

TR 2006/11DA - Draft Addendum - Income tax, fringe benefits tax and product grants and benefits: Private Rulings

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 This document has changed over time. This is a consolidated version of the ruling which was published on *6 April 2011*



Draft Addendum

Taxation Ruling

Income tax, fringe benefits tax and product grants and benefits: Private Rulings

Preamble

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation 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.

You can rely on this publication to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

This draft Addendum is being issued as a consequence of the inclusion of indirect tax and excise rulings into the general rulings system following the enactment of *Tax Laws Amendment (2010 GST Administration Measures No.2) Act 2010*.

This draft Addendum also clarifies the scope of the Commissioner's power to rule and confirms the types of matters that the Commissioner can deal with in a private ruling.

It is proposed that TR 2006/11 be amended as follows:

1. Title

Omit 'Income tax, fringe benefits tax and product grants and benefits: '.

2. Paragraph 1

(a) After the first sentence, insert:

This Act implemented the Government's response to the recommendations made in the *Report on Aspects of Income Tax Self Assessment* (ROSA Report).

(b) After the paragraph, insert:

1A. This Ruling also outlines the inclusion of indirect tax and excise rulings into the system of private rulings following the enactment of *Tax Laws Amendment (2010 GST Administration Measures No.2) Act 2010*. This implemented the Government's response to the Board of Taxation's *Review of the Legal Framework for the Administration of the GST* which recommended harmonising the indirect tax rulings system with the general rulings system.

3. Paragraph 2

Omit the first sentence.

4. Paragraph 3

After the paragraph, insert:

3A. Goods and Services Tax Ruling GSTR 1999/1 and Wine Equalisation Tax Ruling WETR 2002/1 have been withdrawn with effect from 1 July 2010. To the extent that the Commissioner's views relating to private rulings in those Rulings continue to apply under Divisions 357 and 359 of the TAA, they have been incorporated into this Ruling.

5. Paragraph 6

Number the paragraph beginning 'The Commissioner may give a private ruling' 6A.

6. Paragraph 8

After the paragraph, insert:

8A. An indirect tax private ruling in force just before 1 July 2010 is treated from that time as if it were a private ruling under Division 359 of Schedule 1 to the TAA.^{4A}

7. Paragraph 9

Omit the last three dot points; substitute:

- indirect tax (including goods and services tax (GST), wine tax and luxury car tax (LCT));
- excise duty;
- the administration and collection of the above taxes, levies and duties;

^{4A} Subitem 46(2) of Schedule 2 to the *Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010*.

- 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), or the administration or payment of the product grants and benefits;
- a net fuel amount, or the administration, collection or payment of a net fuel amount;
- a net amount or the administration, collection or payment of a net amount; and
- a wine tax credit, or the administration or payment of a wine tax credit.

8. Paragraph 11

After 'aspect of the tax', insert ', levy, duty'.

9. Footnote 10

Omit the text; substitute:

Paragraph 3.22 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005 and paragraph 2.11 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010.

10. Paragraph 13

After 'liability to the listed taxes', insert ', duties and levies'.

11. Paragraph 14

Omit the first sentence; substitute:

Provisions dealing with penalties for false or misleading statements, late payment of taxes, levies or duties or late lodgment of returns, are examples of provisions about the administration or collection of taxes, levies and duties.

12. Paragraph 16

Omit the second sentence; substitute:

This can include, where appropriate, matters such as the Commissioner's approach to discretions, 'safe harbours', and tax risk management. However, such matters can only be addressed to the extent that they are relevant to the application of the relevant provision. This is discussed in more detail in the context of public rulings in Taxation Ruling TR 2006/10 Public Rulings at paragraphs 16A to 16D. Additionally, the Commissioner is able to provide a private ruling which covers the value of anything where it is necessary in dealing with the application of the law.

13. Paragraph 17

Omit 'the income tax regulations.'; substitute 'the regulations.'^{14A}

14. Paragraph 20

Omit the third sentence; substitute:

If no time is specified and the ruling is not an indirect tax or excise ruling then the ruling applies from when it is made until the end of the income year or accounting period in which it started to apply. If no time is specified and the ruling is an indirect tax or excise ruling then the ruling applies until it is withdrawn or replaced by the Commissioner.^{18A}

15. Paragraph 25

Omit the last sentence.

