

Part C Lodgment of Documents and Notification of Liabilities

55 DEFERRAL OF THE DUE DATE FOR LODGMENT OR SUSPENSION OF LODGMENT ACTION

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

Date of effect: 4 July 2006 (This replaces the 2003 version)

55.1 PURPOSE

This chapter deals with:

- (i) the Commissioner's power to exercise his discretion to defer the time for lodgment of an approved form or another prescribed form,
- (ii) the circumstances under which the Commissioner will exercise that discretion, and
- (iii) the circumstances in which the Commissioner will suspend lodgment enforcement action.

55.2 LEGISLATION

55.2.1 The relevant provision under which the Commissioner may defer time for lodgment of approved forms is:

Subsection 388-55(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA) which states:

'The Commissioner may defer the time within which an 'approved form' is required to be given to the Commissioner'

55.2.2 This provision applies to approved forms including:

- (i) income tax returns, statements and other approved forms given for the 2000-2001 income year and later years,
- (ii) fringe benefits tax returns, statements and other approved forms for the year of tax commencing on 1 April 2001 and later years,
- (iii) various notifications lodged by consolidated or consolidating entities for the year commencing 1 July 2002 and later years, and
- (iv) other returns, statements and approved forms for tax periods commencing on or after 1 July 2000.

55.2.3 The Commissioner's discretion to grant a deferral of time to lodge other prescribed forms is contained in the various provisions requiring the lodgment of prescribed forms.

55.3 INTRODUCTION

55.3.1 Approved and other prescribed forms are due for lodgment by either the gazetted due dates, due dates specified in a legislative instrument, legislated due dates within prescribed periods or as required by the

Commissioner. Taxpayers or their representatives are expected to lodge such forms as and when they fall due.

55.3.2 It can generally be expected that the Commissioner will take action to secure lodgment of those forms if they are not lodged by the due date. Refer to the policy chapters entitled '*Due date for lodgment of an approved form and other prescribed forms*', '*Actioning non-lodgment*' and '*Risk management*'. However, where notifications of a choice to either consolidate or form a MEC group are required to be lodged by entities it is up to the entity to ensure the notifications are lodged if they want their intent to consolidate to be recognised.

55.3.3 Lodgment of approved forms and other prescribed forms by the due date is essential to the efficient operation and administration of the taxation system. Integral to this is the value of the information contained in these documents and the preservation of community confidence in the tax system.

55.3.4 Legislation allows the Commissioner to defer the time for lodgment of an approved form and other prescribed forms. The existence of this discretion does not mean that the taxpayer has an entitlement to it being exercised.

55.3.5 At times, circumstances may be such that lodgment of an approved form or a prescribed form by the due date cannot be achieved. The delayed lodgment of an approved form may result in the application of a 'failure to lodge on time' penalty.

55.3.6 The delayed lodgment of other prescribed forms may result in the application of other administrative penalties.

55.3.7 The Commissioner recognises that circumstances do arise from time to time which temporarily prevent a taxpayer or their representative from meeting their lodgment obligations. In certain circumstances, the Commissioner may defer the time for lodgment of an approved form or a prescribed form provided certain criteria are met.

55.3.8 The purpose of deferring the due date for lodgment of an approved form or other prescribed form is to facilitate the lodgment of such forms by taxpayers or their representatives who can demonstrate that, because of circumstances beyond their control, they are unable to lodge by the due date, but have the ability or potential to lodge at a particular time in the future.

55.3.9 Further, deferring the due date for lodgment provides taxpayers or their representatives with a further period of time in which to lodge without incurring a failure to lodge on time penalty, for approved forms, or other administrative penalties for other prescribed forms and provides the Commissioner with an alternative to undertaking further compliance action.

55.3.10 Where the circumstances may not warrant a deferral of the due date for lodgment, the Commissioner may, upon request, suspend lodgment enforcement action. In such circumstances a 'failure to lodge on time' penalty for approved forms or other administrative penalties for other prescribed forms may still be imposed from the original due date.

55.3.11 A deferral of time to lodge does not necessarily defer the time for payment. However, the Commissioner does have power under a separate provision to defer the time for payment of a tax-related debt.

Refer to the policy chapter entitled '*Taxation debts and the due date for payment*'.

