

IRAS e-Tax Guide

Income Tax Treatment of a Trust registered under the Business Trusts Act



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Income Tax Treatment of a Trust registered under the Business Trusts Act

1 Aim

- 1.1 This e-Tax Guide¹ provides details on the income tax treatment of a trust which is registered under the Business Trusts Act².
- 1.2 This guide is applicable to trustee-managers or unitholders of a registered business trust.

2 At a glance

- 2.1 A trust registered under the Business Trusts Act (“registered business trust”) will be treated like a company for income tax purposes.
- 2.2 The income of a registered business trust is taxable at the trustee level. It is a final tax and the unitholders of the registered business trust will not be taxed on their entitlement of trust income.
- 2.3 This guide sets out how certain corporate tax features are to be applied to a registered business trust:
 - (a) group relief;
 - (b) application of “shareholding test”;
 - (c) election of section 24 for the sale of property;
 - (d) mergers and acquisitions scheme;
 - (e) gains on disposal of shares.

¹ This e-Tax Guide replaces the IRAS e-Tax Guide on “Income Tax Treatment of a Trust registered under the Business Trusts Act 2004”

² The Business Trusts Act regulate the business trusts activities and the responsibilities of a trustee-manager.

3 Glossary

3.1 Company

A company refers to any company incorporated or registered in Singapore or elsewhere.

3.2 Relevant dates for shareholding test

Carry-forward relief

Unabsorbed capital allowances

Last day of the YA in which the capital allowances were given and the first day of the YA in which the capital allowances are to be deducted.

Unabsorbed trade losses and donations

Last day of the year in which the trade losses and donations were incurred and first day of the YA in which the trade losses and donations are to be deducted.

Carry-back relief

Unabsorbed capital allowances

First day of the YA in which the capital allowances were given and the last day of the immediate preceding YA in which the capital allowances are to be deducted.

Unabsorbed trade losses and donations

First day of the year in which the trade losses were incurred and last day of the immediate preceding YA in which the trade losses are to be deducted.

3.3 Same business test

This test determines if a company continues to carry on the same trade or business for which capital allowances are given when carrying forward or back the unabsorbed capital allowances. The test is satisfied if the same trade or business is continued.

3.4 Shareholding test

This test compares the percentage of the shareholdings of a company (or its ultimate parent company) that is held by the same persons as at the relevant dates. The test is satisfied if there is no substantial change in the shareholders and their shareholdings as at the relevant dates.

3.5 Unabsorbed capital allowances

The capital allowances claimed by a company (under Section 16, 17, 18A (repealed), 18B, 18C, 19, 19A, 19B, 19C, 19D or 20 of the Income Tax Act) for a YA that exceeds the company's aggregate taxable income for that YA.

3.6 Unabsorbed donations

The approved donations made by a company in a YA that exceeds its statutory income for that YA. Approved donations are donations approved for tax deduction and made to approved recipients under section 37(3)(b), (c), (d) or (f) of the ITA.

3.7 Unabsorbed trade losses

The trade losses incurred by a company for a YA that exceed the company's income from all sources for that YA.

3.8 Mergers and Acquisition Scheme

Under the scheme, subject to conditions, a company ("acquiring company") that acquires the ordinary shares of another company ("target company") during the period 1 April 2010 to 31 March 2015 (both dates inclusive) is granted an M&A allowance, equal to 5% of the value of the acquisition.

4 Background and tax treatment of a registered business trust

- 4.1 For tax purpose, a registered business trust will be treated like a company from the first year it commences operation as a registered business trust. This is because the economic purpose, structure and operation of a registered business trust are similar to those of a company.
- 4.2 The corporate tax features which includes the rates of tax, tax reliefs and foreign tax credits that are applicable to companies, will similarly apply to a registered business trust. This treatment is provided under Section 36B of the Income Tax Act.
- 4.3 In addition, relief under section 15 of the Stamp Duties Act which is applicable to companies, also applies to the transfer of assets to a registered business trust. The conditions for the relief to apply to companies will apply accordingly to registered business trusts.
- 4.4 For tax purpose, a registered business trust is considered a resident of Singapore if –
- (a) the trustee of the registered business trust in his capacity as such carries on a trade or business in Singapore; and
 - (b) the control and management of the business of the registered business trust is in Singapore.
- 4.5 The income of a registered business trust is taxed at the trustee level. However, the unitholders will not be taxed on their entitlement of the trust income and no credit will be allowed to the unitholders for the tax paid by the trustee of the registered business trust.
- 4.6 The following paragraphs highlight how certain features of the corporate tax system will apply to a registered business trust:
- (a) group relief;
 - (b) application of “shareholding test”;
 - (c) election of section 24 for sale of property;
 - (d) mergers and acquisitions scheme; and
 - (e) gains on disposal of shares.

