

ATO Private Rulings – When, Why and How?

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CCH Learning:

Hello, everybody, and welcome to today's webinar, ATO Private Rulings: When, Why, and How? My name is Susannah Gynther from Wolters Kluwer CCH Learning, and I will be your moderator for today. A few quick pointers before we get started. In the handouts section, you'll find the PowerPoint slides for today's presentation. If you're having sound problems, please check your audio settings on the GoTo webinar panel. Try to toggle between audio and phone. Just a reminder that within 24 to 48 hours, a notification for the e-learning recording will be emailed to you. You can ask questions at any time during the presentation by sending them through the Questions box. I will collate those questions and ask them at the Q&A towards the end of today's presentation.

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Your presenter today is Bruce Collins, founder and principal solicitor of Tax Controversy Partners. Bruce is currently helping clients to resolve all types of tax issues with the ATO and SROs. Before moving into private practice in 2017, Bruce worked for over 35 years in the Tax Office, a third of this time as a senior executive in what is now Client Engagement Group covering most ATO functions. Bruce was the leader of the Technical & Case Leadership area in private wealth for several years prior to leaving the ATO, as well as having previously been the Strategic and Technical leader for many of the ATO's law clarification and compliance risk programs. Bruce was previously involved in designing many of the systems and procedures guiding the ATO's private ruling process. I will now hand you over to Bruce to commence today's presentation.

Bruce Collins:

We should be seeing my screen now. Great. Well, enough of a picture of me. You've got one on live. Today, we'll be talking about the private ruling system, which is sometimes called the PBR system because it covers what are called private binding rules. We'll talk about what matters can and which can't be subject to a PBR; why taxpayers would want to get an ATO PBR; who is able to apply; the private ruling process, which includes the forms that the ATO asks people to complete and why they're important; what the ATO does when they actually get an application; and also the potential that the ATO may decide to refuse to rule and what circumstances can allow them to do that validly.

We'll talk about when a taxpayer can rely upon a private binding ruling. In other words, when that binding bit will apply. We'll talk about the interactions between the private ruling system and the also binding nature of ATO public rulings. We'll then look at what happens if you don't like the ruling you get and when you can object and what the limitations there are on objecting because there are quite a few. Then also looking at the tricks and traps of then trying to navigate through the Administrative Appeals Tribunal or the Federal Court or one after the other, the ATO first and the Federal Court after, and potentially even to the High Court, if you wanted to go that far. Then things that advisors in particular should consider before lodging an application on behalf of their clients because there are some limitations on the benefits of private rulings, but there are some benefits from doing it as well, so limitations, benefits, you've got to work out which way to go.

Before we kick off, we just thought we'd ask a couple of questions about the background of the people attending so I can pitch the content accordingly, so we're going to have a poll asking whether you're an accountant or tax agent, a lawyer, a financial planner, a student, or other. Back to you, Susannah.

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Not a problem. I'll just launch that. If you could please put a click in the radio button next to the choice that best describes you, that would be brilliant. Just a quick reminder that if you do have any questions, please put them into the Questions pane, and we will get to those questions at the Q&A session at the end of the presentation. I think we shall just give you five more seconds. Excellent. I'm going to close it and have a little look. We had 79% who say they're an accountant or a tax agent, 16% who say they're a lawyer, and 5% other. Back to you, Bruce.

Bruce Collins:

Thanks for that. Again, we have another one as well which is actually asking whether people are in private practice with experience of the ATO PBR system, in private practice with no experience, or in public practice, potentially at the ATO, for instance, and, again, with the usual other category at the end. So I'll just turn back to Susannah who [inaudible 00:06:16] that poll as well.

CCH Learning:

No worries. I will launch that up. Again, please put a click in the radio button that best describes you, that would be wonderful. Thank you very much. Just once more a reminder, if you do have any questions during the presentation, please put them into the Questions box, and we will get to those questions in the Q&A at the end of the presentation. I'll just give you about five more seconds to get your votes in. All right, perfect. I'm just going to close the poll, and let's have a little look. We have 53% who say they're in private practice with no experience, we have 41% in private practice with experience, and then 6% other. Back to you, Bruce.

Bruce Collins:

Thanks for that. That helps to pitch the content. Now, the ATO obviously operates the private ruling system, but it was created by government or previous governments. The aim of the private ruling system is to provide clarity in advance for taxpayers so that it can guide their self-assessment, so it was introduced originally as a consequence of full self-assessment. Back in the day in the '90s, I was involved in the self-assessment priority task project to work on this and [inaudible 00:07:52] penalties. The '92's version of the system was very similar to what I've got now, but then again, post that.

The current system was then introduced in the Taxation Administration Act to make it uniform across all taxes. The idea is that it gives advice in advance to help a taxpayer deal with the tax consequences of arrangements that they are either contemplating or are already involved with in advance of dealing with the assessment system, as we'll talk about later. That leads to certain consequences, most notably, the interaction between assessments of a matter that's subject to private ruling which have already been issued versus the private ruling itself.

Now, the key provision in relation to the PBR system, it's obviously as set out here on the slide. The commissioner may on application make a written ruling, and such a ruling is called a private ruling. Now, it says "may." That's in contrast to what you see with other provisions like the assessment provisions for income tax. It says the commissioner must make an assessment of tax for a person based upon a return lodged or other information the commissioner has. Similarly for objections, if you lodge an objection, the commissioner must make a decision on a valid objection. The word "must" is there. It's mandatory. This is permissive. So there are a variety of

circumstances which we'll talk about where the commissioner may decide not to rule, and then there's guidance for what criteria should be used in making that decision.

The requirements for the private ruling system are quite specific because you need to have various schemes for it to be valid and binding. So there might be other avenues for a taxpayer to get certainty such as through self-assessing or objection, and there might be better ways to do things than a private ruling. But private rulings are incredibly useful in the right circumstances because they bind the commissioner, as we'll talk about. Now, there's a tax ruling which actually talks about private rulings, and it talks about how the ATO administers the system. I worked on previous versions of those guidance documents. I must say they're not easy things to draft, so I think they've done a pretty good job.

Now, a private ruling can only be made for specified taxpayers. Private rulings deal with specified taxpayers. Public rulings deal with a population of taxpayers who may be subject to particular provisions. Class rulings deal with a class of taxpayers involved in a type of arrangement. Product rulings deal with taxpayers who are part of the pool of taxpayers who've been entered into a particular type of product.

