CR 2001/1 - Class Rulings system

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Generated on: 4 November 2026, 05:05:55 AM

Class Ruling
Class Rulings system

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This publication is a public ruling for the purposes of the Taxation Administration Act 1953.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

What this Class Ruling is about

1. This Ruling outlines the system of Class Rulings, which may be public rulings under the *Taxation Administration Act 1953* ('TAA'), in relation to the income tax and fringe benefits tax law. This Ruling considers:

- the date of effect of Class Rulings;
- what constitutes a Class Ruling;
- requesting a Class Ruling; and
- when we will not rule.

2. The term 'participants' is used throughout this Ruling to describe the class of entities to which a Class Ruling applies.

Date of effect

This Ruling

3. This Class Ruling applies from 28 February 2001.

Note: The Addendum to this Ruling that issued on 5 April 2006 applies on and from 1 January 2006.

Later Rulings

4. Class Rulings will stipulate a date of effect.

5. A Class Ruling may also specify the date on which it will be withdrawn and cease to have effect. A Class Ruling applies to all entities within the specified class who participate in the specified scheme during the term of the Ruling.

Ruling and Explanation

What constitutes a Class Ruling

6. Class Rulings have been introduced to enable the Commissioner to provide legally binding advice in response to a request from an entity seeking advice about the application of a relevant provision to a specific class of entities in relation to a particular scheme. The purpose of a Class Ruling is to provide certainty to participants and obviate the need for individual participants to seek private rulings.

7. Being a type of public ruling, the Commissioner derives the power to issue Class Rulings under Division 358 of Schedule 1 to the *Taxation Administration Act 1953* ('TAA'). The Commissioner has an unfettered discretion as to whether or not to issue a Class Ruling in relation to any particular scheme, and this applies whether the Class Ruling has been requested or not.

8. A Class Ruling provides certainty to participants by stating/confirming that the tax consequences set out in the **Ruling** part of the Class Ruling are available, provided that the schemes are carried out as described in the **Scheme** part of the Class Ruling. The highest levels of disclosure are expected of the applicant. If the scheme carried out is materially different from that ruled upon, the Ruling has no binding effect on the Commissioner and may be withdrawn or modified.

9. Participants in a particular scheme may wish to seek assurances from the entity implementing the scheme that it will be carried out as described in the Class Ruling.

Class of entity

10. Division 358 of Schedule 1 to the TAA contains the public ruling provisions and sets out what is necessary for a published opinion of the Commissioner to be a public ruling. A class ruling sets out the Commissioner's opinion as to the way in which a 'relevant provision' applies to a class of entities in relation to a scheme (subsection 358-5(1) of Schedule 1 to the TAA).

11. The class of entities subject to a Class Ruling is defined in the Class Ruling. The Class Ruling is legally binding on the Commissioner and participants can rely on the statements contained in the ruling.

Relevant provision

12. Provisions that are relevant to rulings are defined in section 357-55 of Schedule 1 to the TAA. A 'relevant provision' is a provision of an Act or regulation administered by the Commissioner that is about any of the following:

- income tax;
- Medicare levy;
- fringe benefits tax;
- franking tax (that is, franking deficit tax, over-franking tax and venture capital deficit tax);
- withholding taxes (including non-resident withholding taxes and mining withholding tax);
- the administration or collection of the above taxes;
- product grants or benefits mentioned in section 8 of the *Product Grants and Benefits Administration Act 2000* (including energy grants, cleaner fuel grants and product stewardship (oil) benefits); and
- the administration or payment of the above grants and benefits.

13. A public ruling on the way in which a relevant provision applies may be a ruling on the way in which a discretion of the Commissioner under that law would be exercised.

Scheme

14. A Class Ruling describes the relevant details of a particular scheme. A Class Ruling contains the Commissioner's opinion about the application of the relevant provision to a specific class of entities in relation to the particular scheme. The following are examples of situations where such a ruling may be given:

(a) An employer seeks advice about the tax consequences of retention bonuses for a class of employees.

(b) An employer seeks advice about the tax consequences of a bona fide redundancy plan for a class of employees.

(c) An employer seeks advice about the tax consequences of an employee share acquisition plan for individual employees.

(d) A company seeks advice about the tax consequences for its shareholders of a restructure of the company, a split or consolidation of its shares, or any other proposed transaction of the company affecting the tax affairs of its shareholders.

(e) A public company seeks advice about the application of the scrip for scrip roll-over provisions to its shareholders.

(f) A Commonwealth, State or Territory Government or one of their Government authorities seeks advice about a proposed transaction; for example, an industry restructure which has taxation consequences for participants in that industry.

15. Class Rulings will not be issued in relation to investment schemes and similar products. Product Rulings are issued for this purpose.

Numbering of Class Rulings

16. Class Rulings will:

- be grouped as the 'CR' series;
- have a prefix for the particular calendar year in which they issue; and
- be numbered in issue order.

Publication

17. A Class Ruling is a public ruling in terms of the TAA. Accordingly, for a Class Ruling to be made, the Ruling must be published and notice of it must be published in the *Gazette*. Because a Class Ruling may only apply for a set term, the *Gazette* notice giving notice of the making of the Ruling may also give notice of the future date on which the Ruling will be withdrawn. The Commissioner may, however, withdraw a Class Ruling at any stage by publishing notice of the withdrawal in the *Gazette*.

