# *TR 2006/D7 - Income tax, fringe benefits tax and product grants and benefits: Private Rulings*

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# Draft Taxation Ruling

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

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**This Ruling provides you with the following level of protection:**

This publication is a draft for industry and professional 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 (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. 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.

# What this Ruling is about

1. This Ruling outlines the system of private rulings following the enactment of the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*. In respect of private rulings, that Act inserted new Divisions 357 (common rules) and 359 (private rulings) into Schedule 1 to the *Taxation Administration Act 1953* (TAA), the provisions of which are referred to in this Ruling.

2. The new Divisions implement the Government's response to the recommendations made in the *Report on Aspects of Income Tax Self Assessment* (ROSA Report). This Ruling considers:

(i) what constitutes a private ruling;

(ii) what is a relevant provision;

(iii) what can be covered by a private ruling;

(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; and

(xiii) the review of private rulings.

# Previous Rulings

3. Taxation Rulings TR 93/1 and TR 97/16, Taxation Determinations TD 93/34, TD 95/45, TD 96/5, TD 96/6 and TD 96/16, and Product Grants and Benefits Ruling PGBR 2003/2 are withdrawn on and from the issue date of this draft Ruling. To the extent that the Commissioner's views in those Rulings apply in respect of the new provisions, they have been incorporated in this Ruling.

# Ruling

**What constitutes a private ruling?**

4. A private ruling is a written expression of the Commissioner's opinion about the way in which a relevant provision applies or would apply to an entity. A private ruling is also in relation to a specified scheme.[1]

5. The private ruling can either be one that has been applied for or it can be a 'related ruling'. Section 359-45 of Schedule 1 to the TAA permits the Commissioner to make the private ruling applied for a private ruling on a different provision, or to make an additional private ruling to that sought by the applicant. An example of the former would be making a private ruling on a new provision of the law where the applicant had sought a private ruling on the superseded provision. If the Commissioner makes an additional private ruling, it may be about the way in which another relevant provision would apply in relation to the scheme, or about how a relevant provision would apply to a related scheme.

6. 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. 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. This may occur even though the Commissioner would 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.

[1] Section 359-5 of Schedule 1 to the TAA.

7. Therefore, it is important for you to take care in the formation of the questions on which you are seeking a private ruling. For example, a question which seeks confirmation that an item of property sold during the year is an 'asset' for the purposes of Division 108 of the ITAA 1997 may receive an affirmative private ruling. That private ruling does not represent confirmation that the capital gains tax provisions apply to the sale rather than, say, section 6-5 of the ITAA 1997. If the author of the private ruling is aware of another provision that would apply to produce a different outcome, the applicant would ordinarily be advised of this.

8. A private ruling in force immediately before 1 January 2006 under former Part IVAA of the TAA is treated as if it were a private ruling under Division 359 of Schedule 1 to the TAA, with effect from the day it was originally made.[2] Therefore the level of protection applicable to a ruling under the former Part IVAA of the TAA will continue to apply to that ruling through Division 359 of Schedule 1 to the TAA. Where inconsistencies arise between two rulings that were originally made before 1 January 2006, the rules set out in former sections 170BC to 170BDC and 170BF of the ITAA 1936 will apply. For more information about inconsistencies refer to paragraphs 39 to 46 of this Ruling.

### What is a relevant provision?

9. Provisions that are relevant to rulings are defined in section 357-55 of Schedule 1 to the TAA. Relevant provisions are provisions of Acts and regulations administered by the Commissioner that are about any of the following:

- income tax;
- Medicare levy;
- fringe benefits tax;
- franking tax (that is, franking deficit tax, over-franking tax and venture capital deficit tax);
- withholding taxes (including non-resident withholding taxes and mining withholding tax);
- the administration and collection of the above taxes;
- 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); and
- the administration or payment of the product grants and benefits.

[2] Item 29, Part 3 of Schedule 2 to the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*.

10. Only provisions of Acts and Regulations administered by the Commissioner are directly covered by section 357-55 of Schedule 1 to the TAA. Therefore, for example, the Commissioner cannot directly rule on trust law or the common law relating to the resettlement of a trust. However, the Commissioner may issue a private ruling on, say, the capital gains tax consequences of a trust resettlement. In making this ruling, the Commissioner might state the effect of a resettlement at common law. In such a case, the ruling would be binding in relation to the application of capital gains tax, even though it is premised on a particular view about the common law effect of a resettlement (which might even turn out to be incorrect).