5 Group Relief

- 5.1 Under section 37C of the Income Tax Act (“ITA”), group relief³ is available to companies belonging to the same group of companies.
- 5.2 To qualify for group relief, the registered business trust must be established in Singapore and its trust deed must be executed in Singapore and governed by Singapore laws.

³ Full details of the group relief are set out in IRAS e-Tax Guide on “Group Relief System”.

- 5.3 All requirements applicable to a company for the purposes of group relief will similarly apply to a registered business trust. However, for a registered business trust, units of the registered business trust will be used in lieu of the ordinary shares of the company.

6 “Shareholding test”

- 6.1 A company can carry forward and carry back unabsorbed capital allowances, trade losses and donations, provided that the company meets the “shareholding test”. Additionally, for unabsorbed capital allowances, the company must satisfy the “same business test”.
- 6.2 For a company, the “shareholding test” is satisfied if, on the relevant dates not less than 50% of the total number of issued shares of the company are held by or on behalf of the same persons.
- 6.3 For a registered business trust, the “unitholding test” is satisfied if, on the relevant dates –
- (a) the same unitholders are entitled to no less than 50% of any residual profits available for distribution; and
 - (b) the same unitholders are entitled to no less than 50% of any residual assets available for distribution on a winding up.
- 6.4 Where each unit of a registered business trust carries the same beneficial interest in terms of the entitlement of the residual profits available for distribution and residual assets available for distribution on a winding up, the “unitholding test” is satisfied if, on the relevant dates, the same unitholders hold no less than 50% of the units of the registered business trust.

7 Election of Section 24 for sale of property

- 7.1 Under Section 24 of the ITA, when there is a sale of property and –

- (a) the buyer has control over the seller; or
- (b) the seller has control over the buyer; or
- (c) a third party has control over both the seller and buyer;

the parties involved can make a Section 24 election so that the property is regarded as being transferred, for income tax purposes, at the tax written down value from the seller to the buyer.

7.2 For the purpose of Section 24 election, control involving a registered business trust is determined as follows:

- (a) the registered business trust is deemed to have control over a company if:
 - (i) the trustee of the registered business trust holds (on trust for unitholders) more than 50% of the shares of the company; or
 - (ii) the unitholders of the registered business trust hold more than 50% of the shares of the company.
- (b) a company is deemed to have control over the registered business trust if it holds more than 50% of the units in the registered business trust.
- (c) another registered business trust has control over the registered business trust if the trustee of that other registered business trust holds (on trust for unitholders) more than 50% of the units in the registered business trust.

7.3 Hence, Section 24 is applicable where the relationship between the seller and buyer (denoted by “A” or “B” as the case may be) is as follows:

- (a) company A or trustee of another registered business trust A holds more than 50% units in registered business trust B;
- (b) unitholders of registered trust B or trustee of registered trust B holds more than 50% of shares of company A;
- (c) another company C owns more than 50% shares of company A or more than 50% units in registered business trust A, and more than 50% units in registered business trust B or;
- (d) trustee of another registered business trust C holds, on trust for its unitholders, more than 50% shares of company A or more than 50% units in registered business trust A, and more than 50% units in registered business trust B.

8 Mergers and acquisitions scheme (“M&A scheme”)

- 8.1 The M&A scheme⁴ is extended to a registered business trust. The acquiring registered business trust is subject to the same conditions (with necessary modifications) as those imposed on an acquiring company that claims M&A allowance and stamp duty relief pursuant to a qualifying share acquisition.

9 Gains on disposal of shares

- 9.1 The gains from disposal of ordinary shares in an investee company which are trust property of the registered business trust may be exempt under Section 13Z of the ITA.

10 Contact Information

If you have any enquiries or need clarification on this e-Tax Guide, please call 1800-356 8622.

⁴ Full details of the M&A scheme for companies and registered business trusts are available in IRAS e-Tax Guide on “Mergers and Acquisitions Scheme (Second Edition)”