

# Binding rulings

How to get certainty  
on a tax position



## About this guide

This guide tells you what binding rulings are and the process for applying for one. It also gives some detail about when we can and can't give rulings.

The information in this guide is based on Part 5A of the Tax Administration Act 1994 and the Tax Administration (Binding Rulings) Regulations 1999.

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## What is a binding ruling?

A binding ruling is Inland Revenue's interpretation of how a tax law applies to a particular arrangement, person or item of property. This can be on any agreement, contract, plan or understanding (whether enforceable or not), including any steps and transactions that carry it into effect or it can be whether a person or item of property meets the requirements of the tax law.

Binding rulings can provide certainty on the tax position for a wide range of transactions, from complex financing transactions to land subdivisions. Anyone can apply for a binding ruling on a transaction, but there are some restrictions on our ability to provide a binding ruling, as described on page 13.

If a binding ruling applies to a taxpayer and they follow it, Inland Revenue is bound by it (provided that the facts are exactly as described in the ruling, and that the stipulated conditions are satisfied). A taxpayer is not required to follow the approach in the ruling.

A binding ruling does not remove the requirement to file an income tax return and pay any taxes.

We are required by law to charge a fee for preparing a private or product ruling.

For questions concerning binding rulings email [rulings@ird.govt.nz](mailto:rulings@ird.govt.nz)

## What is the purpose of a binding ruling?

Binding rulings help taxpayers comply with the law and to meet their obligations under the law. They provide certainty about how Inland Revenue will interpret how the law applies to a specific transaction, person or item of property.

They are especially useful where:

- the law is unclear and there is more than one possible interpretation
- new legislation applies to the transaction
- the transaction is novel, sensitive or controversial
- significant issues arise or may have a wide impact
- the arrangement is a complex financing transaction.

## Types of binding rulings

There are five types of binding rulings:

- public rulings
- private rulings (including advance pricing agreements)
- short-process rulings
- product rulings
- status rulings.

We publish product and public rulings at IR's website [www.ird.govt.nz](http://www.ird.govt.nz) (search keywords Published Statements then select from your search results "How tax laws affect you").

### Public rulings

Public rulings interpret how a tax law applies to a specific type of arrangement that has a wide general application. If your circumstances match those in a public ruling and you meet any requirements in the ruling, Inland Revenue is bound to follow it. You may apply it, but you are not required to.

You can suggest tax interpretation topic of broad interest, by email to [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz)

### Private rulings

A private ruling gives a single taxpayer or group of taxpayers an interpretation of how the tax law applies to a particular arrangement, person or item of property. You must apply for a private ruling, and it is confidential to you and any other applicants.

A private ruling only applies to the person(s) named in the ruling. The facts must be exactly as described in the ruling and the person must satisfy any stated conditions.

### Short-process rulings

A short-process ruling is a quicker, less expensive way for individuals and organisations, with an annual gross income of \$20 million or less, to apply for a binding ruling. The tax amount relating to the ruling application must be less than \$1 million.

A short-process ruling only applies to the person(s) named in the ruling. The facts must be exactly as described in the ruling and the person must satisfy any stated conditions.

Short-process rulings have an online application process. For more information go to [ird.govt.nz/spr](http://ird.govt.nz/spr)

## Product rulings

A product ruling is an interpretation of how the tax law applies to a particular "product" or "consumers" of a "product" that is entered into by several people on identical terms. For example, a product ruling could be given on whether delivery drivers are employees or independent contractors.

Product rulings can only be made where it isn't practicable to identify the relevant taxpayers, and whose characteristics will not affect the content of the ruling.

A product ruling only applies to persons who transact as described in the ruling, and satisfy all stated conditions.

## Status rulings

If a relevant tax law is amended or repealed, the person who applied for an existing private or product ruling can apply for a status ruling on whether that amendment or repeal changes the way that the law applies in the private or product ruling.

## Advance pricing agreements (APAs)

APAs represent a cooperative approach to addressing transfer pricing compliance. They can produce significant time and cost savings for both tax authorities and multinationals in comparison with an audit. APAs encourage upfront taxpayer compliance and early resolution of potential disputes. They offer a practical solution to complex cases with difficult facts and circumstances.

APAs are ideally suited to issues involving intangibles and specialised services which can result in a wide range of opinions as to pricing.

