TR 2006/11A7 - Addendum - Private Rulings

Addendum

Taxation Ruling

Private rulings

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2006/11 to address recent developments in case law and the promoter penalty laws in Division 290 of Schedule 1 to the *Taxation Administration Act 1953*.

TR 2006/11 is amended as follows:

1. Paragraph 2

Omit the wording of the paragraph; substitute:

> This Ruling considers:
>
> (i) what constitutes a private ruling;
>
> (ii) what is a relevant provision;
>
> (iii) what can be covered by a private ruling (including valuations and the general anti-avoidance rule);
>
> (iv) the status and binding effect of private rulings;
>
> (v) who may apply for a private ruling and who is covered by it;
>
> (vi) the form of application and information to be provided;
>
> (vii) the making of a private ruling;
>
> (viii) applications that do not have to be dealt with;
>
> (ix) the effect of inconsistent rulings;
>
> (x) revising private rulings;
>
> (xi) the status of private rulings following a rewrite of the law;
>
> (xii) the period for which a private ruling has effect;
>
> (xiii) delays in making private rulings;
>
> (xiv) the review of private rulings; and
>
> (xv) private rulings and the promotor penalty laws.

2. Paragraph 6

Omit the wording of the paragraph; substitute:

> There is no obligation on the Commissioner to make an additional private ruling. Where a private ruling request is very specific in its application to a scheme and a particular relevant provision, the Commissioner may give a private ruling that does no more than express an opinion on that particular relevant provision.

3. Paragraph 6A

Omit the wording of the paragraph; substitute:

> For example, you might ask for a private ruling on whether an amount derived from the sale of an asset is assessable under section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997). The Commissioner may give a private ruling that the amount is not assessable under section 6-5 of the ITAA 1997. This may occur even though the Commissioner might, if asked to consider the matter, consider that an amount (namely, a net capital gain calculated under Part 3-1 of the ITAA 1997) would be assessable as statutory income under section 6-10 of the ITAA 1997. However, because the ruling application did not draw attention to a possible alternative treatment, this question was not addressed.

4. Paragraph 8

Omit the paragraph, including footnotes 2 to 4.

5. Paragraph 8A

Omit the paragraph, including footnote 4A.

6. Paragraph 9

(a) Omit 'are about any', insert 'are 'about' any'.

(b) At the end of the paragraph, insert 'This list includes, for example, tax (paragraph 357-55(a)), fringe benefits tax (paragraph 357-55(c)), franking tax (paragraph 357-55(d)), withholding tax (paragraph 357-55(e)) and indirect tax (paragraph 357-55(fb)).'.

7. Paragraph 10

(a) After the paragraph, insert new paragraph 10A:

> 10A. The Administrative Appeals Tribunal in *Hamilton and Commissioner of Taxation*[7A] provides a further example. In that case, the Tribunal explained that the Commissioner is authorised and required to apply the *International Organisations (Privileges and Immunities) Act 1963* and the relevant regulations when determining whether salary or wages or emoluments received from an international organisation is exempt income for income tax purposes. Once again, any views the Commissioner gives on how that Act applies are not binding outside the income tax context of the specific scheme covered by the private ruling and the entity it applies to.

(b) In new paragraph 10A after '*Hamilton and Commissioner of Taxation*', insert new footnote 7A:

> [7A] [2020] AATA 1812 at [48–51].

8. Paragraph 11

In footnote 10, omit 'Paragraph 3.22'; substitute 'Paragraphs 357-55(g) to (h). Paragraph 3.22'.

9. Paragraph 12

Omit 'ITAA 1936'; substitute '*Income Tax Assessment Act 1936* (ITAA 1936)'.

10. Paragraph 15

(a) After the paragraph, insert new paragraph 15A:

15A. When making a private ruling, the decision-maker, on behalf of the Commissioner, identifies and specifies the scheme from the facts provided. The decision-maker then states an opinion on the way the law applies to that specified scheme. It is important that the Commissioner is provided with relevant information to enable this to be done as accurately as possible in the first instance. This is because any subsequent decision-maker considering the private ruling has limited capacity to review the facts and may not themselves engage in a fact-finding exercise.[13A] Rather, a subsequent decision-maker must form their own view as to how a taxation law applies to the specified scheme. That subsequent decision-maker must take the specified scheme as a given.[13B]

(b) In new paragraph 15A, after 'fact-finding exercise.', insert new footnote 13A:

[13A] Refer to paragraphs 60 and 61 of this Ruling for further information.

