

Public Ruling

PR 2024/1: Public and Private Rulings System- Explanation and Status

This Ruling is a public ruling within the meaning of section 149 of the Tax Administration Act 2022 (TAA).

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Preamble

The Public and Private Rulings system has been introduced from 1 January 2023:

- in the case of Public Rulings, it is a means of publishing decisions on interpretation of the laws administered by the Commissioner; and
- in the case of Private Rulings, it sets out the Commissioner's position on application by a taxpayer regarding how a tax law applies or would apply to the particular taxpayer and to an arrangement for which the ruling is sought.

Introduction

1. Section 149 of the TAA authorises the Commissioner of Inland Revenue to make public rulings setting out how a tax law applies in relation to a type of person or type of arrangement.
2. Section 153 of the TAA authorises the Commissioner to make a private ruling.
3. This Ruling explains how the Commissioner will make Public and Private Rulings in accordance with the TAA.
4. Public rulings express the Commissioner's interpretation of the laws he or she administers which applies to all taxpayers. 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.

PUBLIC RULINGS

The Commissioner is bound by a public ruling

5. The Commissioner is bound by a public ruling made in accordance with section 150 of the TAA until withdrawn. This means that the Commissioner is not able to use a position that conflicts with a position he has taken in a public ruling as the basis for assessing a person for a liability to pay income tax for example. However, as explained below, the Commissioner can replace a public ruling with a new one that is based on a revised interpretation of a tax law.
6. 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.

Public rulings are not binding on taxpayers

7. 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.

8. In addition, depending on the circumstances behind the person's decision to adopt a position contrary to the Commissioner's interpretation of the law, the person may be liable for administrative penalties imposed under the TAA.
9. Factors that will affect a possible liability to administrative penalties include:
 - whether the taxpayer disclosed to the Commissioner that the taxpayer was taking a position that conflicted with the Commissioner's interpretation of the law;
 - whether the taxpayer's position was based on a contrary interpretation in the law that a court would consider to be an arguable position;
 - whether the taxpayer took a contrary position:
 - unaware of the Commissioner's position through disregard, carelessness, inattention; or
 - unaware of the Commissioner's position through negligence;
 - aware of the Commissioner's position, but having grounds to believe it may not have been correct; or
 - aware of the Commissioner's position and having no reasonable grounds to believe it may not have been correct.

Procedure for making public rulings

10. 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

11. The Commissioner may amend a public ruling or withdraw a public ruling, in whole or in part. The Commissioner must publish the amendment or withdrawal in the Gazette.
12. 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

13. 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.
14. 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; or
 - Where a public ruling is treated (deemed) as withdrawn and not to have effect to the extent that it is inconsistent with a subsequent 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 public ruling is treated (deemed) as withdrawn and not to have effect to the extent that it is inconsistent with a subsequent public ruling,
 - on and from the date that the new ruling applies.

15. A public ruling that has been withdrawn, in whole or in part:
- (a) continues to apply to an arrangement that commenced before the ruling was withdrawn; and
 - (b) to the extent that the ruling is withdrawn, does not apply to an arrangement that commenced after the ruling was withdrawn.
16. The Commissioner may replace a public ruling at any time with a new public ruling.
17. Where a public ruling replaces a previous one, the later ruling will clearly indicate that taxpayers may rely on the new ruling and that the former ruling may no longer be relied upon by taxpayers.
18. A ruling that replaces another ruling will also provide transitional rules for taxpayers who had sought to rely upon the former ruling. A replaced ruling will continue to be valid and binding on the Commissioner for all tax periods that have concluded at the time of the new ruling. The replacement ruling will indicate under what circumstances, if any, taxpayers may rely on the replaced ruling for the tax period in which the replacement ruling is issued or for future tax periods.

Private rulings

Commissioner may make private rulings

19. Section 153 of the TAA authorises the Commissioner to make a private ruling setting out the Commissioner's position on application by a taxpayer regarding how a tax law applies or would apply to a particular taxpayer and to an arrangement for which the ruling is sought.
20. The term "arrangement" is defined in section 3 of the TAA to mean any contract, agreement, plan, or understanding, whether express or implied and whether legally enforceable or not".
21. The Commissioner may make a private ruling on the basis of assumptions about a future event or other matter as the Commissioner considers appropriate.

Effect of Private ruling

22. 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), 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.
23. "Binding on the Commissioner" means that the Commissioner cannot use a position that conflicts with a position he has taken in a private ruling as the basis for assessing the recipient of the private ruling for a liability to pay tax. However, a private ruling given by the Commissioner will only be binding on the Commissioner in respect of the particular arrangement and for the tax period or periods for which a person requests a ruling unless there is an explicit indication to the contrary in the ruling.
24. Further, the arrangement must have proceeded in all material respects as described in the taxpayer's application for the ruling.
25. Because a private ruling is binding on the Commissioner only if the person seeking the ruling has provided a full and true disclosure of all aspects of the arrangement or planned arrangement relevant to the ruling, a private ruling cannot be relied upon by any person other than the person to whom it was issued.
26. 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 to make private rulings

27. The Commissioner may refuse an application for a private ruling on any of the following grounds:
- the Commissioner has in an assessment 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.

