

Content

Title :	Directions for the Implementation of Advance Tax Rulings Ch
Date :	2003.12.30
Legislative :	Promulgated on December 30, 2003 by the Ministry of Finance
Content :	<p>Objective</p> <p>1. These Directions are formulated in order to enhance consistency and certainty in the application of tax laws, to reduce controversy and litigation between tax authorities and taxpayers, and to encourage compliance with the tax laws.</p> <p>Definition</p> <p>2. The term “advance tax rulings” (hereinafter referred to as ATR) means an interpretation or clarification issued by the Ministry of Finance (hereinafter referred to as the MOF) with respect to the request of a taxpayer or his representative (hereinafter referred to as the applicant), concerning the application of tax laws to a specific contemplated transaction which will be undertaken within one year.</p> <p>Authority responsible for examining ATR request</p> <p>3. The MOF shall establish the Advance Tax Rulings Committee (hereinafter referred to as the ATRC) to oversee advance tax ruling cases. Members of the committee and administrative authorities are as follows:</p> <p>a) The ATRC consists of 8 to 15 commissioners, who are designated by the Taxation Agency, the Taxation and Tariff Committee, and National Tax Administrations. The Chairman of the ATRC is the Director General of the Taxation Agency, and other commissioners include the Director Generals or Deputy Director Generals of the aforesaid tax authorities, and the Directors or Deputy Directors of the First Second and Fifth Divisions of the Taxation Agency.</p> <p>b) The Chairman of the ATRC shall appoint an Executive Secretary-General from among the commissioners, to be responsible for the co-ordination of administrative affairs; and the Taxation Agency and National Tax Administrations shall designate staff members with professional competency to examine advance tax ruling cases.</p> <p>Basic qualification to apply ATR</p> <p>4. Advance tax rulings are provided on international transactions or investments which meet one of the following conditions:</p> <p>a) The total amount of the investment (land investment excluded) exceeds NT\$ 200,000,000, or the amount of the first transaction exceeds NT\$ 50,000,000.</p> <p>b) The proposed transaction will bring significant economic benefit to the R.O.C.</p> <p>Information and documentation requirements</p> <p>5. Persons applying for advance tax rulings should fill in the stipulated form which should contain the following information, with related documents or certification:</p> <p>a) Applicant’s name, ID number (or Business Identification Number), address and other basic information</p> <p>b) Power of attorney if the representative is authorized to act for the taxpayer</p> <p>c) A statement of purpose of the application, the provisions of tax laws relevant to the application, a description of the tax concern that is the cause of the request, and suggestions from related professionals</p> <p>d) A complete description of the relevant facts of the proposed transaction and its critical assumptions</p>

- e) The taxable year and predicted tax liability of the proposed transaction
- f) The characteristics and amount of payments related to the proposed transaction and an analysis of its economic benefits
- g) Confirmation that the request is not in connection with any of the circumstances listed in Article 6 of these Directions.

Restrictions on and exclusions from the issuance of an ATR

6. An advance tax ruling will not be issued if the application violates Article 4 or Article 5, or is found to be in connection with any of the following circumstances:

- a) when the request is mainly a question of fact or involves a determination of the fair market value of a property;
- b) when the transaction is hypothetical and is not being seriously contemplated, or the proposed transaction will not be undertaken within a period of one year commencing from the date of the filing of the application;
- c) when the transaction has already been proceeded, or the tax return has been filed or is going to be filed soon;
- d) when the main tax issue involved in the request is similar to cases that are already in the process of administrative remedy;
- e) when information provided in the request is not sufficient and the applicant does not provide supplementary information by the date specified by the MOF;
- f) when the primary content of the description of the relevant facts is incorrect or is presented in a deceptive manner;
- g) when the request primarily concerns the determination of the price of sale, cost or expenses of a transaction with respect to the Article 43-1 of the Income Tax Act;
- h) when the ruling would require an interpretation of non-tax-related laws;
- i) when the ruling would require an interpretation of foreign laws;
- j) when the main purpose of the request is for tax avoidance and the transaction is not being seriously contemplated;
- k) when there are other circumstances under which a ruling should not be issued.

Operational guidelines

7. The operational process for issuing an advance tax ruling shall be conducted as follows:

- a) The MOF should notify the applicant as to whether the application will be accepted within one month after receiving the required supplementary information from the applicant;
- b) A joint-examination meeting will be held by the ATRC every 2 months in principle, and additional meetings can be held whenever necessary. In addition, a meeting shall not commence unless more than half of the commissioners have attended the meeting, and the decision shall be made only if at least half of the attendees agree with it.
- c) If there is little controversy in the application of tax laws, or there have been similar precedents, the request will be examined by the relevant National Tax Administration, where a preliminary decision will be proposed, and sent to the MOF for reply; in other cases, the request should be reviewed by the ATRC.
- d) The ATRC may allow the applicant to attend and present an explanation in an ATRC meeting if necessary.
- e) The MOF shall conclude an advance tax ruling and issue the ruling to the applicant within 3 months after receiving the application or the supplementary information from the applicant; however, the duration of completing an advance tax ruling may be extended for another 3 months, and the MOF shall notify the applicant in advance.

Effectiveness of the ATR

8. The effectiveness of an advance tax ruling is equivalent to an explanatory decree issued by the MOF.

Re-examination of an issued advance tax ruling

9. The MOF may re-examine an issued ruling if information provided in the application is incorrect or important aspects have been obviously omitted

in comparison with the actual transaction, or if statements in the application are incomplete or false, causing the MOF to issue an advance tax ruling based on incorrect information.

End of validity

10. An advance tax ruling shall cease to be valid if the determination was based on a specific tax law and that tax law has subsequently been abolished or amended. The rulings shall be invalid from the effective date of the abolition or amendment of the relevant tax law.

Data Source : Ministry of Finance, R.O.C. Laws and Regulations Retrieving System