11. The intention of the amendments implementing the ROSA Report is to enable the Commissioner to make private rulings on all the matters and circumstances in which private rulings have previously been made. In addition, the Commissioner is authorised to make a private ruling to cover any aspect of the tax or entitlement covered by a relevant provision, including the collection and recovery of the tax, and its administration, or the administration or payment of a relevant grant or benefit.[3] This includes the ability to make a private ruling with respect to the value of anything where that is required for the making of the private ruling (see paragraphs 17 to 18 of this Ruling).

12. The intention to allow rulings to be given in a very wide range of circumstances has been reflected in the use of the word 'about' in section 357-55 of Schedule 1 to the TAA, which has a very broad meaning. The word 'about' is not defined in the ITAA 1936 or ITAA 1997 but takes its ordinary meaning of 'concerning' 'connected with' 'on the subject of' or 'relating to'.[4]

13. Therefore, a provision under which the extent of liability to the listed taxes is worked out is a provision 'about' them, as are provisions that are sufficiently relevant, or a necessary pre-requisite, to working out the liability. Similarly, a provision under which the extent of entitlement to the listed grants or benefits is worked out is a provision 'about' them, as are provisions that are sufficiently relevant, or a necessary pre-requisite, to working out the entitlement. Moreover, because private rulings are no longer restricted to provisions determining the extent of a liability or entitlement, the Commissioner may rule on how a provision applies to you even where the provision does not directly affect your liability or entitlement. Therefore, for example, a trustee may obtain a private ruling on whether a particular receipt of the trust is included in its net income, even though the private ruling may not affect the trustee's liability.

[3] Paragraph 3.22 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[4] The Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW and The Australian Oxford Dictionary, 1999, Oxford University Press, Melbourne.

14. Provisions dealing with penalties for false or misleading statements, late payment of income tax, or late lodgment of income tax returns, are examples of provisions about the administration or collection of income tax. The same applies to provisions dealing with shortfall interest charge and general interest charge. Similarly, provisions dealing with, for example, franking credits and debits are about the administration or collection of franking tax.

### What can be covered by a private ruling?

15. A private ruling deals with a specified scheme. 'Scheme' is widely defined to mean 'any arrangement', or 'any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise'.[5] An 'arrangement' is defined[6] to mean any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.

16. A private ruling may deal with anything involved in the application of a relevant provision, including issues relating to liability, administration, procedure and collection, and ultimate conclusions of fact.[7] This includes being able to provide a private ruling which covers the value of anything where it is necessary in dealing with the application of the law.

17. Valuations in private rulings are covered by section 359-40 of Schedule 1 to the TAA. Where your private ruling request requires the determination of the value of anything (including any property, service or intangible asset), you can provide a valuation or ask the Commissioner for a valuation. In either case, the Commissioner may refer the valuation aspect of the private ruling request to a valuer, and you may be charged for this in accordance with the income tax regulations. You will be advised if this occurs and when the valuer has completed their work. The Commissioner is not obliged to obtain a valuation from a valuer. For example, if a valuation has been provided with the ruling request, the Commissioner may accept it without reference to a valuer if the valuation or a similar valuation has been previously provided and accepted by the Commissioner.

[5] Subsection 995-1(1) of the ITAA 1997.
[6] Subsection 995-1(1) of the ITAA 1997.
[7] Subsection 359-5(2) of Schedule 1 to the TAA.

18. A private ruling request for the valuation of a gift or contribution for the purposes of Division 30 of the ITAA 1997 is not covered by section 359-40 of Schedule 1 to the TAA, as Division 30 has specific valuation requirements which are only applicable to that Division.[8] Providing a private ruling in these circumstances would generally constitute an unreasonable diversion of resources since a specific alternative mechanism for obtaining the valuation is provided by Division 30 of the ITAA 1997 and associated regulations. Therefore the Commissioner may decline to rule in these circumstances (see paragraph 37 of this Ruling, 'Applications that do not have to be dealt with').