Unilateral APAs can be issued in the form of a private ruling.

Applicants for APAs must complete an *Application for private ruling on transfer pricing arrangement - additional declaration (IR713A)* form as well as an *Application for private ruling (IR713)* form.

You can request assistance by sending an email to **transfer.pricing@ird.govt.nz**

An application fee of \$322 is payable for a private ruling.

If any overseas travel is involved in completing an APA, we will provide an estimate of such costs prior to travel being undertaken and seek to recover "out of pocket" costs (transport, accommodation and meals) on an actual and reasonable basis from the taxpayer.

# What you need to know

## Who can apply for a ruling

Any person (including a company, trust and other unincorporated body) in their own right, or on behalf of a person who is yet to come into legal existence (like a company yet to be incorporated), can apply for a private or product ruling. The person must legally exist before the ruling can be issued.

An agent can apply on behalf of a person(s), provided the agent has the written consent of the applicant(s).

For private rulings, the applicant must be, or intend to be, a party to the arrangement or be the person affected, and can apply either individually or jointly with other persons who are parties to the arrangement.

For product rulings, the applicant must be, or intend to be, a party to the arrangement or be a promoter of the proposed arrangement.

## What does it encompass?

Most binding rulings apply to "arrangements" (although some situations may not require there to be an arrangement). An "arrangement" is any agreement, contract, plan or understanding (whether enforceable or not), and includes any steps and transactions that carry it into effect. It also includes background information Inland Revenue considers necessary or relevant for a private or product ruling.

A private ruling may be made on either a single arrangement, person or item of property or a recurring arrangement. A recurring arrangement is a series of identical transactions the applicant enters into with any number of other parties, eg, selling TVs on hire purchase.

We can issue private or product rulings on transactions that have been entered into, or proposed arrangements that are "seriously contemplated".

We issue rulings on the basis of the information and facts provided to us. We may ask questions to clarify and confirm the facts provided.

Inland Revenue can inquire into the correctness of the facts either before or after making the ruling. If the facts are incorrect, the ruling may not be binding.

## Pre-lodgement meetings

The purpose of a pre-lodgement meeting (PLM) is to help you decide whether you want to apply for a ruling, and if so, to submit the best application possible.

If you want a draft ruling within three months, you (or your agent) must contact us to arrange a PLM. In this discussion the requirement for a PLM may be waived, for example, if your application is a straightforward reissue of an existing ruling

The PLM typically involves:

- gaining a preliminary understanding of the issues
- discussing the scope of the ruling you're looking for (which could help you to focus on the most important issues)
- letting you know what information you'll need to supply with your application (eg, relevant documents, specific areas of analysis or transaction pre-tax and post-tax cash flows)
- discussing our timeframes
- telling you about our fees, that are payable irrespective of the outcome of your application.

A PLM can help you decide whether you want to go ahead and apply for a ruling and help you submit the best application possible.

## Additional meetings

We may have additional meetings with you while we consider an application, to help us understand and clarify factual matters, or to discuss any concerns we may have.

## When private and product rulings are not binding

The main advantage of a private or product ruling is that it is binding on Inland Revenue. If a taxpayer applies the tax law in the way stated in the ruling, Inland Revenue **must** follow the ruling, provided the taxpayer satisfies all stipulated conditions. The applicant, however, is not required to follow the ruling.

It is very important to note that a private or product ruling will **not** be binding on Inland Revenue if:

- there's a material difference between the facts identified in the ruling and what is actually entered into or
- the applicant materially omits or misrepresents information or
- a stipulated condition in the ruling is not satisfied.

Private and product rulings are only binding on the person(s) stated in the ruling. They are not binding for any other person or situation, no matter how similar the facts may be. If you need certainty on how the tax laws apply to a transaction, you will need a ruling on that specific transaction.

### Tax law changes

A private or product ruling does not apply from the date a tax law is repealed or amended, if it changes the way the law applies in the ruling. If a relevant tax law changes and you have a private or product ruling, you can apply for a status ruling to determine the effect of the law change.

## How long it takes to consider a ruling application

### Private and product rulings

Generally, we'll complete our consideration of your application and send you a draft ruling (or contrary view) within 10 weeks of receiving a complete application.

However, the timeframe for delivering a draft ruling (or contrary view) becomes six months from the date we receive your application if:

- it has more than eight legal issues or
- we haven't had a PLM with you (unless we've waived that requirement) or
- it's an APA.

