

# Revenue | Rulings

## General information on private rulings

### Revenue Ruling GEN.009

Replaces GEN.007

#### Preamble

This ruling, which replaces Revenue Ruling GEN.007, has been revised to further clarify the status of private rulings issued by the Commissioner of State Revenue to a particular taxpayer.

The Commissioner of State Revenue issues two types of rulings - public and private. Public rulings are issued as part of the Revenue Rulings Service introduced by the State Revenue Office (SRO) in June 1993 as a method of publishing and disseminating decisions on the interpretation and application of legislation administered by the Office (see Revenue Ruling GEN.001). These rulings detail the SRO's position or policy on a particular issue and are of general application to taxpayers. Private rulings are issued in response to specific requests by taxpayers, or their representatives, seeking advice on the interpretation of the legislation for a situation encountered by a particular taxpayer. The SRO is not required by law to issue private rulings but does so to help taxpayers pay the correct amount of tax.

#### Ruling

##### (a) Application requirements

A person, who is uncertain of his liability to pay tax under the legislation administered by the SRO, may apply to the Commissioner for a private ruling. An applicant may apply individually or jointly with others who are party to the arrangement or transaction. The application may be made through an agent or representative.

The application must be in the form of a written submission lodged with the SRO, and must:

- explain why a private ruling is required;
- describe the legislation and the issue in question;
- state the applicant's interpretation of the provisions at issue and the rationale for such views, including arguments for and against and any relevant case law;

- identify all parties involved by name and address;
- provide all material facts and copies of any relevant documents;
- permit the Commissioner access to such information or third parties as the Commissioner may require.

Where the ruling request concerns a proposed course of action, the application must be accompanied by a statement signed by the applicant (and any other joint applicants) containing:

- an estimated completion date for the proposed course of action; and
- a declaration by the applicant (and other relevant parties as appropriate) to the effect that there is a genuine intention to proceed with the proposed course of action depending on the ruling given, and that a full disclosure of all the relevant facts has been made.

##### (b) Commissioner to decide whether a private ruling will be issued

The SRO wishes to give taxpayers all possible help to comply fully with the Acts administered by the Office and, for that purpose, the Commissioner will issue a private ruling at the request of an individual taxpayer.

However, it is not appropriate for the Commissioner to give taxpayers private rulings which would enable them to practice tax avoidance or to exploit ambiguities in the legislation. For this reason, requests for private rulings may sometimes be refused.

Generally a private ruling will not be issued to a taxpayer who presents a hypothetical situation or an opinion. Nor will a private ruling be issued to evaluate alternatives and advise which option results in the least liability for tax or duty. In no circumstances will the SRO engage in an iterative process in which a taxpayer who receives an unfavourable decision requests another ruling for a similar, but modified, situation or document.

The Commissioner may issue a private ruling on a proposed course of action if the taxpayer is unable to decide whether to proceed without receiving advice of the SRO's view of the tax consequences. Before a ruling will be issued in these circumstances, the taxpayer must give the SRO an estimated completion date for the proposed course of action and must demonstrate a genuine intention to proceed with the proposed course of action unless the ruling indicates that it would be impractical to do so, or raises issues not previously addressed.

In some instances it may be necessary to give a qualified ruling stating the Commissioner's current position but advising the taxpayer of the possibility of a change of opinion. This would occur when the SRO is awaiting judicial interpretation of the same issue which concerns the taxpayer or when it is known that legislative amendments are contemplated.

#### **(c) Process**

The Commissioner will examine the application presented and advise the applicant whether a private ruling will be issued.

If the Commissioner decides to issue a private ruling, further information from the taxpayer, or third parties, may be sought.

A private ruling will always be given in writing and will not be provided until the Commissioner has obtained all the information considered relevant and necessary. No discussion or other written documentation exchanged in the process of developing the ruling forms part of a private ruling. In no circumstances should a person construe oral advice given by the SRO to be a private ruling.

#### **(d) Application of private ruling**

A private ruling applies only to the taxpayer to whom it is issued and to the factual situation presented. Other taxpayers cannot rely on it as a precedent.

Likewise, a tax practitioner may not rely on a private ruling obtained for one taxpayer as a precedent for another client.

The Commissioner will be bound by any private ruling issued to a taxpayer if:

- **the taxpayer and all relevant parties have been fully identified;**
- **the taxpayer has made a full disclosure of all material facts and information in the application and any subsequent submissions sought by the Commissioner;**

- **the circumstances to which the ruling is applied are identical to those represented to the Commissioner in the application and subsequent submissions; and**
- **the taxpayer acts, or has acted, in accordance with the ruling.**

If the facts or circumstances, as presented by the applicant, change after the private ruling has been issued, the taxpayer, or their representative, must contact the SRO to clarify whether the private ruling still applies.

A qualified private ruling applies as long as the conditions stated in the ruling continue to apply and the onus rests with the taxpayer to monitor the continuing validity of the ruling.

#### **(e) Non-application of private ruling**

The Commissioner will not be bound by a private ruling where it is found that:

- **a taxpayer, or their representative, has failed to provide all material information which ought to have been provided; or**
- **has misrepresented information when seeking a private ruling.**

The ruling will be considered never to have had application and accordingly, the withdrawal of such a ruling would have both a prospective and retrospective effect.

In cases where there has been a failure to provide all material information, the Commissioner will take into consideration the role of the SRO in obtaining further information to determine the date of the withdrawal of the ruling. However, the onus is on the taxpayer, or their representative, to provide all material information in the first instance and to monitor all communications from the SRO which advise of legislative amendments, judicial decisions and policy changes.

#### **(f) Withdrawal of private ruling**

The Commissioner may depart from a decision made in a private ruling if:

- **the advice is subsequently overruled by a court, tribunal or legislative amendment; or**
- **the Commissioner has determined that a particular ruling issued is incorrect.**

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The Commissioner will review the circumstances of the case before deciding whether the ruling should be withdrawn. If the Commissioner decides the ruling must be withdrawn, it will be withdrawn from the date of the decision of the court or tribunal (or such later date as the Commissioner decides is appropriate), the date of the amendment or the date of the Commissioner's determination respectively. If the withdrawal of the ruling results in a new liability for the taxpayer, tax or duty will be payable only from the date on which the ruling is withdrawn.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.001.

**Commissioner of State Revenue**

**December 1998**

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