

# ***TR 98/19 - Income tax: PPS deduction exemption certificates and reporting exemption approvals***



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This document has changed over time. This is a consolidated version of the ruling which was published on *2 December 1998*



## Income tax: PPS deduction exemption certificates and reporting exemption approvals

<a href="#">contents</a>	para
<b>What this Ruling is about</b>	<b>1</b>
Class of person/arrangement	1
<b>Date of effect</b>	<b>6</b>
<b>Ruling and explanations</b>	<b>7</b>
Conditions of issue	10
Commissioner's discretion	40
Effect of decision	59
Revocation	63
Reporting exemption approvals	75
<b>Objection and appeal rights</b>	<b>76</b>
<b>Examples</b>	<b>83</b>
<b>Previous Rulings</b>	<b>99</b>
<b>Detailed contents list</b>	<b>100</b>

### **Preamble**

*This document is not a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953** and is not legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

## **What this Ruling is about**

### **Class of person/arrangement**

1. The legislation relating to the Prescribed Payments System ('PPS') is in Division 3A of Part VI of the *Income Tax Assessment Act 1936* ('ITAA'). This Ruling applies to any person who either makes or receives a payment which is subject to the PPS provisions in that Division. Provisions discussed in this Ruling are in Division 3A unless otherwise indicated.
2. A person may apply to the Commissioner for either a deduction exemption certificate ('exemption certificate') or for approval to quote a reporting exemption number ('reporting exemption approval').
3. Where a payee states an exemption certificate number on a payee declaration form and the person making the payment reasonably believes that the certificate is in force, subsection 221YHD(4) requires the payer not to deduct any tax from the payment.
4. Where a reporting exemption number is given in writing to the payer together with the expiry date, while the approval to quote the number is current:
  - no deductions need to be made from the payment;
  - a payee declaration is not required to be given to the payer; and
  - the payer is relieved of the obligation to report the payment.
5. This Ruling explains:

# TR 98/19

- how the Commissioner applies the tests in Division 3A in deciding whether to issue an exemption certificate or a reporting exemption approval;
- the circumstances in which the Commissioner may revoke an exemption certificate or reporting exemption approval; and
- the objection and appeal rights available to a payee who is dissatisfied with a decision of the Commissioner to either not issue or revoke an exemption certificate or reporting exemption approval.

## Date of effect

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6. This Ruling applies to decisions involving the issue, failure to issue or revocation of an exemption certificate or reporting exemption approval, made by the Commissioner on or after the date of issue of the Ruling. However, the Ruling does not apply to payees under PPS to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraph 21 of Taxation Ruling TR 92/20).

## Ruling and explanations

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7. Subsection 221YHQ(1) of the ITAA provides that a person may apply, in a form approved by the Commissioner, for either an exemption certificate or reporting exemption approval.

8. In order to obtain an exemption certificate or reporting exemption approval, an applicant must satisfy the various requirements in subsection 221YHQ(2). These requirements are explained in paragraphs 10 to 39.

9. If the conditions in subsection 221YHQ(2) are not satisfied, the Commissioner may issue the exemption certificate or reporting exemption approval if, having regard to the purpose of the Division and any special circumstances and other matters, the Commissioner considers it would be unreasonable not to issue the certificate or approval<sup>1</sup>.

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<sup>1</sup> subsection 221YHQ(4)

**Conditions of issue**

10. There are four conditions in subsection 221YHQ(2) that an applicant must satisfy for issue of an exemption certificate or reporting exemption approval. Broadly, the applicant must have:

- (i) been regularly engaged in carrying on business in Australia for a period of three years before the date of the application;
- (ii) maintained adequate accounting and taxation records in relation to the applicant's business;
- (iii) satisfactorily complied with tax obligations during the relevant period; and
- (iv) provided a statement certifying that the last taxation return lodged is accurate.

