



How to apply for private ruling

Getting started

Use the following information as a guide to prepare an application for private ruling about certain laws administered by the Commissioner Inland Revenue in respect of:

- your own affairs, or
- the affairs of another person (including an individual) if you are their agent or representative.

Remember to include all supporting documentation and information required with your form.

What is a private ruling?

A private ruling is an expression of the Commissioner's position regarding the application of a tax law to an **arrangement** or transaction entered into, or proposed to be entered into by a taxpayer.

If your affairs are based on a private ruling that applies to you, the Commissioner will be bound to act in the way set out in the ruling, even if the private ruling is later found to be incorrect. This will apply so long as the taxpayer has:

- made a full and true disclosure of all aspects of the transaction relevant to the ruling; and
- the arrangement or transaction has proceeded in all material respects as described in the taxpayer's application for private ruling.

Arrangement

An arrangement is any contract, agreement, plan, or understanding, whether express or implied and whether legally enforceable or not.

Who can a private ruling apply to?

A private ruling is usually made in response to an application by or on behalf of a particular person.

It is specific to the person the private ruling is for and cannot be relied on by another person. A **person** is:

- an individual
- a trust
- partnership,
- incorporated or unincorporated body of persons, incorporated body of persons" means a body of persons incorporated or registered under a law in force in Solomon Islands or elsewhere
- government entity which means:
 - (a) the Government, including a department, division or agency of the Government; or
 - (b) a provincial government or the Honiara City Council; or
 - (c) a foreign government or political subdivision of a foreign government; or
 - (d) a person who, under a Solomon Islands law, is responsible for issuing a licence, permit, certificate, concession, authorization or other document for a fee, or
- an international organization.

When should you consider applying for a private ruling?

Typically, you will apply for a private ruling when you want certainty about the way a tax law applies to your particular circumstances.

However, you may be satisfied by the information that is available through any of the services provided by Inland Revenue. These include public rulings and Inland Revenue guides.

If you cannot find the information you need in these Inland Revenue publications you can contact or visit Inland Revenue for assistance.

What matters can a private ruling cover?

You can apply for a private ruling from Inland Revenue for issues concerning:

- income tax, including PAYE and withholding tax;
- goods and sales tax; and
- value added tax (when enacted),

Apart from matters of liability to taxes, a private ruling can be about:

- collection or payment
- administration
- procedure, or
- an ultimate conclusion of fact – for example:
 - residency status; or
 - whether an activity is an enterprise, a hobby or business

Who can apply for a private ruling?

You can apply for a private ruling on your own behalf.

Alternatively, your agent (for example, your tax agent), or representative can apply for a private ruling on your behalf. A **representative** is:

- **in the case of an individual under a legal disability**, the guardian, trustee or manager who receives, or is entitled to receive, income on the individual's behalf or for his or her benefit;
- **in the case of a company**, the managing director, the chief executive officer or any director of the company;
- **in the case of a partnership**, a partner in the partnership;
- **in the case of a trust**, a trustee of the trust;
- **in the case of a body of persons other than a company or a partnership**, any individual who is responsible for accounting for the receipt or payment of money or funds by the body;
- **in the case of the Government, a provincial government or the Honiara City Council**, any individual who is

responsible for accounting for the receipt or payment of money or funds by the Government, provincial government or Honiara City Council;

- **in the case of a foreign government or agency of a foreign government**, any individual who is responsible for accounting for the receipt or payment of money or funds in Solomon Islands by the foreign government or agency;
- **in the case of a non-resident person**, any individual controlling or managing the person's affairs in Solomon Islands, including any manager of any business of that person;
- **in the case of a taxpayer whose property is in the possession or control of a person in the capacity of liquidator as defined**, that liquidator;
- **an individual declared to be a person's tax representative by the Commissioner** by notice in writing to an individual.

A private ruling applied for by a trustee of a trust will apply to the beneficiaries of the trust, and to any trustee that replaces the applicant trustee, during the currency of the ruling. For VAT private rulings, the private ruling will apply to the trust.

