

Our Ref: LS/65/07/AC/cheryl

Your Ref:

29 May 2007

Ms Poh Puay Hoon
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LEADERSHIP 1967 - 2007

Dear Ms Poh

REQUEST FOR LAW SOCIETY'S FEEDBACK ON GST ADVANCE RULING SYSTEM

We refer to the e-mail message dated 13 April 2007 from Mr Wilson Ong Joon Lim, Assistant Commissioner (GST Division) of IRAS, requesting for the Law Society's feedback on the usefulness of the draft e-Tax Guide on the GST Advance Ruling System.

This matter was referred to our Corporate Practice Committee for their views.

We attach the views of some of our members on the draft e-Tax Guide for your attention.

We apologize for the delay in our response. Thank you for giving the Law Society the opportunity to present our views on the matter.

Yours faithfully

Alvin Chen
Director, Practice Concerns

Enc.

cc. (1) Council
(2) Corporate Practice Committee

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Feedback on the draft e-Tax Guide on the GST Advance Ruling System

1. Paragraph 2.1.1 footnote 1

On the CGST's right to rule also on provisions of the Goods and Services Tax Act (Cap. 117A) ("GST Act") not referred to in the application, it is not clear whether such rulings will be binding on the applicant. If they are binding, IRAS should clarify whether they will inform the applicant of their intention to rule on other provisions and allow the applicant an opportunity to withdraw the application.

2. Paragraph 2.1.2

It is not clear why there are various matters set out in paragraph 2.1.2 which the CGST will "generally not" rule on via advance ruling. Some of these matters may have a material impact on proposed arrangements. IRAS's clarification is sought on when rulings for such matters would be effected.

3. Paragraph 2.2.1

Paragraph 2.2.1 provides that the CGST "will not rule" on matters falling within any of the provisions stated in paragraphs 1(3), 2 and 3 of Part I of the proposed Fifth Schedule to the GST Act. On the other hand, paragraph 2 of Part I of the proposed Fifth Schedule states that the CGST "may decline to make a ruling", which suggests that the CGST has a discretion not to make a ruling. The wording in paragraph 2.2.1 seems to suggest that the CGST will not exercise the discretion conferred under the proposed Fifth Schedule. IRAS's clarification is sought on whether the above interpretation of paragraph 2.2.1 is an appropriate or a correct reflection of IRAS's position.

4. Paragraph 2.2.2

Paragraph 2.2.2 provides that the CGST will not rule on applications submitted less than 8 weeks before the filing deadline for the relevant GST return. The 8-week moratorium may unnecessarily delay proposed transactions and have a distorting effect.

Additionally, the 8-week moratorium seems to be unnecessarily burdensome; there could be situations where negotiations are only commenced within the 8-week moratorium (and the agreement is to be executed before the 8-week moratorium expires). Parties would therefore be barred from seeking any adjudication of any relevant GST issue in such cases. Although the CGST does have the discretion to rule even if the application is submitted less than 8 weeks from the GST filing date, his adjudication fees could be increased to three times the original fees (paragraph 5.2).

5. Part I of Proposed Fifth Schedule to the GST Act

It is not clear why some matters shall not be the subject of a ruling under Part I of the Proposed Fifth Schedule to the GST Act. For example, paragraph 3(d) provides that no ruling shall be made if the matter on which the ruling is sought involves the interpretation of any foreign law. The effect of an agreement governed by foreign law will of course require such interpretation but there will be ways of addressing this issue, for instance, by getting foreign law opinions and/or the making of assumptions. IRAS's clarification is sought on why the interpretation of any foreign law should be an absolute bar to obtaining a ruling.