Copyright

18. Each Class Ruling is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth, available from AusInfo. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601. The relevant form that must be completed (entitled 'A Request to Reproduce Published Commonwealth of Australia Copyright Material') is available on AusInfo's Internet site at **http://www.ausinfo.gov.au/infoman/im_copyright.htm**.

Requesting a Class Ruling

19. An entity may specifically request a Class Ruling. Furthermore, whenever an entity requests advice about the application of a relevant provision to a specific class of entity/entities in relation to a particular scheme, it will be treated as a request for a Class Ruling. ATO staff are to also give consideration to issuing a Class Ruling in those situations where a member of a class of entity/entities affected by a particular scheme requests a private ruling on the scheme.

20. A written request for a Class Ruling should be sent to the same mailing address as other correspondence: see *TaxPack* for addresses. The information that must be provided includes:

- A full and accurate description of the scheme - including details of the principals carrying out the scheme and any documents referred to in the scheme;
- Where relevant, the title given to the scheme;
- A clear and accurate description of the class of entities subject to the scheme; and
- A clearly articulated question/s in terms of the particular provisions that are to be ruled on. In

addition, the entity requesting the advice is expected to present the issues that are to be considered together with the results of research undertaken.

21. The issue/publication of a Class Ruling in relation to a particular scheme is generally conditional upon the requesting entity:

- acknowledging that the Commissioner will reveal in the Ruling:
  - the name and address of the entities involved as principals in the carrying out of the scheme;
  - the name and description of the scheme; and
  - a description of the agreements, deeds and transactions to which the participants are parties;
- obtaining express consent to be named from all parties named in the Ruling; and
- verifying that the description of the scheme contained in the proposed Ruling is accurate.

22. The quality and completeness of information supplied and the need to research, analyse and resolve issues that arise, are factors in the time taken to provide a Class Ruling.

Obligations after the issue of a Class Ruling

23. Where the scheme is relevant to or affects statutory or other Government requirements (e.g., director's reports requirements), the Commissioner may request that the relevant information be provided to him or her.

Testing our views

24. Where we are unable to rule favourably, we will agree to issue a private ruling in response to a valid application by a proposed participant, to enable the issues to be tested through the relevant review processes. This does not preclude the Commissioner from also issuing a Class Ruling on the scheme, though this will generally only be done where the relevant entity agrees to it.

When we will not rule

25. The Commissioner makes and withdraws Class Rulings at his discretion.

26. Without limiting the discretion to refuse to rule in relation to other instances, a Class Ruling will not be issued in the following circumstances:

(a) the request is frivolous or vexatious. Falling within this category are requests where:

- the scheme is only hypothetical, in that the scheme to which the application relates is not being carried out and is not seriously contemplated by the applicant;
- there is no realistic chance of implementing the scheme; or
- the scheme is revised or additional information provided, indicating that there is, in fact, no settled scheme on which the ATO may rule;

(b) the Ruling, or circumstances associated with the Ruling, could reasonably be misleading to participants. Falling within this category are requests where:

- the Government has announced a change to the law upon which the Commissioner has been asked to rule;
- the ATO cannot give a positive clearance on general anti-avoidance provisions; or
- the material provided in support of the application cannot reasonably be relied upon;

(c) in the opinion of the Commissioner, insufficient information has been provided despite a request by the Commissioner for additional information. Falling within this category also are requests where material provided is inconsistent, inaccurate or contains errors such that the scheme cannot be ascertained with particularity; and

(d) in the opinion of the Commissioner it is unreasonable to comply with the application given the extent of resources available or other relevant matters. For example, the Commissioner may refuse to issue a Class Ruling in the following circumstances:

- in the case of protracted and very time consuming matters to which the Commissioner cannot devote resources;
- where the issues are sufficiently covered by a previously issued public ruling; or

- where statutory or other Government requirements (e.g., prospectuses, licences, approvals) have not been met and are not expected to be met, have expired, have been withdrawn, or are expected to expire or be withdrawn in the near future.

27. Class Rulings will generally be withdrawn where no longer needed. For example, a Class Ruling will be withdrawn where the Commissioner is satisfied that the scheme in relation to which the Class Ruling issued, is no longer to be implemented or the scheme has been implemented but in a way materially different from that described in the Ruling. A Class Ruling, although withdrawn, will continue to bind the Commissioner in relation to those to whom the Ruling applies, who entered into the scheme as described in the Ruling during the currency of the Ruling.

27A. If a Class Ruling is inconsistent with a later public or private ruling, the relevant class of entity/entities may rely on either ruling that applies to them (subsection 357-75(1) item 1 of Schedule 1 to the TAA).

27B. If a private ruling is inconsistent with a later Class Ruling, the earlier private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

If the above two conditions do not apply, the relevant class of entity/entities may rely on either ruling that applies to them (subsection 357-75(1) item 3 of Schedule 1 to the TAA).

Detailed contents list

28. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation
28 February 2001

Previous draft:
Not previously released in draft form

Subject references:
- Class Rulings
- Public Rulings
- taxation administration

Legislative references
- TAA 1953
- TAA 1953 Sch 1
- TAA 1953 Sch 1 Div 357
- TAA 1953 Sch 1 Div 358

ATO references:
NO T2001/003539
BO
FOI Index detail: I 1021813
ISSN: 1445-2014