Now, class rulings and product rulings are public rulings. They're just done with a narrower scope of either that class or that product. But a private ruling can actually have an enormous number of people on it or taxpayers, I mean entities, but generally, there's a relatively narrow number that in practice people apply for. It has to be for a specified period of time. In practice, the ATO is very reluctant to issue private rulings for longer than four or five years, but they can, in some circumstances, do it when the arrangement is going to be maybe 10 years of duration. I've even seen ones longer than that in some circumstances. But the uncertainty of future facts can sometimes lead to there being issues with that longer period. Sometimes you get taxpayers having to apply for a fresh ruling every four or five years for a really long-term arrangement which can remove the certainty of the process in one sense.

Now, the taxpayers who are specified, named in the private ruling, can rely on it when lodging their tax return activity statement or in addressing the machinery or administrative obligations they have under the various taxing acts and the tax administration legislation. The taxpayer isn't bound by a private ruling, which is curious. They can assess conversely, as we'll talk about later. But the commissioner is bound by a ruling if it is more generous than the general law would apply. In other words, the only good ruling is a bad ruling. The only ruling that a taxpayer can really rely upon as being binding is one which is wrong at law but which is more generous than the law should provide.

If the ruling is later found to be incorrect, the taxpayer is protected for both primary tax, and of course, if there's no primary tax shortfall arising, there's no shortfall penalties, rather non-compliance penalties that might apply for, say, not lodging a return or something that would otherwise arise. Now in that sense, as I've said, the best ruling may be a ruling that's wrong for a taxpayer, but it has to be more beneficial. In other words, if it's wrong and it's less beneficial, that doesn't bind a commissioner to do that. It's a protection, it's a shield if you like, against an adverse outcome. It's not a sword to deliver an adverse outcome.

Now, a PBR can be issued on a relevant provision, which is actually a lot of the issues. It talks about income tax; the Medicare levy, which flows from income tax issues; fringe benefits tax, franking taxes including franking deficit tax, over-franking tax, and the venture capital deficit tax; indirect taxes including GST, wine equalization tax, and luxury car tax. It can also be issued on other basis of administration and collection of the above taxes, levies, and duties. So it covers things that are not just about the assessment of liability, but about the administration and machinery provisions in the act now. It didn't used to be, but it was changed in the 2000s.

Now, the commissioner can only rule on a tax law covered in that list. They can't rule, the ATO, on the operation of general law. So a common law issue, like how trusts work, a provision in relation to the trustee act in a state or territory, corporations law governed by the Corporations Act, or common law issues like a principal and agent or some sort of legal remedy issue, they can make assumptions about that, but they can't actually rule on it. They can take into account how they think the law works, but they're not bound by that part of the ruling.

Now, also now there was a bunch of fuss years ago about the question of valuation issues and questions of fact and whether the commissioner could rule on that in a binding fashion, so the law has changed to expressly provide a mechanism for the commissioner to rule on a valuation issue, but only where the valuation is relevant to how the tax laws apply or the quantification of the liability under a tax law. In that sense, the ATO can rule upon a valuation provided by a taxpayer as a draft valuation. They can actually provide a valuation that the commissioner provides through one of the contract valuers. It used to be the Australian Valuation Office, but that's changed a bit. Or it can actually be done on the basis of a combination of both. Now, if the ATO gives a valuation, they'll charge for it, so there's a bit of a sting in the tail there. That can work out that if you've got your own valuation and the ATO doesn't like it or wants to critique it, do a curbside reassessment of that valuation, that's going to actually involve additional costs for the client.

Now, the PBR can give certainty within the scope of the particular arrangement as it's described in the other private ruling and subject to any assumptions that are made, as we'll talk about later. But it has to be implemented in accordance with the arrangement ruled upon. This is called the material difference test. So if it's not implemented in accordance with the arrangement and the ruling, the ruling can't provide protection because what's being done is materially different, material in the sense of changing the outcome, from what was in the ruling.

As I mentioned earlier, the taxpayer doesn't have to follow an adverse ruling if they don't like it. Obviously, most taxpayers aren't going to like an adverse ruling. They can choose to ignore it. There used to be a shortfall penalty for not following a private ruling, but now there isn't. That doesn't mean that the taxpayers can still be found not to have exercised reasonable care or not to have had a reasonably arguable position. If the ATO's position is that it's not at least as likely as to be correct, the position taken by the taxpayer, then they could actually say that it's not reasonably arguable, and therefore, you haven't exercised reasonable care because you know the ATO's position differs. So you need to really document an adverse position that you're taking, sorry, a positive position taken on an adverse private ruling matter.

Now, the other risk in applying for a ruling is that the commissioner can make assumptions, as we'll talk about. Some of those might be viewed as being inappropriate or maybe unrealistic in their circumstances to the taxpayer based on the commissioner's officers not necessarily knowing those circumstances well as the taxpayer does. Those assumptions can, of course, change the way that the law operates or indeed the facts upon which the ruling is then based. So the making of an assumption is something the commissioner has to notify the intention to do. As a consequence, the taxpayer has the option of trying to provide contrary feedback about why that assumption shouldn't be made or why a different one should be made instead, but the commissioner's not compelled to act upon that feedback. They don't have to agree, in other words. So it can actually lead to a bit of a [inaudible 00:18:27] in that process. I've seen private rulings discontinued based upon the commissioner's intention to make an assumption.

Now, in addition, the commissioner can request further information from the taxpayer or taxpayers before making a private ruling. This can open up additional questions about the material facts beyond what the taxpayer considered relevant. That can be a bit tricky, and it can widen up the scope of the description of the arrangement that is actually ruled upon.

The commissioner can also seek further information from third parties, like a counterparty to a transaction or a financier, and that can be awkward for the taxpayer. But if the commissioner's going to do that, seeking information from a third party, they're again required to give notice of their intention and give the opportunity for the taxpayer to provide feedback. So if it's going to spoil a deal, if the ATO goes to that other party, whether it's a financier or counterparty, that would be something to tell the commissioner fairly quickly, and that gives them the opportunity to consider that. Again, they're not compelled not to go that extra stage just because the commissioner has received feedback to the contrary.

Now, the other tricky part is that the commissioner's not just bound to rule upon a matter that has been raised as a question in a private ruling application. So you find the situation that the taxpayer may ask about a general provision, and the commissioner might decide to rule upon a specific anti-avoidance rule or even a general anti-avoidance rule. Say you ask a question about whether a franking credit is available. They may actually seek to make a ruling upon not only the ordinary provision providing franking credit relief, but also then rule upon the franking credit integrity rules or the specific sub-part of the general anti-avoidance rule that deals with franking credits or dividend stripping or indeed the generally anti-avoidance ruling in [inaudible 00:20:38], in the ordinary provisions. That can actually mean that a person gets the benefit under one but then gets the other detriment under the other. It gives clarity and certainty, but it's not necessarily something that the taxpayer is going to like.

