

# ***TR 2006/11 - Income tax, fringe benefits tax and product grants and benefits: Private Rulings***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *4 October 2006*



## Taxation Ruling

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

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### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant 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.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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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;
- (xiii) delays in making private rulings; and
- (xiv) the review of private rulings.

## Previous Rulings

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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 were withdrawn on and from 5 April 2006. 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

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### 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 you. A private ruling must be in relation to a specified scheme.<sup>1</sup>

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 you. An example of the former would be making a private ruling on a new provision of the law where you 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).

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<sup>1</sup> Section 359-5 of Schedule 1 to the TAA. See paragraph 15 of this Ruling for an explanation of what a 'scheme' is.

The Commissioner may give a private ruling that the amount is not assessable under section 6-5. This may occur even though the Commissioner might, if asked to consider the matter, consider that an amount (namely, a net capital gain calculated under Part 3-1 of the ITAA 1997) would be assessable as statutory income under section 6-10 of the ITAA 1997. However, because the ruling application did not draw attention to a possible alternative treatment, this question was not addressed.

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 a 'CGT 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, he or she would ordinarily advise you 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<sup>2</sup>. Therefore the level of protection accorded by 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. More generally, the provisions of Division 359 apply to private rulings made under former Part IVAA in relation to things done on or after 1 January 2006<sup>3</sup>. Therefore, for example, the objection, review and appeal rights applicable under Division 359 will apply to such a ruling if the relevant objection is made on or after 1 January 2006. 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<sup>4</sup>. For more information about inconsistencies refer to paragraphs 41 to 48 of this Ruling.

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<sup>2</sup> Item 29, Part 3 of Schedule 2 to the *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*.

<sup>3</sup> Item 32, Schedule 2 of *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*.

<sup>4</sup> Item 30, Schedule 2 of *Tax Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*.

**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);
- petroleum resource rent 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), or the administration or payment of the product grants and benefits; and
- net fuel amount, or the administration, collection or payment of a net fuel amount.

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 creation of a new trust. Such matters are outside the scope of the relevant provisions on which the Commissioner can directly rule.<sup>5</sup> However, the Commissioner may issue a private ruling on, say, the capital gains tax consequences of the formation of a new trust. In making this ruling, the Commissioner might form a view that a new trust has or has not been created at common law for the purpose of coming to a view on the application of the capital gains tax provisions.<sup>6</sup> In such a case, that ruling would be binding in relation to the application of the capital gains tax provisions, even though it is premised on a particular view about whether a new trust has been formed at common law (which might even turn out to be incorrect). However, the view expressed about whether a new trust has been created at common law is not, by itself, a ruling. Therefore it would not be binding on the Commissioner in a context outside of the application of the capital gains tax provisions to the particular scheme addressed by the private ruling and the entity it is expressed to apply to.<sup>7</sup>

<sup>5</sup> Subsection 359-5(1) of Schedule 1 to the TAA.

<sup>6</sup> Subsection 359-5(2) of Schedule 1 to the TAA.

<sup>7</sup> Subsection 357-60(1) of Schedule 1 to the TAA.

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 (for example, the extent of liability to income tax<sup>8</sup>, or the way in which a discretion of the Commissioner would be exercised in determining that liability<sup>9</sup>). 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.<sup>10</sup> 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 and 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'.<sup>11</sup>

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.

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.

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<sup>8</sup> Former section 14ZAF of TAA.

<sup>9</sup> Former section 14ZAE of TAA.

<sup>10</sup> Paragraph 3.22 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.

<sup>11</sup> The Macquarie Dictionary, 2001, rev. 3<sup>rd</sup> edn, The Macquarie Library Pty Ltd, NSW and The Australian Oxford Dictionary, 1999, Oxford University Press, Melbourne.

**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'.<sup>12</sup> An 'arrangement' is defined 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.<sup>13</sup>

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.<sup>14</sup> 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 the valuation 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.

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.<sup>15</sup> 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 income tax regulations. Therefore the Commissioner may decline to rule in these circumstances (see paragraph 39 of this Ruling, 'Applications that do not have to be dealt with').

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<sup>12</sup> Subsection 995-1(1) of the ITAA 1997.

<sup>13</sup> Subsection 995-1(1) of the ITAA 1997.

<sup>14</sup> Subsection 359-5(2) of Schedule 1 to the TAA.

<sup>15</sup> Subsection 359-40(5) of Schedule 1 to the TAA.

**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.<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> 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 54 of this Ruling). As discussed at paragraphs 51 to 53, where the law is re-enacted or remade, the private ruling continues to apply insofar as the new law expresses the same ideas as the old law. If the law is repealed or amended to have a different effect, the private ruling ceases to apply.<sup>19</sup>

21. The reason why a private ruling ceases to apply if the law is amended to have a different effect 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 (see paragraph 23 of this Ruling for an example of this).

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<sup>16</sup> Subsection 357-60(1) of Schedule 1 to the TAA.

<sup>17</sup> Paragraph 3.26 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.

<sup>18</sup> Paragraph 3.24 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.

<sup>19</sup> 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 and therefore do not need to lodge a return.