55.4 POLICY

55.4.1 This Policy seeks to achieve a balance between the Commissioner's obligation to administer tax law and the circumstances affecting individual taxpayers. Where possible, a lodgment deferral request should be made prior to the lodgment due date. A request may be made by telephone, however in some cases it may be necessary to apply in writing to assist in the provision of a more informed decision. Requests by registered tax agents and BAS preparers will generally need to be in writing.

55.4.2 In any request for a deferral of the due date to lodge an approved form or another prescribed form, a taxpayer or the taxpayer's representative will need to:

- (i) provide details of the circumstances which give rise to the inability to lodge on time,
- (ii) propose a deferred date for lodgment, and
- (iii) give an assurance that future obligations will be met on time once the stated circumstances are resolved.

55.4.3 Generally, a deferral of the due date for lodgment will only be granted where taxpayers or their representatives have demonstrated to the Commissioner's satisfaction that:

- (i) lodgment cannot be made, or has not been made, by the due date because of circumstances beyond their control, and they have taken reasonable steps to mitigate the effects of those circumstances,
- (ii) lodgment can be made by the deferred due date, and
- (iii) future obligations will be met on time unless the circumstances continue to be beyond their control. An example of when the circumstances will continue to be beyond the control of the taxpayer is where the taxpayer is an arms length partner or a beneficiary of a partnership/trust **and** cannot influence the preparation timeframe of the main return.

55.4.4 In considering requests for lodgment deferrals the Commissioner may have regard to the size and structure of the taxpayer entity. It would be expected that large corporate entities are more likely to have the ability to overcome circumstances that might otherwise adversely affect their ability to lodge by the due date. Consequently it would be expected that lodgment deferrals for these clients would be minimal and restricted in nature.

55.4.5 The Commissioner may introduce concessional lodgment arrangements for a class of taxpayers subject to certain conditions being met (for example the electronic lodgment of forms). These arrangements are subject to review and may be revoked at any time.

55.4.6 At times, the Government may announce new legislative measures which will have retrospective application once the enabling legislation is enacted. This may cause affected taxpayers to seek a lodgment deferral until the outcome of the legislative measure is known.

55.4.7 The Tax Office's general approach to administering retrospective changes is to apply the existing law until the proposed changes are enacted. The Commissioner cannot insist on the application of a proposed law which has the effect of increasing a taxpayer's liability or paying monies to taxpayers where there is no legal basis. However, under self-assessment the Commissioner is empowered to accept returns as lodged and may, in limited situations, advise taxpayers to meet their obligations by anticipating the effects of a proposed change. These decisions are not taken lightly and must be defensible having regard to the *Financial Management and Accountability Act 1997*.

55.4.8 On some limited occasions, it may be appropriate to grant a general deferral of the due date for lodgment. Generally, the fact that a new legislative measure will have retrospective application but has not been enacted, will not be sufficient for a deferral of the due date for lodgment.

Consolidation – notification of choice to consolidate not lodged

55.4.9 Where notification of choice to consolidate has not been lodged prior to, or at the time of lodgment of the income tax return as required, the Commissioner may still give effect to that choice where the intention to consolidate is clear (for example, the income tax return clearly reflects the consolidated status).

Requests for deferrals based on factors affecting the taxpayer

55.4.10 It would generally be expected that a deferral will be granted in exceptional or unforeseen circumstances where the taxpayer can demonstrate that the inability to lodge an approved form or another prescribed form by the due date can be directly attributed to those circumstances. Such circumstances may include:

- (i) natural disasters (flood, fire, drought, earthquake and the like) or other disasters that may have, or have had, a significant impact on a taxpayer or region or particular industry or grouping of taxpayers,
- (ii) the serious illness of the taxpayer where there is no other person that could prepare and lodge the required forms,
- (iii) impeded access to records (for example, records seized during a police search or retained as evidence in a court matter), or
- (iv) in some instances, the advanced age or the youth of a taxpayer, the serious illness of a family member or a problem due to language difficulties, may be considered.

55.4.11 Each request will be considered on its merits and the deferred due date will be determined having regard to the particular circumstances of the taxpayer and those that led to the inability to lodge by the due date. The fact that a taxpayer may have a poor lodgment compliance history should not prevent consideration of a request for a deferral of time to lodge, where the inability to lodge was caused by circumstances beyond their control.

