

## ATO RECEIVABLES POLICY

### PART C Lodgment of Documents and Notification of Liabilities

## Chapter 55

# DEFERRAL OF THE DUE DATE FOR LODGMENT OR SUSPENSION OF LODGMENT ENFORCEMENT 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:** 24 July 2008 (This version replaces the 2006 version.)

**Key legislation:** Subsection 388-55(1) of Schedule 1 to the *Taxation Administration Act 1953*

### PURPOSE

1. This chapter deals with the Commissioner's discretionary power under subsection 388-55(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA) to defer the time for lodgment of an approved form and the circumstances under which the Commissioner will exercise that discretion or suspend lodgment enforcement action.
2. Subsection 388-55(1) applies to forms given from certain dates including:
  - (i) income tax returns, statements and other approved forms given for the 2000–01 income year and later years
  - (ii) fringe benefits tax (FBT) 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.
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 those forms.

### INTRODUCTION

4. 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.
5. The Tax Office will generally take action to secure lodgment of those forms if they are not lodged by the due date. Refer to Chapter 51 'Introduction to Part C -

Lodgment of documents, Chapter 56 'Actioning non-lodgment' and Chapter 3 '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 the responsibility of the entity to ensure the notifications are lodged in order for their intention to consolidate to be recognised.

6. At times, circumstances may be such that lodgment 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. The delayed lodgment of other prescribed forms may result in the application of other administrative penalties.
7. 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, but it does enable the time for lodgment of an approved form or a prescribed form to be deferred provided certain criteria are met.
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. Deferring the due date for lodgment provides the 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 Tax Office with an alternative to undertaking further compliance action.
9. Where the circumstances may not warrant a deferral of the due date for lodgment, the Tax Office 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 applied from the original due date.
10. 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 Chapter 4 'Introduction to Part B – The collection of taxation debts' and Chapter 9 'Deferring the time for payment'.

## **POLICY**

11. The policy seeks to achieve a balance between the Commissioner's obligation to administer tax law consistently and to do so fairly having regard to the circumstances affecting individual taxpayers. Where possible, a lodgment deferral request should be made before 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 where they are outside the specific concessionary deferrals extended to them. Deferral requests by tax agents may be made through the Tax Agent Portal.
12. 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:
  - provide details of the circumstances which give rise to the inability to lodge on time
  - propose a deferral date for lodgment, and

- give an assurance that future obligations will be met on time once the stated circumstances are resolved.

### **Circumstances to be considered**

13. Generally, a deferral of the due date for lodgment will only be granted where taxpayers (or their representatives) have demonstrated to the satisfaction of the Tax Office that:
  - (i) lodgment cannot be made, or has not been made, by the due date because of circumstances beyond their control, and that 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 a taxpayer is where arm's length partners or beneficiaries of a partnership or trust cannot influence the preparation timeframe of the main return.
14. In considering requests for lodgment deferrals, the Tax Office may have regard to the size and structure of the taxpayer entity. 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. Accordingly, it would be expected that lodgment deferrals for these clients would be minimal and restricted in nature.

### **Concessional lodgment arrangements**

15. The Tax Office may also introduce concessional lodgment arrangements subject to certain conditions being met. These arrangements are subject to review and may be revoked at any time. Some examples of these concessionary arrangements are provided below.
16. A two-week deferral applies to most quarterly activity statements lodged using the Business Portal or Electronic Commerce Interface. This concession applies to activity statements with quarters ending 30 September, 31 March and 30 June which have an original due date of 28<sup>th</sup> of the month following the end of the quarter – that is, quarters 1, 3 and 4. (Quarter 2 activity statement lodgers already have eight weeks to lodge).
17. The two week deferral does not apply to:
  - monthly activity statements
  - monthly goods and services tax (GST) payers with quarterly pay as you go (PAYG) instalments (or other quarterly roles). This includes businesses that are required to report on a monthly basis and those who have elected to report on a monthly basis.
  - monthly PAYG withholding payers, including those with a quarterly role (for example PAYG instalments) who lodge on the 28<sup>th</sup>
  - quarterly PAYG instalments for head companies of consolidated groups
  - entities with a substituted accounting period that are classified as a large business client
  - any other clients who do not have an original date of the 28<sup>th</sup>
  - quarterly instalment notices – for example forms R, S and T

- any activity statement lodged before quarter 4, 2003
18. From 5 February 2007 tax agents may self assess requests for deferrals of all end dates listed in the Lodgment program (with the exception of the 15 January due date for large corporates or where the Commissioner has advised that the benefit of the Lodgment program will not apply to a particular taxpayer)
  19. Generally, these deferral requests will be granted without the need for detailed reasons to be supplied with each request if the following conditions are met:
    - (i) the request must be made on or before the due date for lodgment of the relevant document
    - (ii) all taxpayers for whom a deferral is sought must appear on the current client listings for the registrations specified, and
    - (iii) tax agents must only request reasonable deferral periods which can be justified by the circumstances.
  20. The timeframes that are eligible for self assessed lodgment deferrals are:
    - (i) up to four weeks for annual obligations
    - (ii) up to three weeks for quarterly obligations, and
    - (iii) up to two weeks for monthly obligations.
  21. The Tax Office may consider a request from a tax practitioner for additional time to lodge after the due date for lodgment of the relevant document where a detailed explanation of the reason for making a late request is supplied.

