TR 92/20 - Income and other taxes: guidelines on the use of date of effect paragraphs in Taxation Rulings and Taxation Determinations

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Australian Taxation Office

Taxation Ruling

Income and other taxes: guidelines on the use of date of effect paragraphs in Taxation Rulings and Taxation Determinations

other Rulings on this topic

IT 2500TR 92/1

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*This Ruling, 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 Ruling is a public ruling and how it is binding on the Commissioner.*

*[**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 Ruling is about

1. This Ruling sets out the principles and guidelines to be followed in deciding the appropriate date of effect of Taxation Rulings and Taxation Determinations. Key terms used in this Ruling are defined in paragraph 25.

Ruling

A. BASIC PRINCIPLES

2. The Australian Taxation Office (ATO) must, at any particular point in time, apply the law as it understands it to operate, even if a different interpretation was adopted previously.

3. A Ruling is an expression of the ATO's view on how a particular provision of the law should be interpreted or administered. In most cases a Ruling represents the ATO's view of what the law has always been. **In other words, a Ruling usually has a continuing application, i.e. both a past and a future application**.

4. As a result of recent amendments to the *Income Tax Assessment Act 1936 , Fringe Benefits Tax Assessment Act 1986* and the *Taxation Administration Act 1953*, a Ruling which is a 'public ruling' as defined in Part IVAAA of the *Taxation Administration Act* (see Taxation Ruling TR 92/1) is binding on the Commissioner if it is favourable to a taxpayer. A Ruling is not binding in relation to arrangements begun to be carried out before 1 July 1992 (section 12 of the *Taxation Laws Amendment (Self Assessment) Act* 1992).

5. As stated in paragraph 38 of Taxation Ruling TR 92/1, the basic administrative policy of the ATO stated in Taxation Ruling IT 2500 will continue to apply to all Taxation Rulings to the extent that they are not legally binding. The guidelines contained in this Ruling are not intended to, and do not, alter what is said in paragraphs 6, 7 and 10 of IT 2500 about the situations in which a departure would be made from a previous Ruling.

6. If the approach set out in an earlier Ruling is altered, any later Ruling setting out the new interpretative or administrative policy will be applied on the basis of the principles and guidelines set out in this Ruling. These principles and guidelines are aimed at ensuring that taxpayers who have relied on ATO advice contained in an earlier Ruling are not disadvantaged as a result of the ATO altering its opinion.

7. In providing 'date of effect' guidelines, we do not intend to lay down rigid rules that must be adhered to without due regard to the effect on the revenue or the extent to which taxpayers might be disadvantaged. We are attempting to set out for the information of taxation officers a guide as to the appropriate date of effect provision that might generally be adopted. At all times, these guidelines need to be administered in a commonsense manner in the light of the particular issues dealt with in a Ruling.

B. APPLICATION OF BASIC PRINCIPLES

8. Generally Rulings will have both a past and future application.

9. The fact that the ATO has not previously publicly stated its interpretative or administrative policy (e.g.. no previous Ruling on a matter) does not mean a Ruling should not have a past application. Even if uncertainty existed previously in an industry, market or among taxation advisers and taxpayers, a Ruling that is issued to clarify this uncertainty is to have both a past and future application (subject to any of the exceptions mentioned in paragraphs 15 to 20 below).

10. The existence of uncertainty in the interpretation or application of the taxation laws is a matter that may affect the amount of penalty imposed but it does not affect a taxpayer's liability to pay the primary tax required by the law.

11. Rulings dealing with legislative amendments will usually apply from the application date of the amending legislation. Because these Rulings are usually issued after the legislation has come into effect, they have both a past and future application.

12. If a new Ruling is inconsistent with a private ruling and the Ruling is less favourable to taxpayers, the Ruling will usually have both a past and future application for taxpayers other than the

particular taxpayer to whom the private ruling was provided (see paragraph 19). If a new Ruling is more favourable than that contained in an earlier Ruling or private ruling, the new Ruling ordinarily will have both a past and future application (subject to the statutory limits of section 170 of the ITAA or equivalent provisions in other laws).

13. If a Court or Tribunal decision is accepted as correct by the ATO and the decision is more favourable to taxpayers than previous ATO practice, any new Ruling based on that decision ordinarily will have both a past and future application.

14. Rulings will usually have both a past and future application even if the issue dealt with in the Ruling is a timing issue, e.g. an issue that relates to the time that certain income is derived.

C. EXCEPTIONS TO THE GENERAL RULE OF PAST AND FUTURE APPLICATION FOR RULINGS

15. If a new Ruling is less favourable to taxpayers than a:

(a) previous Ruling;

(b) previous Commissioner media release;

(c) previous ATO publication e.g. information booklet or Tax Pack; or

(d) written ATO answer to a question on notice asked by, or written ATO submission to, a Parliamentary Committee:

the new Ruling only has a future application.

16. In addition, there may be rare instances where, by communicating consistently to a wide range of taxpayers a certain taxation treatment on a particular issue, the ATO has contributed to taxpayers generally adopting a certain practice in lodging their tax returns. Any Ruling less favourable to taxpayers which directly contradicts or overrules that practice will usually only have a future application.