55.4.12 Circumstances such as the taxpayer being overseas or away from home will generally not be considered exceptional or unpredictable. In these circumstances, the Commissioner expects that the taxpayer will make arrangements to deal with their taxation affairs either before or during their absence. However, where a taxpayer is absent at the time of normal bulk activity statement generation, an activity statement may be

generated early, where possible, so that taxpayers can meet their lodgment and payment obligations on time. This includes:

- self preparers who are going to be absent from their place of business before the end of the reporting period and the business will not be trading during that period,
- short term visitors, (for example, entertainers and sports people who will be leaving the country before generation of the activity statement),
- entities under some form of administration,
- ceased businesses, or
- individuals who are travelling (either within Australia or overseas) and therefore will not be able to obtain their activity statement if generated under the normal bulk process.

55.4.13 Where the reasons given may not be considered exceptional or unforeseen, they may nevertheless be worthy of consideration. Details such as the length of time required to lodge the document, the circumstances and the taxpayer's compliance history would be factors to consider. Poor lodgment or payment compliance history would provide some basis for not deferring the taxpayer's due date further in such cases. The Commissioner will view the taxpayer's compliance history as a whole (that is lodgment of taxation returns, activity statements and other approved forms as well as payment of outstanding amounts on time) to gain a view of the taxpayer's level of compliance. Recent non-compliance will be viewed less favourably than non-compliance in earlier periods.

55.4.14 If a taxpayer presents a proposal that is either unacceptable or has some aspects that are unacceptable to the Tax Office, a more suitable arrangement may be negotiated. As with other aspects of this process, factors to consider are the risk to the revenue, the value of the information contained in the document, lodgment taking place within a reasonable time, and the taxpayer's compliance history.

55.4.15 Where the Commissioner has allowed a deferral to a taxpayer based on factors beyond their control, this will be on a short term basis to allow time to overcome problems, and lodgment will not be extended on a permanent basis. The Commissioner may however introduce concessional lodgment arrangements for taxpayers or their representatives where appropriate. These arrangements would be subject to ongoing review and may be revoked at an appropriate time.

55.4.16 In all cases where it has been decided to defer the due date for lodgment of an approved form or another prescribed form, the taxpayer is to be advised:

- of the year or tax period to which the deferral applies,
- of the deferred due date by which lodgment is to be made and from which a penalty for failing to lodge on time will be calculated, if lodgment is not made by the deferred due date, and
- that action to secure lodgment may be commenced without further notice if lodgment is not made by the deferred due date.

55.4.17 If a deferral request is disallowed or varied, the Tax Office will document factors considered and reasons for making the decision and

communicate those reasons to the taxpayer. Taxpayers will also be advised of their rights of review.

- 55.4.18 The Commissioner may exercise his discretion to allow deferrals to a class of taxpayers affected by a common event, eg bushfire, delayed legislation.
- 55.4.19 Labour hire firms and recruitment agencies acting in the capacity of a labour hire firm, are given a deferral for lodgment of TFN declarations. These firms are required to forward TFN declarations to the Commissioner within 14 days from the **commencement of the relationship**, that is, from when the payee actually commences working for the payer (the firm), and not from the date the payee has signed (made) the declaration. This is because the labour hire firm will usually have the payee complete the TFN declaration at the time of registering with the firm (for convenience only), but the payee may not commence a working relationship until a substantial time later, if at all.
- 55.4.20 In considering all requests for a deferral each situation will be treated on its merits.
- 55.4.21 Where a deferral to lodge an income tax return is granted, any other returns, statements or notices that are due on the same date as the income tax return will be similarly deferred, eg annual GST return, notification of choice to consolidate.

Requests for deferrals based on factors affecting registered tax agents and bookkeepers providing a BAS service

- 55.4.22 The Commissioner acknowledges the important role that tax agents and BAS preparers have in assisting taxpayers to meet their lodgment obligations. The Tax Agent Lodgment Program has been specifically developed to assist registered tax agents in managing their workload throughout the year. The Commissioner does however recognise that circumstances may arise that prevent tax agents from meeting all of their obligations under the lodgment program.
- 55.4.23 Throughout the life of the prevailing lodgment program the Commissioner will work with tax agents to review the effectiveness of the program and address any concerns that arise.
- 55.4.24 Tax agents may request deferrals of time to lodge approved forms or other prescribed forms, and bookkeepers providing a BAS service may apply for a deferral of time to lodge activity statements where circumstances exist that affect their ability to lodge these forms by the due date. Such circumstances include:
 - (i) practice management factors, for example:
 - (a) the serious illness of a sole practitioner;
 - (b) prolonged but unexpected staff absences;
 - (c) prolonged and expected staff absences but where other factors have prevented replacement by suitably-qualified staff;
 - (ii) natural and other disasters (eg flood, fire, drought, earthquake and the like),
 - (iii) impeded access to records (eg records seized during a police search or retained as evidence in a court matter), or

- (iv) where, despite making a concerted effort to achieve lodgment for a period, a small number of forms will not be lodged by the due date. This process is referred to in the Tax Agent Lodgment Program as the 10/10 deferral.