***Business for three years***

11. The first requirement in subsection 221YHQ(2) is that the applicant has been regularly engaged in carrying on business in Australia for a period of three years immediately preceding the date of the application.<sup>2</sup>

12. It is not necessary that the applicant has been operating, for a period of three years, the business for which they seek exemption. Any other business carried on by an applicant in Australia over the three year period is relevant for satisfying this requirement. In order to have been regularly engaged in business it is necessary that an applicant's involvement in business has been essentially continuous.

13. A 'business' is any undertaking that has a defined or organised structure with a view to achieving commercial objectives. The term is broad enough to encompass benevolent pursuits that exist for non-profit making purposes. However, the enterprise, whether benevolent or otherwise, must bear the characteristics of commercial significance in the course of achieving the objective of the organisation.

14. The term 'carrying on' implies repetition or a series of acts. The degree of activity that is necessary to decide whether a person is 'carrying on' a business varies depending upon the nature of that business. Some businesses call for a high volume of activity while others require very little (*Thomas v. FC of T*<sup>3</sup>; *Ferguson v. FC of T*<sup>4</sup>;

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<sup>2</sup> subparagraph 221YHQ(2)(a)(i)

<sup>3</sup> (1972) 46 ALJR 397; [1972] ALR 368; 72 ATC 4094; (1972) 3 ATR 165

<sup>4</sup> (1979) 37 FLR 310; (1979) 26 ALR 307; 79 ATC 4261; (1979) 9 ATR 873

and *Walker v. FC of T*<sup>5</sup>). Clearly, the greater the activity the more likelihood there is that a person is 'carrying on' a business.

## *Adequate records*

15. The second requirement for approval is that an applicant must satisfy three criteria in relation to each business carried on by the applicant during the relevant period. These criteria are set out in subparagraph 221YHQ(2)(a)(ii) and are described below in paragraphs 16 to 18.

## *Records maintained*

16. The applicant must have maintained proper accounting and taxation records so as to record correctly and explain the transactions and financial position of the business. The standard of record keeping should meet the taxation record keeping rules contained in section 262A of the ITAA.

## *Established premises*

17. The applicant must have conducted business, over the three year period, from established premises. Further, the applicant must have advertised to the public that they were carrying on the business from those premises. While applicants may work from home, there remains a requirement for the business to be operated from established premises (which may be the home) advertised to the public for that purpose.

## *Bank account*

18. The applicant must have conducted all financial transactions through a bank account or accounts for the three year period. For this purpose, an account with a recognised credit union or building society is accepted as a 'bank' account. The account used for the operation of the business must be separate from any private or domestic account of the applicant.

## *Satisfactory compliance*

19. The third requirement for approval relates to satisfactory compliance. Before the Commissioner can grant an exemption

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<sup>5</sup> (1985) 79 FLR 161; 85 ATC 4179; (1985) 16 ATR 331

certificate or reporting exemption approval, the applicant must have 'satisfactorily complied' with their obligations under Acts administered by the Commissioner.<sup>6</sup>

20. In looking at an applicant's compliance history, the examination:

- (a) is limited to the compliance history of the **applicant** only;
- (b) is limited to the three years preceding the making of the application; and
- (c) is of the applicant's compliance history in respect of obligations under Acts administered by the Commissioner.

21. In the case of companies, this examination of the compliance of the **applicant** does not extend to either shareholders or directors. Where partners carry on business in partnership, the compliance of the partners is considered. Where the applicant is a trust, it is the trustee's affairs in respect of the trust that are considered. The Commissioner does not have regard to the compliance record of the beneficiaries of a trust.

22. The Commissioner decides each case on its merits in the determination of satisfactory compliance as required by subparagraph 221YHQ(2)(a)(iii). The decision in *Case W104*; *AAT Case 5395*<sup>7</sup> indicates that 'satisfactory' in this context does not mean the applicant's record must be perfect, but that the record is reasonable in the circumstances.