Note: Paragraphs 15 and 16 of Taxation Ruling 92/20 need to be read having regard to Taxation Determination TD 94/45. Briefly stated, TD 94/45 explains that the contents of the Assessing Handbooks cannot be relied on as evidence of the ATO's position. We do not consider the Assessing Handbooks to be 'a previous ATO publication' for the purposes of paragraph 15(c) of TR 92/20. Furthermore, we do not consider the guidelines referred to in the Assessing Handbooks to be instances of 'consistent communication to a wide range of taxpayers' as described in paragraph 16 of TR 92/20. Consequently, a Ruling or Determination that is less favourable to taxpayers than the

position adopted in an Assessing Handbook need not, in terms of the date of effect guidelines in TR 92/20, have only a future application.

17. However, the fact that one or more Branch Offices of the ATO may have communicated a particular taxation treatment contrary to that adopted by other Branch Offices does not necessarily mean that a contrary Ruling can only apply for the future.

18. Similarly, mere silence or failure to issue a Ruling on a matter cannot be said to contribute to any practice that an individual taxpayer, or taxpayers generally, may adopt in lodging tax returns. For example, mere silence in respect of a particular financial product which is marketed on the basis of having certain tax benefits will not mean that the ATO is compelled to accept that such benefits exist. However, it is not mere silence if ATO officers have, following specific identification of an issue, accepted, in a wide cross-section of situations, the basis on which taxpayers treat the issue in their returns. On the other hand, the fact that an officer may choose not to examine an issue or, following identification of the issue as part of an audit, may choose to roll over the issue for examination in a future audit will not constitute acceptance of any general practice.

19. If a Ruling is inconsistent with an earlier private ruling and the new Ruling is less favourable to the taxpayer than the private ruling then the Ruling will apply to the taxpayer for all transactions, arrangements, agreements, acts or events entered into, commenced or occurring after the date the Ruling is issued or any later date specified in the Ruling**.**

Note: Paragraph 19 of Taxation Ruling 92/20 needs to be read having regard to Taxation Determination TD 93/34. Briefly stated, TD 93/34 explains that there is no withdrawal of a legally binding private ruling by a later inconsistent legally binding public ruling if the year to which the private ruling relates has either (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. TD 93/34 applies only to **legally binding** private rulings. For administratively binding private rulings (that is, responses made under section 169A of the *Income Tax Assessment Act 1936* or advance opinions), the position outlined in paragraph 19 of TR 92/20 still applies. This means that if a public ruling (whether legally or administratively binding) is less favourable than an earlier administratively binding private ruling, the public ruling will apply to the taxpayer for all transactions, arrangements, agreements, acts or events entered into, commenced or occurring after the date the public ruling is issued or any later date specified in the public ruling.

20. A Ruling dealing with the criteria for, or the method by, which the Commissioner will exercise a discretionary power can only apply to an exercise of the particular discretion after the Ruling is issued. Such Rulings cannot fetter an officer in the exercise of the discretion.

D. INTER-RELATIONSHIP BETWEEN RULINGS AND SETTLEMENTS

21. Situations may arise where, after a dispute is settled between a taxpayer and the ATO, a Ruling is issued that covers an issue(s) which was part of the settlement. In such cases the Ruling will not apply to the taxpayer in relation to that issue(s) for the taxation years which were the subject of the settlement. It will be our general policy to state in each Ruling the extent to which it will apply to taxpayers who have agreed to a settlement of the issue(s) with the ATO.

22. If after a settlement with a taxpayer a basis of assessment is followed for future income years, and a new Ruling is issued which is:

(a) less favourable to the taxpayer than the settlement terms - the Ruling will apply to the taxpayer for all transactions, arrangements, agreements, acts or events entered into, commenced or occurring after the date the Ruling is issued or any later date specified in the Ruling; or

(b) more favourable to the taxpayer than the settlement terms - the Ruling will generally have both a past application (other than in respect of taxation years the subject of the settlement) and a future application.

E. AUDIT CASES

23. Apart from settled cases referred to in paragraphs 21 and 22, the date of effect of a Ruling will not be any different for those taxpayers who are subject to a taxation audit at the time the Ruling is issued.

F. VARIATIONS FROM THESE GUIDELINES

24. The guidelines set out in this Ruling are intended to ensure consistency in the use of date of effect provisions in Rulings. However, it is recognised that there may be situations where, for the proper administration of the taxation laws, it will be necessary to depart from the guidelines. Such variations will only occur in exceptional circumstances, and only after taking into account the potential effects on both taxpayers and the revenue. A departure may be warranted if, for example, giving a Ruling both a past and a future

application would, on an objective consideration of all the factors, produce an absurd, unfair or unjustifiable result.

Definitions

25. In this Ruling the following definitions apply:

Ruling means a published Taxation Ruling or Taxation Determination issued by the ATO dealing with any laws, other than Sales Tax, administered by the Commissioner of Taxation .

Future application of a Ruling means

(a) for an interpretative Ruling - the Ruling will apply in relation to all transactions, arrangements, agreements, acts or events entered into, commenced or occurring on or after the date(s) of effect set out in the Ruling;

(b) for a Ruling dealing with machinery or procedural provisions of a tax law (e.g. section 207 ITAA) - the Ruling will operate for any application of the particular provision on or after the date(s) of effect set out in the Ruling.

Past application of a Ruling means the Ruling will be regarded as having always applied.

Private Ruling means a response to a request made under section 169A of the *Income Tax Assessment Act 1936* ,an advance opinion, or a private ruling as defined in 14ZAA of the *Taxation Administration Act 1953.*

This is the last Taxation Ruling for the 1992 calendar year.
The next Ruling will be Taxation Ruling TR 93/1.

Commissioner of Taxation

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