55.4.25 The Commissioner will consider each request on its merits having regard to some or all of the following factors:

- (i) past lodgment performance,
- (ii) reporting period,
- (iii) approved form or other prescribed form type,
- (iv) number of deferrals,
- (v) size of the practice,
- (vi) deferred due date,
- (vii) value of the information required, and
- (viii) risk to the revenue.

55.4.26 Any request for deferral from a tax agent or a bookkeeper providing a BAS service must:

- (i) be in writing or other means approved by the Commissioner;
- (ii) contain sufficient information for the Commissioner to make a decision, and
- (iii) be made before:
 - (a) the end date assigned under the tax agent lodgment program, or
 - (b) where the obligation is not covered by the tax agent lodgment program - the due date for lodgment.

55.4.27 Requests made after these dates will only be considered where the practitioner can demonstrate that circumstances existed that prevented the request being made before these dates.

55.4.28 These requirements may be relaxed in very limited circumstances, for example where due to very extreme circumstances associated with natural disasters it is unreasonable to expect that the request be submitted in writing.

55.4.29 The Commissioner may also exercise his discretion to allow lodgment deferrals to registered tax agents subject to certain conditions being met (for example the electronic lodgment of forms and electronic payment of any associated liability). The Commissioner may also respond to representations from tax practitioners and accounting professional associations and allow further concessions to either a particular group of taxpayers or to taxpayers with a particular due date in the lodgment program.

Lodgment Deferrals and Payment Consequences

55.4.30 The provision that allows the Commissioner to defer the time for lodgment of an approved form does not generally defer the due date for payment of any tax-related amounts.

55.4.31 However, in those cases where payment of a tax liability is legislatively linked to the lodgment of an approved form or another prescribed form, any deferral of the lodgment date effectively defers the payment date. For example, the statutory due date for payment of an income tax liability by taxpayers other than full self assessment taxpayers is directly linked to the lodgment due date.

55.4.32 The linkage between lodgment and payment does not exist for activity statements or the annual GST return and in these cases any request for lodgment and payment deferrals will need to be considered independently.

55.4.33 If the lodgment due date is deferred it may also be appropriate to defer the payment date. In such cases, provided lodgment and payment are made by the deferred due date no penalties will apply for failure to lodge on time and no general interest charge will apply for failure to pay on time.

55.4.34 However, there will be cases where it is not appropriate to defer the due date for lodgment but it may be appropriate to defer the due date for payment. An inability to pay by the due date is not a valid reason for failing to lodge on time.

55.4.35 Circumstances, in which it is desirable to defer the due date for lodgment but not payment, may include the situation where information not affecting the payment delays lodgment. There may be occasions where the late provision of information from a third party delays the issue of an activity statement, eg Customs data required for inclusion on the activity statement for participants in the deferred GST scheme. The individual circumstances of a participant may be such that a deferral is warranted.

SUSPENSION OF ENFORCEMENT ACTION

55.4.36 If a taxpayer or a taxpayer's representative applies to have the due date deferred but the reasons given are not sufficient to allow a deferral, the Commissioner may agree to 'suspend action' for a period of time. In doing so, the Commissioner agrees not to actively pursue lodgment of the outstanding document for a given time. However, the 'failure to lodge on time' penalty will be imposed from the original due date.

55.4.37 Alternatively, where a taxpayer or a taxpayer's representative applies directly to the Commissioner to suspend lodgment action for a period of time, the Commissioner may, provided the reasons for the request meet certain criteria, agree to 'suspend action' for a period of time. Again, in doing so, the Commissioner agrees not to actively pursue lodgment of the outstanding document for a given time and a penalty for failing to lodge on time will be imposed from the due date. Matters the Commissioner will take into consideration when deciding whether to suspend action include:

(i) information provided by the taxpayer and other information that may be held (or obtained) by the Commissioner,

- (ii) the circumstances that led to the inability to lodge on time and the effect of requiring immediate lodgment;
- (iii) the stage that current lodgment enforcement action has reached and the grounds put forward by the taxpayer to justify suspension of that action;
- (iv) the offer made and the ability to meet that offer without seriously impacting on the ability to meet other obligations as and when they fall due
- (v) whether there is a likely risk to the revenue or to the efficient operation and administration of the taxation system
- (vi) compliance with other taxation obligations (eg whether lodgments are up to date) and the history of the taxpayer's prior dealings with the Tax Office, and
- (vii) the likelihood of the taxpayer lodging the form within the period allowed.