23. The indicators that may be taken into account by the Commissioner in deciding the issue include:

- (a) whether any income tax, sales tax or fringe benefits tax returns are outstanding and not the subject of an agreed arrangement;
- (b) whether any remittance of deductions required in respect of the PAYE, PPS or Reportable Payments System or remittance of sales tax is outstanding and not the subject of an agreed arrangement;
- (c) whether returns or remittances of the type referred to in paragraphs (a) and (b) have been lodged in the past within agreed time frames;

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<sup>6</sup> per subparagraph 221YHQ(2)(a)(iii). This refers to the Commissioner of Taxation so, for example, Child Support compliance cannot be considered as the relevant Acts are administered by the Child Support Registrar

<sup>7</sup> 89 ATC 832; (1989) 20 ATR 4054

- (d) whether ancillary items such as reconciliation statements and required forms have been lodged within agreed time frames;
- (e) whether there are any unpaid taxes owing to the Commissioner;
- (f) the frequency of any non-compliance;
- (g) the applicant's ability to control the cause of any non-compliance;
- (h) the applicant's efforts in reducing the effects of any non-compliance;
- (i) the applicant's attempts to remedy the cause of any non-compliance; and
- (j) whether the applicant has been convicted in regard to an offence against the taxation laws.

### ***Statement regarding last tax return lodged***

24. The fourth requirement for approval involves an examination of the taxation and accounting records of the relevant year of income, i.e., the year of income relating to the last income tax return lodged.

25. The underlying purpose of the examination is to ensure the business records accurately reflect the tax liability of the applicant for that year of income. An applicant must satisfy one of three scenarios contained in paragraphs 221YHQ(2)(b), (c) and (d).

### ***Records include a balance sheet***

26. Paragraph 221YHQ(2)(b) applies where, for the relevant year of income, an applicant has kept accounting and taxation records in relation to the return and the records include a balance sheet which has been audited by a person (known as a prescribed person). In such a case, the applicant must have furnished a declaration by that prescribed person.

27. That declaration must state the prescribed person has examined the records and is satisfied the return of income accurately discloses the applicant's assessable income and allowable deductions in respect of that year of income.

28. Before making the declaration, the person must take such steps as are prudent and reasonable in the circumstances. In some cases, it may be necessary for a prescribed person to undertake further checks before being satisfied.

29. Such a statement is not accepted as valid where the prescribed person has attempted to modify, qualify or otherwise weaken the declaration by some additional statement or words either on, or attached to, the application form. However, a disclaimer regarding any responsibility to third parties for civil damages arising through the reliance on the declaration is acceptable. Such disclaimers do not affect the validity of such a declaration for the purposes of section 221YHQ.

30. Paragraph 221YHQ(3)(b) defines a 'prescribed person' for this context. The prescribed person must be either a person who is a registered tax agent within the meaning of Part VIIA of the ITAA or a person who, in the opinion of the Commissioner, is competent and qualified to furnish the declaration.

31. Members of the Australian Society of Certified Practising Accountants, the Institute of Chartered Accountants in Australia, the National Institute of Accountants or the Taxation Institute of Australia would, in the opinion of the Commissioner, be competent and qualified. However, this list is not exhaustive.

32. The Commissioner accepts persons who can demonstrate that their relevant experience places them in a position equal to, in respect of the making of the declaration, a member of one of these organisations.

*Company, partnership or trust not required to furnish a declaration*

33. Paragraph 221YHQ(2)(c) relates only to an applicant that is either a company, partnership or trustee of a trust estate and is not required to furnish a declaration in accordance with paragraph 221YHQ(2)(b). This would be a situation where the taxation and accounting records of the company, partnership or trust relating to the last year of income lodged, do **not** contain a balance sheet or have not been audited by a prescribed person.

34. An application under paragraph 221YHQ(2)(c) must contain:

- (i) a statement detailing all property transactions for the relevant year of income. The statement must include transactions for both acquisitions and disposals of property. Property includes all real and personal property including money;
- (ii) a further statement that reconciles the property transactions with the return of income for the relevant year; and
- (iii) a declaration from a prescribed person that the property and reconciliation statements have been examined and, to the best knowledge and belief of that person, the relevant

return of income accurately discloses the applicant's taxable income for the relevant year.

