



# Get a clear view with a private ruling

**There have been cases where people believe the idle talk about being able to coerce a better tax outcome simply by applying for a private ruling from the ATO. But there are some sober facts that you may need to keep in mind if you have thought of it yourself.**

Any taxpayer can apply for a private ruling where they have a concern that their circumstances may put them in an unusual position tax-wise. It may be that a particular transaction or event doesn't fit any known approach for tax purposes, for example, or the taxpayer may simply be looking to minimise the risk of an unanticipated tax outcome on the back of an out-of-the-ordinary financial arrangement.

For instance, asking for a private ruling can be a good way to “test-drive” a tax arrangement you may be considering, especially where the already existing information from the ATO does not seem to adequately cover all the bases.

But remember, these are one-off decisions, made only about a certain set of circumstances, and they set out how the ATO views that one particular situation. Each ruling is specific to

whoever applied for it, and only to the situation considered by the ruling. Generally these can't be picked up as a standard by any other taxpayer.

By the same token, if you happen to find, say, a “private binding ruling” (they are, after all, publicly accessible on the ATO website) and decide this ruling sounds pretty much the same as your circumstances, you need to be aware you will not get any protection from using that ruling if the ATO decides that your situation should have a different outcome.

That the term used for these rulings has the word “binding” included is indicative. If a tax practitioner applies for and is granted a private ruling by the ATO on behalf of a taxpayer, the ATO is generally bound to administer the tax law as set out in that ruling.

But if in due course the ATO issues a “public ruling” (which applies to any taxpayer if their situation fits the ruling) and the tax outcome conflicts with the one in the private ruling, it may indeed be the case that there will be a choice of which one to apply (but we will need to check on your behalf).

The other side of that coin however is that if arrangements entered into differ materially in any way from the situation spelled out in your application for a private ruling, the ATO is not obliged to be bound by that ruling (although minor variations that don't affect the way the law applies are generally acceptable).

Private rulings can cover more than just income tax laws, and can also cover indirect taxes such as the luxury car or goods and services tax, but can also cover whether an activity is a hobby or a business, or decide the value of any item.

Each party may have income tax and GST obligations, depending on their circumstances and the nature of the crowdfunding arrangement.

You also need to be aware that a ruling made in respect of a particular tax law will be changed if that law is altered by legislation or by the result of a court decision. But it is also worthwhile to point out that if a ruling is followed, and that ruling is later found to not have applied the law correctly, there is generally some protection for you (or at

least leaving you with a “reasonably arguable position”) to make a request to not have to repay any tax that would have otherwise have been owed, as well as interest and penalties.

If a private ruling affects an earlier tax assessment, the ATO will not automatically amend that assessment unless you make a point of submitting a written request for an amendment.

We can apply for a private ruling on your behalf, or you can elect to do this yourself (search on the ATO website for an application form). For companies, a public officer can apply for a private ruling, or a partner of a partnership or a trustee of a trust estate.

One last thing that should be pointed out — you must understand that just because you ask for a private ruling doesn't automatically mean you are going to get one. The ATO can refuse if it thinks a ruling would prejudice or restrict the law. It can also refuse if you are being audited over the same issue, or if it deems your application to be “frivolous” or “vexatious”.

**Important:** Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore, it should be regarded as confidential and not be made available to any person without our prior approval.