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.<sup>20</sup> Where you choose not to rely on a private ruling and you have a tax shortfall, you may incur a shortfall penalty.

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<sup>20</sup> 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 under the law 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.<sup>21</sup> 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, amount or an entitlement (or whether there is a tax liability, amount or an entitlement) under a relevant provision, the liability, amount 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 may 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 where that is the correct position.<sup>22</sup>

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<sup>21</sup> Section 357-70 of Schedule 1 to the TAA.

<sup>22</sup> See paragraph 3.30 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005.







- the Commissioner considers that information provided by a source other than you is material to the outcome of the ruling, but disclosure of that information to you would breach tax secrecy provisions, privacy legislation or the confidentiality of the person providing the information (see paragraph 34 of this Ruling);<sup>36</sup> or
- making the private ruling would require an unreasonable diversion of the Commissioner's resources from other matters to which the Commissioner must attend in the course of administering the taxation laws.

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 detriment of others and the robustness of the system as a whole.<sup>37</sup>

- 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, because the appropriate course of action is for the Commissioner simply to exercise the power or decline to exercise the power, the Commissioner does that rather than issue a ruling. 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. This is to be distinguished from the situation where you are seeking a private ruling about how the Commissioner would exercise a discretion at a future time in relation to the scheme specified.

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<sup>36</sup> See paragraph 3.44 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.

<sup>37</sup> See paragraph 3.82 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.







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

51. 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.<sup>44</sup> However, if the law has been substantively changed, the part of the private ruling dealing with the changed law ceases to apply.

52. Therefore, for schemes commencing on or after the date of effect of the new law, you 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.

53. 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, second reading speech, or other relevant extrinsic material 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**

54. A private ruling will usually specify the time it begins to apply and the time it ceases to apply. The specified start or end time of a private ruling may be before, when or after the private ruling is made. 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.<sup>45</sup>

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<sup>44</sup> Section 357-85 of Schedule 1 to the TAA.

<sup>45</sup> Section 359-25 of Schedule 1 to the TAA.

### **Delays in making private rulings**

55. Where you have applied for a private ruling and the Commissioner has not made the ruling (nor declined to rule) within 60 days of the application being lodged, you may give a notice to the Commissioner to make the private ruling. You may lodge an objection if the Commissioner has failed to make a private ruling (or declined to rule) within 30 days after being given such a notice. In lodging this objection, you must also lodge your own draft private ruling.<sup>46</sup>

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 a valuation matter to a valuer.<sup>47</sup>

57. The effect of your own draft private ruling mentioned in paragraph 55 above 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.<sup>48</sup> If the Commissioner fails to do either of these within, in the usual case, 60 days of lodgment of the objection (for example, because further information is required to make the ruling and this has not been provided by you) the objection is taken to have been disallowed.<sup>49</sup> However, this deemed disallowance of the objection against the Commissioner's failure to rule does not mean that the draft private ruling lodged with your objection takes effect, or that you can have that draft ruling considered by the Federal Court or the Administrative Appeals Tribunal in any review or appeal against the disallowance.

### **The review of private rulings**

58. You may object against a private ruling which applies to you if you are dissatisfied with it.<sup>50</sup> 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 relevant assessment or amended assessment; and

<sup>46</sup> Section 359-50 of Schedule 1 to the TAA.

<sup>47</sup> Subsection 359-50(2) of Schedule 1 to the TAA.

<sup>48</sup> See subsection 14ZY(1A) of the TAA for more information.

<sup>49</sup> Section 14ZYB of the TAA. Note that paragraph 14ZYB(1)(b) specifies a different period within which the Commissioner must make the objection decision in certain circumstances.

<sup>50</sup> Section 359-60 of Schedule 1 to the TAA.

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

59. 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.<sup>51</sup> If the objection is disallowed to any extent you may have the objection decision considered by the Federal Court or the Administrative Appeals Tribunal.<sup>52</sup>

60. 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<sup>53</sup> opportunity to comment or respond before allowing or disallowing the objection.<sup>54</sup>

61. 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

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62. This Ruling applies from 1 January 2006. However, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of this Ruling.

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**Commissioner of Taxation**

4 October 2006

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<sup>51</sup> Section 359-70 of Schedule 1 to the TAA.

<sup>52</sup> See paragraph 3.104 of the Explanatory Memorandum to the Tax Laws Amendment (Improvements to Self Assessment) (No. 2) Bill 2005.

<sup>53</sup> See Law Administration Practice Statement PS LA 2003/4 for a discussion of what may be a reasonable time in particular circumstances. Note: PS LA 2003/4 is in the process of being rewritten.

<sup>54</sup> Section 359-65 of Schedule 1 to the TAA.

## **Appendix 1 – Detailed contents list**

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

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## References

*Previous draft:*

TR 2006/D7

*Related Rulings/Determinations:*

TR 2006/10

*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
- TAA 1953 Pt IVAA
- TAA 1953 14ZY(1)
- TAA 1953 14ZYB
- TAA 1953 14ZYB(1)(b)
- TAA 1953 14ZAAD
- TAA 1953 14ZAAE
- TAA 1953 Sch 1 12-35
- 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
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