TR 97/16 - Income tax: status of taxation rulings following the income tax law rewrite

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Taxation Ruling
Income tax: status of taxation rulings following the income tax law rewrite

other Rulings on this topic

IT 1; IT 2500; TR 92/1; TR 93/1

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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

Background

1. In 1993 the Australian Government established the Tax Law Improvement Project to restructure, renumber and rewrite Australia's income tax law in plain language. The first two instalments of the rewritten income tax law are contained in the 1997 package of tax legislation that comprises:

Income Tax Assessment Act 1997

Income Tax (Transitional Provisions) Act 1997

Income Tax (Consequential Amendments) Act 1997

Tax Law Improvement Act 1997.

2. The major part of this package is the *Income Tax Assessment Act 1997*. It establishes the structure and framework of a new Income Tax Assessment Act. Over the next few years this new Act will be built up progressively to replace the *Income Tax Assessment Act 1936*.

3. The *Income Tax (Consequential Amendments) Act 1997* makes changes to a number of Commonwealth laws as a consequence of the introduction of the *Income Tax Assessment Act 1997*. These changes include amendments to the parts of the *Taxation Administration Act 1953* (TAA) that deal with legally binding public and private rulings.

What this Ruling is about

4. This Ruling explains the implications for the Taxation Rulings System of the introduction of the *Income Tax Assessment Act 1997* and the consequential amendments of the TAA mentioned in

paragraph 3 above. In particular, this Ruling deals with how a Ruling about a section or other provision of the *Income Tax Assessment Act 1936* (the 'old law') applies to a rewritten section or other provision in the *Income Tax Assessment Act 1997* (the 'new law').

5. The types of Rulings covered by this Ruling include:

A. Legally binding public rulings and private rulings made under Part IVAAA or Part IVAA respectively of the TAA;

B. Other Australian Tax Office (ATO) documents which are not legally binding but are administratively binding on the Commissioner, namely:

- Rulings that are not public or private rulings for the purposes of the TAA;
- Determinations that are not public rulings for the purposes of the TAA; and
- Advance Opinions.

Class of person/arrangement

6. This Ruling applies to anyone who relies on a Ruling mentioned in paragraph 5, where the Ruling is about the application of the Income Tax Assessment Act.

Ruling

A. Legally binding public and private rulings

7. Under Part IVAAA of the TAA, the Commissioner may make a public ruling on the Commissioner's opinion of the way in which a tax law applies to a person or class of persons in relation to an arrangement or class of arrangements. The ruling will be a public ruling if:

- the Commissioner publishes it on or after 1 July 1992;
- the ruling states that it is a public ruling for the purposes of Part IVAAA of the TAA and includes a number and subject heading by which it can be identified; and
- notice of the ruling is published in the *Gazette*.

8. A public ruling is binding on the Commissioner if it is favourable to a taxpayer. A public ruling is favourable to a taxpayer if:

- the way in which a tax law applies to the taxpayer is different from the way the public ruling states that law will apply; and
- the amount of tax payable by the taxpayer by applying the law would be more than the tax payable according to the interpretation of the law stated in the public ruling (sections 170BA and 170BD of the *Income Tax Assessment Act 1936*).

9. Under Part IVAA of the TAA, a taxpayer may apply to the Commissioner for a private ruling. A private ruling is a written expression of the Commissioner's opinion on how a tax law or tax laws would apply to the rulee for an arrangement in a particular year of income.

10. The private ruling given by the Commissioner is binding on the Commissioner, in that the amount of tax payable by the taxpayer in the year of income is not to be more than the tax payable according to the interpretation of the law stated in the ruling (sections 170BB and 170BE of the *Income Tax Assessment Act 1936*).

11. Schedule 2 of the *Income Tax (Consequential Amendments) Act 1997* amends the TAA to insert two new provisions - sections 14ZAAM and 14ZAXA. Sections 14ZAAM and 14ZAXA provide, for public and private rulings respectively, that a legally binding ruling about an old law is to be treated as also being a legally binding ruling about that law as re-enacted or remade. However, the sections limit this rule to a new law to the extent that it expresses the same ideas as the old law. [For the purposes of the TAA, the expressions 'old law' and 'new law' have a narrower interpretation than that described in paragraph 5 above but this does not affect this Ruling].

12. Therefore, for arrangements occurring on or after the date of effect of the new law, taxpayers can continue to rely on existing legally binding public or private rulings which deal with the old law, where the old law expresses the same ideas as the new law. If the old law has been replaced by a new law which does not express the same ideas, then the part of the public or private ruling on that old law does not apply in relation to the new law. That is, that part of the public or private ruling will not apply to arrangements entered into on or after, or extending beyond, the date the new law commences.

