TD 95/D22 - Income tax: self assessment: can a person (the attorney) acting within the terms of a general power of attorney validly apply on behalf of the grantor of the power of attorney (the principal) for a private ruling on the way in which a tax law or tax laws will apply to the principal?

This cover sheet is provided for information only. It does not form part of *TD 95/D22 - Income tax: self assessment: can a person (the attorney) acting within the terms of a general power of attorney validly apply on behalf of the grantor of the power of attorney (the principal) for a private ruling on the way in which a tax law or tax laws will apply to the principal?*

This document has been finalised by TD 96/5.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: self assessment: can a person (the attorney) acting within the terms of a general power of attorney validly apply on behalf of the grantor of the power of attorney (the principal) for a private ruling on the way in which a tax law or tax laws will apply to the principal?

1. Yes.

2. A power of attorney given by one person to another empowers the attorney to represent, or to act in place of the principal for certain purposes. The power of attorney can be general or specific.

3. A general power of attorney confers on the attorney the authority to do, on behalf of the principal, anything that the principal can lawfully do by an attorney. An attorney, acting under the authority of a general power of attorney, can apply, in accordance with section 14ZAF of the *Taxation Administration Act 1953* (TAA), for a private ruling on the way in which a tax law or tax laws will apply to the principal.

4. Section 14ZAG of the TAA allows a person, with the written consent of another person, to apply for a private ruling on behalf of that other person. A general power of attorney is more than written consent to apply for a ruling. It allows the attorney to act in the place of the principal and, therefore, enables the attorney to apply for a private ruling as if he or she is the person to whom the ruling relates. Consequently, a general attorney, requesting a private ruling on the way in which a tax law or tax laws relate to the principal, will not have to obtain the written consent of the principal to apply for the ruling. However, the attorney will need to advise, with the application, that the power of attorney exists and that the document is available for examination by the Commissioner if required.

5. A specific power of attorney will not usually enable the attorney to validly apply for a private ruling on behalf of the principal. For a specific power of attorney to have the same effect, for Private Rulings purposes, as a general power of attorney, it would need to specify that the attorney is empowered to act in place of the principal in applying for a private ruling.

Commissioner of Taxation
1 November 1995

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