### The status and binding effect of private rulings

19. A private ruling binds the Commissioner if the private ruling applies to you and you rely on the private ruling.[9] In such a case, the Commissioner must not apply the provision covered by the private ruling in a way that is inconsistent with the private ruling to your detriment. However, if the scheme is not implemented in the way set out in the private ruling, or material facts were omitted from the private ruling application, or misleadingly or inaccurately stated, the private ruling does not bind the Commissioner.[10]

20. A private ruling applies to you if it is given in response to an application by you and the facts, assumptions or conditions set out in the ruling or accompanying documents are met.[11] A private ruling applies for the specified period, so long as the law to which it relates remains in force. If no time is specified, the ruling applies from when it is made until the end of the income year or accounting period in which it started to apply (see paragraph 52 of this Ruling). Where the law is re-enacted or re-made, the private ruling continues to apply. If the law is repealed or amended to have a different effect, the private ruling ceases to apply.[12]

21. The reason why a private ruling ceases to apply if the law is materially amended is because a private ruling on the way the Commissioner considers a relevant provision applies or would apply according to the state of the law as it then exists says nothing about how a materially altered version of that provision applies. This is the case irrespective of whether the amendment is to the provision itself or to another provision which effects a change to the operation of the original provision.

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[8] Subsection 359-40(5) of Schedule 1 to the TAA.
[9] Subsection 357-60(1) of Schedule 1 to the TAA.
[10] Paragraph 3.26 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[11] Paragraph 3.24 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[12] See note 2 in subsection 357-60 of Schedule 1 to the TAA.

22. That is not to say that any amendment to (or affecting) a provision would render a private ruling on that provision inoperative. It is only if the amendment produces an effect which is different from the effect of the provision prior to the amendment that the private ruling ceases to apply (and therefore ceases to bind the Commissioner). If the private ruling given under the original provision would have been the same if the amendment had been made before the private ruling is given, then the private ruling is still applicable. If the private ruling ceases to apply because of the amendment, then the private ruling cannot be relied on.

23. This point can be illustrated by way of the following example. Subsection 8-1(1) of the ITAA 1997 provides a deduction for certain losses or outgoings. However, the operation of subsection 8-1(1) is directly affected by Division 26 of the ITAA 1997, which sets out some amounts which cannot be deducted. If a private ruling is made about how the Commissioner considers subsection 8-1(1) applies to a particular type of outgoing, and an amendment were later made to Division 26 denying a deduction for such outgoings, then the private ruling can no longer apply. This is the case even though the wording of subsection 8-1(1) has not itself been changed (rather, the effect of the provision has been changed or amended by the amendment to Division 26). However, if the amendment to Division 26 is irrelevant to the issues addressed by the ruling, the ruling would still apply and would still bind the Commissioner. This is the case even if the ruling were later shown to represent an incorrect interpretation of the words of subsection 8-1(1).

24. You rely on a private ruling when you act (or omit to act) in accordance with it. An example of demonstrating reliance by omitting to act is omitting to lodge a tax return in response to a private ruling stating that you do not have assessable income in the relevant year.

25. You may rely on a private ruling at any time unless prevented from doing so by a time limit imposed by a taxation law (for example, the period of review for your assessment). Also, you may change your mind and stop relying on a private ruling at any time. Further, having stopped relying on that private ruling, you may rely on it again at a later time, again subject to any applicable time limits. You stop relying on a private ruling by acting, or omitting to act, in a way that is not in accordance with the private ruling.[13] Where you choose not to rely on a private ruling you must be able to demonstrate that you have taken reasonable care or have a reasonably arguable position to avoid a shortfall penalty.

[13] Section 357-65 of Schedule 1 to the TAA.

26. Where you rely on a private ruling and the correct application of the relevant provision of the law actually gives a more favourable result for you, the Commissioner may nevertheless apply the correct view of the relevant provision as if you had not relied on the private ruling. For example, where the ruling determines an amount of a tax liability, the Commissioner will determine your liability in accordance with the private ruling unless the correct position is more favourable to you than was set out in the private ruling. In such a case, the Commissioner may adopt the correct position even though you are relying on the private ruling. However, the Commissioner is not obliged to consider whether a more favourable outcome is available for you.[14] Rather, the Commissioner may accept your self-assessment without further investigation.