Given that some of those other provisions may actually be ones that have triggering conditions like a purpose test, like the sole dominant purpose test in Part IVA or the not merely incidental purpose in relation to franking credit trading arrangements under some provisions. There's then a question about whether the facts and circumstances support that. So it can be a bit tricky.

The other point is that if you know what the answer is going to be and you know it's going to be negative, as a tactical question and maybe even a strategic one, you've got to ask yourself whether the taxpayers should get confirmation of what they believe is going to be a negative ruling so that they can then try and contest it or whether there are better ways to contest the ATO view, such as self-assessing according to the ATO view and maybe objecting to it, so assess negatively and then object positively on your view of the law. Now, those issues are why you may or may not want to get a private ruling and what might happen during the course of it.

Who can apply for a ruling? Well, it's the usual suspects. It's going to be an individual, a body corporate, a body politic, a partnership, any other unincorporated associational body of people, and that's legal people, not just natural people, a trustee of a trust, or a superannuation fund. Now, somebody can apply on behalf of any of those people. The idea is usually it's going to be under authority by a tax agent or a lawyer, but it can also be an executor of a deceased estate on behalf of that deceased estate or a person holding a power of attorney on behalf of a person. I've got a case at the moment involving the executor of an estate, for instance.

Now, the private ruling process is actually a reasonably clear one. What you've got is that there's a specified form that's referred to in the legislation so you have to follow it, but the ATO doesn't administer it that strictly. If you say, "I filled out a form or I sent a letter that answers all the questions that are in the form," they're not going to insist that you have done the online electronic version of that in a form-fillable PDF or whatever. The actual presentation has a link to the standard private ruling form.

But if you are not going to use it or if you're going to have attachments and things, you need to provide details of the taxpayers to whom the ruling will apply, that should say to whom, by the way, I just missed that one when I was editing it; contact details of the person representing the taxpayer or taxpayers; the questions that are to be answered, yes or no questions, and they have to be framed as yes or no questions. Not, how will the law work, but will the law give this outcome? Is it going to be assessable income under 6-5? Is it going to be deductible under 8-1? Is it going to be denied under the negative limit of 8-1 as a deduction? Or if you wanted to, will a commissioner apply Part IVA to this particular arrangement? Or, interestingly, the commissioner can rule on

discretions, too, and they're treated effectively as exercising that discretion. Would, say, the non-commercial loss discretion under 35/55, whether that would be applied?

Now, where a taxpayer provides a private ruling application themselves in a self-represented capacity, the commissioner doesn't really quibble about whether there is legal analysis and whether the right provisions are identified. But where a tax professional, like a tax agent or a tax lawyer, actually does it, they have to do that. That's just common sense because the ATO doesn't want to have to do the client's work for them.

It has to describe the facts of the arrangement, the material facts, and potentially indicate assumptions that should be made and details of any previous rulings on the same issue, the ones received by the taxpayer obviously, but also more generally, it's beneficial to look and see what is available. The CCH service has a great tool to search the PBR published edited version database.

Now, you also need to provide arguments about how the law applies, particularly if you're a tax professional. You should also provide what you think the answer is under each of those questions of law. That isn't just the tax law. That's also, as I mentioned earlier, the general law provisions or other statutory provisions that may apply that affect materially the tax outcome.

Of course, if you're going to be getting a ruling on a transaction that is already in place or is being negotiated, you need to provide details and supporting documents of what the transaction looks like and what those documents say. Without the supporting documents, it's hard for the commissioner to rule, so therefore, quite frequently if you don't provide it, they would come back and ask for that as the first stage of their information request.

Now, the first thing that happens is that the Commissioner directs his staff to notify the taxpayer that their application has been received. They'll also advise whether they believe the application is valid. If it doesn't have those mandatory requirements, like specified taxpayer specified period and sufficient certainty about the arrangement, then it can be invalid. It may be also asking for a ruling on something the commissioner can't rule on because it's not a tax law.

Now, in the Hacon case, the taxpayers applied for a ruling, and the commissioner advised that they were disinclined to actually rule because there wasn't sufficient information, exactly what I was just talking about. The commissioner's officer didn't request specifically the additional information, but the taxpayer provided that information when advised that the commissioner proposed to decline to rule. Right up to the full Federal Court, the commissioner's decision to decline this rule was quashed. Quashed is pretty heavy. They said that the commissioner is still subject to an imperative obligation to request information that was considered necessary to make a decision on the ruling. If the taxpayer doesn't provide that information, then it's valid to knock it out because the information isn't sufficient. But the commissioner can't just drop the ball and not ask, especially when they've identified that there's insufficient information and then the taxpayer subsequently provides it.

Now, if the application involves the generally anti-avoidance rules, then it goes to what's called the GAAR panel. As a consequence, the idea is that that panel gives advice. Now, that advice can be internal advice, which actually just gives advice to the team about whether it's a viable case to consider applying Part IVA. But if that advice is internally positive, then usually the taxpayer will get the opportunity to make a case at the GAAR panel so that they can effectively work through with the panel what the counter proposition is. So ATO says the GAAR is likely to apply or should be applied, the taxpayer will say, no, they don't think it does and it shouldn't be applied and why. The commissioner will then make a decision obviously about the making of the private ruling in that context. That can cause taxpayers to pull back if they're advised the GAAR may apply, so don't get an actual GAAR finding. That's, again, a tactical decision about whether you go through the private ruling process or you go through the assessment process instead.

If a ruling has not been made or has declined to rule at the end of the 60 days after the application has been made and the applicant can actually provide, sort of demand a request they call it, but effectively it's a demand, requiring the commission to make the ruling, if the commissioner doesn't make the ruling or declines to rule within 30 days, the applicant can then lodge an objection to the presumptive negative answer on that ruling. Now, the 60-day period in which those requests can be made to the commissioner is extended where the commissioner requests further information within the initial 60-day period. So if the commissioner doesn't do it within 60 days, it's a bit bugged, frankly. That's the technical term for it. But if the commissioner does request it, then what happens, the circumstance is that 60 days then starts up again when the information's provided.