A contrary view will set out our conclusions and reasoning if we cannot make the ruling as requested.

These timeframes exclude the time where we are waiting for:

- confirmation of our estimated costs or
- any information we've requested where we can't progress the application without the information, and we've advised you or your agent that we've put the project on hold.

If you have a genuine pressing need for your ruling more quickly than 10 weeks, we strongly recommend you tell us (and why). We will do our best to meet your timeframes, but we still need to be satisfied that the interpretation in a ruling is correct, so a shorter timeframe will not always be possible.

### Short-process rulings

Generally, we'll complete our consideration of your application and send you a draft ruling (or contrary view) within 6 weeks of receiving a complete application.

However, the timeframe for delivering a draft ruling (or contrary view) may take longer if it:

- does not have enough information
- requires consideration of several issues
- is sent to us around the holiday period.

If you have a genuine pressing need for a short-process ruling more quickly than 6 weeks, we strongly recommend you tell us (and why). We will do our best to meet your timeframes, but we still need to be satisfied that the interpretation in a ruling is correct, so a shorter timeframe will not always be possible.

## How long a ruling applies for

Each private, product or short-process ruling specifies the period or tax year(s) it applies for, and only binds Inland Revenue for that period or tax year.

In practice, we ordinarily issue private or product rulings for a period of three years. For information on when we will rule for a period other than three years, see QB 17/03: Tax Administration Act 1994 – the period for which a private or product ruling applies.

## Fees

We are required by law to charge an application fee and an hourly fee for preparing private and product rulings. All fees quoted include GST.

- The application fee of \$322 covers the cost of reviewing your application to establish whether it is valid and complete and the first two hours working on your application.
- Thereafter a fee of \$161 per hour or part-hour for all applications is applied
- For APAs, you are required to pay the application fee of \$322 but no further fee is payable other than overseas travel costs if required (refer to APA pg 5).

We will send you a written estimate of the likely cost of your ruling, usually within two weeks of receiving your application. We will not do any work on your application until we receive written confirmation approving our estimate.

We can only provide an estimate of our fees, and not a guaranteed "price". If we find the complexity of the issues requires further time, we may increase our estimate and seek your approval to continue.

The cost of a private or product ruling can vary significantly.

As a guide, the cost for rulings ranges between \$5,000 and \$45,000. The average fee was approximately \$15,000, reflecting the fact that many binding rulings relate to substantial commercial transactions.

The fee for a short-process ruling application is \$2,000 (GST inclusive). This is a flat fee, and must be paid in full at the time the application is submitted.

## Waivers of part of the fee

The general principle is that fees are chargeable for private or product binding rulings based on the time it takes us to consider the application.

However, we can waive part or all of the fee payable for a private or product ruling application if it is fair and reasonable to do so in the circumstances.

In practice, we will only waive fees in limited circumstances.

## Ways to pay the fee

You can pay your application fee electronically using your banks internet facility.

If your bank does not yet have this facility you can still make internet payments through your bank using the following details:

|                            |                            |
|----------------------------|----------------------------|
| <b>Bank</b>                | Westpac                    |
| <b>Account</b>             | Inland Revenue             |
| <b>Number</b>              | 03 0049 0001100 027        |
| <b>Particulars (IRD #)</b> | 123-456-789 or 012-345-678 |
| <b>Reference</b>           | RUL                        |
| <b>Payee Code</b>          | blank                      |

# How to apply for a private or product ruling

It is important you provide all relevant information as part of your ruling application, due to the binding nature of private and product rulings. We need to fully understand what is going on, how you consider the tax laws apply, and why you hold that view.

Because private and product rulings are often about complex issues, and submissions need to be made on how the tax laws apply, you should consider using a professional tax advisor to help prepare your application.

Short-process rulings have a simpler, online application process. For more information go to [ird.govt.nz/spr](https://ird.govt.nz/spr)

## Application form

To apply for a private or product ruling, you need to complete one of the following application forms:

- *Application for private ruling (IR713)*
- *Application for product ruling (IR714)*

An applicant for an APA must also complete an *Application for private ruling on transfer pricing arrangement - additional declaration (IR713A)* form.

You can get these forms from our website or by calling 0800 257 773.