27. Because the Commissioner may apply an interpretation of the law that is more favourable for you, a private ruling binds the Commissioner in the following ways if you choose to rely on it:

- To the extent that a private ruling determines a tax liability or an entitlement (or whether there is a tax liability or an entitlement) under a relevant provision, the liability or entitlement will be determined by the Commissioner in accordance with the private ruling. However, if the Commissioner concludes that the private ruling was wrong, the Commissioner may adopt the correct position if it is more favourable than the private ruling.
- To the extent that a private ruling expresses the Commissioner's opinion on an ultimate conclusion of fact for the purposes of a relevant provision (such as whether you are a resident), the Commissioner is bound to follow his or her expressed opinion, or adopt the correct conclusion if that is more favourable.
- To the extent that a private ruling deals with matters of administration, procedure, collection or any other matter involved in the application of a relevant provision, the Commissioner must not act inconsistently with the private ruling to your detriment. However, the Commissioner may adopt an interpretation that is more favourable.

[14] Section 357-70 of Schedule 1 to the TAA.

### Who may apply for a private ruling and who is covered by it?

28. Any entity, their agent (which includes the entity's tax agent) or their legal personal representative (which includes a person who holds a general power of attorney granted by the entity)[15] may apply for a private ruling.[16] Trustees may apply for private rulings about the affairs of the trust, and a partner (or other authorised person) may apply for private rulings for a partnership as agent of the partnership (and its partners).

29. 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 and 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).

30. You may withdraw your application for a private ruling (orally or in writing) at any time before the ruling is made. The Commissioner must provide written confirmation of the withdrawal.[17]

### The form of application and information to be provided

31. The application for a private ruling must be in an approved form.[18] You need not apply on a standard form (in the sense of pre-printed stationery or a template), provided the application contains all the information the Commissioner requires in an application in order to be able to make the private ruling. Application forms are available from the Tax Office website and branch offices. These forms detail the information that is required by the Commissioner in order to deal with requests for private rulings.[19]

32. If insufficient information is provided in the application, the Commissioner may consider further information is required in order to proceed. The Commissioner must ask for that information from you. You may also provide additional information after making the application. Where the Commissioner has asked you for additional information and it is not provided within a reasonable time, the Commissioner may decline to rule (see paragraphs 37 to 38 of this Ruling).[20]

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[15] See paragraph (c) of the definition of 'legal personal representative' in subsection 995-1(1) of the ITAA 1997.
[16] Subsection 359-10(1) of Schedule 1 to the TAA and paragraph 3.67 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[17] Subsection 359-10(3) of Schedule 1 to the TAA.
[18] Subsection 359-10(2) of Schedule 1 to the TAA.
[19] See also Law Administration Practice Statement PS LA 2005/19 for general information about approved forms.
[20] Sections 357-105 and 357-115 of Schedule 1 to the TAA.

33. The Commissioner may also obtain additional information necessary for a private ruling from other parties, or make any assumptions that he or she considers to be the most appropriate in the circumstances. However, you must be informed of the additional information and/or assumptions that the Commissioner intends to use and have a reasonable opportunity to comment or respond.[21] Where disclosure by the Commissioner to you of any such additional information that is material to the outcome of the private ruling is not possible (for example, where disclosure would breach the confidentiality of the provider of the information), the Commissioner may decline to rule (see paragraph 38 of this Ruling).

34. There will be circumstances where the application of a relevant provision to the particular scheme depends on a question of fact. For example, the application of many provisions depends on whether a business is being carried on. In such a case, you should ensure you have researched the factors that are relevant (for example, the factors described in Taxation Ruling TR 95/6: Income tax: primary production and forestry) and that the description of the scheme in the application contains sufficient information addressing all those factors (for example, the commercial viability of the activity).

35. Where the application is in respect of a proposed scheme, there is a real, practical risk in that differences may arise between the scheme dealt with by the Commissioner in a ruling and the scheme actually carried out. Where these differences are material, the private ruling given will not apply to the scheme as implemented (see paragraph 19 of this Ruling). In these circumstances it may be possible to obtain another private ruling, which can be in respect of the scheme that is or was actually carried out.