(c) In new paragraph 15A, after 'must take the specified scheme as a given.', insert new footnote 13B:

[13B] See *Rosgoe Pty Ltd v Commissioner of Taxation* [2015] FCA 1231 at [12] citing the Full Federal Court case of *Commissioner of Taxation v McMahon, Brian John, Deputy President, The Administrative Appeals Tribunal & Anor* [1997] FCA 1087. See also *Commissioner of Taxation v Eichmann* [2019] FCA 2155 (first instance) at [22], and *Eichmann v Commissioner of Taxation* [2020] FCAFC 155 (on appeal) at [16], *Baya Casal v Deputy Commissioner of Taxation* [2025] FCA 87 at [42] (first instance) at [42], *Baya Casal v Commissioner of Taxation* [2026] FCAFC 11 (on appeal) at [8] and *The Public Servant and Commissioner of Taxation* [2014] AATA 247 at [53].

11. Paragraph 16

Omit 'TR 2006/10 *Public Rulings*'; substitute 'TR 2006/10 *Public rulings*'.

12. Paragraph 17

(a) Before the paragraph, insert heading '***Private rulings and valuations***'.

(b) In footnote 14A, after 'See', insert 'subsection 359-50(4) and'.

(c) After the paragraph, insert new paragraph 17A:

17A. The Commissioner will not issue a private ruling where the application concerns[14B]:

- determination or confirmation of the appropriateness of a valuation methodology (see, more generally, paragraph 10 of this Ruling as to the scope of the rulings regime), or
- the market value of a future event (see, more generally, paragraphs 40AC and 40AD of this Ruling for further information about the making of assumptions in respect of future events).

(d) In new paragraph 17A, after 'will not issue a private ruling where the application concerns', insert new footnote 14B:

[14B] See also Private rulings and valuations.

13. Paragraph 18

(a) After the paragraph, insert new paragraphs 18A to 18C, including heading:

Private rulings and the general anti-avoidance rules

18A. You can request a ruling on whether a general anti-avoidance rule[15A], applies to a scheme. However, the operation of a general anti-avoidance rule is largely a question of fact, and relatively fine distinctions of fact can easily affect the answer. The operation of a general anti-avoidance rule may depend not only on the facts of the scheme to be implemented by you but also the correct identification of the alternative or alternatives reasonably available to you. Because any omission or misstatement of a material fact means a private ruling is not binding (as outlined in paragraph 19A of this Ruling), a high level of accuracy is required when specifying the relevant facts for the ruling to bind the Commissioner (see paragraphs 19 to 27 of this Ruling for further information).

18B. Where a scheme has not been carried out, there can be practical issues with identifying the facts necessary to make the ruling. If, as may well be the situation where the scheme is yet to be implemented, making the ruling involves making an assumption, the Commissioner has a discretion whether to make the ruling (see paragraph 40AC of this Ruling). Generally, the Commissioner will not make a ruling about the application of a general anti-avoidance rule, especially in a case that is not otherwise straightforward, or if there is any serious question whether the assumption will prove to be correct.

18C. Where there are grounds to suppose that the private ruling was sought to promote tax avoidance schemes, the Commissioner will consider declining to make the ruling on the ground that it will prejudice or unduly restrict the administration of a taxation law.[15B]

18D. Nevertheless, even though the Commissioner may not make a ruling about the application of a general anti-avoidance provision for the reasons mentioned in paragraph 18B of this Ruling, the Commissioner will consider, in more general terms, the risk that it may apply and may inform you of the Commissioner's view. It is also the Commissioner's practice to inform you of the Commissioner's view on a general anti-avoidance rule applying, even if you have not requested a ruling on this point, where the facts related to a private ruling application on another tax provision give rise to a substantial risk of the general anti-avoidance rule applying. In cases of uncertainty, the Commissioner will follow the procedures in Law Administration Practice Statement PS LA 2005/24 *Application of General Anti-Avoidance Rules*.[15C]

(b) In new paragraph 18A, after 'general anti-avoidance rule', insert new footnote 15A:

[15A] For example, Part IVA of the ITAA 1936 or Division 165 of the *A New Tax System (Goods and Services Tax) Act 1999*.

(c) In new paragraph 18B, after 'administration of a taxation law.' insert new footnote 15B:

[15B] Subsection 359-35(2).

(d) In new paragraph 18C, after '*Application of General Anti-Avoidance Rules.*', insert new footnote 15C:

[15C] Refer to paragraphs 9 to 13 of PS LA 2005/24.