When we may not give a private ruling

We may not give a private ruling if:

- the **Commissioner has**, in an assessment, **already decided the matter that is the subject of the application**;
- the **Commissioner considers that a current public ruling adequately covers the matter** that is the subject of the application;
- the **application relates to a matter that is the subject of a tax audit or an objection**;
- the **application is frivolous or vexatious** - the Commissioner considers that frivolous means something that is not worth serious attention, while vexatious means that the application is made simply

for the purpose of wasting time or for causing delay;

- the **arrangement to which the application relates has not been carried out and there are reasonable grounds for believing that it will not proceed;**
- the applicant has provided the Commissioner **with insufficient information** for making a private ruling;
- the Commissioner considers that it would be **unreasonable to make a private ruling in view of the resources available to the Commissioner.**

Relying on a private ruling

If you rely on a private ruling and your tax liability is less than would otherwise have been the case, the Commissioner cannot apply the provision in a way that is inconsistent with the private ruling, unless the correct application of the law would be of greater benefit to you.

If you choose not to rely on the private ruling and the position you have adopted is shown to be incorrect, you will be required to pay any underpaid tax or overpaid grant or benefit and interest on that under or over payment. You may also be required to pay a penalty on the underpaid tax or overpaid grant or benefit if you do not have a reasonably arguable position or have not taken reasonable care.

A tax position is reasonably arguable if, on an objective interpretation of the relevant law and its application to the facts of the case, the taxpayer's position is as likely to be correct as incorrect. A tax position that is contrary to a public or private ruling issued by the Commissioner is not capable of being a reasonably arguable position.

If you rely on the action or advice of a tax advisor engaged by you, you are taken to have exercised reasonable care in taking that tax position (whether or not it is a reasonably arguable position) and you are not liable to the prescribed penalty.

Also, a private ruling only applies to the particular arrangement described in the ruling. If the actual arrangement has not proceeded in all

material respects as we have described in your private ruling, the private ruling will be ineffective.

Steps in applying for a private ruling:

1. Download a private ruling application form.
2. Use this site to identify the required information and documents.
3. Complete your private ruling application form.
4. Send your private ruling application through the internet or by e-mail, fax or post – using the addresses on this site.

1. Private ruling application form

If you are seeking a private ruling on any of the matters on which the Commissioner can rule, you must use the private ruling application form.

2. Required information and documents

The supporting documents requirements for private rulings lists the information and documents we usually need to resolve questions about the subjects listed.

If your private ruling is about a listed subject in the supporting documents requirements, you should provide the appropriate information and documents requested with your private ruling application. This will avoid delays caused by us having to ask you to provide the information at a later time.

3. What to include in your private ruling application

The information and supporting documentation required in a private ruling application includes:

- your contact details and TIN
- the full name of the person that the private ruling is for and TIN
- your question(s) and issues that you want answered
- the facts describing the arrangement (including supporting documents)
- your arguments and references

- details of any previous rulings on your issue
- a checklist, and
- declaration and signature.

Your questions

Your question(s) must be clear enough for the Commissioner to identify the issues that are the subject of the ruling.

Applications lodged by tax professionals should refer to the specific provisions of law on which a ruling is required. Other applicants are not required to quote provisions of the law.

Facts describing the arrangement

You must provide us with a full and complete description of the facts (with supporting documentation) that are relevant to the arrangement or transaction. If the actual arrangement or transaction has not proceeded in all material respects as we have described in your private ruling, the private ruling will be ineffective, that is not binding on the Commissioner.

Where you are only proposing an actual arrangement, the facts must still be reasonably certain. We cannot provide a private ruling on hypothetical situations.

Your arguments and references

If you are a tax agent or other tax professional you must provide a full description of the issues, together with the results of research undertaken. That research might cover journal and textbook commentary on the relevant provisions and your application should include case citations and references to public rulings (where applicable). You should state your own opinion on the question, together with your reasons behind that opinion and you may, if you wish, supply a draft of the ruling sought.