## What to include in your application

We need all the relevant details and information. If we request further information, this could delay the time required to complete the ruling. If you don't give us sufficient information, we may decline to make a ruling. Remember that a ruling will not be binding on Inland Revenue if information has been omitted or misrepresented in some way in the application.

By law, you must include the following in your application:

- the identity of the person(s) who are applying for the ruling (the applicant(s))
- all relevant facts and documents
- the tax laws you want a ruling on (see page 13 for the tax laws we can rule on)
- the propositions of law (or legal arguments) relevant to the issues raised (see page 10)
- a draft ruling (see example template in *Appendix one*).

You also need to tell us:

- the period(s) or tax year(s) which the application relates to, and
- details of any ruling application that has been lodged about the arrangement for another period(s) or tax year(s).

If you are an agent or applying on behalf of more of one person, you also need to have the written consent of the applicant(s) to apply on their behalf.

If you're applying for a product ruling, you need to tell us why it isn't practicable to identify the other parties and why the characteristics of the taxpayers who may enter into the transaction will not affect the content of the ruling. If you are a promoter applying for a product ruling, you also need to provide us with a statutory declaration that you have disclosed all relevant facts, and that the facts are correct.

## Facts and documents

You must give details of all the relevant facts and send copies of all documents relevant to the ruling, including:

- the names of all of the parties to the arrangement (in addition to the applicant(s)), including the counterparties involved in any steps or transactions
- a detailed description of the transactions and steps involved, including an explanation of what the arrangement is intended to achieve
- copies of relevant legal documents or draft documents
- recent financial statements for the applicant(s) (in some applications).

Each different arrangement or fact situation requires a separate application. If you want a binding ruling on any alternatives, you must make separate applications and show you are "seriously contemplating" each one.

We can ask you for further information at any time during the process. If, after a reasonable period, you don't provide this information, we may decline to make a ruling, and charge you for the time we've already spent on the application. You can decide to go ahead with the ruling at a later date, but you will have to apply again and provide us with the information we requested.

Where the application of the tax laws depends on certain facts being true or certain events occurring, we may decide to include conditions in a ruling. The ruling will not be binding on Inland Revenue if you don't satisfy these conditions, and we can check whether this is the case after we've issued a ruling.

### **Propositions of law (legal arguments)**

It is important that your application fully discusses any legal arguments that relate to the issues raised by your application. If you do not provide sufficient analysis, we might ask you for further submissions, or we might need to do additional research, which could add to our fees and the time taken.

For an application for a private or product ruling, relevant propositions of law include:

- sections of any legislation that are relevant to the application (including any relevant non-tax legislation, eg, the Companies Act 1993)
- legal reasons and appropriate case law that support the interpretation of the section(s) you have adopted
- possible arguments contrary to the interpretation you are seeking and legal reasons and authoritative support for these
- other material or relevant matters or sources of information that Inland Revenue should know about.

### **Draft ruling**

You need to include a draft ruling with your application. This helps us understand exactly what you want the ruling to cover and focuses our consideration on the key issues.

See page 18 for a template to use in preparing your draft ruling.

# What happens when we receive an application?

Applications will be assigned to relevant business units within Inland Revenue based on the nature of the technical issues raised. If you are interested in how we allocate issues, see our allocation guidelines.

Inland Revenue will:

- do the legal analysis required within the agreed timeframe
- contact you if there are questions or we need more information,
- send you a draft ruling or a contrary view.

## Draft ruling

If we agree in principle with the legal arguments and conclusions in your application, we'll send you a draft ruling for comment. The draft ruling will include a detailed description of the facts including any specified conditions we consider are necessary and set out our conclusions on how the tax laws apply.

## Contrary view

If we consider that we cannot make the ruling as requested in your application, we will write to you, setting out our initial contrary views and their legal basis. This could happen if:

- we do not agree with the legal arguments and conclusions in your ruling application
- significant changes to your arrangement would be necessary for us to conclude that we can rule as requested
- we would need to include significant conditions to rule favourably.

## Consultation

Once you receive a draft ruling or contrary view, you will have the opportunity to provide us with comments. For draft rulings, you can comment on any factual matters, the wording of any specified conditions or our conclusions. We'll consider your comments and (if we agree) make any relevant changes to the draft ruling. When you have approved the content of the draft ruling, we will finalise it.