*Sole trader who is not required to furnish a declaration*

35. Paragraph 221YHQ(2)(d) relates to an applicant who is not a company, partnership or trustee. Ordinarily, such an applicant would be a sole trader. The paragraph applies tests that are essentially the same as for paragraph 221YHQ(2)(c) relating to companies, partnerships and trustees. This paragraph also requires the lodgment of:

- (i) a statement detailing all property transactions (including money) during the relevant year of income. In this instance, the property transaction statement must include acquisitions and disposals of a private or domestic nature;
- (ii) a statement reconciling the first statement with the applicant's return of income for the relevant year; and
- (iii) a declaration from a prescribed person that the above two statements have been examined and the return of income accurately discloses the applicant's taxable income for the relevant year. This declaration must be made to the best knowledge and belief of the person.

*Statements or declarations in relation to an associate*

36. Where an applicant is required to furnish a statement or declaration of the kind referred to in paragraph 34 or 35, the Commissioner may require further statements in relation to an associate of the applicant.<sup>8</sup> These further statements are identical to those detailed in paragraphs 34 and 35, but relate to the associate.

37. Paragraph 221YHQ(3)(c) defines an 'associate' of the applicant for this context. Where the applicant is a company, an associate is any director or shareholder of the company. Where the applicant is a partnership, an associated person is any partner within the partnership. Where the applicant is an individual, an associate is any relative of the applicant.

38. A 'relative' is defined in subsection 6(1) of the ITAA as:

- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of the person or of his or her spouse; and

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<sup>8</sup> paragraph 221YHQ(2)(e)

- the spouse of that person or of any other person mentioned in the first dot point.

39. Subsection 6(1) also defines the term 'spouse'. It includes a person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as a husband or wife.

### **Commissioner's discretion**

40. Where an applicant fails to satisfy the requirements of subsection 221YHQ(2), as set out in paragraphs 10 to 39, the Commissioner may still issue the exemption certificate or reporting exemption approval. This discretion is only applied where certain circumstances exist and the Commissioner is of the opinion that it would be unreasonable to refuse the request.<sup>9</sup> It is not necessary that a person make a separate application under this subsection.

41. In deciding whether to exercise this discretion to issue an exemption certificate or a reporting exemption approval, the Commissioner has regard to:

- (a) the purpose of Division 3A;
- (b) the special circumstances that exist or existed in relation to the applicant; and
- (c) such other matters as the Commissioner thinks fit.

42. The Commissioner only exercises this discretion in cases where the applicant would have qualified, but fails to do so by reason of some minor aspect. Typical situations in which this would occur are:

- (a) where an applicant fails to satisfy the three year requirement by a short length of time, for example, six months;
- (b) in the case of companies and partnerships, where a director or partner, as the case may be, has been in business either as a sole trader or through another entity over the three year period; or
- (c) where a sole trader or partnership, that has been in business for more than three years, incorporates to form a new entity.

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<sup>9</sup> subsection 221YHQ(4)

## ***Purpose of Division 3A***

43. The Commissioner must take into account the purpose of Division 3A. Division 3A provides for the collection of tax by making deductions at source from certain payments for work as a provision for end of year tax liability. If issued, an exemption certificate or reporting exemption approval, in effect, stops all tax deductions at source.

44. The legislation provides for the issue of exemption certificates and reporting exemption approvals to persons who have been in business for a significant period and who have maintained a satisfactory taxation record in all respects. These persons represent little risk to the collection of taxation revenue. It is for this reason the Commissioner uses the discretion in limited circumstances.

## ***Special circumstances***

45. Subsection 221YHQ(5) details some of the special circumstances that may apply. Essentially, the special circumstances refer to the same matters discussed in paragraphs 10 to 39. They vary slightly depending upon the type of entity making the application. Paragraphs 46 to 55 discuss the special circumstances relating to each particular entity. While the list is not exhaustive, the matters provided for apply in all instances as a minimum.