28. The Commissioner must serve the applicant with written notice of a refusal to make a private ruling.

Procedure for making private rulings

29. The Commissioner makes a private ruling by serving a written notice of the ruling on the applicant.
30. 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.
31. Attached at Appendix B is the template the Commissioner intends to use to make private rulings.

Commissioner may withdraw a private ruling

32. The 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

33. 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*.

34. 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.

Publication of Rulings

35. The Commissioner makes a public ruling by publishing the ruling in the Gazette. The Commissioner will also publish a public ruling on an Inland Revenue Division's internet site to which the public has free access.

36. Private rulings will not be published.

Joseph Dokekana
Commissioner of Inland Revenue
Date: 31st May 2024

Legislative references: public and private rulings TAA PART 9 Divisions 1 and 2 sections 149 to 152 and 153 to 158

APPENDIX A PRIVATE RULING TEMPLATE

NOTICE OF PRIVATE RULING

This ruling is a private ruling for the purposes of section 153 of the Tax Administration Act 2022.

THIS PRIVATE RULING APPLIES TO: *Name of the person to whom the ruling is to apply to, address- postal and email and TIN*

TAX PERIOD(S) TO WHICH THIS PRIVATE RULING APPLIES: *For income tax matters, this will generally be the particular income year. In Goods Tax matters, this will be the relevant period in which the transaction occurred or will occur.)*

TAX LAW(S): - *The provision(s) of the relevant Act on which the applicant is seeking a private ruling.*

WHAT THIS PRIVATE RULING IS ABOUT: – *Sets out the question(s) asked clearly including sub-questions.*

THE SUBJECT OF THE PRIVATE RULING: – *This is where the facts of the arrangement are set out. If the facts are detailed in documents the facts in those documents are set out here.*

COMMENCEMENT OF ARRANGEMENT: - *If known, the date the arrangement commenced or will commence.*

ASSUMPTIONS: – *If none, then nil. Otherwise, all assumptions made are to be clearly stated.*

PRIVATE RULING: - *This is the short answer to the question(s) posed in the ‘what this private ruling is about section’ of this notice.*

Joseph Dokekana

COMMISSIONER OF INLAND REVENUE

Date: 31st May 2024

EXPLANATION: –*it is not legally binding. It should detail the legal analysis, that is, the application of the facts to the law.*

INFORMATION ABOUT THIS PRIVATE RULING

You are advised that this ruling is based on the information provided in your ruling application. This private ruling shall be binding on the Commissioner Inland Revenue provided:

- the facts stated in the application regarding the arrangement or proposed arrangement are not materially different from the arrangement actually carried out;
(a fact is considered material if it would have resulted in a different ruling had the Commissioner been aware of it when the original ruling was made); and
- you have made a full and true disclosure of all aspects of the arrangement relevant to the ruling, that is, there is no misrepresentation or no wilful nondisclosure of a material fact; and
- any condition or assumption stipulated by the Commissioner as a condition of the issue or binding effect of ruling has been satisfied or carried out.

If any of the above apply that is:

- the facts are materially different, or
- there has not been a full and true disclosure or
- a condition has not been satisfied or carried out or assumption is incorrect,

the ruling will be of no effect and be not binding on the Commissioner.

If both a private ruling and a public ruling applies 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.

However, if the Commissioner publishes a subsequent public ruling that is inconsistent with the private ruling, the private ruling shall be treated as withdrawn to the extent of any inconsistency.

The withdrawal of a private ruling, in whole or in part, takes effect:

- if the Commissioner has withdrawn your private ruling by serving written notice on you, from the date specified in the notice of withdrawal; or
- if the Commissioner has issued an inconsistent public ruling, from the date of application of the inconsistent public ruling.

A private ruling that has been withdrawn shall:

- continue to apply to an arrangement commenced before the private ruling was withdrawn; and

- not apply to an arrangement commenced after the private ruling was withdrawn to the extent that the ruling is withdrawn.

NOTE:

A ruling ceases to have effect if any of the following occur:

- if the provision of the relevant Act that was the subject of the ruling is repealed or amended, the ruling will cease to be effective from the date such repeal or amendment is effective; or
- if a court overturns or modifies an interpretation of the relevant Act on which the ruling is based, the ruling will cease to be effective from the date of the court's judgment unless:
 - the decision is under appeal; or
 - the decision is fact specific and the general interpretation upon which the ruling was based is unaffected; or
 - the reference to the interpretation upon which the ruling was based was "obiter dicta" (that is, the interpretation was not part of the binding decision of the Court).

The ruling ceases immediately upon occurrence of events above whether or not the Commissioner has not published a notice of withdrawal or modification.

This ruling may be withdrawn by written notification given to the applicant, provided that the Commissioner must first give the Applicant notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decisions to withdraw or modify the ruling.

This Ruling is a tax decision for the purposes of the Tax Administration Act 2022 (TAA) and if you are dissatisfied with the decision you may object to the decision in accordance with section 55 of the TAA.

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