

# Guidance on the Administration of NTS' Advance Ruling Service

National Tax Service (NTS) Instruction No. 1698  
Effective on October 1, 2008

## Chapter I. General Provisions

**Section 1. (Purpose)** These instructions are established to provide general guidances concerning the basic and common administrative matters involved, including the application process, in relation to the NTS' Advance Ruling Service which is available to provide a clear and expedited interpretation of the Tax Law.

### Section 2. (Definition)

- a. The meaning of the terminologies used in these guidances are as follows :
  - i. A "Tax Law" is any tax law, as defined in subparagraph 2 of the Article 2 of the "Framework Act on National Taxes" or "Framework Act on National Taxes".
  - ii. "Advance Ruling" refers to a tax ruling service through

which the Commissioner of the NTS provides a clear and expedited ruling to a "specific transaction" of a taxpayer's business, provided that a ruling is requested by submitting a completed "Advance Ruling Application Form (Form No. 1)" with the disclosure of the taxpayer's identity and the specific facts and circumstances of the transaction in question.

- iii. A "specific transaction" is a transaction which could be objectively verified with relevant documents that it has actually occurred or will occur in the near future.
- iv. "Disclosure of Taxpayer Identity" refers to the inclusion of taxpayer's identity information (i.e., taxpayer's business entity name, representative name and business registration number) as part of the Advance Ruling application. Similarly, in case of an applicant being a non-resident or a foreign corporation without a place of business in Korea, disclosure of their respective identity information is required.
- v. A "Tax representative" is a lawyer, a Certified Tax Accountant (CTA), or a registered Certified Public Accountant (CPA) pursuant to paragraph 1 of the Article 20-2 of the Certified Tax Accountant Act.

b. Terminologies stated in this guidance follow the meaning of such terms as used in the tax law, except as otherwise particularly defined in Section 2 of Chapter 1 above.

## Chapter II. Application Process for Advance Ruling

**Section 3. (Applicant)** An Applicant refers to the person who satisfies any of the following four conditions below while being directly related to the specific transaction contained in a ruling request (including those who may assume a tax responsibility from future business transaction) :

- i. a business taxpayer registered pursuant to Article 5 of Korea's VAT Law
- ii. a business taxpayer registered pursuant to Article 168 of Korea's Income Tax Law
- iii. a business taxpayer registered pursuant to Article 111 of Korea's Corporation Tax Law
- iv. a non-resident or a foreign corporation without a place of business in Korea

**Section 4. (Eligibility of Application)** Advance Rulings will be provided only to taxpayers who request a ruling on tax matters with regard to a specific transaction of their business. However, applications in relation to any of the following matters are excluded from consideration for an Advance Ruling.

- i. Ruling requests which involve application of the Tax

Law that is not relevant to the Taxpayer

- ii. Ruling requests with regard to assumed facts
- iii. Ruling requests which require judgment of facts and circumstances involved
- iv. Ruling requests which involve transactions that have violated laws or have concerns for violation
- v. Ruling requests which involve an applicant, or any related party relevant to the ruling request, who resides in a country or territory from which the NTS has difficulty in collecting information or verifying relevant facts and circumstances, including a case that the tax treaty with such country lacks an effective information exchange agreement
- vi. Ruling requests pertaining to a single or partial transaction which belong to a series of associated transactions
- vii. Ruling requests which appear to have been applied for means of tax evasion or tax avoidance

## Section 5. (Representative)

- a. In case when the taxpayer authorizes a representative to file an Advance Ruling request on behalf of the taxpayer, NTS will regard such application request as being filed by the taxpayer.
- b. The Director of the Tax Ruling Division requires the

taxpayer to provide a written verification of its intent to delegate or dismiss a representative.

c. The taxpayer's representative may act on behalf of the taxpayer with regard to the taxpayer's ruling request to the extent it is relevant to the application. However, the taxpayer's representative has the power to withdraw the ruling request application on behalf of the taxpayer only when such power is specifically granted by the taxpayer.