Now, as I mentioned earlier, the refusal to rule power is actually sort of specified, and it says when the commissioner may decline to make a ruling. First criterion is that the commissioner considers that making the ruling would prejudice or unduly restrict the administration of a tax law. You'd think that if it was going to be binding on the commissioner, if it was wrong, that every ruling that was potentially wrong would actually [inaudible 00:30:20] that one. But this is actually about where it would unduly fetter the ability of the commissioner to administer the law. It's not used as often as the third. The second one is actually about, where the matter has already being ruled upon, say, in a public ruling, it might have been considered by the commissioner for your circumstances already, such as in a previous assessment decision or something like that. The third one is actually where the commissioner could exercise a discretion and the commissioner has decided or decides whether to exercise that power.

The ATO can refuse to issue a ruling if the question is about how the commissioner would exercise a power such as a discretion, but the ATO can also refuse to rule if the request for further information is not met within a reasonable time. Now, what's a reasonable time? That might actually be the million dollar question, I suppose. It might be that the taxpayer considers unreasonable and provides an explanation as to why they can't do it within that time frame. Then the commissioner gets impatient with that as it continues to extend indefinitely into the future. Often, there'll be some sort of warning that, if you don't do this by a particular time, then they'll actually then refuse to rule. The other point is that if there are certain assumptions that the commissioner considers need to be made and the commissioner feels that they can't make such a valid assumption, then it can actually knock it back on that basis.

Now, when can a taxpayer rely upon the other ruling? It must be one of the applicants, the rulee for the rule. It has to be in relation to the time period covered in the ruling, and, as I mentioned earlier and I've probably stressed, it has to be that the facts and assumptions are not materially different from what actually happened when the arrangement was implemented. Where those current conditions are met, as I've mentioned, the ATO's bound to follow the ruling if the ruling is more favourable than the ordinary [inaudible 00:32:40] of the law, but not if it's obviously negative to the taxpayer.

There's also some caveats. If the law is subsequently amended, the PBR continues to apply to the extent that the amended law expresses the same ideas as the old law. When the TLIP, the Tax Law Improvement Project, passed, it resulted in a lot of legislation passing to redraft older laws in the '36 Act into the '97 Act, between '97 and a few years later. There was a lot of that sort of change which was intended not to have any substantive effects, so those old private rulings still applied to those laws. But if there are substantive change to the policy and how the policy is implemented in the new law, then the PBR ceases to apply.

The commissioner also has the power to issue a revised PBR, which causes the old PBR to cease to apply, and it cannot be relied upon from that point on. But the PBR can only be revised where the scheme to which the original PBR relates and/or the relevant income have not yet begun. This is an important protection for the certainty provided by the private ruling system.

Now, there's a few cases that talk about some issues about the interaction between the private ruling system and the public ruling system. Public rulings apply to taxpayers if they fall within the specified area of law and also the other type of arrangement to which the ruling relates. So a PBR can't be relied upon where an inconsistent public ruling is issued after the PBR but before the scheme has actually started to be implemented or the relevant year of income to which the PBR relates has actually started. In other words, if the ATO decides to issue an inconsistent public ruling, it can actually override the private ruling provided the arrangement hasn't actually started to be implemented and the relevant income year hasn't started.

Now, the Bellinz case, which is one of the most famous cases on the private ruling system, highlights the issues that can arise. The court said that the commissioner was only bound to follow those rulings in relation to the types of arrangements described within them, not in relation to their underlying philosophy or theory. In other words, it had to be specifically on all [inaudible 00:35:09] with the matter in question rather than being sort of the vibe, if you like, of what the ruling was talking about.

The other case, which is not so much about private rulings but is about the application of the commissioner's views on a prospective basis, the Full Court has said in Macquarie Bank case that when the commissioner has formed a view on how the law applies to a particular taxpayer, there's a direct duty to assess the taxpayer in accordance with that view. The commissioner can't just say, "Well, look, I previously said something contrary and now I believe I was wrong," and they don't have a valid private ruling, that you're going to then be stopped.

Now, the other point is that in the practice statement about a prospective application of ATO views, it's preferable that a decision whether to apply the ATO or the law in relation to past years or periods have been made as early as practical in any compliance process. Over you, the ATO case officers can make such a decision at any time before issuing an assessment including an amended assessment. This may result in the ATO declining to reassess the taxpayer on an earlier year transaction. So that's about past transactions where the ATO made changes. It's worth having a look at that practice statement. I didn't write it, but it's one I was involved in.

Now, if you don't like a private ruling, you can object, but there are some tricks and traps. Part IVC applies. It's treated in parallel to objections to assessments but with a few of these differences. If there's been an assessment already issued for a year or period on which the private ruling was intended to cover, you can't object to the private ruling anymore for that particular period. You can do it for future periods that there's still covered, it's still in the future, but you can't do it for the past period. Instead, you must lodge an objection to the irrelevant assessment or amended assessment.

Now, that requires you in that circumstance to self-assess according to the negative ATO view and then to positively object according to the taxpayer's view which was contained in the PBR because effectively there's nothing to object to if you don't have a negative original assessment. So that's a bit tricky, and people struggle with that. Similarly, you can't do that withholding tax amounts where the amounts become due and payable because the period's passed and the statutory date's been tripped. There's also issues in relation to excise duty or amounts payable on goods under an excise law. Those decisions are reviewable under the excise law.

Now, during the objection process, the commissioner has the power to obtain further information about the scheme arrangement. Now, that could be from the applicant or, again, going to a third party. If that's materially different to the arrangement in the original private ruling, the problem is that you have to start again because there's no purpose in pursuing such an objection to a private ruling that is actually materially different to the arrangement as implemented. So you must go back and start the process again, which is, again, a pain for people.

Now, if you do challenge a private ruling in the course of the process to an appeal to the AAT, the problem you have is that you're going to need to be restricted to the facts outlined in the PBR when appealing to the AAT and the Federal Court. You can't introduce new evidence. You can't sort of shore up the position on what the material facts were. Instead, you only really get to look at and see whether the private ruling was correct as written on its face or not. It has to be based upon the facts and assumptions outlined in the PBR, whether those things are correct or not.

In McMahon's case, that issue is specifically dealt with because if you don't have a framing for the other private ruling, what you actually have is that people could just go on a contest of themselves of whatever they want to talk about and bring in new evidence, and you're no longer dealing with the content of the private ruling. So there has to be a ring-fence around the matter that can actually be looked at. Similarly in Rosgoe, the question was about whether the ruling scheme is static and whether it can be redefined based upon additional facts or evidence. The finding in there it was that it can't be. Again, it's ring-fenced on the basis of what was, on its face, the views set out in the ruling.

