

Need tax certainty? Try a binding ruling

Tony Wilkinson, Fiona Heiford

29 May 2020

Tax is complicated – and expensive to get wrong. For taxpayers who want to avoid unexpected tax bills, or those who want to demonstrate to shareholders and other stakeholders that they have been prudent on tax matters, a binding ruling from Inland Revenue has become a commonly used means of obtaining certainty as to how a transaction will be treated for tax purposes. That is because, once issued, Inland Revenue is bound to apply the tax treatment set out in the ruling, provided there have been no changes to the facts and the taxpayer meets any conditions set out in that ruling.

Binding rulings are issued by Inland Revenue on request and set out how a particular arrangement will be treated for tax purposes. The range of transactions for which a binding ruling are obtained are as varied as the taxpayers that request them. For example, a binding ruling may apply to a new contract that a company is entering into, a restructuring of its equity or debt funding, or new employee incentive arrangements. Taxpayers also often have innovative products that are not contemplated by existing tax laws, or that fall into sensitive or grey areas. There is a high risk in rolling out these products without knowing the tax treatment that will be applied to them by Inland Revenue.

Taxpayers can apply for a binding ruling themselves, or through their accountant or lawyer. However, a ruling application must be made in the prescribed form, cannot be vague about the facts of the particular tax arrangement in question and must contain sufficient legal submissions to show Inland Revenue's ruling staff that the legal position being put forward by, or on behalf of, the taxpayer is correct. This means that the chances of obtaining a binding ruling that truly delivers the certainty required are increased dramatically when you engage a tax specialist who is experienced in the binding rulings regime.

Strategies to maximise the likelihood of obtaining a successful binding ruling

Many improvements have been made to the rulings process over the last few years, including the time it takes to get a ruling and the ability for the taxpayer to discuss issues with Inland Revenue in real time. Inland Revenue's binding rulings staff are highly educated and experienced and they are well equipped to deal with the difficult and unique factual and legal circumstances that arise in ruling applications.

Despite this, the path to obtaining a binding ruling that delivers the certainty required, and will remain binding over time, is not always easy.

To ensure that our clients' applications for a binding ruling have the best chance of success, we apply the following principles when engaging in the rulings process:

1. The application must explain the facts well – and cover all of the relevant facts. An application that provides insufficient information can result in the ruling being effectively non-binding, whereas the inclusion of irrelevant facts can confuse the process and result in unnecessary (and potentially expensive) delays.
2. A pre-lodgement meeting (PLM) with Inland Revenue should be requested and we almost always recommend that our clients attend. In these meetings Inland Revenue may raise points of concern or interest to them, or they may request further details of the facts. Having this information allows us to ensure that the ruling application has sufficient detail to address issues flagged by Inland Revenue from the outset of the process.
3. Submissions in the application regarding the tax laws must be thoroughly checked for consistency with any public rulings, interpretation statements from Inland Revenue (including the current interpretation statement on the general anti-avoidance provision, if relevant), interpretation guidelines and cases, etc. If our submissions are not consistent with them, we explain why the facts are different or why the published statement or case is wrong.
4. It is important not to ignore statements or contextual details (particularly when quoting from cases) that go against the position that the taxpayer would like to have applied to their particular circumstance. We know that Inland Revenue will look at all the relevant material and will identify any misquotations or contextually incorrect statements in the ruling application.
5. Be realistic about time frames. While most rulings are completed in less than two months, we know the circumstances in which Inland Revenue can agree to meet a shorter timeframe – but pushing for a quick turn around when it is not necessary can potentially result in the ruling being issued in a manner that does not deliver certainty on all of the tax issues required (or may

result in the level of certainty being less than optimal for the taxpayer).

6. Never assume that a negative indication (commonly referred to as a contrary view) cannot be changed. We are aware that in approximately 20% of cases where a contrary view is issued, that view is subsequently changed following further careful submissions from, or on behalf of, the taxpayer.

Our thoughts

The objective of a binding ruling application is to obtain not only a favourably binding ruling, but one that will endure and will not be subject to unnecessary conditions placed on it by Inland Revenue.

Drafting a ruling application is an art, not a science. However, to have the most successful outcome, you must not only submit the best ruling application possible, you must also be prepared and able to engage with Inland Revenue to discuss the technical aspects of the application from start to finish.

This outcome is more likely to be achieved if you engage a tax specialist with vast knowledge of the binding rulings process. It is up to you, or the specialist that you engage, to convince Inland Revenue that the interpretation of the law put forward in your ruling application, is the correct interpretation. After all, the role of Inland Revenue 's rulings team is not about revenue protection but is to determine what they consider is the correct application of the law to the facts of a particular arrangement.

How can we help

Buddle Findlay's tax team has extensive experience in obtaining binding rulings. Uniquely, our team consists of senior lawyers who have acted both for the taxpayer and Inland Revenue and so we have an unparalleled understanding of the strategies that will deliver the best outcome when applying for a binding ruling. If you'd like further information on the binding rulings process, or would like to apply for a binding ruling, we are available to discuss your individual circumstances.

Auckland

**188 Quay Street
Auckland 1010**

**PO Box 1433
Auckland 1140
New Zealand**

**P: +64 9 358 2555
F: +64 9 358 2055**

Wellington

**Aon Centre
1 Willis Street
Wellington 6011**

**PO Box 2694
Wellington 6140
New Zealand**

**P: +64 4 499 4242
F: +64 4 499 4141**

Christchurch

**83 Victoria Street
Christchurch 8013**

**PO Box 322
Christchurch 8140
New Zealand**

**P: +64 3 379 1747
F: +64 3 379 5659**