If you receive a letter advising you of a contrary view, you will have one opportunity to make further arguments or submissions in response to our letter. We will also offer to meet you to discuss our views, either before or after sending the letter.

We aim to respond to any substantive comments or submissions you make (about either a draft ruling or contrary view) within one month of receiving them.

## Publication of rulings

We do not publish private rulings in any form. They are confidential between the applicant(s) and Inland Revenue. If a private ruling raises a topic of general interest, we may subsequently develop and issue a public ruling on that topic without referring to the details of the applicant(s).

We are required by law to publish product rulings two months after the ruling has been made (signed) on Inland Revenue's website and in our *Tax Information Bulletin (TIB)*.

If you ask us to, we can publish it before the two months have passed. You may have a business reason for doing this, eg, you might want to refer to the product ruling in your advertising material.

## OECD information sharing

Under Action 5 of the OECD's Base Erosion and Profit Shifting (BEPS) Action Plan, OECD and G20 countries, including New Zealand, are required to exchange information about taxpayer-specific rulings issued on cross-border activities. This will cover six categories of rulings as follows:

- (a) Taxpayer-specific rulings related to preferential regimes (although New Zealand does not have any preferential regimes).
- (b) Cross-border unilateral APAs and any other cross-border unilateral tax rulings covering transfer pricing or the application of transfer pricing principles.
- (c) Cross-border rulings providing for a unilateral downward adjustment to the taxpayer's taxable profits that is not directly reflected in the taxpayer's financial/commercial accounts.
- (d) Permanent establishment rulings, ie rulings concerning the existence or absence of, and/or the attribution of profits to, a permanent establishment by the country giving the ruling.
- (e) Related party conduit rulings.
- (f) Any other type of ruling that, in the absence of spontaneous information exchange, gives rise to BEPS concerns.

This requirement covers all private and product rulings, APAs and financial arrangement determinations that come within the above criteria. The Commissioner is required to ensure that information regarding the relevant rulings is exchanged within three months of the ruling being issued. To protect the secrecy of taxpayer information, information will only be shared with countries where New Zealand has a double tax agreement in place, and with parties to the *Convention on Mutual Administrative Assistance in Tax Matters*.

## Withdrawing an application

You may withdraw your application at any time, for any reason, before a ruling is issued, by giving notice in writing. For example, you may want to withdraw your application if you decide not to proceed with the transaction, or if you receive a contrary view from us.

You must pay any fees incurred up to the date we receive your written withdrawal.

If one party withdraws from a joint application for a private or product ruling, we will not treat this as a withdrawal by all the applicants, unless it:

- clearly affects the arrangement identified in the application, or
- results in insufficient information being provided about the application.

## Withdrawing a ruling

We can withdraw a product or private ruling at any time. We may do this if our interpretation of the law alters, if the courts reach a different conclusion about its meaning or to allow us to replace the ruling.

We will notify the person who applied for the ruling that we have withdrawn it and give them details of what that means. For product rulings, we also publish a notice of withdrawal of product rulings on our website and in the *TIB*.

## Correcting a ruling

If a private or product ruling has a typographical or minor error that doesn't change the ruling's meaning, we can correct it without having to withdraw the ruling.

## What we can rule on

Inland Revenue can make binding rulings on most provisions of the following Acts and regulations:

- The Estate and Gift Duties Act 1968
- The Gaming Duties Act 1971
- The Stamp and Cheque Duties Act 1971
- The Goods and Services Tax Act 1985 (except ss 12 and 13 of that Act)
- The Income Tax Act 2007, except to the extent that the matter in question is or could be the subject of a determination of Inland Revenue in relation to:
  - a financial arrangement (other than as permitted by s91CC)
  - petroleum mining
  - accrual expenditure
  - depreciable property
  - specified livestock.
- The Tax Administration Act 1994 (at s91CB and s91CC) sets out further situations where Inland Revenue may provide binding rulings in relation to the status of a person or item of property
- An Order in Council or regulations made under any of the Acts listed above, including double tax agreements (unless the matter is or should be dealt with by the competent authority), except:
  - where the relevant provision is or could be the subject of one of the determinations referred to above; or
  - section RD 24 of the Income Tax Act 2007.

## When we cannot rule

Inland Revenue cannot make binding rulings on the Tax Administration Act 1994, or any matter relating to the administration of the tax system, including Inland Revenue's rights or obligation to exercise its powers in any of the following areas:

- imposing or remitting penalties
- inquiring into the correctness of any return or other information supplied by any person
- prosecuting, or
- recovering debt owing by any person.