13. In deciding whether the new law expresses the same ideas as the old law, where the old law has been the subject of a Ruling, taxpayers can assume that there has been no change in those ideas unless and until announced otherwise. This means that no unannounced change disadvantaging taxpayers under the new law will be applied before the date on which it is announced, or have effect before that date unless

stipulated otherwise in amending legislation. Ways in which a change may be announced include:

- the explanatory memorandum or Second Reading Speech relating to a Bill prepared under the Tax Law Improvement Project;
- a tribunal or court decision making it clear that there has been a change in ideas; and
- a public announcement by the ATO by way of a Taxation Ruling or Taxation Determination. If it is urgent the ATO may make an announcement by Press Release or other ATO publication, but the announcement will be subject to confirmation as soon as practicable in a Ruling or Determination.

Where necessary, the ATO will announce transitional and/or implementation arrangements applying to changes.

B. Administratively binding rulings

14. Taxation Ruling IT 2500 sets out the ATO's long-standing administrative policy for Taxation Rulings and Advance Opinions which are not legally binding but are administratively binding on the Commissioner. That policy has been affirmed by Taxation Rulings TR 92/1 and TR 93/1. The basic policy is that we stand by the advice given in the ATO Rulings or Opinions, unless there are good reasons for not doing so. For example, the advice will not be treated as administratively binding if:

- the facts are materially different from those upon which the advice was premised; or
- Parliament has changed the legislation on which the advice was based; or
- a tribunal or court has overturned or modified the interpretation of the law on which the advice was based; or
- we otherwise consider the advice given in the Ruling or Opinion is no longer appropriate as, for example, in cases where the relevant commercial practice has changed, where the advice has been exploited in an abusive and unintended way or where on reconsideration the advice is found to be wrong in law.

15. Administratively binding documents include:

- Rulings made, and Advance Opinions given, before the system of legally binding rulings was introduced on 1 July 1992; and
- Rulings or Determinations made on or after 1 July 1992 that are not public rulings because they do not rule on a 'tax law' as that term is defined in section 14ZAAA of the TAA; and
- Advance Opinions given on or after 1 July 1992 because the applicant is not entitled to a private ruling on the matter.

16. The ATO's administrative practice for the documents covered by paragraph 15 adopts the same approach as sections 14ZAAM and 14ZAXA of the TAA take for legally binding public and private rulings.

17. This means that an administratively binding document that is about an old law will be treated as also being about that law as re-enacted or remade. However, this rule is limited to a new law to the extent that it expresses the same ideas as the old law. In deciding whether the new law expresses the same ideas as the old law, refer to the comments in paragraph 13.

18. Therefore, for arrangements occurring on or after the date of effect of the new law, taxpayers can continue to rely on existing administratively binding Rulings or Opinions which deal with the old law, where the new law expresses the same ideas as the old law. If an old law has been replaced by a new law which does not express the same ideas, then the part of the Ruling or Opinion on that old law does not apply in relation to the new law. That is, that part of the Ruling or Opinion will not apply to arrangements entered into on or after, or extending beyond, the date the new law commences.

19. This Ruling also extends the application of the policy set out in Taxation Rulings IT 2500, TR 92/1 and TR 93/1 to documents covered by paragraph 15 which only relate to a new law. This means that such documents which are written about the new law will be treated as administratively binding, subject to the considerations outlined in paragraph 14.

Date of effect

20. This Ruling applies from the same date as the *Income Tax Assessment Act 1997*. That Act, as originally enacted, applies generally to assessments for the 1997-98 income year and later income years.

Examples

A. Legally binding public and private rulings

21. Taxation Ruling TR 97/7 sets out the ATO's view on whether the word 'incurred' in subsection 51(1) of the *Income Tax Assessment Act 1936* has the same meaning for taxpayers who return their income on a receipts basis as it does for those taxpayers who generally return their income on an earnings basis. Subsection 51(1) has been re-enacted in the *Income Tax Assessment Act 1997* as section 8-1. Section 8-1 expresses the same ideas as subsection 51(1). Therefore, TR 97/7 will also apply in interpreting the word 'incurred' in section 8-1.

B. Administratively binding Rulings

22. A taxpayer has been given an Advance Opinion on whether an item of proposed expenditure in the 1996-97 and 1997-98 income years is deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*. As mentioned in paragraph 21, subsection 51(1) has been re-enacted in the *Income Tax Assessment Act 1997* as section 8-1. Section 8-1 expresses the same ideas as subsection 51(1). Accordingly, we will treat the administratively binding Advance Opinion that is about subsection 51(1) as also being about section 8-1.

Withdrawal

23. Upon the completion of the rewrite of the old law, consideration may need to be given to the withdrawal of this Ruling.

Commissioner of Taxation

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subject references
- advance opinions
- private rulings
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legislative references
- ITAA 1936 51(1)
- ITAA 1936 170BA
- ITAA 1936 170BB
- ITAA 1936 170BD
- ITAA 1936 170BE

- ITAA 1997 8-1

- TAA 1953 14ZAAA
- TAA 1953 14ZAAM
- TAA 1953 14ZAXA
- TAA 1953 Pt IVAAA
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case references