

# **IRAS e-Tax Guide**

## **Deduction for Statutory and Regulatory Expenses**



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# **Deduction for Statutory and Regulatory Expenses**

## **1 Aim**

- 1.1 This e-Tax Guide explains the rationale and scope of the deduction allowed for qualifying statutory and regulatory expenses. The e-Tax Guide is relevant to you if you have incurred such expenses during the basis periods for Year of Assessment ("YA") 2014 and subsequent YAs.

## **2 At a glance**

- 2.1 Businesses are often required to comply with various laws and regulations. Some of the statutory and regulatory expenses incurred in the course of complying with those laws and regulations may, however, not be deductible for tax purposes based on the Income Tax Act ("ITA") because they are not regarded as wholly and exclusively incurred in the production of an income<sup>1</sup>.
- 2.2 To promote good corporate governance and voluntary compliance with statutory and regulatory requirements, a specific deduction has been introduced for qualifying statutory and regulatory expenses incurred during or after the basis period for YA 2014. This is provided under section 14X of the ITA.

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<sup>1</sup> The general deduction provision is in section 14(1) of the ITA.

### **3 Glossary**

#### **3.1 Business**

For the purposes of section 14X of the ITA, the word “business” in relation to a business entity has its ordinary dictionary meaning. It refers to any activity or enterprise for which a business entity is established to carry out in accordance with its constituent documents.

#### **3.2 Goods and Services Tax Assisted Compliance Assurance programme (“GST ACAP”)**

GST ACAP is a compliance initiative for businesses to set up robust GST Control Framework as part of good corporate governance. Businesses can, on a voluntary basis, conduct a holistic risk-based review to endorse the effectiveness of their GST controls.

## 4 Background

- 4.1 In ascertaining the income to be chargeable to tax, a claim for deduction of expenses is allowed provided the expenses are wholly and exclusively incurred in the production of the income in accordance with section 14(1) of the ITA.
- 4.2 Based on case law, the word “wholly” refers to the quantum of the money expended, and the word “exclusively” relates to the purpose of the expenditure. If the expenditure were incurred for more than one purpose (e.g. for both business and private purposes), the expense would not be “exclusively” incurred in producing the income. In addition, there has to be a nexus between the incurrence of the expense and the production of the income.

## 5 Current tax treatment for deduction of statutory and regulatory expenses

- 5.1 In today’s business environment, taxpayers are often required to incur expenses to comply with various laws and regulations in Singapore and elsewhere. Some of these expenses as listed in the **Table** below may not be deductible based on the current law. Notwithstanding so, some of them have been given deduction by way of an administrative concession or a tax remission.

**Table – Examples of non-deductible statutory and regulatory expenses**

S/N	Non-deductible statutory and regulatory expenses	Reasons
1	Expenses incurred to meet statutory obligations such as those under the: (a) Companies Act (audit fees, secretarial fees, cost of holding annual general meetings) (b) ITA and GST Act (preparation and filing of tax returns)	Audit fees and tax filing fees are incurred <u>after</u> the income is earned.  As an administrative concession, deduction is allowed on audit fees and tax filing fees.
2	Expenses incurred to enhance the internal controls for prevention and detection of non-compliance with statutory requirements, such as expenses incurred in conducting IRAS’ GST ACAP.	The expenses are generally considered to be capital in nature as they may result in a more compliant and robust internal control system.  Tax remission has been granted on GST ACAP expenses.

S/N	Non-deductible statutory and regulatory expenses	Reasons
3	Fines and penalties	<p>Penalties are imposed for non-compliance with the laws.</p> <p>It is against public policy to allow such deduction.</p>

## 6 New tax deduction for qualifying statutory and regulatory expenses

- 6.1 A high level of general compliance with statutory and regulatory requirements will benefit the entire society. To support businesses' efforts to comply with statutory and regulatory requirements and to provide tax certainty on the deductibility of such expenses, a specific deduction under section 14X of the ITA has been introduced with effect from YA 2014. The deduction applies to qualifying statutory and regulatory expenses incurred during the basis period relating to YA 2014 and subsequent YAs, subject to conditions.

### *Qualifying statutory and regulatory expenses*

- 6.2 Qualifying statutory and regulatory expenses are expenses incurred by a taxpayer for his business<sup>2</sup> and in the production of income accruing in or derived from Singapore or received in Singapore from outside Singapore, and:
- (a) for the purpose of compliance by him with any written law of Singapore or another country;
  - (b) for the purpose of compliance by him with any code, standard, rule, requirement or other document issued by the Government, a public authority established by or under any public Act, or by the government or a public authority of another country, or by a securities exchange;
  - (c) to study the impact of any proposed law referred to in (a) that has yet to be enacted, or proposed document referred to in (b) that has yet to be issued;
  - (d) to prevent or detect any non-compliance with any law referred to in (a) or document referred to in (b);
  - (e) to voluntarily comply with a requirement of any law referred to in (a) or document referred to in (b), even though he is exempt from complying with the requirement.

