

Level 2
95 Pitt Street Sydney, NSW 2000
Telephone 02 8223 0000
Facsimile 02 8223 0077
Email tia@taxinstitute.com.au
Website www.taxinstitute.com.au
ABN 45 008 392 372



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Inspector-General of Taxation
GPO BOX 551
SYDNEY NSW 2001

Email: privaterulings@igt.gov.au

Dear Sir

Review of Private Rulings Income Tax Matters

The Taxation Institute of Australia (**Taxation Institute**) is pleased to provide comments on the *Review into the Tax Office's Administration of Private Rulings*.

Our Submissions concerning the matters raised in the Terms of Reference and Consultation Plan for the *Review into the Tax Office's Administration of Private Rulings* are set out below.

1. Ongoing relevance of the register of edited private rulings and the relationship of the register to the ATO's more authoritative forms of guidance such as ATOIDs

The Taxation Institute welcomes the ATO decision to retain the Register of Edited Private Rulings (**Register**). This decision reinforces the Taxation Institute's view that the Register:

- provides the necessary checks and balances in taxation administration through greater transparency and consistency in the application of taxation laws;
- is frequently used by tax practitioners seeking guidance on the indicative views that may be taken by the Australian Taxation Office (**ATO**) in relation to the application of taxation laws to specific factual circumstances;
- provides an insight on how contentious taxation matters may be resolved by the ATO; and
- provides tax practitioners with a further tool in the decision making process as to how to approach taxation issues.

Further, the decision to retain the Register reinforces the Taxation Institute's view that, although related, ATO Interpretative Decisions (**ATOIDs**) and private rulings serve different functions. Access to ATOIDs does not diminish the importance or relevance of the Register. In this regard, the Taxation Institute's view is that:

- the Register supplements more authoritative forms of ATO guidance (such as ATOIDs);
- ATOIDs are, by their nature, general and provide minimal factual material. This limits their application as a guidance tool when trying to obtain guidance or an indication of the ATO's approach to certain tax issues. The private rulings on the Register often provide more factual material which can provide better guidance to practitioners regarding the ATO's approach to the relevant tax issue; and

- not all private rulings are used as the basis for ATODs. Therefore, the Register provides guidance on a wider range of factual scenarios than available through the ATODs.

In summary, the decision to retain the Register reinforces the Taxation Institute's view that the Register is a relevant and invaluable tool for tax practitioners. Further, the Taxation Institute submits that despite the relationship between the private rulings on the Register and ATODs, both are necessary to assist tax practitioners in providing accurate taxation advice.

2. Timeliness, accessibility and productivity issues for private rulings and issues concerning their binding nature

Timeliness, accessibility and productivity

In our members' experience, private rulings are generally not issued within the 28 day period in which the ATO endeavours to provide a response. Further, in our members' experience, this is certainly the case where the private ruling concerns complex tax and factual matters. However, obtaining a private ruling for simple matters can also often take more than 28 days.

Our members do not see the above comments as a criticism of the ATO as there is a general understanding among our members that the process of responding to a private ruling application can be a time consuming matter. Nevertheless, the general view is that a taxpayer cannot expect to obtain a private ruling in a timely manner prior to entering into a transaction.

The Taxation Institute submits that private rulings would be more useful if taxpayers could rely on them being provided within 28 days. This would assist taxpayers by providing them with certainty regarding the tax effect of a transaction prior to entering into the transaction.

Binding nature

Overall, in our members' experience, the ATO does not ignore their own private binding rulings (PBRs). Generally, the ATO does not follow a PBR where the ATO considers that the facts are materially different from the facts ruled on. However, there have been instances reported by our members where the ATO has not followed a PBR where another PBR is sought on an identical transaction at a later point in time or where only immaterial facts have changed between two transactions. The Taxation Institute submits that in such circumstances discussed above, the ATO should have to disclose the reasons for the change in their approach or explain why the factual changes affect the tax outcomes of the particular transaction.

3. The extent to which the ATO has implemented the administrative recommendations on private rulings made in the ROSA Review and Inspector General's 2008 Review on the potential revenue bias in private rulings

ROSA review

The Taxation Institute understands from the NTLG "Open Action Items" list presented at the March 2009 NTLG meeting that improving the language and clarity of private rulings is the one outstanding administrative recommendation from the *Review of Self Assessment (ROSA Review)* in respect of private rulings. This is an on-going task with an expected finalisation date of August 2009.

Our members' experience to date indicates that there has been no substantial change in the language or clarity of the private rulings received from the ATO. However, our members recognise that this is an on-going task that will take time to implement and will benefit them and the private ruling process in the future.

To ensure that the project remains on track, the Taxation Institute recommends more regular reporting of progress, including through the NTLG process, and further opportunities for consultation.

Revenue Bias

Overall, our members have confidence in the private ruling process. Further, the Inspector General's review of the public binding rulings process (i.e. *Review into the Tax Office's administration of Public Binding Advice*) concluded that, in that context, there was no pro revenue bias. However, that review did not explore the technical merits of the relevant decisions made in the rulings process or the process by which ATO officers weigh competing precedents and interpretations of the tax law in determining their view regarding the application of the law to particular circumstances.

The Taxation Institute notes that there is a perception among some members that in weighing up the competing precedents and interpretations in respect of the tax law, ATO officers may place greater weight on factors that favour the revenue. This perception and the need to address it, was raised in the context of public rulings at the NTLG meeting in June 2007. The ATO rejected the arguments regarding a pro revenue bias.

However, regardless of whether there is a pro revenue bias or not, there remains a perception that a pro revenue bias exists. Accordingly, the Taxation Institute considers that it would be appropriate for the ATO to focus on addressing this perception regardless of whether it considers the perception is justified or not.

If you require any further information or assistance in respect of our submission, please contact Joan Roberts on 03 9611 0178 or the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis, on 02 8223 0011.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joan Roberts', with a stylized flourish at the end.

Joan Roberts
President