14. Paragraph 19

(a) After the paragraph, insert new paragraph 19A:

19A. In *BAC Holdings Limited v Commissioner of Taxation*[17A], the Court decided that a private ruling did not bind the Commissioner because the actual facts differed from those described in the ruling.

(b) In new paragraph 19A, after the '*Commissioner of Taxation*', insert new footnote 17A:

[17A] [2020] FCA 413 at [48].

15. Paragraph 20

(a) After 'in which it started to apply.', insert new footnote 18AA:

[18AA] Section 359-25. An accounting period is a period for which a liability for tax has been accounted. For example, a fringe benefits tax year for fringe benefits tax, a franking period for franking deficits tax and a petroleum resource rent tax year for petroleum resource rent tax, are all examples of accounting periods.

(b) In footnote 18A, after 'section 359-25', insert ', subsection 357-75(1B)'.

(c) In footnote 19, omit 'subsection 357-60'; substitute 'subsection 357-60(1)'.

16. Paragraph 21

Omit 'exists'; substitute 'existed'.

17. Paragraph 23

After 'provision has been changed', omit 'or amended'.

18. Paragraph 24

After 'in accordance with it.', insert footnote 19A:

[19A] Subsection 357-60(1).

19. Paragraph 27

In the third bullet point, omit 'they'; substitute 'the Commissioner'.

20. Paragraph 30

(a) After the paragraph, insert new paragraph 30AA:

30AA. A private ruling does not apply to (and cannot be relied on by) an entity who did not apply for the ruling or who is not named in the notice of private ruling.[25AA] A private ruling is the Commissioner's view on how the law applies to the entities in respect of whom it is made (and no others).[25AB]

(b) In the new paragraph 30AA, after 'notice of private ruling.', insert new footnote 25AA:

[25AA] Subject to some exceptions, see, for example, paragraph 30 of this Ruling.

(c) In new paragraph 30AA, after '(and no others).', insert new footnote 25AB:

[25AB] See *Lenzo v Commissioner of Taxation* [2007] FCA 1402 at [95].

21. Paragraph 30B

(a) After 'recipient can claim.[25C]', insert:

This means that if a ruling is not relied upon by a supplier (for example, by the supplier acting inconsistently with it[25D]), it does not impact and therefore has no effect for the recipient. Even if the effects of the ruling impact the recipient, the recipient is unable to object to the ruling.[25E]

(b) After 'acting inconsistently with it', insert new footnote 25D:

[25D] See paragraph 357-60(1)(b) and the Note to subsection 357-60(3).

(c) After 'object to the ruling.', insert new footnote 25E:

[25E] See subsection 357-60(4).

22. Paragraph 33

Omit 'paragraphs 39 and 40'; substitute 'paragraphs 39 to 40AB'.

23. Paragraph 34

(a) Omit 'that they consider'; substitute 'that the Commissioner considers'.

(b) Omit 'they may decline'; substitute 'the Commissioner may decline'.

24. Paragraph 39

(a) Omit the wording of the paragraph; substitute:

In the usual case where an application has been made in the approved form, the Commissioner is bound to make the private ruling. However, in the interests of allowing the Commissioner to focus efforts on increasing certainty for entities in the most genuine and worthy cases, the Commissioner may decline to rule in certain situations.[33] Situations where the Commissioner may decline to rule are as follows.[34]

(b) After paragraph 39, insert new paragraphs 39A to 39D, including headings:

Making the ruling would prejudice or unduly restrict the administration of a taxation law

39A. The Commissioner may decline to rule where the Commissioner considers that making the ruling would prejudice or unduly restrict the administration of a taxation law. Examples include where:

- the application is frivolous or vexatious or not seriously contemplated (such as a request where the scheme is merely hypothetical);
- provision of a private ruling would not have any practical consequences for you (such as where a product ruling already applies to you, or where the transaction has already occurred in an income year for which the amendment period has expired or the ruling relates to a past income year and the transaction as a matter of historical fact was not entered into in that year)[38A];
- you do not agree to pay the amount charged for a valuation[38B];
- the Commissioner considers that information provided by a source other than you is material to the outcome of the ruling, but disclosure of that information to you would breach tax secrecy provisions, privacy legislation or the confidentiality of the person providing the information (see paragraph 34 of this Ruling)[38C]; or
- making the private ruling would require an unreasonable diversion of the Commissioner's resources from other matters to which must be attended to in the course of administering the taxation laws.