16. Paragraph 30

Omit the paragraph; substitute:

30. Usually the private ruling applies only to the entity in respect of whom the application was made. However, a private ruling given to a trustee in respect of the tax affairs of a trust also applies to:

- the beneficiaries of the trust if the ruling is not an indirect tax or excise ruling; and

^{14A} See Part 7 of the Taxation Administration Regulations 1976.

^{18A} See note to section 359-25 of Schedule 1 to the TAA and also paragraph 2.55 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No .2) Bill 2010.

- to any replacement trustee,

provided the ruling would have applied to the former trustee (which it would not have if, for example, the scheme in respect of which the private ruling is made is not materially the same as the scheme actually implemented).²⁵

30A. An indirect tax ruling obtained by a member of a GST group, a participant in a GST joint venture, or an incapacitated entity may also apply to the representative member of the GST group, the joint venture operator of the GST joint venture or the representative of the incapacitated entity.^{25A} The Commissioner will only be bound by such a ruling in relation to the 'member entity' and the 'representative entity' if both entities rely on the ruling by acting or omitting to act in accordance with the ruling.^{25B}

30B. In the context of GST, the entitlement of a recipient of a supply to input tax credits, depends on the GST that is payable by the supplier. A private ruling issued to the supplier does not apply to the recipient of the supply. However, if it affects the treatment of the supply by the supplier who relies on it, it may correspondingly have an effect on the input tax credits that a recipient can claim.^{25C}

17. Footnote 30

Omit the text; substitute:

Sections 357-110 and 357-120 of Schedule 1 to the TAA. See also Law Administration Practice Statement PS LA 2008/5 in regards to obtaining information from third parties.

18. Footnote 38

Omit the text; substitute:

See Law Administration Practice Statement PS LA 2008/5 for a discussion of what may be a reasonable time in particular circumstances.

²⁵ Section 359-30 of Schedule 1 to the TAA.

^{25A} Subsections 357-60(5) and (6); and see paragraphs 2.45 to 2.47 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010.

^{25B} This is only the case, however, if the ruling satisfies subsection 357-60(6) of Schedule 1 to the TAA. A ruling which applies to the member entity and relates to its own indirect tax liability (as opposed to an amount that 'becomes' a liability of the representative entity under the indirect tax rules relating to GST groups, GST joint ventures or incapacitated entities) will not satisfy subsection 357-60(6). Accordingly, the Commissioner will be bound by a ruling of this type if the member entity alone relies on the ruling.

^{25C} Subsection 357-60(3); and see paragraph 2.44 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010.

19. Paragraph 41

After the paragraph, insert:

41A. To the extent inconsistent rulings deal with indirect tax or excise issues, the indirect tax and excise rules apply (refer to paragraphs 48A and 48B of this Ruling). To the extent inconsistent rulings deal with other issues, the rules for rulings other than indirect tax or excise rulings apply (refer to paragraphs 42 to 48 of this Ruling).^{39A}

20. Paragraph 42

Insert the heading:

Rulings other than indirect tax or excise rulings

21. Paragraph 48

After the paragraph, insert:

Indirect tax or excise rulings

48A. If there are two inconsistent rulings that apply to an entity and at least one of the rulings is a private ruling then, to the extent of the inconsistency, the later ruling is taken to apply from the later of the time it is made and the time (if any) specified in the ruling as being the time from which it begins to apply. The earlier ruling is taken to cease to apply at that later time.^{42A}

48B. Where there are three or more inconsistent rulings, the rules in paragraph 48A of this Ruling should be applied to each combination of two rulings in the order in which they are made, to determine which ruling the entity can rely on for a particular period of time.

22. Paragraph 49

After the heading, insert the subheading:

Rulings other than indirect tax or excise private rulings

^{39A} See section 357-75 and also paragraph 2.32 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010.

^{42A} Subsection 357-75(1B) and see also paragraphs 2.28 and 2.29 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010.