Now, the other point is that when you look at it, you actually have to determine what the facts are. In the AAT, this one, and it was obviously in Case 2 of 2014, the actual facts of the PBR are what are written in the private ruling itself. It has to actually be according to its framing rather than what else might be argued. Unless there's a material difference in the facts as the arrangement has implemented, once that arrangement has actually occurred, you can then have an argument about whether the ruling applies, but there's no point in objecting to and then appealing against a ruling that's got materially different facts.

So the AAT found that, even though it normally stands in the shoes of the commissioner in other assessment-related matters and they can exercise powers and make decisions according to what the commissioner would do or could do, they couldn't do that in the context of a PBR. They could make different assumptions and make a different PBR, but they couldn't actually decide that the facts were different. In other words, they can't reframe the facts or assumptions or at least the facts, but they could say what the answer should be, which is, after all, why people are contesting a matter in there.

There are a few things to consider looking at whether you should apply for a private ruling on behalf of a client. The first is whether you can adequately describe the arrangement. I always break the world up into the idea that you need to be able to describe the transactions as a question of fact before you get onto characterizations of elements for general law or tax law purposes. So if you can't describe the arrangement sufficiently, then you need to go back to the drawing board because the ATO won't be able to rule on something that's nebulous or ambiguous.

The second point is that you need to work out what, as professionals, lodging these things for clients, you have to make sure that your position about the operation of the laws that are relevant to the commissioner making a ruling are actually reasonably strong, preferably reasonably arguable, and maybe the better view ideally. Because if you can't articulate your position, then you're going to have problems. But then you need to work out whether there are counter propositions that the commissioner may consider.

This is, again, something which in [inaudible 00:42:42] Tax Controversy Partners, we actually deal with controversial issues. So it's not always a question of it being simple or direct. You need to be able to articulate why you think the law works this way, general law as a starting point, but then particularly for the tax laws upon which you're asking the commissioner to rule, then to be able to articulate that clearly and show why your view is hopefully at least as likely as not to be correct, but preferably the better view which the commissioner will go along with. You also need to think about when you might decide to pull a ripcord of not continuing with your private ruling. You need to also consider the issues about when the commissioner may make decisions about the type I described earlier, about whether to make assumptions or seek information from third parties or make a

related ruling. So you need to work out when you might want to decide, "Well, I don't think the taxpayer wants to go any further with this and incur greater costs and maybe get greater risks."

Now, just because you withdraw a private ruling application doesn't mean there's no record of it. The commissioner is going to know about it because it's recorded in the ATO systems. If there is a subsequent audit on a matter, the ATO system will actually record that and the ATO officers will be able to dig into the files and find it.

Now, the options when you get an unfavorable PBR are, of course, also important. The first question is whether the taxpayer wants to simply say, "Okay, it's a fair cop, Guv," and accept the ruling and lodge the relevant tax return or activity statement or whatever based upon the advice contained in the ruling. Now, that's not binding on the taxpayer, but, as I mentioned earlier, the taxpayer can be exposed to penalties, reasonable care penalties. If they don't have a reasonably arguable position for shortfall purposes, if they don't accept a negative ruling, there's no specific penalty anymore for not actually following the private ruling.

Now, the third option, of course, is that you lodged the return in accordance with the PBR and then if you still have a client who's dissatisfied with that is to actually then lodge an objection against the self-assessed position with which the taxpayer disagrees. Now, this is sometimes called the self-assess and object to your own self-assessment sort of tactic. It's not a sneaky thing to do. It's actually maybe the only thing you can do.

As I mentioned earlier, if you've got an unfavorable PBR and the period's already happened, you may not be able to contest the unfavorable PBR any longer, at least for the first year or the first period in an activity statement context. So maybe you're forced to do that, but I'd just be upfront with the tax office and say, "Well, look, because the period's already passed and we've actually now got to the point where we need to lodge a return, we can no longer object to the private ruling. We're going to have to do this. Therefore, we're going to assess according to the negative ATO view and then object positively on what we think is the correct view of the law."

Now, the last option is not one I recommend, which is the audit lottery, as I sometimes call it. Ignore the private ruling and self-assess contrary to the ATO position. That is going to expose the taxpayer to potential shortfall penalties either for a lack of reasonable care or not having a reasonably arguable position. The commissioner, or has previously at least, had a program to look at negative PBRs to see whether the taxpayers have followed them, particularly if the transaction is large value in that particular taxpayer segment. Like, a million dollar transaction might be a large transaction for a small business, but it might not be worth noticing on the side of a large business or multinational case. So there are some things to look at in terms of how that works.

The audit lottery is risky. If you have a good RAP, reasonably argued position, maybe it's defensible. But I think that otherwise you're better off trying to contest it through the self-assessment object path, or wear it and simply agree that the risks are too high for the taxpayer. I might open up for questions and talk about some of those issues in practice. Back to you, Susannah.

CCH Learning:

Thank you for that, Bruce. Appreciate that. We will be spending the next few minutes taking questions, so please put your questions into the Questions pane. To give you some time to type those up, I will mention our upcoming webinars. Coming up next, tomorrow we're looking at the FBT 2023: Update Essentials. We also have coming up our Cyber Security Update for April. We've also got Division 7A Advanced. Excuse me, we're looking at some Aged Care Advice with clients downsizing and delivering quality aged care advice. We're also looking at the new IFRS S1, which is about sustainability-related disclosures, and Putting a Cap on Contributions and Benefits in regards to your superannuation. If you are interested in any of those, please head to our website at www.wolterskluwer.cchlearning and check them out.

Let's have a little look at our questions. I have a question from Edward. Edward was asking, "Can we lodge a private ruling with the ATO requesting to claim full depreciation of a business motor vehicle, which is actually a Ute, put above the car costs' limit, also to claim the full input tax credit for the purchase price of \$165,000?"

Bruce Collins:

That's an interesting question. I think you could apply, but I think the answer would be negative. The caps are there for a purpose, so I think that that would be likely to lead to a negative outcome. The thing is, when there are thresholds in the Tax Office that they use for risk assessment, you can maybe argue that they're exercising a discretion or something. When the words in the legislation are clear, it's not even a matter of whether the ATO has a clear position. It's actually the fact that the legislation provides those sorts of restrictions. The policy intent for any measure is based upon what the government of the day says when they release it, and when it's passed by Parliament, those particular thresholds are baked in.

Now, the exception to that, of course, would be if there was a framing issue around whether a particular vehicle was caught by the measure or not. So if there was a luxury car tax thing and there was an exception, for instance, for a vehicle that can carry seven people or more, something that happens sometimes with FBT issues, then maybe you could argue that a particular vehicle is going to be carrying seven more people, but Utes don't tend to.