39B. The power to decline to rule in such situations recognises that the ATO is not in the business of giving advice as a purely academic exercise, or assisting unscrupulous people to provide doubtful tax planning advice, or allowing some entities to divert the ATO's resources to meet their needs to the detriment of others and the robustness of the system as a whole.[38D]

The ruling sought deals with a matter that is already being, or has already been, considered

39C. The Commissioner may decline to rule where the matter is already being considered, or has been considered by the Commissioner for you. This includes where you already have a private ruling on the matter, where the matter has already been decided for the purposes of a Commissioner's assessment, where the matter is the subject of a tax audit, or the matter is the subject of an objection against an assessment. In the case of a discretion, it will include circumstances where the Commissioner considers whether or how to exercise the discretion (refer to paragraph 39D of this Ruling).

The ruling sought is how the Commissioner would exercise a power

39D. The Commissioner can decline to make a private ruling if the issue is about how a power would be exercised under the law, and the proper approach is simply for the Commissioner to exercise or not exercise that power. If you want the Commissioner to exercise a particular power under the law, this should normally be by way of asking them to do this rather than by seeking a private ruling. For example, you should normally ask the Commissioner for an extension of time to provide a required approved form under section 388-55 rather than seeking a ruling on the issue. This is to be distinguished from the situation where you are seeking a private ruling about how the Commissioner would exercise a discretion at a future time in relation to the scheme specified.

(c) Omit footnotes 35, 36, 37 and 38.

(d) In new paragraph 39A, after 'historical fact was not entered into in that year)', insert footnote 38A:

[38A] See also *CTC Resources NL v The Commissioner of Taxation for the Commonwealth of Australia* [1994] FCA 76.

(e) In new paragraph 39A, after 'charged for a valuation', insert footnote 38B:

[38B] See paragraph 3.81 of the 2005 EM.

(f) In new paragraph 39A, after 'paragraph 34 of this Ruling)', insert footnote 38C:

[38C] See paragraph 3.44 of the 2005 EM.

(g) In new paragraph 39B, after 'system as a whole.', insert footnote 38D:

[38D] See paragraph 3.82 of the 2005 EM.

25. Paragraph 40

(a) Omit the wording of the paragraph; including headings, substitute:

The Commissioner has asked you for additional information and it is not provided within a reasonable time

40. The Commissioner may also decline to rule where the Commissioner has asked you for additional information and it is not provided within a reasonable time (see paragraph 33 of this Ruling).

(b) Omit footnotes 39 and 39AA.

(c) After paragraph 40, insert new paragraphs 40AA to 40AD, including heading:

40AA. In *Commissioner of Taxation v Hacon Pty Ltd*[39AAA], the Full Federal Court considered that the Commissioner cannot decline to rule merely because the Commissioner requires something more to make the ruling requested by the applicant.

40AB. However, if the information is requested and isn't provided within a reasonable time, the Commissioner may refuse to rule.

The correctness of the ruling depends on assumptions about future events

40AC. The Commissioner can also decline to rule if the correctness of the private ruling would depend on making assumptions[39AAB] about a future event or other matter.[39AAC] This includes situations where giving a ruling would require knowing possible future events, circumstance and their consequences for the arrangement. Also included are situations where knowledge of past events is needed to rule, but records or knowledge of those past events have been lost or not kept.

40AD. Note that the Commissioner is not obligated to first request information in relation to such future events or other matters from you in those circumstances.[39AAD]

(d) In new paragraph 40AA, after '*Hacon Pty Ltd*', insert new footnote 39AAA:

[39AAA] [2017] FCAFC 181.

(e) In new paragraph 40AC, after 'would depend on making assumptions',, insert new footnote 39AAB:

[39AAB] Assumptions about other matters may include, for example, an assumption regarding the application of financial accounting standards.

(f) In new paragraph 40AC, after 'about a future event or other matter.', insert new footnote 39AAC:

[39AAC] See the Note in subsection 359-35(3).

(g) In new paragraph 40AD, at the end of the paragraph, insert new footnote 39AAD:

[39AAD] *Commissioner of Taxation v Hacon Pty Ltd* [2017] FCAFC 181 at [8].

26. Paragraph 40A

(a) Before the paragraph, insert new heading:

The ruling sought is on the Australian IIR tax/UTPR tax or Australian DMT tax

(b) Omit 'where they consider'; substitute 'where the Commissioner considers'.

27. Paragraph 42

Omit the wording of the paragraph; substitute:

> As a general principle, you may always choose to rely on a public ruling that applies to you and may choose to rely on a private or oral ruling that specifically addresses your circumstances provided the private or oral ruling applies to you (paragraph 49 of this Ruling discusses the situation if the private ruling has been revised). So, if there is an apparent inconsistency between a later applicable private ruling and an earlier public ruling, you may choose which ruling you wish to rely on. Similarly, if there is an inconsistency between two public rulings, both of which apply to you, you may rely on either ruling.