Further, in some situations Inland Revenue is unable to issue a private or product ruling, as set out in the table on pages 14 and 15. If we determine that we are unable to rule because of one of these situations, we will treat the application as though it had been withdrawn. In some of these situations, although we are unable to give a binding ruling, we may be able to assist by providing a non-binding indicative view.

## Situations where we cannot or may not rule

| Situation                                     | Description  |
|---|--|
| Not seriously contemplated                    | We cannot make a private or product ruling if, at the time the application is made or at any time before the ruling is issued, we consider that the taxpayer is not "seriously contemplating" entering into the arrangement.   |
| Application contains insufficient information | We cannot make a private or product ruling if the applicant does not give us sufficient information. We will ask for additional information if necessary, and if the information is not provided, we can decline to make a ruling.   |
| Facts and factual matters                     | <p>Except in the international transfer pricing context (ie, where the ruling is an APA), we cannot make a private or product ruling determining a "proscribed question". "Proscribed question" is defined as meaning:</p> <ul style="list-style-type: none"> <li>(a) whether facts are correct or exist:</li> <li>(b) what is a person's purpose or intention, for the purposes of any provision of the Income Tax Act 2007, that expressly refers to a person's purpose or intention, other than as permitted by s 91CB of the Tax Administration Act 1994:</li> <li>(c) what is the value of a thing:</li> <li>(d) what is commercially acceptable practice, for the purposes of any provision of that Act that expressly refers to commercially acceptable practice.</li> </ul> <p>As part of your application, you must provide all material facts. Where this is not possible, we can make conditions or statements of fact as to future facts in the ruling itself.</p> <p>If the Commissioner issues you with a draft ruling containing a specified condition or material fact, you may be able to obtain a level of certainty through the factual review process (see page 16).</p> |
| Generally accepted accounting practice        | We cannot make a private or product ruling if the application would require us to form an opinion on the application of generally accepted accounting practice.  |
| Frivolous or vexatious applications           | We cannot make a private or product ruling if the application is "frivolous or vexatious". "Frivolous" applications are not just ones that are "trifling" or "silly"; they include requests which could not possibly succeed, or which no reasonable person could treat as genuine.  |
| Private or product ruling already exists      | If a private or product ruling already exists on the application of a specific tax law to a particular arrangement, we cannot give another ruling on the same tax law for the same period covered by the existing ruling. However, a further ruling can be issued for subsequent periods or tax years if the arrangement continues after the duration of the previous ruling or is in relation to a different tax law.   |
| Double tax agreement procedures               | <p>An arrangement may have tax implications in another country with which New Zealand has a double tax agreement (DTA).</p> <p>We are able to rule on DTAs, unless the matter is (or should be) dealt with by the competent authority under a DTA. We will consult with the competent authority before issuing a ruling concerning a DTA.</p> <p>We are unable to rule on an issue that is within the scope of a mutual agreement made under a DTA, or on the interpretation of a mutual agreement. Go to <a href="http://www.ird.govt.nz">www.ird.govt.nz</a> (search keyword: QB 08/03 then tick "Technical Tax only").</p>  |
| The tax, duty, or levy is due and payable     | We cannot issue a private ruling if the matter on which the ruling is sought concerns a tax (excluding provisional tax), duty, or levy that is due and payable, unless we receive the application before the tax (excluding provisional tax), duty, or levy is due and payable. The correct way to challenge any tax assessed is through the disputes resolution and/or challenge process.   |