## Section 6. (Application)

a. The Director of the Tax Ruling Division shall accept the Advance Ruling application form submitted by the taxpayer and record it in the "Advance Ruling Application and Processing File (Form No. 4)" in the order in which the applications were received. The Advance Ruling application requires the provision of following information :

- i. Applicant's Name and Information
- ii. Specific facts and circumstances relevant to the Advance Ruling request
- iii. Tax matter(s) in question for an Advance Ruling
- iv. Relevant regulations and available tax ruling interpretation or court cases involving similar fact patterns
- v. Applicant's opinion with regard to the tax matter(s) involved

b. The Director of the Tax Ruling Division shall require the taxpayer to submit relevant materials which are necessary to verify the facts and circumstances involved and examine the appropriateness of such request. In case the Advance Ruling request involves a future transaction, specific materials which allow the verification of details regarding such transaction must be required for submission.

**Section 7. (Application Due Date)** An Advance Ruling request application must be submitted by the relevant legal filing due date as specified in the relevant Tax Laws. However, for matters involving withholding tax, such as income tax and corporation tax, the application must be filed by the due date under Article 128 of the "Income Tax Law" and under Article 73 of the "Corporation Tax Law," respectively, and for matters involving "comprehensive real estate holding tax (CREHT)", the application must be filed by the day before the CREHT payment due date under Article 16 of the CREHT Law.

### **Chapter III. Procedures for Advance Ruling**

**Section 8. (Review of Submitted Application and Request for Revision)**

a. In case when an applicant omits information required in the application, ambiguously states information, or fails to provide supporting materials relevant to the Advance Ruling request, the Director of the Tax Ruling Division may request such information to be provided within a 14-day period.

b. The request for revision to a submitted Advance Ruling application shall be made based on the issuance of a "Revision Request Form (Form No. 3)".

**Section 9. (Return of Application)** Applications which are relevant to any of the matters specified in Section 4 above will be precluded from review. In such case, reason for a return of application shall be notified to the applicant in writing.

**Section 10. (Issuance of Advance Ruling)**

a. The results of an Advance Ruling request (Advance Ruling result) shall be issued in writing clearly.

b. The to the Advance Ruling request shall be issued on the "Advance Ruling Result Form (Form No. 2)," referred to as the Response Form herein.

c. The numbering of the Response Form shall be made based on a combination of the department name which administered the Advance Ruling request, relevant tax category code provided in Table I attached, the year in which the Advance Ruling request was made and a serial number.

**Section 11. (Preclusion from Response)** An application with facts and circumstances which relate to any of the following situations will not receive a Response and the applicant of such application shall receive a written notification accordingly.

- i. Ruling requests which are accompanied by a tax audit notice in connection with Chapter 81-7 of the "Framework Act on National Taxes" or tax adjustment at a date subsequent to the ruling request submission.
- ii. Ruling requests which are broadly comprehensive in nature or contain issues which may be vague or unclear for interpretation.
- iii. Ruling requests which were accompanied by a request for revision pursuant to Section 8 above, but have failed to furnish additional materials as necessary within the given time limit.
- iv. Ruling requests which are considered impertinent for a ruling due to tax law revisions or political reasons.



- v. Ruling requests which appear to have been applied for means of tax evasion or tax avoidance.

## **Chapter IV. Compliances on Advance Ruling Obtained**

**Section 12. (NTS' Obligation to Comply)** Provided that the taxpayer's treatment of the actual transaction is consistent with the results of the ruling obtained, and such transaction is in accordance with the facts and circumstances represented in the ruling request, the tax authority (i.e., relevant regional tax office director or head of district tax office) will protect the taxpayer's interest in accordance with the bona fide principle in case of a tax assessment with regard to such transaction.

### **Section 13. (Public Disclosure of Advance Rulings)**

a. The Director of the Tax Ruling Division shall make Advance Ruling results, which were issued to the respective applicants according to Section 10 above, publicly available on the National Tax Law Information System. In such case, potentially sensitive information of the taxpayer, including the identities of the applicant and the transaction counterparty, will remain undisclosed.

b. In case that the applicant who has received an Advance

Ruling requests for a delay in the disclosure of such information to the public based on a reasonable explanation, the NTS may disclose such Advance Ruling result to the public after the lapse of a considerable time period.

### **Additional Provision**

- a. Effective Date: These guidances on the administration of the NTS' Advance Ruling Service enter into effect on October 1, 2008.