23. Paragraph 50

After the paragraph, insert:

Indirect tax or excise private rulings

50A. An existing indirect tax or excise private ruling may be revised by the Commissioner. Such a revision may be made whether or not there is an application for a revised private ruling.^{43A} Unless the revised private ruling specifies a later start date, it applies to you from the time it is made (that is, when a copy of it is given to you). From that time the original private ruling no longer applies and therefore cannot be relied upon.^{43B}

24. Paragraph 54

Omit the last sentence; substitute:

If no end time is specified and the ruling is not an indirect tax or excise ruling it ceases to apply at the end of the income year or accounting period in which it started to apply.⁴⁵ If no end time is specified and the ruling is an indirect tax or excise ruling it continues to apply until it is either replaced by a later indirect tax or excise ruling or it is withdrawn.^{45A}

25. Paragraph 58

(a) Omit 'two instances'; substitute 'three instances'.

(b) Omit the dot points; substitute:

- where an assessment has been made in respect of the year of income or accounting period covered by the private ruling. In this situation you can have the matter dealt with in the private ruling reviewed by lodging an objection against the relevant assessment or amended assessment;
- where the private ruling relates to withholding tax or mining withholding tax that has become due and payable; and
- where the private ruling relates to excise duty or another amount payable in relation to the goods under an excise law and the Commissioner has made a decision about the excise duty, or other amount, payable in relation to those goods and the decision is reviewable under an excise law.

^{43A} Section 359-55 of Schedule 1 to the TAA.

^{43B} Subsections 359-55(4) and 359-55(5) of Schedule 1 to the TAA.

⁴⁵ Section 359-25 of Schedule 1 to the TAA.

^{45A} See note to section 359-25 of Schedule 1 to the TAA and also paragraph 2.55 of the Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010.

26. Footnote 53

Omit the footnote.

27. Paragraph 63

Insert:

<i>Rulings other than indirect tax or excise rulings</i>	42
<i>Indirect tax or excise rulings</i>	48A
<i>Rulings other than indirect tax or excise rulings</i>	49
<i>Indirect tax or excise rulings</i>	50A

28. Related Rulings/Determinations

Omit the references; substitute 'TR 95/6; TR 2006/10'.

29. Previous Rulings/Determinations

Omit '; TR 95/6'; insert '; GSTR 1999/1; WETR 2002/1'.

30. Legislative references

Omit:

- TAA 1953 14ZAAD
- TAA 1953 14ZAAE
- TAA 1953 Sch 1 358-5(1)
- TAA 1953 Sch 1 358-5(2)

Insert:

- TAA 1953 14ZAE
- TAA 1953 14ZAF
- TAA 1953 Sch 1 105-60
- TAA 1953 Sch 1 357-60(3)
- TAA 1953 Sch 1 357-60(5)
- TAA 1953 Sch 1 357-60(6)
- TAA 1953 Sch 1 357-75(1)
- TAA 1953 Sch 1 359-5(1)
- TAA 1953 Sch 1 359-30
- TAA 1953 Sch 1 359-55(4)
- TAA 1953 Sch 1 359-55(5)
- ITAA 1936
- ITAA 1997
- Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010
- Tax Laws Amendment (2010 GST Administration Measures No. 2) Act 2010 Sch2 46(2)
- Taxation Administration Regulations 1976 Pt 7

31. Other references

Omit:

- Law Administration Practice Statement PS LA 2003/4

Insert:

- Explanatory Memorandum to the Tax Laws Amendment (2010 GST Administration Measures No. 2) Bill 2010
- Law Administration Practice Statement PS LA 2008/3
- Review of the Legal Framework for the Administration of the GST, Board of Taxation

Your comments

You are invited to comment on this draft Notice of Addendum. Please forward your comments to the contact officer by the due date.

A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

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It is proposed that when finalised, this Addendum will have effect both before and after its date of issue. To the extent that the Addendum concerns indirect tax and excise rulings, it will have effect from 1 July 2010.

Commissioner of Taxation
6 April 2011

TR 2006/11

ATO references

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Income Tax ~~ Administration ~~ private binding rulings