### The making of a private ruling

36. A private ruling is made by the Commissioner recording it in writing and providing a copy to you, either on paper or electronically.[22] A private ruling must state that it is a private ruling, specify the relevant scheme, identify the entity to whom it applies, and the relevant provision to which it relates.[23]

[21] Sections 357-110 and 357-120 of Schedule 1 to the TAA.
[22] Section 359-15 of Schedule 1 to the TAA.
[23] Section 359-20 of Schedule 1 to the TAA.

### Applications that do not have to be dealt with

37. 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.[24] Situations where the Commissioner may decline to rule are as follows:[25]

- 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 arrangement is only 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 already expired);
  - you do not agree to pay the amount charged for a valuation;[26]
  - 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 33 of this Ruling);[27] or
  - making the private ruling would require an unreasonable diversion of the Commissioner's resources.

  The power to decline to rule in such situations recognises that the Tax Office 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 Tax Office's resources to meet their needs to the

[24] Section 359-35 of Schedule 1 to the TAA and paragraph 3.82 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[25] Subsection 359-35(2) and (3) of Schedule 1 to the TAA.
[26] See paragraph 3.81 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[27] See paragraph 3.44 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.

detriment of others and the robustness of the system as a whole.[28]

- The matter is already being, 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 of which you are aware and which will be decided by the audit, or the matter is the subject of an objection against an assessment.
- The matter is about how the Commissioner would exercise a power under a relevant provision and the Commissioner decides whether or not to exercise the power. If you want the Commissioner to exercise a particular power under the law, this should normally be by way of asking the Commissioner 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 of Schedule 1 to the TAA rather than seeking a ruling on the issue.

38. 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[29] (see paragraph 32 of this Ruling); or
- the Commissioner considers that the correctness of the private ruling would depend on an assumption about a future event or other matter.[30]

### The effect of inconsistent rulings

39. Where there are inconsistent rulings that both apply to you, section 357-75 of Schedule 1 to the TAA sets out rules for determining which ruling may be relied upon, to the extent of the inconsistency.

40. 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 ruling that specifically addresses your circumstances (provided it applies to you, which it would not if it has been revised in time: see paragraph 47 of this Ruling). 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.

[28] See paragraph 3.82 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.
[29] See the rewritten Law Administration Practice Statement PS LA 2003/4 for a discussion of what may be a reasonable time in particular circumstances.
[30] Subsection 359-35(3) of Schedule 1 to the TAA.

41. However, there are special rules which limit the ability to rely on a private ruling if it is inconsistent in some respect with a later public or private ruling.

42. If the private ruling is inconsistent with a later public ruling, the earlier private ruling is taken not to have been made if, when the public ruling is made, the following two conditions are met:

(i) the income year or other period to which the rulings relate has not begun; and

(ii) the scheme to which the rulings relate has not begun to be carried out.

43. This allows the correction of an erroneous private ruling, but only where you have not already entered into the scheme and the relevant income year or accounting period has not commenced.

44. If an earlier private ruling is inconsistent with a later private or oral ruling, the earlier ruling is taken not to have been made if you informed the Commissioner of the existence of the earlier ruling when applying for the later ruling. If you did not inform the Commissioner about the earlier ruling, the later ruling is taken not to have been made.

45. Where there are three or more inconsistent rulings, the rules in paragraphs 39 to 44 of this Ruling should be applied to each combination of two rulings in the order in which they are made, to determine whether any of the rulings are taken not to have been made, and then to determine which of the remaining rulings you can rely on.

46. These rules to resolve inconsistencies between rulings do not apply where both the inconsistent rulings were originally made before 1 January 2006. Rules set out in former sections 170BC to 170BDC and 170BF of ITAA 1936 apply in such a situation.

### Revising private rulings

47. An existing private ruling may be revised by the Commissioner, but only where the scheme to which that original private ruling relates and the relevant income year or accounting period has not begun. Such a revision may be made whether or not there is an application for a revised private ruling.[31] The revised private ruling applies to you once a copy of it has been given to you. The original private ruling no longer applies and therefore cannot be relied upon.

48. A private ruling can also be taken not to have been made where a subsequent inconsistent public ruling is made before either the scheme or the income year (or accounting period) relevant to the private ruling have started (see paragraph 42 of this Ruling).