### **New legislative measures**

22. At times, the Australian Government may announce new legislative measures which will have retrospective application once enabling legislation is enacted. The Tax Office's general approach to administering retrospective changes is to apply the existing law until the proposed changes are enacted. The Tax Office cannot insist on the application of a proposed law which has the effect of increasing taxpayers' liability or of paying money to taxpayers where there is no legal basis. However, under self-assessment the Tax Office 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*.
23. In limited circumstances, it may be appropriate to grant a general deferral of the due date for lodgment. Generally, however, the fact 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.

### **Notification of choice to consolidate not lodged**

24. Where notification of choice to consolidate has not been lodged before or at the time of lodgment of the income tax return as required, the Tax Office may defer the time for lodgment of the notification of choice where the intention to consolidate is clear (for example, the income tax return clearly reflects the consolidated status).

### **Exceptional or unforeseen circumstances**

25. A deferral will usually be granted in exceptional or unforeseen circumstances where the taxpayer can demonstrate that the inability to lodge by the due date can be reasonably attributed to those circumstances. Such circumstances may include:
- (i) natural disasters (flood, fire, drought, cyclones, earthquake and similar events) 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
  - (iii) impeded access to records (for example, records seized during a police search or retained as evidence in a court matter), or
  - (iv) the advanced age or the youth of a taxpayer, the serious illness of a family member or a problem due to language difficulties.
26. 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.
27. Where fraudulent alterations made by a taxpayer's representative without the authority of the taxpayer are detected in a document already lodged, the Tax Office will generally advise the taxpayer of the requirement to lodge a fresh document. The due date for lodgment of this document will be deferred for 30 days from the date of the advice from the Tax Office. A longer deferral period may be granted, if requested, depending on the taxpayer's circumstances.
28. Deferrals may be granted to a class of taxpayers affected by a common event, for example bushfire or delayed legislation. Where the Tax Office can reasonably assume that a common event has sufficiently impacted on all of a defined population, a deferral may be granted without individual applications by the taxpayers. For example where industrial instruments prevent employees of schools and associated bodies from working over the Christmas holiday shutdown period, deferrals may be granted to all entities affected in this way.

### **Early generation of activity statements**

29. Circumstances such as the taxpayer being overseas or away from home will generally not be considered exceptional or unpredictable. In these circumstances, the taxpayer should make arrangements to deal with their taxation affairs either before or during their absence.
30. 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:
- (i) 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
  - (ii) short term visitors, (for example, entertainers and sports people who will be leaving the country before generation of the activity statement),
  - (iii) entities under some form of administration
  - (iv) ceased businesses, or

- (v) 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.

### Other factors to consider

- 31. Where the circumstances are not exceptional or unforeseen, the deferral request may nevertheless be granted if fair and reasonable to do so. Details such as the length of time needed 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 Tax Office 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.
- 32. 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.

### Duration of deferral

- 33. Where a deferral is granted based on factors beyond the taxpayer's control, this will be on a short term basis to allow time to overcome problems. Lodgment will not be extended on a permanent basis. However concessional lodgment arrangements for taxpayers or their representatives may be introduced where appropriate. These arrangements would be subject to ongoing review and may be revoked at an appropriate time.

### Communication of deferral decision

- 34. Generally, in 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:
  - (i) of the year or tax period to which the deferral applies
  - (ii) 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
  - (iii) that action to secure lodgment may be commenced without further notice if lodgment is not made by the deferred due date.
- 35. 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 therefore become due on the deferred date, for example annual GST return, notification of choice to consolidate.
- 36. 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.

### Labour hire firms

37. Labour hire firms and recruitment agencies acting in the capacity of a labour hire firm, are given a deferral for lodgment of tax file number (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 labour hire firm), and not from the date the payee has made the declaration. This is because the labour hire firm will usually have the payee complete a TFN declaration at the time of registering with the labour hire firm (for convenience only), but the payee may not commence a working relationship until a substantial time later, if at all.

