

Application for Advance Ruling Information Sheet

Application for advance ruling

Advance ruling system is available to taxpayers who want a ruling which is legally binding on the Commissioner. The Commissioner has issued a Departmental Interpretation and Practice Notes No. 31 for information and guidance of taxpayers. This note can be downloaded from the website of the Inland Revenue Department (“the IRD”) (<https://www.ird.gov.hk>) (“the IRD Website”).

The IRD will continue to give advice on more general matters through our enquiry areas, Departmental Interpretation & Practice Notes, etc. Rulings are binding only in respect of the taxpayer(s) identified in them and cannot be taken as a precedent for other taxpayers.

Who can apply for a ruling?

A person can apply for a ruling on the way in which a provision of the Inland Revenue Ordinance (Cap. 112) (“IRO”) applies to that person in relation to a particular arrangement. Schedule 10 to the IRO provides that the Commissioner may make a ruling on a provision thereof.

However, the Commissioner cannot make a ruling on any of these matters:

- the Commissioner’s right or obligation to exercise penal or investigative powers, or prosecute or recover debt from any person; and
- the law concerned with the administration of the tax system.

An “arrangement” means any contract, agreement, plan or understanding (whether enforceable or unenforceable), including all steps and transactions by which it is carried into effect.

Note: The Commissioner may make a ruling on how a provision of the IRO applies to the arrangement described in an application whether or not reference was made to that provision in the application.

What is this information sheet for?

This information sheet will help you complete your application for a ruling. If you want to obtain a ruling, you must fill out the form and send it to:

Deputy Commissioner of Inland Revenue (Technical)
15/F, Inland Revenue Centre, 5 Concorde Road
Kai Tak, Kowloon, Hong Kong

Introduction

Your ability to complete all aspects of the form will depend upon your familiarity with the relevant law and the complexity of the issues involved. If you are unable to:

- (a) state the provision of the IRO in respect of which the ruling is sought;
- (b) state the propositions of law (if any) in respect of which the ruling is sought; and
- (c) provide a draft ruling to the Commissioner,

you can apply to the Commissioner to waive any or all of these requirements.

Statements or reasons and draft answers to the issues and questions identified are useful because they ensure that the Commissioner fully understands what ruling you are seeking and why you are seeking it. A full understanding of the requirements of and the reasons for the application can avoid unnecessary delays.

The form is divided into 6 parts

- Details of the applicant and representative
- Commissioner’s power to rule
- Disclosure requirements
- General questions
- Spontaneous exchange of information on tax rulings
- Consultation, application fee, declarations and checklist

Applicant and representative details

The front page of the form requests the applicant and representative (where the application is made on behalf of an applicant(s)) to provide certain details.

Representative details

Where a representative is making an application on behalf of an applicant(s), the representative must supply his details and those of the applicant(s). The ruling will be sent to the representative.

Commissioner’s power to rule

The questions in this part are designed to determine whether the Commissioner has the power to rule on the arrangement in question.

1. The Commissioner may not rule on an arrangement which is subject to an objection or appeal either by the person who applied for the ruling or any other person.
2. The Commissioner may not rule on a tax that is due and payable at the date of application for a ruling.
3. The Commissioner may not rule if a ruling already exists on how a provision of the IRO applies to the applicant(s) and the arrangement specified in the application.
4. The Commissioner may not rule if the relevant return has been or is due to be lodged.
5. The Commissioner may not rule if the Commissioner is undertaking an audit on how a provision of the IRO applies to the applicant(s) or an arrangement similar to the arrangement specified in the application.

Disclosure requirements

The items in this part deal with the disclosure requirements. The law requires this information before the Commissioner will issue a ruling. Provide the information on separate sheets which should be attached to the form together with any relevant documents.

1. You need to state clearly what question(s) you want the Commissioner to answer.
2. You need to identify the issue(s) which you need to resolve.
3. You must set out a full description of the facts and the arrangement in question. Where appropriate, you must provide the additional information referred to in the part “Information and documents to be provided with a ruling request” in the Departmental Interpretation and Practice Notes No. 31. You must disclose all relevant facts and documents relating to the arrangement for which the ruling is sought, for example, the fact that a party to the arrangement is an associated person may be a relevant fact. Accordingly, appropriate disclosure should be made.
4. You must state the provision(s) of the IRO in respect of which the ruling is sought.
5. You are required to state the propositions of law (including case law) which are relevant to the issues raised in your application.
To the extent that it is relevant and material to your application, you must set out any legal reasons and arguments supporting your preferred interpretation. You should also indicate any legal arguments you are aware of that may be contrary to your interpretation.
Where relevant to do so, you should refer to the wording of the relevant taxation law and provide reasonable authoritative support. If you have obtained written advice from a lawyer or an accountant, you should attach copies of that advice or correspondence to the application.
6. You must provide a draft ruling.
7. If you cannot provide all the information required above, you can ask the Commissioner to waive all or any of these requirements. You need to explain why you cannot provide the information requested.