[31] Section 359-55 of Schedule 1 to the TAA.

### The status of private rulings following a rewrite of the law

49. Where a relevant provision is re-enacted or remade, an earlier private ruling is taken to be about the re-enacted or remade provision insofar as the new law expresses the same ideas as the old law.[32] However, if the law has been substantively changed, the private ruling ceases to apply.

50. Therefore, for schemes commencing on or after the date of effect of the new law, entities can continue to rely on existing private rulings which deal with the old law if the new law expresses the same ideas as the old law. If the old law has been replaced by a new law which does not express the same ideas, then the part of the private ruling on that old law does not apply in relation to the new law. That is, that part of the private ruling will not apply to schemes entered into on or after, or extending beyond, the date of effect of the new law.

51. In deciding whether the new law expresses the same ideas as the old law, you can normally assume there has been no change in those ideas unless announced otherwise. Ways in which a change may be announced include:

- the explanatory memorandum or Second Reading Speech relating to a Bill which is re-enacting or remaking the particular provisions;
- a tribunal or court decision (not under appeal) which makes it clear that there has been a change in ideas; and
- a public announcement by the Tax Office that there has been a change in ideas – for example, by way of a Taxation Ruling, Taxation Determination, press release or other Tax Office publication.

### The period for which a private ruling has effect

52. A private ruling may specify the time it begins to apply and the time it ceases to apply. This time may be specified by reference to the occurrence of a particular event (for example, commencement of the relevant scheme). Where no date or event is specified, the private ruling applies from when it is made. If no end time is specified, it ceases to apply at the end of the income year or accounting period in which it started to apply.[33]

[32] Section 357-85 of Schedule 1 to the TAA.
[33] Section 359-25 of Schedule 1 to the TAA.

### The review of private rulings

53. You may object against an unfavourable ruling.[34] However there are two instances where a private ruling may not be objected against:

- 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 assessment; and
- where the private ruling relates to withholding tax or mining withholding tax that has become due and payable.

54. Where an objection against a private ruling is allowed to some extent the private ruling is taken to have been altered in accordance with the objection decision once the period in which an appeal against, or an application for the review of, the decision may be made has ended without such an appeal or application being made.[35] If the objection is disallowed to any extent you may seek a review of the objection decision by the Federal Court or the Administrative Appeals Tribunal.

55. Where you have applied for a private ruling, you may lodge an objection if the Commissioner has failed to make a private ruling within 30 days after being given a notice to make the private ruling. Such a notice may be given where the Commissioner has not made the ruling (nor declined to rule) within 60 days of the application being lodged. In lodging this objection, you must lodge your own draft private ruling.[36]

56. Certain actions by the Commissioner within the 60 day period have the effect of extending that period including:

- requesting further information from you;
- telling you about assumptions the Commissioner proposes to make or additional information that is proposed to be taken into account; and
- referring the matter to a valuer.

[34] Section 359-60 of Schedule 1 to the TAA.
[35] Section 359-70 of Schedule 1 to the TAA.
[36] Section 359-50 of Schedule 1 to the TAA.

57. The effect of your own draft private ruling is as follows. The draft private ruling does not by itself have any effect. However, as a result of the objection, the Commissioner must either make a private ruling in the same terms as your draft, or make a different one.[37] If the Commissioner fails to do either of these within 60 days of lodgment of the objection (for example, because further information is required to make the ruling) the objection is taken to have been disallowed. The disallowance of the objection against the Commissioner's failure to rule provides you with an ability to seek a review of the disallowance in the Federal Court or the Administrative Appeals Tribunal.

58. In considering an objection against a private ruling, the Commissioner may consider additional information that was not considered at the time of making the private ruling. Where additional information will be considered and it comes from a source other than you, the Commissioner must tell you what this information is and give you a reasonable[38] opportunity to comment or respond before allowing or disallowing the objection.[39]

59. However, if the Commissioner considers that the additional information is such that the scheme to which the application related is materially different from the scheme revealed by the additional information, the Commissioner must ask you to make an application for a different private ruling. Your objection is taken not to have been made in these circumstances.