## ***Private companies***

46. The first of the special circumstances relates to private companies<sup>10</sup> that were in existence in the year preceding the year to which an issued certificate would relate. In such cases, the Commissioner may take into consideration the extent to which the requirements of subparagraphs 221YHQ(2)(a)(i), (ii) and (iii) (discussed at paragraphs 10 to 39) have been met in relation to any other business carried on by the directors of, or shareholders in, that company.

47. When looking at the previous business undertakings, the Commissioner does not examine the private affairs of the directors or shareholders. Only business dealings are relevant. The examination is also restricted to only the current shareholders and directors.

48. It is the applicant's responsibility to advise the Commissioner about the businesses, if any, carried on by its directors and shareholders in the three years prior to the date of the application. The

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<sup>10</sup> 'private company' is defined in subsection 6(1)

previous businesses that are examined can be of any legal type, e.g., partnerships, companies, trusts, sole trading concerns and any other entities in which the respective director or shareholder is able to exercise a significant amount of control.

49. While the applicant has responsibility for advising of all previous business dealings, the Commissioner is not restricted to examining only the information provided. If considered necessary, further information may be obtained and examined.

#### *Other companies*

50. Where an applicant is a company other than a private company described in paragraph 46, e.g., listed public company, the Commissioner restricts examination of previous business dealings to the current directors of the applicant company. Matters relating to shareholders are not examined.

51. As with private companies, the Commissioner takes into consideration the extent to which an applicant meets the requirements of subparagraphs 221YHQ(2)(a)(i), (ii) and (iii) in relation to previous business dealings.

52. The previous businesses that are examined can be of any legal type, e.g., partnerships, companies, sole trading concerns and any other entities in which the respective director is able to exercise a great amount of control.

53. It is the responsibility of the applicant to provide all relevant information, including information about relevant businesses of its directors. However, the Commissioner is not restricted to matters advised by the applicant and may obtain and examine further information, if considered necessary.

#### *Partnerships*

54. The Commissioner takes into consideration the extent to which the requirements of subparagraphs 221YHQ(2)(a)(i), (ii) and (iii) have been met in relation to any previous businesses carried on by partners in the partnership.

#### *Trustees*

55. The requirements in respect of trusts are almost identical to the other entities, except that the Commissioner considers if the requirements of subparagraphs 221YHQ(2)(a)(i), (ii) and (iii) have been complied with by a business or businesses carried on by the

trustee (not including the business of the trust). The business and personal affairs of beneficiaries of the trust are not relevant.

***Other matters***

56. In addition to the purpose of Division 3A and the special circumstances of the particular case, the Commissioner may take account of 'such other matters (if any) as the Commissioner thinks fit'.<sup>11</sup>

57. These matters are restricted to those that relate directly to the applicant and are relevant in deciding whether collection of tax will be at risk if the exemption certificate or approval to quote a reporting exemption number issues. The Commissioner does not consider remote or tenuous issues. Any inquiry has at its source an intention to determine the revenue risk associated with the applicant.

58. The type of matters the Commissioner would 'think fit' to examine includes the business and accounting records of the applicant. This examination would entail the same level of scrutiny detailed under the heading '*Adequate records*' in paragraphs 15 to 18.

**Effect of decision**

59. Where an application satisfies the conditions of issue in subsection 221YHQ(2), or it is unreasonable not to issue the certificate as provided in subsection 221YHQ(4), the Commissioner must issue the exemption certificate or reporting exemption approval.

60. An exemption certificate, when issued, remains in force at all times or until revoked. A reporting exemption approval remains in force for the period specified in the approval (not exceeding three years) or until revoked. Paragraphs 63 to 75 of this Ruling detail the process for revoking an exemption certificate or reporting exemption approval.

61. In relation to reporting exemption approvals, once the three years has expired, the approval is not automatically re-issued. If a further approval is required, a new application must be lodged. The same tests must be satisfied before the reporting exemption approval can be renewed or issued.