Generally speaking, if you know the answer's going to be negative, there's no purpose in the client running up costs to try and get a ruling that might be negative because somebody doesn't know about the limitations. Because as practitioners, we have to articulate which provisions we think are relevant and what the ruling is on and provide argument about it. So I don't think we could do that for something where the answer is just going to be clearly negative. Arguable is one thing, but you can't argue against a clear wording in the legislation which provides a dollar limit.

CCH Learning:

Thank you for that, Bruce. There you go, Edward. Perhaps not the answer you were looking for. I have a question from Naya. Naya is asking, "A new client would like to clear their position regarding CGT status on the sale of the property last month. Their old accountant advised them that they can't claim the main residence exemption. Can we apply for a private ruling as I'm confident the main residence exemption applies to them?"

Bruce Collins:

Actually, that's an ideal example where you could do that, but you've got to get your skates on because if the transaction's already occurred and it was last year in the 2022 year, the return's got to be lodged pretty quickly. The ATO's going to take at least 28 days usually to act in a private ruling. As I mentioned earlier, they've got 60 days to start asking questions. So you may find that you'll be outside your lodgement date for your program if you lodge a private ruling this late.

If it was a prospective transaction that was going to happen this year, maybe that you'd get time to get a ruling before next year when the actual transaction is going to happen and then have to be assessed. But for a past matter, you may be best advised in that context to either take the audit lottery option based upon the position that you would articulate the private ruling anyway, or self-assess according to the ATO view and then object to it, and then have an ATO person look at it.

Even with house values now having skyrocketed over the last few years, it's probably not going to be a material transaction big enough to attract the ATO's attention if you went to them and tried to do an early engagement. But there is an early engagement private ruling process on the ATO website, so have a look at the individual's advice page, but it goes into an automated queue with a web form. So you might get somebody relatively quickly or you might not. It's again going to be, if you do a private ruling, you'll be back at the 28-day period and after, and that may not be quick enough given the imminent deadline for lodgement.

CCH Learning:

Thank you for that, Bruce. There you go, Naya. Dave had a question. "How does someone with no expertise in tax law prepare a private ruling application?"

Bruce Collins:

Well, I could say usually badly, but, look, it's actually not as hard as you think. If you use the relevant reference materials, such as the CCH services, which I use all the time, I've got nine tabs open at the moment on the CCH tool, you can actually do quite a bit if you have access to those services. Otherwise, the ATO website contains quite a bit of useful information for people who are less sophisticated and don't have access to those tools.

Some people do it really well. I had one I reviewed for a client a while ago, and they'd done such a good job on the actual application describing their arrangement and asking the questions that there was very little for us to do. Otherwise, it's often a matter of having to really identify what you think is the accurate description of the arrangement requires guiding somebody through that process, then being able to work out what legal questions in a general law sense then arise, and then working out what tax laws are potentially activated which are relevant, and what the ATO might do in terms of integrity rules inside provisions.

In one sense, 8-1 is a good example. You've got the necessarily incurred in running a business or incurred in earning accessible income positively, but you've got the negative limb, things about private or domestic purposes or capital purposes or an exempt or non-accessible and non-exempt income. They're actually policy framings that actually ring-fence the application of that provision.

Now, how many individuals who aren't tax specialists are going to know about the positive limb alone, let alone the negative limbs? Then you look at the fact that there might be specific denial of deduction provisions that apply for something that might otherwise seem perfectly sensible for somebody to do in running a business, like entertainment expenses. There's a specific denial of deduction for entertainment expenses. Or another for a fine, so if you've got a speeding fine or a parking fine, you're going to think maybe that I was driving to and from a business meeting, or I was engaged in delivering stuff for my business. Nothing more natural that a person might think that they actually would be able to claim that as a deduction, except there's a specific provision that says they can't.

Most people who are not experts in this field are going to really struggle [inaudible 00:56:24]. They often don't do it very well when they apply. But the ATO is relatively sensitive to that and most good advice officers in the ATO will help a self-representing taxpayer to navigate the system. The problem I find is more significant is when you get a less sophisticated, smaller tax agent firm doing the same thing. They put in the ruling application to the best of their ability, but maybe they haven't done it as well as a specialist tax lawyer like me or a larger firm with a greater precedence to actually draw upon or greater pools of people with relevant expertise. The ATO will just go, "You're a professional, knock it out, or we refuse to rule cause you haven't done enough."

I think that the ATO on average tends to help self-represented people to navigate that process better than they do, as I said, for smaller practitioners. But if you've got a person in a tax agent firm who is trying to do that sort of work, if they're very good and they're guided, they can actually do a pretty good job of it. But if they are just doing it off their own bat, I don't see how people are going to do a great job with it.

CCH Learning:

Thank you for that, Bruce. There you go, Dave, some advice there. Adam's got a question. He said, "Is the early engagement team a reasonable option to get support before a ruling?"

Bruce Collins:

Yes and no. The reason that the yes is, if you have a material transaction for a public group or a multinational or a larger private group, material in the sense of being in the tens or hundreds of millions of dollars, at least hundreds of millions of dollars for those groups, then the ATO will get up out of bed and be very helpful. But if you've got something, which as I said, is for an individual, a million dollars is a lot of money for an individual, and it might actually be big enough for the ATO to wake up to. They've got those things for small businesses and individuals where you can go onto the website and fill out a form and get into the process. But it goes into a queue, and it's managed in a less sophisticated way than those bigger transactions for those larger groups. So, yes, it can be, but it depends really upon how much money is involved.

Like at one stage when I was in the ATO, I was dealing with routinely matters where people were coming in with hundreds of millions of dollars worth of value for specific transactions in tax effect, not just the actual value of the transaction. So some people will be called in to deal with those sort of issues if they're big enough. But if you're talking about smaller ones, because the ATO's hierarchical in a sense, they've segmented the taxpayer population. So you've got the private wealth area that deals with their part of the patch. You've got the public groups and internationals area that deals with multinationals and public groups.

Even within those, if there's a significant threshold before something gets really strong early engagement and it's the size and value of the transaction, in the small business area and the individuals area, their advice people obviously are dealing mostly with less zeros on the transactions, so you can get in the door and get to them, but you still have to go in through an ordinary queue. You can't just ring somebody or use an email address that'll get you to a higher level person straight away. You're go in through the queue, it gets dissected and allocated to the right people, but it goes into a queue. If it's routine-looking, it's going to be dealt with by whoever is the next [inaudible 01:00:22] off the rank, not necessarily the person with the power to deal with a really complicated matter.