# Date of effect

60. It is proposed that when the final Ruling is issued, it will apply from 1 January 2006.

**Commissioner of Taxation**
5 April 2006

[37] See subsection 14ZY(1) of the TAA for more information.
[38] See the rewritten Law Administration Practice Statement PS LA 2003/4 for a discussion of what may be a reasonable time in particular circumstances.
[39] Section 359-65 of Schedule 1 to the TAA.

# Appendix 1 – Your comments

61. We invite you to comment on this draft Taxation Ruling. Please forward your comments to the contact officer by the due date. (Note: The Tax Office prepares a compendium of comments for the consideration of the relevant Rulings Panel. The Tax Office may use a sanitised version (names and identifying information removed) of the compendium in providing its responses to persons providing comments. Please advise if you do not want your comments included in a sanitised compendium.)

| | |
|---|---|
| **Due date:** | **19 May 2006** |
| **Contact officer:** | **David Hinds** |
| **Email address:** | **David.Hinds@ato.gov.au** |
| **Telephone:** | **(02) 6216 2042** |
| **Facsimile:** | **(02) 6216 1088** |
| **Address:** | **Public Rulings Branch**<br>**Australian Taxation Office**<br>**2 Constitution Avenue**<br>**Canberra ACT 2600** |

# Appendix 2 – Detailed contents list

62. The following is a detailed contents list for this Ruling:

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| **Ruling** | **4** |
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# References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 92/1

*Previous Rulings/Determinations:*

PGBR 2003/2; TD 93/34;
TD 95/45; TD 96/5; TD 96/6;
TD 96/16; TR 93/1; TR 95/6;
TR 97/16

*Subject references:*

- binding private rulings
- private rulings
- status of private rulings
- Taxation Rulings
- withdrawal of private rulings

*Legislative references:*

- TAA 1953 Pt IVAAA
- TAA 1953 14ZY(1)
- TAA 1953 Sch 1 Div 357
- TAA 1953 Sch 1 357-55
- TAA 1953 Sch 1 357-60
- TAA 1953 Sch 1 357-60(1)
- TAA 1953 Sch 1 357-65
- TAA 1953 Sch 1 357-70
- TAA 1953 Sch 1 357-75
- TAA 1953 Sch 1 357-85
- TAA 1953 Sch 1 357-105
- TAA 1953 Sch 1 357-110
- TAA 1953 Sch 1 357-115
- TAA 1953 Sch 1 357-120
- TAA 1953 Sch 1 Div 359
- TAA 1953 Sch 1 359-5
- TAA 1953 Sch 1 359-5(2)
- TAA 1953 Sch 1 359-10(1)
- TAA 1953 Sch 1 359-10(2)
- TAA 1953 Sch 1 359-10(3)
- TAA 1953 Sch 1 359-15
- TAA 1953 Sch 1 359-20
- TAA 1953 Sch 1 359-25
- TAA 1953 Sch 1 359-35
- TAA 1953 Sch 1 359-35(2)
- TAA 1953 Sch 1 359-35(3)
- TAA 1953 Sch 1 359-40
- TAA 1953 Sch 1 359-40(5)
- TAA 1953 Sch 1 359-45
- TAA 1953 Sch 1 359-50
- TAA 1953 Sch 1 359-55
- TAA 1953 Sch 1 359-60
- TAA 1953 Sch 1 359-60(1)
- TAA 1953 Sch 1 359-65
- TAA 1953 Sch 1 359-70
- TAA 1953 Sch 1 388-55
- ITAA 1936 170BC
- ITAA 1936 170BDA
- ITAA 1936 170BDB
- ITAA 1936 170BDC
- ITAA 1936 170BF
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 8-1(1)
- ITAA 1997 995-1(1)
- ITAA 1997 Pt 3-1
- ITAA 1997 Div 26
- ITAA 1997 Div 30
- ITAA 1997 Div 108
- Product Grants and Benefits Administration Act 2000 8
- Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005
- Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005 Sch 3 Pt 2

*Other references:*

- Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005
- Report on Aspects of Income Tax Self Assessment
- Law Administration Practice Statement PS LA 2005/19
- Law Administration Practice Statement PS LA 2003/4
- The Macquarie Dictionary, 2001, rev. 3rd edn, The Macquarie Library Pty Ltd, NSW
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ATO references

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