62. In the event an applicant is unsuccessful, the Commissioner issues a notice in writing. Paragraphs 76 to 82 explain the objection and appeal rights available to a person whose application is refused.

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<sup>11</sup> paragraph 221YHQ(4)(c)

**Revocation**

63. Once issued, an exemption certificate operates indefinitely and a reporting exemption approval operates for three years. However, the certificate or approval may be revoked at any time by the Commissioner.<sup>12</sup>

64. Paragraphs 76 to 82 explain the objection and appeal rights of a person whose exemption certificate or reporting exemption approval has been revoked.

***Exemption certificates***

65. An exemption certificate may be revoked where a certificate holder:

- fails to comply with the taxation laws;
- changes business structure;
- ceases business; or
- is subsequently found to have made a false declaration or statement in respect of the application.

***Unsatisfactory compliance***

66. Where the holder of an exemption certificate has failed to maintain a satisfactory compliance record, the Commissioner ordinarily notifies the taxpayer and requests that the matters be rectified. If the matters are not rectified within the stipulated period, or the Commissioner does not receive a reply to the request within the required time for reply, the exemption certificate may be revoked without further notice.

67. Where it is not possible for the compliance issues to be rectified, the Commissioner may request further information concerning the circumstances of the non-compliance. In blatant cases of poor compliance or if there is a serious risk that tax will be avoided, the Commissioner may revoke the certificate without seeking any further information.

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<sup>12</sup> subsection 221YHS(1)

## *Change of business structure*

68. The Commissioner may also revoke an exemption certificate where the holder changes the structure of their business operations. A change of structure includes forming a new partnership, a sole trader becoming a company or creating a trust for the purposes of operating the business. In such cases, an application needs to be made by the new entity or person carrying on the business.

## *Cessation of business*

69. Where a holder of an exemption certificate ceases business, the certificate is no longer necessary and should be forwarded to the ATO for revocation. An exception occurs when the holder suspends business operations for a temporary period and intends to recommence operations. In that case, the holder of the certificate has to satisfy the Commissioner of the need for the certificate to remain in force.

70. Where an exemption certificate has been issued, and the business of the certificate holder is now being conducted through a different entity or structure, the certificate cannot be used by the new entity. An application for an exemption certificate, if required, should be lodged by the new entity or person carrying on the business.

## *False declaration or statement*

71. Where it is subsequently discovered a false statement or declaration has been made in order to obtain a certificate, it is ordinarily revoked unless it can be shown the statement would have been inconsequential to the original decision.

## *Effect of decision to revoke*

72. Where the Commissioner decides to revoke a certificate, a written notice issues to the holder of the certificate. The holder must return the certificate to the Commissioner within 14 days after receipt of such a notice. Where a certificate holder fails to return a revoked certificate, the penalty upon conviction for such an offence is \$500.

73. The person who held the revoked exemption certificate should notify payers where:

- the holder has previously notified the payer, in a payee declaration form, of an exemption certificate number;
- the certificate was in force when the declaration was given; and

- the certificate was revoked after the declaration was given but before a prescribed payment is made.

74. Where all of these circumstances are present and the person whose certificate has been revoked does not notify the payer before a payment is made, that person is guilty of an offence. The maximum fine upon conviction for such an offence is \$2,000.

### **Reporting exemption approvals**

75. In relation to reporting exemption approvals, the Commissioner adopts the same process of revocation as for exemption certificates. The obligations placed upon the holder of a revoked reporting exemption approval are the same as those for holders of exemption certificates except the holder of a reporting exemption approval need not return any documents to the Commissioner.

## **Objection and appeal rights**

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76. Where the Commissioner decides not to issue or to revoke an exemption certificate or a reporting exemption approval, a person dissatisfied with the decision may lodge an objection against that decision.

77. The objection must be lodged, in writing, within 60 days after notification of the decision. Where the objection is valid, the Commissioner must decide whether to allow or disallow the objection.

78. An objection is valid where it is lodged, in writing, within the 60 day period and sets out fully and in detail the reasons why the original decision is incorrect. A mere statement that the decision is wrong is not sufficient.