28. Paragraph 48

(a) Omit the paragraph.

(b) Omit footnote 42.

29. Paragraph 48A

(a) After 'two inconsistent', insert 'indirect tax or excise'.

(b) After 'The earlier ruling', insert ', to the extent of the inconsistency,'.

30. Paragraph 48B

After 'three or more inconsistent', insert 'indirect tax or excise'.

31. Paragraph 49

(a) After 'original private ruling relates', insert 'has not begun to be carried out'.

(b) Omit 'have not begun'; substitute 'has not begun'.

(c) At the end of the last sentence, insert new footnote 43AA:

[43AA] Section 359-55.

32. Paragraph 53

Omit 'Taxation Ruling, Taxation Determination, press release'; substitute 'taxation ruling, taxation determination, media release'.

33. Paragraph 55

Omit '30 days after'; substitute '30 days of'.

34. Paragraph 57

Omit 'If the Commissioner fails to do either of these within, in the usual case, 60 days of lodgment of the objection (for example, because further information is required to make the ruling and this has not been provided by you), the objection is taken to have been disallowed.'; substitute:

> If the Commissioner fails to do either of these, in the usual case, by the end of 60 days after lodgment of the objection, the objection is taken to have been disallowed.

35. Paragraph 58

(a) Omit the wording of the paragraph; substitute:

> You may object against a private ruling which applies to you if you are dissatisfied with it in the manner set out in Part IVC of the TAA.[50] From 1 July 2010, this includes private indirect tax rulings. There are time limits associated with lodging an objection against a private ruling.[50A]

(b) In paragraph 58, after 'against a private ruling.', insert new footnote 50A:

> [50A] See subsections 14ZW(1AAC) (concerning private indirect tax rulings) and 14ZW(1A) (concerning private rulings other than private indirect rulings) of the TAA. An entity may make a written request that a late objection be dealt with as if it had been lodged within the objection period – see subsection 14ZW(2) and section 14ZX of the TAA. See also paragraphs 25 and 130 to 134 of Taxation Ruling TR 2011/5 *Income tax: objections against income tax assessments* and Law Administration Practice Statement PS LA 2003/7 *How to treat a request to lodge a late objection*.

(c) After the paragraph, insert new paragraph 58A:

> 58A. However, there are three instances where a private ruling may not be objected against:
>
> - where an assessment has been made in respect of the year of income or other accounting period covered by the private ruling.[50B] 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 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.

(d) In new paragraph 58A, after 'period covered by the private ruling.', insert new footnote 50B:

[50B] Paragraph 359-60(3)(a). As noted in footnote 18AA of this Ruling, an accounting period is a period for which a liability for tax has been accounted. In the context of the rules regulating objections to private rulings, 'accounting period' also includes periods for which indirect tax and excise has been accounted, for example, a tax period for goods and services tax and wine equalisation tax.

36. Paragraph 61

(a) After the paragraph, insert new paragraphs 61A to 61C, including heading:

61A. If an objection decision has already been made on a private ruling, you can only object to the relevant assessment on new grounds that were not, and could not have been, raised in the original objection.[55] This avoids duplication of objections.

Private rulings and the promoter penalty laws

61B. Under the promotor penalty laws[56], the Commissioner may apply to the Federal Court for sanctions, remedies (or both) to address conduct concerning the:

- promotion of schemes on the basis of conformity with a private ruling if the scheme is materially different from that described in the ruling; and
- implementation of schemes, that have been promoted on the basis of conformity with a private ruling, in a way that is materially different from that described in the ruling.

61C. The Commissioner has issued Law Administration Practice Statement PS LA 2021/1 *Application of the promoter penalty laws*, setting out the administrative procedures that are used in applying the promoter penalty laws.

(b) In new paragraph 61A, after 'raised in the original objection.', insert new footnote 55:

[55] See section 14ZVA of the TAA; *XRXR and Commissioner of Taxation* [2025] ARTA 357 at [72–73].

(c) In new paragraph 61B, after 'promoter penalty laws', insert new footnote 56:

[56] Division 290.

37. Paragraph 63

Omit the wording of the paragraph; substitute:

The following is a detailed contents list for this Ruling:

This Addendum applies both before and after its date of issue.

Commissioner of Taxation
22 July 2026

ATO references

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