong. This should include the location and size of the office(s), the number of personnel to be employed, their full names, post titles, duties and responsibilities and remuneration package.
- (2) Provide details of the business and its functions both in Hong Kong and outside Hong Kong for the applicant. Provide documents relating to its establishment, such as certificate of incorporation, shareholders agreements, joint venture agreements, registration with government authorities, memorandum and articles of association and its issued and paid up capital.
- (3) If the applicant is part of a group, provide details of the group. This should include the names of the group companies with which the applicant has trading transactions, the normal places of business of these companies, their management and the nature of their business. Provide similar documents relating to the establishment of these group companies as set out in (2) above.
- (4) A detailed description of the functions carried out by the applicant in order to earn the commission income. For each of the activities identified, specify the name(s) of the responsible staff member(s) and the place where such activity is performed.
- (5) A copy of the service agreement with each of the commission payers.
- (6) In respect of each commission payer involved, provide details of the following:
 - (a) the name and address of the payer, its relationship with the applicant, its directors and/or shareholders; and
 - (b) how the commission is determined.
- (7) Provide details of the transactions whereby the applicant is to derive commission from the purchase/sale of goods including:
 - (a) the type of goods to be purchased/sold;
 - (b) the name and location of the corresponding suppliers/customers;
 - (c) how, where and by whom the suppliers/customers are contacted and procured;

- (d) how the price of the goods purchased/sold is determined; if by negotiation, how, where and by whom the negotiations are carried out;
 - (e) whether there is negotiation of the price of the goods for each and every purchase/sale order placed with each of the suppliers/customers;
 - (f) whether there are formal contracts for each order/repeated order; how, where and by whom the contracts are prepared and signed; provide samples of the contracts to be used;
 - (g) the routing of the purchase/sale orders and repeated orders; particulars of the personnel involved in handling the orders; provide samples of the orders to be used;
 - (h) how, where and by whom the purchase/sale orders are received and processed;
 - (i) if goods are stored in Hong Kong, how, where and by whom the arrangement are made;
 - (j) how, where and by whom the shipment, including the inspection before shipment, of the goods is made;
 - (k) how, where and by whom payments/receipts for the goods purchased/sold are made; and
 - (l) copies of agreements entered into by the applicant with each of the persons responsible for the work in (c) to (k) above, if any.
- (8) If the applicant is to derive commission income from the purchase/sale of goods to or from related companies, provide the following additional information:
- (a) the type of goods to be purchased/sold;
 - (b) how the commission is determined; how such rate of commission compares with that charged on unrelated parties in respect of similar lines of business; and
 - (c) the relative volume/amount of transactions with related companies as compared to those with unrelated parties, if any.

**Information to be supplied in respect of
Income from Service Company Arrangements
under Section 9A of the IRO**

- (1) Copies of the agreement and any related undertaking among the relevant person, the relevant individual and the service company covered by the arrangement. If an agreement or undertaking has not been reduced to writing, an explanation of why this is the case should be provided together with full details of its terms and conditions.
- (2) If not otherwise apparent, full details of the remuneration payable under each agreement or undertaking, including fringe benefits, share awards, share options etc.
- (3) Copies of the respective organisation charts of the relevant person and the service company.
- (4) A statement setting out the relevant individual's :
 - (a) duties and obligations in relation to the relevant person and the service company respectively; and
 - (b) previous employment history, if any, with the relevant person or any associated party.
- (5) A statement listing, together with supporting details, the specified criteria in subsection (3) of section 9A of the IRO which have been satisfied.
- (6) An explanation of why it is considered that the relevant individual did not in substance hold an office or employment of profit.

To facilitate consideration of the application, answers should also be provided to the questions listed below. If a particular question is not pertinent to the relevant individual's situation, this should be noted together with a brief explanation of why that is the case.

1. **The Control Test** (*To determine whether the relevant individual is controlled by the relevant person*)
 - (a) Who decides the work to be done by the relevant individual? Who prescribes the time schedule?
 - (b) Is there a fixed place of work? Who provides the place of work?

- (c) Does the agreement (or related undertaking) between the service company and the relevant person require the relevant individual to perform the work personally?
 - (d) Is the relevant individual required to follow the rules and regulations of the relevant person?
 - (e) Can the service company or the relevant individual work for others without the approval of the relevant person? Can the service company or the relevant individual refuse the performance of a particular task or job requested by the relevant person?
2. **Integration Test** *(To determine whether the relevant individual is holding a position within the organisation of the relevant person)*
- (a) Does the relevant individual represent to third parties that he is a staff member of the relevant person?
 - (b) Does the relevant individual get promotions within the organisation framework of the relevant person?
 - (c) Does the relevant individual have subordinates who are the staff of the relevant person?
 - (d) Is the relevant individual part and parcel of the organisation of the relevant person?
 - (e) Is the relationship a continuing one or does it exist only to procure a result?
3. **Economic Reality Test** *(To determine whether the income of the relevant individual is in effect derived from the relevant person and whether the relevant individual is at risk with his capital)*
- (a) Does the relevant person provide the equipment or assistants while the relevant individual is performing his duties?
 - (b) Does the relevant individual contribute capital and in what amount? Can the capital be at risk and in what way?
 - (c) How is the remuneration received by the service company from the relevant person computed? How is the remuneration received by the relevant individual from the service company computed?
 - (d) What is the duration of the agreement between the service company and the relevant person? Will the agreement be renewed and on what basis?

4. **Mutuality of Obligation Test** (*To determine whether there has been some form of mutual obligation between the relevant individual and the relevant person*)
- (a) Is the relevant person obliged to pay a wage or remuneration?
 - (b) Is the relevant individual obligated to provide his work or skill?
 - (c) Is the relevant person under an obligation to provide work?
 - (d) Is the relevant individual under an obligation to carry out the work?
 - (e) Can either the relevant person or relevant individual terminate the relationship without incurring any liabilities?
 - (f) Can either the relevant person or relevant individual apply any sanction to the other in the event that work is refused or not offered?

Fees for Ruling Requests

1. The fees payable in respect of an application for a ruling as specified under Part II of Schedule 10 are as follows:

- (a) An application fee:
 - (i) for a ruling on whether profits are to be treated as chargeable to profits tax under section 14 of the IRO as arising in or derived from Hong Kong \$30,000
 - (ii) for a ruling on whether remuneration is to be treated as chargeable to salaries tax under section 9A of the IRO \$10,000
 - (iii) for any other ruling \$10,000
- (b) Where the time spent in consideration of the application, including any time spent in consulting with the applicant, exceeds the time specified in 3 below for the type of rulings to which the ruling belongs, an additional fee calculated on the basis of each hour or part hour spent by
 - (i) a Deputy Commissioner \$1,330
 - (ii) an Assistant Commissioner \$1,260
 - (iii) any other person appointed under the IRO \$1,000

2. In an application for a ruling, reimbursement shall be made in respect of:

- (a) any fees paid by the Commissioner to any person if the Commissioner requires external advice in relation to the ruling; or
- (b) any costs and reasonable disbursements incurred by the Commissioner in relation to the ruling.

3. The time specified for the types of rulings is as follows:

- (a) for a ruling on whether profits are to be treated as chargeable to profits tax as arising in or derived from Hong Kong 23 hours
- (b) for a ruling on whether remuneration under certain arrangements is to be treated as income derived from an employment. 11 hours
- (c) for any other ruling. 7 hours