79. In some instances, the Commissioner may not decide the objection within 60 days of receipt. In such cases, the person who lodged the objection may, by written notice, require that a decision be made within a further 60 day period. If the Commissioner does not issue a decision within the additional 60 days, the objection may be taken to have been disallowed.

80. Where a person does not lodge their objection within the required 60 days, they may request an extension of time to lodge the objection. The person seeking the extension of time has to provide reasons in writing why the objection is outside the 60 day requirement and why the extension should be granted.

81. Where the Commissioner disallows an objection, either in whole or in part, the person may either apply to the Administrative Appeals

Tribunal ('AAT') for review of the decision or lodge an appeal with the Federal Court against the decision.

82. The application for review or appeal must be lodged directly with the AAT or the Federal Court, as appropriate. There are costs to applicants in lodging either an application for review or an appeal. These costs differ depending upon the venue chosen.

## Examples

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### Example 1

83. One year after receiving an exemption certificate, the Commissioner decides to review Mrs Jones' case as she has not paid tax instalment deductions under the PAYE system for the previous two months. Upon notification of an intention to revoke her certificate, she pays the tax instalments and penalty. As she has otherwise maintained a perfect compliance record and rectified the non-compliance, the Commissioner does not withdraw the certificate.

### Example 2

84. Jenny is an interstate truck driver carrying goods exclusively for one company. She operates her own business as a sole trader and has done so for the past five years. Jenny applies for an exemption certificate. As the application meets all the necessary requirements, the Commissioner issues a certificate.

85. Eighteen months later, Jenny decides to form a company to operate the business. She decides to bring her sister Mary into the business and together they become both directors and shareholders in the company. As the business has re-formed from a sole trader to a company, the existing deduction exemption certificate is no longer valid and is returned to the ATO. A new application is necessary.

86. The company does not meet the general requirements for issue of a certificate as it has been not been carrying on business for 3 years. The Commissioner looks at the special circumstances to determine if the certificate should be issued.

87. In deciding the new application, the Commissioner looks at Mary's previous business dealings. She has operated an excavation and earthmoving business for the past nine years. The Commissioner considers that Mary's compliance with the taxation laws has been satisfactory for the past three years. All proper accounting and tax records are available.

88. As part of the process, the Commissioner also looks at Jenny's compliance record. The examination shows she has an unpaid tax debt from her last income tax assessment.

89. The unpaid amount is the subject of an objection. The deduction exemption certificate will still issue in this case, despite the liability remaining unpaid. The basis for the Commissioner's decision is that, with the exception of this amount, Jenny has met all her obligations under Acts administered by the Commissioner. This amount is the subject of a formal objection and does not make her compliance history unsatisfactory.

90. The Commissioner takes into account the compliance of Jenny and Mary for the past 3 years in relation to their previous businesses. He determines that special circumstances exist for the issue of the certificate. The Commissioner will use the available discretion in these circumstances.

### **Example 3**

91. Richard has been operating in business as a sole trader for the past 5 years. He recently formed a company, R Pty Ltd and is the company's only director and shareholder. R Pty Ltd operates as a contractor in the building industry and has applied to the Commissioner for the issue of an exemption certificate.

92. As the company is newly formed, it does not have 3 years of satisfactory compliance and does not comply with the conditions in subsection 221YHQ(2). The Commissioner then considers the application, as required by subsection 221YHQ(4), to see if special circumstances exist for the issue of the certificate.

93. The Commissioner examines the compliance history of the company and finds that the company's compliance with the taxation laws has been satisfactory.

94. The Commissioner then examines the compliance history of its only director and shareholder, Richard, in relation to his previous business. The Commissioner finds that there are some irregularities in his previous compliance, namely:

- two years ago, Richard was prosecuted and convicted of an offence in relation to the omission of business income from his last income tax return;
- his income tax returns for the past 2 years are outstanding; and

# TR 98/19

- an amount of \$15,000 is currently owing to the Commissioner and no arrangement for payment has been made.