### **Registered tax agents and bookkeepers providing a BAS service**

38. Tax agents and business activity statement (BAS) preparers have an important role 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. Nevertheless, circumstances may arise that prevent tax agents from meeting all of their obligations under the Program.
39. 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
    - the serious illness of a sole practitioner
    - prolonged but unexpected staff absences
    - prolonged and expected staff absences where other factors have prevented replacement by suitably qualified staff
  - (ii) natural and other disasters (flood, fire, drought, cyclone, earthquake or similar events)
  - (iii) impeded access to records (for example records seized during a police search or retained as evidence in a Court matter)
  - (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.
40. Each request will be considered 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) value of the information required, and
  - (vii) risk to revenue.
41. 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 Tax Office (that is, Tax Agent Portal)

- (ii) contain sufficient information for the Commissioner to make a decision (except where tax agents can self assess deferrals of eligible documents), and
  - (iii) be made before:
    - the end date assigned under the tax agent lodgment program, or
    - where the obligation is not covered by the tax agent lodgment program – the due date for lodgment.
42. These requirements may be relaxed where circumstances associated with natural or other disasters exist so that it is unreasonable to expect that the request be submitted in writing. Requests made after the due or end dates will only be considered where the practitioner can demonstrate circumstances that prevented the request being made beforehand.
43. Lodgment deferrals may be granted to registered tax agents subject to certain conditions being met (for example the electronic lodgment of forms and electronic payment of any associated liability). Representations from tax practitioners and accounting professional associations may result in further concessions to either a particular group of taxpayers or to taxpayers with a particular end date in the Program.

#### **Lodgment deferrals and payment consequences**

44. 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.
45. 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.
46. 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.
47. 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.
48. 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.
49. Conversely, 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.
50. There may be occasions where the late provision of information from a third party delays the issue of an activity statement, for example 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 LODGMET ENFORCEMENT ACTION**



51. 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 lodgment enforcement action for a period of time. In doing so, the Tax Office agrees not to actively pursue lodgment of the outstanding document for a given time. However, a failure to lodge on time penalty may be applied from the original due date.
52. Alternatively a taxpayer or a taxpayer's representative may apply directly to the Tax Office to suspend lodgment enforcement action for a period of time. If the request meets certain criteria, the Tax Office may agree to suspend lodgment enforcement action for a period of time but, again, a penalty for failing to lodge on time may be applied from the due date.
53. Matters that will be taken into consideration when deciding whether to suspend lodgment enforcement action include:
  - (i) information provided by the taxpayer and other information that may be held (or obtained) by the Tax Office
  - (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 (for example whether lodgments are up to date) and the history of the taxpayer's previous dealings with the Tax Office, and
  - (vii) the likelihood of the taxpayer lodging the form within the period allowed.
54. Requests for suspension of lodgment enforcement action may be received by telephone or in writing. Taxpayers applying for a suspension of lodgment enforcement action must provide all necessary information to enable the Tax Office to give proper consideration to the request. 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. If a suspension of lodgment enforcement action request is either not granted or is varied, the Tax Office will document factors considered and reasons for making the decision and communicate them to the taxpayer. A request for suspension of lodgment enforcement action after the issue of a final notice for lodgment of certain documents, such as income tax returns, will not generally be granted, as potential prosecution action may be compromised.

## **TERMS USED**

Activity Statement – a form that allows the taxpayer or representative to report obligations for GST, luxury car tax (LCT), wine equalisation tax (WET), PAYG withholding, PAYG instalments, FBT instalments and fuel tax credits (FTC).

Annual GST return – Approved form on which entities voluntarily registered for GST may report and pay (or receive refund of) GST annually instead of monthly or quarterly AND approved form where eligible quarterly GST instalment payers under GST reporting

option 3 pay a quarterly GST instalment amount but lodge annually. The Tax Office will calculate the amount of the quarterly GST instalment and notify the taxpayer each quarter. The taxpayer must account for any difference between the actual GST liability and total GST instalments for the year on an annual GST return

Approved form – a form that has been approved by the Commissioner as acceptable to provide information required by the Tax Office. An example of an approved form is any income tax return or activity statement. Law Administration Practice Statement PSLA 2005/19 outlines how a form becomes an approved form and what is required to be in it

Business activity statement – a personalised form lodged by those taxpayers who have an obligation to lodge an activity statement and have a GST role as well as other obligations such as WET, LCT, PAYG instalments, PAYG withholding, FBT instalments and FTC. A BAS must be lodged with the Tax Office for each tax period.

Consolidated entity – is an entity which is part of either a consolidated group or a MEC group.

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 a notice of a choice to consolidate is given to the Commissioner.

Defer, deferral or deferral of time – moves the due date for lodgment of an approved form to a later date. Provided the document is lodged by the deferred due date, no failure to lodge on time penalty will be applied. .

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.

Instalment activity statement – a personalised form issued by the Tax Office for reporting tax obligations to be lodged by taxpayers who are either not registered or required to be registered for GST, or who are not required to report GST in a particular period, but may have other reporting obligations.

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. Tax Office rulings are not legislative instruments.

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.

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.

Suspend lodgment enforcement 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 may apply from the original due date.

**Chapter 55 - Archived version**

Version 4 – July 2006 (will link to chapter 55 pdf)
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