



PRIVATE BINDING RULINGS

Private Binding Rulings is the Fiji Revenue and Customs Service (FRCS) CEO's interpretation and application of tax laws on a particular arrangement of facts which are applicable to a taxpayer. A Private Binding Ruling provides certainty and clarity to the applicant as the ruling is binding on the FRCS. FRCS rolled out the Private Binding Ruling regime in November 2021. This week's Tax Talk focuses on the Private Binding Ruling and some commonly asked questions related to this.

What is a Private Binding Ruling?

A private ruling is a binding advice or confirmation that sets out how a tax law applies to a taxpayer in relation to a specific scheme or circumstance that is applicable to the taxpayer. A private ruling is based on an application that is made by the taxpayer with the payment of prescribed fees. These rulings are based on a particular set of facts (which may be speculative) that is relevant to the taxpayer only.

Why get a Private Binding Ruling?

The private ruling typically binds FRCS in relation to the arrangement for which it is issued. As such, the taxpayer will ordinarily be protected from additional tax and penalties when relying on the ruling issued. FRCS will be bound to follow the tax implications for the transaction or fact-specific arrangement as stated in the Private Ruling. With that said, the binding nature of a private ruling is only limited to the arrangement of facts provided in the application, that is, the ruling will no longer be binding on the CEO of FRCS if the facts differ from what is provided in the application or there is material omission of relevant facts in the application.

Furthermore, Private Binding Rulings are needed as tax legislation by itself often cannot give full explanations and guidelines of tax rules. This is especially so for complex areas of tax law. A fuller analysis and discussion of revenue laws is often required to give guidance on particular transactions.

Can you use a Private Ruling issued by the CEO with another taxpayer?

The benefit of a private ruling is personal to the taxpayer to whom that ruling is issued and is not binding on the CEO of FRCS against other taxpayers, that is, the same ruling does not apply to other taxpayers that have similar or same facts unless an application is made for a private ruling in relation to their transaction. While FRCS will be consistent in its taxation of transactions, FRCS will not be bound by a Private Ruling that was issued to another taxpayer.

with similar facts or circumstances.

Can a taxpayer choose to apply for an advice instead of a Private Ruling?

FRCS will continue to provide advice on general questions which are not fact specific or based on an arrangement of facts. However, this advice will not be binding on FRCS as it is not based on facts provided to FRCS. Queries relating to fact specific arrangements can only be addressed through the Private Ruling regime as such advice would be binding on FRCS in any case.

Is a Private Ruling subject to Review?

A private ruling is not a tax decision which means it cannot be objected to or reviewed in a Court of law. However, a taxpayer may object on an assessment which has resulted from the Private Ruling or apply for a review of the assessment with the Tax Tribunal if the applicant has exhausted the objection process.

What is the difference between and Private Binding Ruling, a Public Binding Ruling and a Standard Interpretation Guideline?

Private Binding Ruling, a Public Binding Ruling and a Standard Interpretation Guideline (SIG) have a common goal of providing certainty to taxpayers but the three products have some key differences, which are:

- I. Private Rulings are issued for fact specific or speculative arrangements based on applications made by taxpayers with a payment of a non-refundable prescribed fee, for example, the time of supply rule on the supply of a specific good by a particular taxpayer at a specific time;
- II. Public Rulings are issued for fact specific arrangements which affect a wide scope of taxpayers, for example, the time of supply rules for land developers only; and
- III. SIGs are issued for general areas of tax and customs laws which provide guidelines on non-fact specific issues, for example, the general time of supply rules under VAT which would cover all aspects of the subject matter.

The determination of issues on which to provide SIGs and Public Rulings is FRCS initiated (upon consultation with its stakeholders) while private rulings are initiated by taxpayers (or their representatives) based on an application.

What is the process of getting a Private Ruling?

A private ruling is obtained through the following steps:

- I. Filling in an application form which is available on the FRCS website. The form together with any attachments is emailed to the TIPU team or hand delivered to Building 3 Level 4 Nasese Complex;
- II. The team conducts a preliminary assessment on the application where we look at completeness of application, determination of any existing grounds for refusal of the application, complexity of matter and its associated fees, and the expected timeline within which FRCS will issue the private ruling;
- III. The findings of the preliminary assessment are summarised in a report and provided to the applicant within 5 working days from date of application;

- IV. Applicant has a choice of electing to proceed with the application by paying the prescribed fees and filling in an acceptance form, or electing not to proceed with the application where the applicant will be requested to complete an exit survey;
- V. FRCS provides the Private Ruling within the time provided in the preliminary assessment report; and
- VI. The applicant is requested to complete a feedback survey which will be used to improve service delivery.

How is the Prescribed fee determined?

The prescribed fee is provided in the Tax Administration (Private Rulings) Regulations 2021. The Regulation requires the CEO of FRCS to determine the complexity of an application which is associated with the applicable fees.

The fee structure is based on the table below:

Complexity of Matter	Fees (VEP)
Easily determinable	\$100
Requires a moderate degree of analysis	\$500
Requires highly technical and complex analysis	\$1000

The determination of the complexity of a matter is made by the CEO and is based on the following factors:

- I. The number of taxpayers involved in the transaction;
- II. The subject matter of the application;
- III. The structure of the entities involved;
- IV. The amount of research required to provide the ruling;
- V. The level of resources required; and
- VI. the hours required to develop and provide the ruling for the transaction or arrangement of facts.

What happens when there is a change in the law or a Public Ruling on similar facts is issued?

If the new legislation or new Public Ruling is provided which leads to some inconsistencies with the private ruling, the new legislation or the Public Ruling will take priority over the Private Ruling to the extent of the inconsistency.

On the other hand, if the Private Ruling is issued and is inconsistent with an existing public ruling, the private ruling has priority to the extent of the inconsistency.

Should you require any further information, please contact the FRCS TIPU team on tipu.techs@frcs.org.fj or send your queries on info@frcs.org.fj.