95. The Commissioner considers that, taking into account the extent to which Richard (a director of the applicant company) has not satisfactorily complied with his taxation obligations in respect of his previous business, the special circumstances do not exist for issue of the certificate. The Commissioner advises R Pty Ltd in writing of the decision and outlines the reasons for the decision.

## Example 4

96. Ellen is a sole trader who operates as an architect. She has held an exemption certificate for the past 3 years. The Commissioner undertakes a review to ensure that Ellen is continuing to comply with the taxation laws.

97. The Commissioner finds some irregularities in her compliance. She has unpaid taxation debts of \$10,000 and has not sent in remittances of PAYE deductions for the past 3 months. The Commissioner further requests payment and notifies Ellen that the exemption certificate may be revoked without further notice if the debt is not paid and remittances are not made within 28 days.

98. Ellen does not respond to the request. After the 28 day period has expired, there has been no response and the outstanding matters have not been rectified. The Commissioner revokes the exemption certificate and notifies Ellen in writing of the revocation outlining the reasons for the decision.

## Previous Rulings

99. This Ruling replaces Taxation Rulings IT 2449 and IT 2055, which have been withdrawn.

## Detailed contents list

100. Below is a detailed list of the contents of this Ruling:

	Paragraph
<b>What this Ruling is about</b>	<b>1</b>
Class of person/arrangement	1
<b>Date of effect</b>	<b>6</b>

<b>Ruling and explanations</b>	<b>7</b>
Conditions of issue	10
<i>Business for three years</i>	11
<i>Adequate records</i>	15
<i>Records maintained</i>	16
<i>Established premises</i>	17
<i>Bank account</i>	18
<i>Satisfactory compliance</i>	19
<i>Statement regarding last tax return lodged</i>	24
<i>Records include a balance sheet</i>	26
<i>Company, partnership or trust not required to furnish a declaration</i>	33
<i>Sole trader who is not required to furnish a declaration</i>	35
<i>Statements or declarations in relation to an associate</i>	36
Commissioner's discretion	40
<i>Purpose of Division 3A</i>	43
<i>Special circumstances</i>	45
<i>Private companies</i>	46
<i>Other companies</i>	50
<i>Partnerships</i>	54
<i>Trustees</i>	55
<i>Other matters</i>	56
Effect of decision	59
Revocation	63
<i>Exemption certificates</i>	65
<i>Unsatisfactory compliance</i>	66
<i>Change of business structure</i>	68
<i>Cessation of business</i>	69
<i>False declaration or statement</i>	71
<i>Effect of decision to revoke</i>	72
Reporting exemption approvals	75

**TR 98/19**

<b>Objection and appeal rights</b>	<b>76</b>
<b>Examples</b>	<b>83</b>
Example 1	83
Example 2	84
Example 3	91
Example 4	96
<b>Previous Rulings</b>	<b>99</b>
<b>Detailed contents list</b>	<b>100</b>

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- exemption certificate
- prescribed payments system
- PPS deduction exemptions
- PPS reporting exemptions
- reporting exemption number

*legislative references*

- ITAA 6(1)
- ITAA Pt VI Div 3A
- ITAA 221YHD(4)
- ITAA 221YHQ
- ITAA 221YHQ(1)
- ITAA 221YHQ(2)
- ITAA 221YHQ(2)(a)(i)
- ITAA 221YHQ(2)(a)(ii)
- ITAA 221YHQ(2)(a)(iii)
- ITAA 221YHQ(2)(b)
- ITAA 221YHQ(2)(c)

- ITAA 221YHQ(2)(d)

- ITAA 221YHQ(2)(e)

- ITAA 221YHQ(3)(b)

- ITAA 221YHQ(3)(c)

- ITAA 221YHQ(4)

- ITAA 221YHQ(4)(c)

- ITAA 221YHQ(5)

- ITAA 221YHS(1)

- ITAA Pt VIIA

- ITAA 262A

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