Notes: (a) The Commissioner may at any time request further relevant information.

- (b) If the application **only** relates to the economic substance requirement of the Foreign-sourced Income Exemption Regime specified in section 15K of the IRO, you are not required to provide the information requested in items 1 to 6. If your application covers more than 50 entities, it must be furnished together with a duly completed “Annex to Data Form (Group Application)”, which can be downloaded from the IRD Website.

General questions

This part deals with general questions which will enable the Commissioner to quickly determine whether the application satisfies the requirements of the legislation.

1. What is the year(s) of assessment and other period(s) to which the application relates?
2. Has an application been lodged in respect of the arrangement for other year(s) of assessment and other period(s)?
3. If the application concerns more than one taxpayer, have you obtained the written consent of all the taxpayers?

Spontaneous exchange of information on tax rulings

Under the transparency framework of OECD’s Action 5 2015 Final Report, rulings including those relating to preferential regimes, permanent establishment and conduit arrangement are required to be spontaneously exchanged with the relevant jurisdictions. Generally, exchange of information on the relevant rulings needs to take place with:

- (a) the jurisdictions of residence of all related parties with which the applicant enters into a transaction for which a ruling is granted or which gives rise to income from related parties benefiting from a preferential treatment (this rule also applies in a permanent establishment context); and
- (b) the residence jurisdiction of the ultimate parent company and the immediate parent company.

The related parties threshold has been set at 25%. Two parties would be considered related if the first person has a 25% or greater investment in the second person or there is a third person that holds a 25% or greater investment in both.

Rulings covered	With which jurisdiction does information need to be exchanged
1. Preferential regime	<ol style="list-style-type: none"> (a) The jurisdictions of residence of all related parties (the 25% threshold would apply), with which the taxpayer enters into a transaction for which a preferential treatment is granted or which gives rise to income from related parties benefiting from a preferential treatment (this rule also applies in a permanent establishment context); and (b) The residence jurisdiction of (i) the ultimate parent company and (ii) the immediate parent company
2. Permanent establishment	<ol style="list-style-type: none"> (a) The residence jurisdiction of the head office, or the jurisdiction of the permanent establishment, as the case may be; and (b) The residence jurisdiction of (i) the ultimate parent company and (ii) the immediate parent company
3. Related party conduit	<ol style="list-style-type: none"> (a) The jurisdiction of residence of any related party making payments to the conduit (directly or indirectly); (b) The jurisdiction of residence of the ultimate beneficial owner (which in most cases will be the ultimate parent company) of the payments made to the conduit; and (c) To the extent not already covered by (b), the residence jurisdiction of (i) the ultimate parent company and (ii) the immediate parent company

Consultation

Before the Commissioner makes a ruling, the Commissioner may give the applicant(s) a reasonable opportunity to consult if the content of his proposed ruling differs from that requested by the applicant(s).

Application fee

Have you included a payment of the application fee with your application? Rulings are charged on a full cost recovery basis.

Declarations and checklist

Have you signed and dated the application declaring the truth and accuracy of the information provided?

The checklist is to help you ensure the ruling application is correctly completed in a form approved by the Commissioner. It is also particularly useful for checking whether all attachments that should accompany the ruling application are attached.

Conclusion

You may withdraw your application for a ruling at any time before a ruling is made. This may be done by giving notice in writing to the Commissioner. Withdrawal of an application will not affect your liability for any fees incurred in processing the application up to the date of withdrawal.

If you require further assistance in the preparation of your ruling application, please contact:

Deputy Commissioner of Inland Revenue (Technical)
15/F, Inland Revenue Centre, 5 Concorde Road
Kai Tak, Kowloon, Hong Kong

Personal Information Collection Statement

The provision of personal data required by this form and during the processing of your application is voluntary. However, if you do not provide sufficient information, the Department may not be able to process your application. The Department will use the information provided by you for the purposes of the Ordinances administered by it and may disclose/transfer any or all of such information to any other parties provided that the disclosure/transfer is authorized or permitted by law. Except where there is an exemption provided under the Personal Data (Privacy) Ordinance, you have the right to request access to and correction of your personal data. You should send such request in writing to the Assessor at GPO Box 132, Hong Kong and quote your file number in this Department.