



# Guide to what is the Public and Private Ruling system

---

## Introduction

This Guide explains the Public and Private Ruling system in the tax law. It is important to note the difference. Public rulings express the Commissioner's interpretation of the laws he or she administers which applies to all taxpayers. Whereas, a private ruling is binding advice that sets out how a tax law applies to a particular person in relation to a specific arrangement or circumstance.

See *PR 2024/1 Public and Private Rulings System* available on the IRD website, for more details on this topic.

## Status of a Public Ruling

The Commissioner is bound by a public Ruling, meaning he or she is not able to use a position that conflicts with a position he or she has taken in a public ruling as the basis for assessing a person for a liability to pay income tax for example. A person who follows a position taken by the Commissioner in a public ruling will not be liable to administrative penalties even if that position is subsequently held by a court not to be a correct interpretation of the law.

However, a public ruling is not binding on a person liable to pay tax. If a person believes the Commissioner's interpretation of the law set out in a public ruling is incorrect, the person may appeal an assessment made on the basis of the position taken by the Commissioner in a public ruling. If a person takes a position contrary to a position taken by the Commissioner in a public ruling and it is subsequently determined that the Commissioner's view is a correct interpretation of the law, the person will be liable for the tax due under the

Commissioner's interpretation. In some circumstances the person may also be liable to administrative penalties imposed under the Tax Administration Act 2022.

## Procedure for making public rulings

Section 150 of the TAA sets out the procedure for making a public ruling. It provides that:

- the Commissioner makes a public ruling by publishing the ruling in the Gazette;
- the Commissioner will also publish the ruling on an Inland Revenue Division's internet site to which the public has free access.
- A public ruling will:
  - (a) state that it is a public ruling made under the TAA; and
  - (b) have a number and subject heading by which it can be identified.
- A public ruling applies from the date specified in the ruling or, if no date is specified, from the date of publication in the Gazette.
- A public ruling has effect despite, and must not be invalidated for, an error or defect in procedure, form or detail that does not affect the substance or effect of the ruling.

Commissioner may amend or withdraw public rulings in whole or in part by publishing the amendment or withdrawal in the Gazette.

A public ruling is treated as withdrawn, and not to have effect, to the extent that it is inconsistent with either a subsequent tax law or amendment to a tax law; or a subsequent public ruling.

### **Effect of amendment or withdrawal of public ruling**

The amendment of a public ruling takes effect on and from the date specified in the notice of amendment or, if no date is specified, on or from the date of publication in the Gazette. However, the amendment of a public ruling does not apply to an arrangement that commenced before the ruling takes effect.

The withdrawal of a public ruling or part of it takes effect:

- Where the Commissioner withdraws a public ruling, in whole or in part by publishing the withdrawal in the Gazette,
  - on and from the date specified in the notice of withdrawal or,
  - if no date is specified, on or from the date of publication in the Gazette;

### **PRIVATE RULINGS**

The Commissioner may make private rulings on application by a taxpayer setting out the Commissioner's position regarding how a tax law applies or would apply to a particular taxpayer and to an arrangement for which the ruling is sought. A private ruling cannot be relied upon by any person other than the person to whom it was issued.

#### **Effect of Private ruling**

A private ruling is binding on the Commissioner in relation to the taxpayer who applied for it, in the approved form (see the Private Ruling Application Form available on the IRD website ([www.ird.gov.sb](http://www.ird.gov.sb)), on condition that:

- the taxpayer has made full and true disclosure of all aspects of the arrangement in question that are relevant to making the ruling; and
- the arrangement has proceeded in all material respects as described in the taxpayer's application for the ruling. The Commissioner considers something is material if it would have resulted in a different ruling had the Commissioner been aware of it when the original ruling was made.

If both a private ruling and a public ruling apply to or in relation to a taxpayer, the private ruling prevails, and the public ruling does not apply, to the extent of any inconsistency between the rulings.

#### **Commissioner may refuse an application for a private ruling:**

Where

- the Commissioner has already decided the matter that is the subject of the application; or
- the Commissioner considers that a current public ruling adequately covers the matter that is the subject of the application; or
- the application relates to a matter that is the subject of a tax audit or an objection; or
- 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; or
- the arrangement to which the application relates has not been carried out and there are reasonable

grounds for believing that it will not proceed; or

- the applicant has provided the Commissioner with insufficient information for making a private ruling; or
- the Commissioner considers that it would be unreasonable to make a private ruling in view of the resources available to the Commissioner.

### **Procedure for making private rulings**

The Commissioner makes a private ruling by serving a written notice of the ruling on the applicant.

The law provides that a private ruling must set out the matter ruled on, identifying:

- (a) the taxpayer; and
- (b) the tax law relevant to the ruling; and
- (c) the tax period to which the ruling applies; and
- (d) the arrangement to which the ruling relates; and
- (e) any assumptions on which the ruling is based.

### **Commissioner may withdraw a private ruling**

Commissioner may at any time withdraw a private ruling by service of a notice of withdrawal on the taxpayer. A private ruling is treated as withdrawn to the extent that it is inconsistent with:

- (a) a subsequent tax law or amendment to a tax law; or
- (b) a subsequent public ruling.

### **Effect of withdrawal of private ruling**

The withdrawal of a private ruling or part of it takes **effect**:

- where the Commissioner withdraws a private ruling by service of notice

of withdrawal on the taxpayer: **on and from the date specified in the notice of withdrawal**; or

- where a private ruling is treated as withdrawn to the extent that it is inconsistent with a subsequent tax law or amendment to a tax law: **on and from the date on which the subsequent tax law or amendment commences or otherwise takes effect**; or
- where a private ruling is treated as withdrawn to the extent that it is inconsistent with a subsequent public ruling: **on and from the date that the public ruling applies**.

A private ruling that has been withdrawn, in whole or in part:

- (a) continues to apply to an arrangement that commenced before the private ruling was withdrawn; and
- (b) to the extent that the private ruling is withdrawn, does not apply to an arrangement that commenced after the private ruling was withdrawn.