<sup>2</sup> The term "business" is not limited to an active trade or business carried on by a person, and would include a business from which passive income is acquired.

- 6.3 In addition, these qualifying expenses should be directly related to the compliance by the taxpayer with the statutory or regulatory requirement. The **Annex** provides examples of these qualifying statutory and regulatory expenses.
- 6.4 On the other hand, the following expenses would not qualify for a deduction:
- (a) expense that is capital in nature;
  - (b) fine, penalty or composition amount in relation to a composition of an offence under any written law of Singapore or another country;
  - (c) expense to defend against charges of non-compliance with any statutory and regulatory requirement; and
  - (d) expense in relation to appeals to the courts or any quasi-judicial body (e.g. the Income Tax Board of Review).

***No double deduction***

- 6.5 Statutory and regulatory expenses, which would have qualified for a deduction under any other provision of the ITA, such as the general deduction provision under section 14(1) of the ITA, would not be deductible under the section 14X. The deduction for such expenses will be given in accordance with such other provisions of the ITA.

## **7 Administrative procedure**

- 7.1 Taxpayers who are making a claim for a deduction in respect of qualifying statutory and regulatory expenses need not submit any supporting documents/ information with their Income Tax Return. However, taxpayers need to prepare and retain<sup>3</sup> documents containing the following information:
- (a) the category [i.e. item (a), (b), (c), (d) or (e) in paragraph 6.2] under which a claim is made;
  - (b) the statutory or regulatory requirement for which the expense is incurred, and the manner in which that requirement applies to the taxpayer; and
  - (c) the nature of the expense and how it is directly related to the compliance of the statutory or regulatory requirement identified in paragraph (b) above.

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<sup>3</sup> The relevant documents/ information must be retained for a period of at least five years from the relevant YA. These documents should be submitted to the Comptroller of Income Tax upon request.



## **8 Contact information**

8.1 If you have any enquiries or need clarification on this e-Tax Guide, please call:

(a) 1800-3568622 (Corporate)

(b) 1800-3568300 (Individual)

## Annex – Examples of qualifying statutory and regulatory expenses

Purpose for which expense was incurred	Examples (Non-exhaustive)
(a) for the purpose of compliance by the taxpayer with any written law of Singapore or another country	<ul style="list-style-type: none"> <li>Expenses incurred to comply with:               <ul style="list-style-type: none"> <li>(a) the ITA, such as preparation of income tax computation, replying to queries raised by Comptroller of Income Tax, lodging objection to Notices of Assessment.</li> <li>(b) the Companies Act, such as audit fees.</li> </ul> </li> <li>Expenses incurred to rectify non-compliance with such requirement.</li> </ul>
(b) for the purpose of compliance by the taxpayer with any code, standard, rule, requirement or other document issued by the Government or a public authority established by or under any public Act, or by the government or a public authority of another country, or by a securities exchange	<ul style="list-style-type: none"> <li>Expenses incurred to comply with non-statutory codes and directives issued by the Monetary Authority of Singapore, Accounting Standards Council and their foreign equivalents.</li> <li>Annual listing fees and other expenses incurred to comply with the Singapore Exchange Listing Manual<sup>4</sup></li> <li>Expenses incurred to rectify non-compliance with such requirement.</li> </ul>
(c) to study the impact of any proposed law referred to in (a) that has yet to be enacted or proposed document referred to in (b) that has yet to be issued	<ul style="list-style-type: none"> <li>Expenses incurred to study the impact of implementing proposed statutory requirements that has yet to be enacted, such as when the Foreign Account Tax Compliance Act (“FATCA”) was first proposed by the US government.</li> </ul>
(d) to prevent or detect any non-compliance with any law referred to in (a) or document referred to in (b)	<ul style="list-style-type: none"> <li>GST ACAP expenses paid to an independent ACAP reviewer to review and verify that a company’s internal controls for GST reporting and filing are working well.</li> </ul>
(e) to voluntarily comply with a requirement of any law referred to in (a) or document referred to in (b), even though the taxpayer is exempt from complying with the requirement	<ul style="list-style-type: none"> <li>Audit fees incurred by a company that is eligible for audit exemption under the Companies Act.</li> </ul>

<sup>4</sup> Capital expenses such as expenses incurred for the purposes of the initial listing and additional listing of shares remain non-deductible (refer to paragraph 6.4).