55.4.38 Taxpayers applying for a suspension of action must provide all necessary information to enable the Commissioner to give proper consideration to the request.

55.4.39 Requests for suspension of action may be received by telephone or in writing. All arrangements made must stipulate that a penalty for failing to lodge on time may be applied from the original due date until lodgment is recorded.

55.4.40 If a suspension of action request is either not granted or is varied, the Tax Office will document factors considered and reasons for making the decision and communicate those reasons to the taxpayer.

55.4.41 A request for suspension of action after the issue of a final notice for lodgment of certain documents, eg income tax returns, will not generally be granted, as potential prosecution action may be compromised.

55.5 TERMS USED

55.5.1 'Activity statement' (AS) see 'business activity statement' and 'instalment activity statement' for further details.

55.5.2 'Annual GST return' is an approved form required to be lodged by those eligible taxpayers who have elected to pay GST by instalments. An 'approved form' takes the meaning set out in subsection 388-50(1) of Schedule 1 to TAA, and includes requirements concerning declarations, full completion of the form, and the manner in which the form must be given. The Commissioner may combine in the same approved form more than one return, notice, statement or other document (for example, the activity statement).

55.5.3 'Approved form' takes the meaning set out in subsection 388-50(1) of Schedule 1 to the TAA, and includes requirements concerning declarations, full completion of the form, and the manner in which the form must be given. The Commissioner may combine in the same approved form more than one return, notice, statement or other document (for example, the Activity Statement).

55.5.4 'Business activity statement' (BAS) - an approved form lodged by those taxpayers who have an ABN and are registered or required to be

registered for GST. Other obligations reported on the BAS may include WET, LCT, PAYG instalments, PAYG withholding, FBTI and DCIN.

55.5.5 'Consolidated entity' is an entity which is part of either a consolidated group or a multiple entry consolidated (MEC) group.

55.5.6 'Consolidated group' consists of an Australian resident head company and all of its Australian resident wholly-owned subsidiaries. An eligible wholly-owned group becomes a consolidated group after notice of a choice to consolidate is given to the Commissioner.

55.5.7 'Defer', 'deferral' or 'deferral of time' means to move the due date for lodgment of an approved form to a later date. Provided that lodgment is made on or by the deferred due date a 'failure to lodge on time' penalty will not apply.

55.5.8 'Eligible tier-1' company member of a MEC group means there is no other entity interposed between the tier-1 company and the 'top' company. The requirements are detailed in sec 719-15 of the ITAA 1997.

55.5.9 'Instalment activity statement' (IAS) - an approved form lodged by taxpayers who are either not registered or required to be registered for GST, or are not required to report GST in the particular period, but may have PAYG instalment, PAYG withholding, FBTI and/or DCIN obligations.

55.5.10 'Legislative instrument' means an instrument registered on the Federal Register of Legislative Instruments as required by the *Legislative Instruments Act 2003*. It is an instrument in writing:

- (a) that is of a legislative character; and
- (b) that is or was made in the exercise of a power delegated by the Parliament.

It determines the law or alters the content of the law, rather than applying the law in a particular case and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

55.5.11 'MEC group' means a multiple entry consolidated group. A MEC group consists of certain Australian-resident entities that are wholly-owned subsidiaries of a foreign 'top' company. The requirements are set out in subdivision 719-B of the ITAA 1997.

55.5.12 'Notification of choice' is made by the head company of a consolidatable group or jointly by the tier-1 companies of a potential MEC group. It is given in the approved form to the Commissioner and states that the group is taken to be consolidated on and after a day that is specified in the choice.

55.5.13 'Suspend', 'suspension of action' means not to take action for lodgment of an 'approved form' or another prescribed form until a future date. A 'failure to lodge on time' penalty for approved forms or other administrative penalty for other prescribed forms will apply from the original due date.