

Can the ATO's public rulings help your outcomes?

The ATO can issue public rulings that provide guidance on the interpretation of various tax laws.

Public rulings generally deal with priority issues that have been found to require clarification, so if you have a concern about a particular area of tax law, you may find that many of your concerns are shared by others and may have already been addressed.

Public rulings provide taxpayers with certainty and protection if they follow the ruling as it applies to them. However, taxpayers who ignore public rulings may face severe penalties and interest.

Note that public rulings are binding on the Commissioner of Taxation (the Commissioner). They may offer some protection against having to pay a tax shortfall in the event that the ruling is found to be incorrect if the taxpayer relies on it.

The Commissioner may exercise his discretion about imposing a penalty on top of a tax shortfall where the taxpayer has drawn upon and relied on incorrect information contained in other publications. However, where these booklets and pamphlets are not classed as a "binding ruling", a tax shortfall resulting from a taxpayer relying on it when it may be incorrect would still need to be paid.

Type of public rulings

Public rulings can sometimes include:

- tax determinations and tax rulings

- tax return instructions
- information booklets
- ATO media releases, and
- speeches or statements by senior officers of the ATO, which must state that it or selected parts of it constitute a public ruling.

Public rulings can cover a number of taxes, which may include any of the following:

- income tax
- Medicare levy
- fringe benefits tax (FBT)
- withholding taxes
- indirect taxes – including goods and services tax (GST), wine tax and luxury car tax
- excise duty
- the administration or collection of the above taxes, levies and duties
- a net fuel amount, or the administration, collection or payment of a net fuel amount
- a net amount or the administration, collection or payment of a net amount; and

- a wine tax credit, or the administration or payment of a wine tax credit.

Date of effect of a public ruling

Public rulings state the ATO's interpretation of tax laws and is taken to have always applied unless:

- the ruling states that it applies only after a particular date, or
- the ATO feels it is unfair to disturb arrangements existing before that ruling.

What happens if you disregard a public ruling?

There is no compulsion on a taxpayer to follow a public ruling. However, if a taxpayer is subject to a tax shortfall penalty, a public ruling is a relevant authority in determining whether the taxpayer has a reasonably arguable position and if reasonable care was exercised. If there is a tax shortfall because a ruling was not followed, penalties can be imposed unless the taxpayer can demonstrate reasonable care was taken and they had a reasonably arguable position.

If in doubt, it would be prudent to follow the public ruling and then lodge an objection against the assessment or seek a private ruling (see below). By using either of these two approaches, the taxpayer protects their rights and avoids the possibilities of tax shortfall penalties.

What happens when a ruling is withdrawn?

In the case of withdrawal of part of a public ruling, the portion that was not withdrawn continues to hold effect for both past and future arrangements. For any arrangement that started before the withdrawal, the former ruling generally applies – provided it is favourable to the taxpayer.

For example, a public ruling dealing with expenditure incurred by an employer-sponsored super fund says deductions are allowed if the expenses are incurred on behalf of the fund by trustees of the super fund or the sponsoring employee. A further public ruling is issued, withdrawing the previous ruling as it affects trustees. In that case, the earlier ruling continues to apply to expenditure incurred by sponsoring employers.

What is the difference between a tax ruling and a tax determination?

A tax determination (TD) is a type of ruling regarding a very specific point of law and has the same status as a public binding ruling.

The difference between a TD and a public ruling is that a TD deals with single issues whereas a public ruling looks at all of the tax implications that might be involved in an arrangement or transaction.

Many times a TD is a result of a specific decision in case law. For example, a TD might deal with the assessability of a particular receipt to advise whether it is income under ordinary concepts. A public ruling, on the other hand, may discuss the assessability of the receipt in a much broader context.

Do online brochures and information booklets from the ATO constitute a public ruling?

As a general rule, a published booklet or other information issued (particularly online) does not become binding on the Commissioner unless the document or information specifically states that it is a public ruling.

What if my tax position is still unclear? Can a private binding ruling from the ATO help?

If there are no public rulings available that specifically deal with or provide guidance on your situation, it may be worth applying to the Commissioner for a private binding ruling.

A private ruling is a written ruling from the Commissioner that considers how the tax law applies or would apply to the taxpayer in relation to a particular arrangement. For example, a taxpayer may seek the Commissioner's position on whether the sale of real estate is on capital or revenue account.

The Commissioner is legally bound to adhere to a private binding if the taxpayer relies on it – the taxpayer however is not legally obliged to act in accordance with the ruling and can take another position available under tax law. In this regard, a private binding ruling would give the taxpayer certainty as to the position that the ATO would take.

For this and any other questions regarding rulings issued by the ATO, please contact us.

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