TD 93/34 - Income tax and fringe benefits tax : is there a withdrawal of a private ruling by a later inconsistent public ruling if the year of income or fringe benefits tax year to which the private ruling relates has (a) already ended or (b) commenced but not yet ended?

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax and fringe benefits tax : is there a withdrawal of a private ruling by a later inconsistent public ruling if the year of income or fringe benefits tax year to which the private ruling relates has (a) already ended or (b) commenced but not yet ended?

1. No. There is no withdrawal of a 'private ruling' (as defined in subsection 14ZAA(1) of the *Taxation Administration Act 1953*) by a later inconsistent 'public ruling' (as defined in section 14ZAAA when read with subsection 14ZAA(2)) if the year of income or fringe benefits tax year to which the private ruling relates has:

(a) already ended; or

(b) commenced but not yet ended.

In relation to (b), there is no withdrawal of the private ruling even if the taxpayer has not, at the time the public ruling is released, begun to carry out the relevant arrangement.

2. The conclusion that the inconsistent public ruling does not withdraw the private ruling in these circumstances arises from the interaction of section 14ZAW with subsections 14ZAU(2) and 14ZAU(4).

3. Section 14ZAW provides that if the Commissioner of Taxation makes a public ruling that is inconsistent with a private ruling, the Commissioner is taken to have withdrawn the private ruling so far as there is inconsistency and the withdrawal is allowed by section 14ZAU.

4. Subsection 14ZAU(2) explains when the Commissioner may wholly or partly withdraw a private ruling without the rulee's consent. Subsection 14ZAU(4) (when read with subsection 14ZAA(2) and the definition of 'year of income' in section 14ZAAA) provides that a private ruling may not be withdrawn under subsection 14ZAU(2) to any extent if it relates to a year of income or fringe benefits tax year that has commenced or ended.

5. Where a private ruling is not withdrawn by an inconsistent public ruling, the public ruling prevails for the purposes of a taxpayer's assessment if the public ruling is more favourable than the private ruling (sections 170BC and 170BF of the *Income Tax Assessment Act 1936* and section 74C of the *Fringe Benefits Tax Assessment Act 1986*).

6. Paragraph 19 of Taxation Ruling 92/20 (date of effect of Rulings and Determinations) and paragraph 16 of Taxation Ruling TR 93/1 (private rulings) need to be read having regard to this Determination.

Example 1: (a) year of income already ended

On 1 December 1992, John receives a private ruling that an amount of $5 000 that he is proposing to incur in May 1993 is deductible under subsection 51(1) of the Income Tax Assessment Act. On 1 November 1993, a public ruling is released which indicates that expenditure of the kind covered by the private ruling is not deductible.

There is no withdrawal of the private ruling by the inconsistent public ruling. This is because the year of income to which the private ruling relates (the 1992-93 year) has already ended when the public ruling is released.

Example 2: (b) year of income commenced but not yet ended

On 1 August 1992, Frances receives a private ruling that an amount of $2 000 that she is proposing to incur in April 1993 is deductible under subsection 51(1) of the Income Tax Assessment Act. On 1 October 1992, a public ruling is released which indicates that expenditure of the kind covered by the private ruling is not deductible.

There is no withdrawal of the private ruling by the inconsistent public ruling. This is because the year of income to which the private ruling relates (the 1992-93 year) has commenced when the public ruling is released. The fact that when the public ruling is released, Frances has not yet incurred the expenditure makes no difference to this conclusion.

Commissioner of Taxation
11/03/93

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