If you are not a tax agent or other tax professional, you should state, to the best of your ability, how you think the actual arrangement or transaction should be treated.

Checklist

There are a number of questions in a Yes/No format on the application form. They seek information such as whether an audit is being carried out or whether you have already sought a ruling on the issue.

Again, you must provide these details to the best of your knowledge.

Client declaration when applying on behalf of someone else

If you are a tax agent or other tax professional or you are lodging an application on behalf of another person, you should receive a client declaration before you lodge the application. This client declaration should state that:

- the information your client (or the person you are acting for) has provided to you for the preparation of the private ruling application is true and correct, and
- you are authorised to give the private ruling application to the Commissioner.

You don't need to send the client declaration to Inland Revenue with the private ruling application. Your client (or the person you are acting for) should retain the client declaration and produce it if requested. Alternatively, you may hold the client declaration on their behalf.

Declaration given electronically

If your client (or the person you are acting for) sends their declaration to you electronically, you should get them to send you an email containing the wording below to satisfy the requirement that they must sign the declaration.

'I declare that the information I provided in the preparation of the private ruling application is true and correct and hereby authorise you to give this private ruling application to the Commissioner Inland Revenue.'

Declaration given by post or email

If your client (or the person you are acting for) gives you their declaration in person, by post or by email, they should also sign a declaration as outlined below.

'I declare that the information I provided in the preparation of the private ruling application is true and correct and hereby authorize you to give this

private ruling application to the Commissioner Inland Revenue.

Signed:

Date:

4. Where to lodge the private ruling application form

If you wish to apply for a private ruling at the same time as lodging your tax return, do not attach the form to your tax return. You should lodge the application separately. Tax returns are to be lodged by their due date, even if a private ruling has been applied for but not yet received.

If lodging through the internet, you will need to obtain a digital signature...

If lodging by e-mail, you should send your private ruling application form to legalandpolicyteam@mof.gov.sb

What happens after you have applied for a private ruling?

If we need further information, we will aim to ask for it within 14 days of receiving your application. Where you are acting for another person, you must obtain a declaration from that person that the additional information you provide to us is true and correct.

The Commissioner will generally only rule on matters directly raised in the private ruling application. If there are other matters that occur to us as we prepare our response that may impact on your overall tax liability in relation to the arrangement, and which we consider you should be aware of, we will tell you. Should you want us to rule on any of these additional matters, we invite you to submit a further private ruling application.

We will aim to give you a private ruling within 28 days (21 days for VAT private rulings) of receiving all necessary information from you. If we cannot give you a private ruling within those relevant time periods, we aim to contact you within 14 days of receipt of your application to discuss an appropriate reply date.

Withdrawal of a private ruling application by the applicant

You can tell Inland Revenue that you want to withdraw a private ruling application at any time before the private ruling is made and we will confirm the withdrawal in writing.

Withdrawal of a private ruling application by Inland Revenue

Inland Revenue can with reasonable cause withdraw a private ruling, in whole or in part, by serving you with notice of the withdrawal. The date of withdrawal is the date specified in the notice.

A private ruling shall be treated as withdrawn if the Commissioner publishes a public ruling that is inconsistent with a private ruling to the extent of any inconsistency. If this happens the date of withdrawal is the date of application of the inconsistent public ruling.

Note: A private ruling that has been withdrawn will continue to apply to a transaction commenced before the ruling was withdrawn and will not apply to a transaction commenced after the ruling was withdrawn to the extent that the ruling is withdrawn.

What if you do not agree with the decision in the private ruling?

You can object to most private rulings in the same way as you can object to a tax assessment. You cannot object to a private ruling if an assessment has issued that covers the private ruling period or where the withholding tax has become due and payable. You can, however, object to the assessment.

Your rights are clearly outlined in the Guide Your Rights – What you need to know.

General advice or help

You can get general advice by phoning or visiting the Inland Revenue and through a range of our publications and taxation rulings.

