



Office of State Revenue
NSW TREASURY

ISO 9001-Quality Certified

Revenue Ruling No. G6

Private Rulings

PREAMBLE

The Office of State Revenue issues two types of rulings:

- Revenue Rulings, which are public rulings issued to clarify the Chief Commissioner's interpretation of the law, particularly where the law is unclear or perhaps complex.
- Private rulings, which are issued in response to requests by taxpayers, clients, or their representatives, seeking clarification on the interpretation of the legislation for a specific situation encountered by a particular taxpayer or client.

These rulings do not have the force of law but are issued to help taxpayers pay the correct amount of tax or clarify the interpretation of the laws administered by OSR. The Chief Commissioner will stand by the rulings until such time as the laws change or the Chief Commissioner has reason to alter that interpretation.

This ruling replaces Revenue Ruling SD 209 and clarifies the status of private rulings and the conditions under which they will be issued. Although most private rulings will relate to duty transactions or documents, private rulings can apply to all laws administered by OSR.

RULING

When Private Rulings Will Be Issued

A private ruling will be provided, at the Chief Commissioner's discretion, in the following circumstances:

- (i) where a person encounters a specific situation where the legislation or public ruling is not clear and there is room for doubt as to the correct method by which the assessment should be determined or how the legislation should be applied;
- (ii) on drafts of a new form of standard document or transaction that is of an ongoing nature, and that will be used widely by an organisation that is to be a party to those documents;
- (iii) in exceptional circumstances, where the Chief Commissioner is satisfied that the transaction is significant to the State economy and involves issues on which a private ruling is required.

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When Private Rulings Will Not Be Issued

The Chief Commissioner will not issue a private ruling:

- to taxpayers, clients or their representatives who present hypothetical situations where all the relevant parties have not been fully identified, or where insufficient information is provided;
- to evaluate alternative options to advise which one results in the least liability for tax or duty;
- on redrafted or modified documents relating to the same matter on which a private ruling has already issued to the taxpayer, client or representative;
- where the Chief Commissioner is satisfied that the application is made for the purposes of tax avoidance;
- where the application is frivolous or vexatious or the arrangement covered by the request is not seriously contemplated;
- where a decision, or an assessment of duty or tax has already been made in relation to the matter, or the dutiable transaction has occurred or the documents or instruments have been executed.

How To Obtain A Private Ruling

To obtain a private ruling, taxpayers, clients or their representative must:

- complete an “Application for a Private Ruling” ([see attachment](#)) form and sign the declaration that a full disclosure of all the relevant facts has been made;
- submit a written request to the Chief Commissioner explaining why a private ruling is required and detailing the applicant’s interpretation of the application of the relevant legislation to the issue, together with supporting arguments and any relevant case law;
- provide draft, unexecuted copies of the documents/instruments representing the proposed transaction, where applicable; and
- ensure the issue in question is clearly identified together with the names of all the parties involved and including all the relevant facts.

Conditions

- the person requesting a private ruling must permit the Chief Commissioner to access such information or other parties as the Chief Commissioner may require to make a ruling with the understanding that commercially sensitive information will be kept confidential;

- a private ruling will apply only to the taxpayer or person to whom it refers and in regard to the specific situation presented and cannot be used as a precedent by other taxpayers or clients or for similar matters (with the exception of private rulings relating to drafts of any new form of standard document or transaction that is of an ongoing nature that are already provided for in this ruling);
- the request for a ruling and the ruling issued must be in writing;
- taxpayers or clients who obtain a private ruling and later wish to proceed with the transaction, must forward all the relevant documentation and a copy of the private ruling to the officer within OSR who issued the ruling.

Are Private Rulings Binding?

- Private Rulings do not have the force of law, but the Chief Commissioner will stand by any private ruling issued provided that:
 - the taxpayer or client and all relevant parties were fully identified in the request for a private ruling;
 - the circumstances to which the ruling is applied are identical to those represented to the Chief Commissioner in the application for a private ruling;
 - the applicant has made a full disclosure of all material facts and information in the written request for a private ruling;
 - the taxpayer or client acts, or has acted, in accordance with the ruling;
- The Chief Commissioner will assess or administer in accordance with a private ruling until such time as an assessment or decision in accordance with the ruling is subsequently overturned by a court or tribunal; or
 - the advice in the private ruling conflicts with a subsequent Revenue Ruling or legislative amendment; or
 - the Chief Commissioner subsequently determines that a particular private ruling is incorrect,subject to the provisions of section 9(2) or 9(3) of the Taxation Administration Act 1996.
- A private ruling will not be binding where a taxpayer, client or representative has failed to provide all material information which ought to have been provided, or has misrepresented information when seeking a private ruling;

Enquiries relating to private rulings should be directed to the Technical Help Desk, Revenue Advisory Services Division, at the Parramatta Office of the Office of State Revenue.

**P Achterstraat
Chief Commissioner of State Revenue
18 December 2001**