CCH Learning:

Thank you for that, Bruce. I hope that does help you there, Adam. I have a question from Gary. Gary was asking, "If you don't lodge a PBR but act on the assumption you would've made mention in a PBR if lodged, if audited, you can then present the reasonable argument you believe would've been raised if the PBR was applied. Could this work?"

Bruce Collins:

Yeah, yeah. Look, effectively, that's the whole definition of a reasonably arguable position. If you have a reasonably arguable position, you need one for transactions above a certain value, 10 grand. For a small taxpayer, 10 is grand a lot, but for BHP Billiton, it's fairly what they spend on paperclips. The problem is that in making a reasonably arguable position, you need to actually have a view of what the facts of the arrangement are, and that

can involve making those sorts of assumptions because if you don't know definitely what it is, you can make that assumption.

But just as with a private ruling, if there's a material difference in what actually happens versus what you assumed would happen, you may not be able to rely upon that legal analysis to the same degree. But if you formed your reasonably arguable position at an early point when that assumption was a reasonable one to make, then a sensible ATO officer would accept that you had a reasonably arguable position at the relevant time. But as the arrangement is implemented year by year or period by period, you might find that your reasonably arguable position becomes unreliable because of the issues with what actually happens and whether those assumptions are still valid.

There's a good case on material difference in the product ruling space, the Barossa Vines case, which was a promoter penalty related matter on a product ruling. It actually looks at the fact that they... The assumption was that certain works would be done and the relevant grapevines would, therefore, be cultivated. But of course, the works weren't done, and therefore, the vines died on the vine, literally. If you'd made an assumption like that in relying upon a reasonably arguable position, then, period by period, in the first period when you were originally calculating things when people were incurring the expenditure on the activity, maybe you'd be able to rely upon that. But as it developed and the vines died at the end of year one, you then wouldn't be able to make that assumption in years two, three, four, and five.

So there are some tricks and traps about relying on assumptions in relation to future events once those events have occurred and are not in alignment with that assumption, even in a RAP. But a RAP has to be in place each time you make a tax statement, so at the end of each period before you make the lodgement for it, for an activity statement period, or in relation to the financial year. So you still need to monitor those things as they're implemented to make sure that you haven't just ignored the impact of changed events.

CCH Learning:

Thank you for that, Bruce. There you go, Gary, I have a question from Amir. Amir is asking... Sorry, I just cut off the question, so I can't quite read it. "A client bought land and wanted to build a MR," I suppose that means main residence," in 2018. Due to council delay and COVID, they have not been able to do it within four years. Construction has started and planning to establish it as a main residence in July 2023. Would this be something worth applying for?"

Bruce Collins:

Look, a private ruling could be issued on that. There is usually discretion in those sorts of time frames for the commissioner to allow a longer period in some circumstances, say, in the CGT small business concession space. There's some concessions around those time periods being extended in that fashion. Main residence exemption, generally speaking, it'd be circumstances outside your control.

I'd check very carefully, and, as I mentioned before, the CCH private ruling search tool is my go-to thing. I'd check very carefully to make sure that there aren't already private rulings that say no consistently before I bothered. The knockdown rebuild sort of scenario and the delays that happened during COVID have thrown a lot of people into that circumstance, so I'd be very surprised if there aren't a heap of rulings already on there. The ATO publishes edited versions of those private rulings. They're not binding for other people who apply for subsequent rulings, but they're often a good guide for what the ATO position is. If you can find ones that are favourable to your proposed answer, referencing those in your private ruling applications are a really good idea. But if you find they're all negative or the majority of them are negative or all the recent ones are negative, it may indicate you've got little chance of success.

CCH Learning:

Thank you for that, Bruce. There you go, Amir, a possible chance there. Now, Gary had another question. He was asking, "In a PBR, you can argue your case and argue how the ATO may counter upfront to bring the case to a head, also ensure you bring in as many facts and laws that you think apply to help in any AAT."

Bruce Collins:

Those are both very good and salient observations. The idea is that if you want to bring something to a head where the transaction hasn't already occurred and you don't already have an assessment yet, private ruling's a good way of doing that prospectively. But you've got to remember that by the time you get a private ruling, it'll be probably two to six months assuming everything runs smoothly, and it might be as much as a year. If the assessment period is finished and you're required to lodge for the first year of the arrangement or if the arrangement's already happened, you're really going to be stuffed in the sense that you won't be able to contest that through the objection and tax litigation process that follows.

It's possible to seek urgency in the Tribunal. It's possible to seek urgency in the Federal Court. So you can actually get things litigated more quickly, but it's still going to be months to years before you get a decision. While it can bring a matter to a head, sometimes you're better going through that alternate path of self-assessing negatively, according to the ATO view, and then objecting positively on the basis of what you think is the correct application at the law.

On the second point, absolutely. If you are going to apply for a private ruling, you want to make sure all of the relevant and potentially material facts are articulated for two reasons. One, you want a ruling that actually covers those material facts, but you also want to limit the scope for the commissioner to try and make assumptions to fill in the gaps. You do want to provide analysis of the law and articulate your position to be most convincing so that you can actually put across the point for the client as much as possible, but also to force the commissioner in a sense to address or rebut all of those arguments in advance in their explanation of a rule.

As people might see when they look at the edited version list, in recent years, probably over the last eight or nine actually, it's probably not that recent now, the ATO really doesn't provide a lot of reasoning for positive rulings that they publish the edited versions for. They really concentrate for negative rulings with unfavorable outcomes to provide the explanation, because the published version, the edited version, is actually drawn from what goes as the reasons for decision to the taxpayer. So you'll not find a lot of supporting reasoning for a positive private ruling in recent years, but you'll often, almost exclusively, find reasoning contained on negative rulings. So if you can work out what your rebuttal arguments are for each of the propositions contained in a negative ruling and put that forward as part of your positive case to get your hopefully positive private ruling, it can help to reduce the likelihood of getting a negative one.

CCH Learning:

Thank you for that, Bruce. There you go, Gary. I have a question from Adam. Adam was asking, "Where there has been a capital loss in an investment in the millions from approximately seven years ago and there's no reasonable expectation to expect a single dollar back, however, the investment company is now closed and there is no formal notification or liquidation, would it be appropriate to engage the early engagement team first or go for a private rule?"