| Situation  | Description   |
|--|---|
| Assessment already made                                  | <p>We cannot make a private ruling if an assessment relating to the person, the arrangement, and a period or a tax year to which the proposed ruling would apply, has been made. This includes where a taxpayer has filed a return, due to this being a self-assessment. See <a href="http://www.ird.govt.nz">www.ird.govt.nz</a> (search keyword: QB 08/01 then tick "Technical Tax only").</p> <p>Again, in such cases, the disputes resolution process is the correct avenue to follow. The only exception to this is if Inland Revenue received the application before the assessment was made.</p> |
| Subject to an audit or investigation                     | <p>We cannot issue a private ruling if we are auditing or investigating how the taxation law applies to the person and to the arrangement for a period or for a tax year to which the proposed ruling would apply. See <a href="http://www.ird.govt.nz">www.ird.govt.nz</a> (search keyword: QB 07/05 then tick "Technical Tax only").</p> <p>Any disputes about subsequent assessments can be challenged through the disputes resolution process.</p>  |
| Notice of proposed adjustment                            | <p>We are unable to issue a private ruling if the application relates to a person, an arrangement, and a tax type or separately identifiable issue that is the subject of a notice of proposed adjustment under the tax dispute resolution process</p>  |
| Arrangement subject to an objection, challenge or appeal | <p>If the arrangement on which the ruling is sought, or a separately identifiable part of the arrangement, is substantially the same as an arrangement that is subject to an objection, challenge or appeal, whether in relation to the applicant or any other person, we can decline to make a private or product ruling.</p>  |
| Debt exists for previous ruling                          | <p>We can refuse to issue a private or product ruling to an applicant with an outstanding debt for a past ruling application. An applicant has an outstanding debt if they have not paid the amount stated on an invoice for an earlier binding ruling, on or before 60 days after the date stated on the invoice.</p>  |
| Resource constraints                                     | <p>We can decline to make a private or product ruling if we do not have sufficient resources to do so. This would normally only happen if a particular application required very extensive resources, or highly specialised expertise that was unavailable at the time of the application or in the foreseeable future.</p>   |
| Reconstruction   | <p>We can decide not to make a private ruling on how sGA1 (Commissioner's power to adjust) of the Income Tax Act 2007 applies or would apply to an arrangement.</p>   |

## Determinations

Generally, we are unable to rule if an issue is or could be the subject of a determination in relation to a financial arrangement, petroleum mining, accrual expenditure, depreciable property, livestock or record keeping.

In relation to the financial arrangements rules, we can issue taxpayer specific determinations on certain matters set out in the legislation (provided no general determination applies). The matters that can be determined include:

- how a spreading method applies to a financial arrangement
- the method for determining what portion of the income or loss is solely attributable to an excepted financial arrangement
- the method for determining the future value of property.

We may also be able to rule on some of these situations under s91CC of the Tax Administration Act 1994. We treat applications for determinations in the same way as private rulings, except that they are published. Please contact us for details on how to apply for a determination.

## Factual review

The factual review has been established to enhance the utility of binding rulings in situations where a ruling is, or is likely to be, issued subject to a critical factual condition. The process will give taxpayers an opportunity to obtain a level of certainty from Inland Revenue about the likelihood that the condition will be satisfied.

Find out more about the factual review process at [www.ird.govt.nz](http://www.ird.govt.nz) (keywords: "factual review" then tick "Technical Tax only").

## Contact us

For more information or to apply for a ruling (except for short-process rulings), please contact:

Tax Counsel Office  
Inland Revenue  
PO Box 2198  
Wellington

Email: [rulings@ird.govt.nz](mailto:rulings@ird.govt.nz)

You can get application forms for private or product rulings from our website, or by calling 0800 257 773.

For more information about short-process rulings, please email: [shortprocessrulings@ird.govt.nz](mailto:shortprocessrulings@ird.govt.nz)

To apply for a short-process ruling go to [ird.govt.nz/spr](http://ird.govt.nz/spr)

# Appendix: Template for private or product rulings

## PRIVATE/PRODUCT RULING

### **The Applicant(s)**

List name(s) and IRD number(s) of applicant(s).

### **Taxation Law(s)**

List the section(s) and statute(s) you want us to rule on.

### **The Arrangement (Facts) to which this Ruling applies**

Set out the relevant facts on which you seek a ruling. Include as much detail as possible. Please provide copies of any documents referred to as part of your application.

### **Condition(s) stipulated by the Commissioner**

List any conditions you think the Commissioner will need to make in order to rule as requested.

### **How the Taxation Law(s) applies (apply)**

Clearly state the outcome(s) that you want the ruling to confirm.

Include a taxation law section reference if possible. For example, you might want us to confirm that:

- An amount of expenditure will be deductible under sDA 1.
- An amount received will not be income under sCB 4.
- A specific transaction is a “financial arrangement” under sEW 3.

### **The period or income year for which this Ruling applies**

Set out the period that you want the ruling to apply for. Our standard period is three years. If you want a different period, please give reasons as part of your application.