Bruce Collins:

Well, with dollar figures in that range, it might be a matter worth going to early engagement on as well. Early engagement is actually a pathway to get you a priority ruling in a sense, but it might also be a pathway to resolve it through another path, like maybe a settlement rather than a private ruling. But just on that point, though, if it's something where the company's gone away and the claim can no longer be made for any loss that's been suffered, I'd have a look at the statute of limitations in the relevant state or territory to see whether it's actually already passed and that may crystallize the loss in any event, even if it hasn't been written off. Well, business debts for debtors get written off formally. Individuals usually don't bother to write off things in that fashion because they're not required to, so bad debts, provisions don't usually apply in that context.

If you're dealing with a capital transaction, I'd be thinking that you might find conceivably it's a six or seven-year period of statutory limitation in relevant states and territories, although sometimes it can be longer for some sorts of transaction, so you've got to read it carefully. Again, that's not a tax law issue, so the commissioner can't rule on whether that other law has done what it does. It takes the law as read when it actually applies it. But when you draw it to their attention, they can then say, "Well, if that's already happened, this is the consequence from a tax law perspective," if you ask them the right tax law question as a consequence.

CCH Learning:

Thank you for that, Bruce. So Adam, it might be all about the question. I also just had a question from Gary. He was a bit late to join, so maybe this question has been answered. He was asking, "What's the difference between a public and a private ruling?"

Bruce Collins:

Yeah, I sort of did cover that earlier on. Essentially, a public ruling covers arrangements in general where a private ruling covers a specified entity or entities. A public ruling also usually runs from the point at which it's issued into the future indefinitely, whereas a private ruling has to have a specified period. But class and product rulings are a sort of hybrid between in concept, but they're both issued as public rulings. I was involved in developing the class ruling system, and I used to run the area of the ATO that actually manages the product ruling system.

They both actually deal with subsets of what a public ruling would deal with. A product ruling deals with a particular type of financial product which has characteristics specified in that product ruling. A class ruling deals with a particular transaction for a class of taxpayers, like shareholders in a company or employees in a particular employment situation, so they sort of ring-fence the taxpayers that can rely upon it. But they're both forms of public ruling, whereas a private ruling has to be subject to an application, and class rulings and product rulings are as well. But that's not a mandated thing. It's just an administrative procedure for the commissioner. So it has to be an applicant, and they have to be a bunch of taxpayers specified as being the rulees, as a result. There has to be a period and then there has to be a bunch of facts and circumstances that are set out.

Some public rulings will actually set out more specific types of transactions like the old TR 95/35, which is on the receipts of compensation for claims that people have. That ruling specifies if somebody's receiving compensation, this is how the CGT rules work for it. Look through the operation of the transaction to see what the underlying rights that it relates to are. Then what happens with it is then dealt with in the course of the public ruling. Now, somebody can apply for private ruling on that very issue and people do, if you look at the edited versions, there's lots of them, but that doesn't mean that that turns the private rulings into a public ruling. So they're actually quite distinct, but they share some machinery. That's the difference broadly.

CCH Learning:

Thank you for that, Bruce. I hope that helps you, Gary. I had a question from Naya just asking, "What is the early engagement process, please?"

Bruce Collins:

That's the bit I talked about earlier. I might not have made it clear that it's called early [inaudible 01:14:55]. Essentially, what you've got is that the ATO for significant transactions in the private wealth area and the public groups and multinationals areas, they permit an early engagement exercise for significant transactions. There's an actual thing on the ATO website that gives you a link into an email mechanism to get to those. The small businesses and individuals and for superannuation funds, there's actually separate channels, but they're actually web forms that take you to classification pools of cases. They don't get you to a high priority, high profile person who can deal with it. So it's more for the bigger transactions rather than mid-sized ones or small ones. That's what they talk about with early engagement. The ATO does genuinely try for those sorts of larger deals to get an answer more quickly and to engage more actively with the taxpayers' representatives to address those issues.

CCH Learning:

Thank you for that, Bruce. I hope that helps you, Naya. Just got one last question by the looks of things. It's just asking, from Gary, "When would the ATO fund an objection due to its wider application to many taxpayers?"

Bruce Collins:

Well, I'd have a look at [inaudible 01:16:23] at the test case litigation program and explanation on the ATO web page. Essentially, it has to be something that applies to a large number of other taxpayers or very significant transactions for a small number of taxpayers. So it's a question of materiality in the other context. It's about size. So it's either a hundred times a million people or it's a million times a hundred people, or maybe it's 10 times a billion people. Sorry, [inaudible 01:16:51]. Sorry, it's 10 billion times 10 people sort of deal. I was just trying to do that too cleverly. The idea is that it's about showing that there are lots of other people affected or there are a moderate number of other entities that would be affected with higher values.

The sun protection case and the managed investment scheme test case are both examples I was involved with where the ATO did test cases, and private rulings were the vehicles in both cases for those taxpayers to contest those issues. The sun protection case was about whether sunscreen and hats and glasses and protective clothing, etc., which were more normal outdoor wear for Australians, were actually tax deductible. The managed investment scheme case was about whether certain classes of tax investment in agribusiness projects were actually in fact tax deductible in the way that they were framed or not, and whether people will carry on a business to generate whether those amounts would be deductible to them.

The idea is that if the ATO thinks that it's widespread enough and you do a good enough job in arguing that, they may decide to fund that, but it's a scarce pool of resources, and it's hard to get that. The objection itself is a precursor to test case litigation. Unless you have litigation in mind as the outcome, then the ATO are unlikely to fund any other work on objection because it's really about whether that's going to resolve the issue publicly.

If you do go through the test case litigation process, if you do go to the AAT, that you want a presidential member so that they can fast-track the questions of the law or the actual appeal against the decision to the Full Court. But if you want to go to the Federal Court straightaway, which is what we did in the managed investment scheme test case, you use the private ruling, the objection's negative, and then the matter goes to the Federal Court. Then the

ATO and the taxpayer both request urgency and a trip to the full bench instead of it being heard by a single judge as normally happens at first instance. But it's got to be a pretty significant issue to get there.

CCH Learning:

Thank you for that, Bruce. I hope that helps you there, Gary. Well, that does actually bring us to the end of our questions for today. In terms of next steps, I would very much like to remind you all to please take a moment to provide your feedback when exiting. We've asked you a couple of questions about today's webinar, so it's really important for us to hear your opinions. It's also a reminder that within 24 to 48 hours you will be enrolled into the e-learning recording, which can be watched multiple times, and have access to the PowerPoint transcripts, any other supporting documentation, and, of course, a CPD certificate. I would very much like to thank Bruce for the session today, and, to you, the audience for joining us. We do hope to see you back online for another CCH Learning webinar very soon. Please enjoy the rest of your day. Thank you very much.

Bruce Collins:

Thanks [inaudible 01:20:16].