

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 ATO 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 ATO.

Date of effect: 7 October 2010

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

PURPOSE

1. This chapter deals with the Commissioner's:
 - discretionary power under subsection 388-55(1) of Schedule 1 to the TAA to defer the time for lodgment of an approved form
 - discretionary power to grant a deferral of time to lodge other prescribed forms according to the various provisions requiring lodgment of those forms
 - power to suspend lodgment enforcement action.
2. Subsection 388-55(1) applies to forms given to the Commissioner from certain dates:
 - for income tax - returns, statements, notices and other documents given for the 2000–01 income year and later years
 - for fringe benefits tax (FBT) - returns, statements, notices and other documents for the year of tax starting on 1 April 2001 and later years
 - for other taxes - returns, statements, notices and other documents for the period starting on 1 July 2000 and later periods
 - for superannuation entities – reporting statements including member contributions statements, rollover benefit statements, superannuation statements to members, and statements related to release authorities given from 1 July 2007.

INTRODUCTION

3. 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 required to lodge such forms as and when they fall due.

4. Where a group has made a choice to either consolidate or form a MEC group it is the responsibility of either the head company or the provisional head company to ensure the relevant information related to the choice is given to the Commissioner in the approved form.
5. 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.

POLICY

6. The law 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 where this action is warranted. The Commissioner will generally grant a deferral, where in the particular circumstances of the taxpayer or their representative, it is fair and reasonable to do so having taken into account all of the material facts.
7. 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 and their representatives. 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 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. It also provides the ATO with an alternative to undertaking further compliance action.
8. Where the particular circumstances of the taxpayer or their representative do not warrant a deferral of the due date for lodgment, we 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.
9. A deferral of time to lodge does not necessarily defer the time for payment, subsection 388-55(2). 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'.
10. Where possible, a lodgment deferral request should be made before the lodgment due date. A request may be made by telephone, but 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 will generally need to be in writing. Our preferred method for receiving deferral requests made by tax agents is through the Tax Agent Portal.
11. 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 particular circumstances which make them unable to lodge on time
 - propose a deferred date for lodgment
 - give an assurance that future obligations will be met on time once the stated circumstances are resolved.
12. In determining whether it is fair and reasonable to grant a deferral the Commissioner will consider:
- the reason why the taxpayer or their representative is unable to lodge on time
 - the value of the information contained in the form
 - the size and structure of the 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)
 - the risk to revenue
 - the taxpayer's compliance history as a whole (that is lodgment of taxation returns, activity statements and other approved forms, payment of amounts on time and previous dealings with us, to gain a view of the taxpayer's level of compliance)
 - the length of time needed to lodge the form (a deferral will usually be granted where a taxpayer has good compliance history and requests a short period of additional time to lodge a form)
 - any other relevant information.
13. 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.

Exceptional or unforeseen circumstances

14. The Commissioner will generally consider it fair and reasonable to grant a deferral where the inability to lodge by the due date is reasonably attributed to exceptional or unforeseen circumstances, such as:
- natural disasters (flood, fire, drought, cyclones, earthquake and similar events) or other disasters or events that may have, or have had, a significant impact on a taxpayer, region or particular industry or grouping of taxpayers
 - the serious illness or death of the taxpayer or their representative
 - impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
 - the advanced age or the youth of a taxpayer, the serious illness or death of a family member or a problem due to language difficulties.
15. A deferral can be granted even where the circumstances leading to their inability to lodge on time continues to be beyond the taxpayer's control so that they may not be able to meet future obligations on time. An example of when the circumstances will continue to be beyond the control of the taxpayer is where arm's length partners or beneficiaries of a partnership or trust cannot influence the preparation timeframe of the return of the partnership or trust.

16. The fact that a taxpayer may have a poor lodgment compliance history should not prevent granting a request for a deferral of time to lodge, where the inability to lodge was caused by circumstances beyond their control or if it would be otherwise fair and reasonable to grant the deferral.

Other circumstances

17. In circumstances such as the taxpayer being overseas or away from home the taxpayer should, where possible, make arrangements to deal with their taxation affairs either before or during their absence. Where a taxpayer is absent at the time of normal bulk activity statement generation, it may be possible to generate an activity statement in advance so that the taxpayer can meet lodgment and payment obligations on time.
18. If a taxpayer presents a proposal that is either unacceptable or has some aspects that are unacceptable to the ATO, a more suitable arrangement may be negotiated.
19. Where fraudulent alterations made by a taxpayer's representative without the authority of the taxpayer are detected in a document already lodged, we 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 us. A longer deferral period may be granted, if requested, depending on the taxpayer's circumstances.

Collective deferrals

20. Deferrals may be granted to a class of taxpayers affected by a common event such as bushfire or delayed legislation. Where we can reasonably assume that a common event has sufficiently impacted on all of a defined population, a deferral may be granted without individual applications being made by the taxpayers involved. 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.

New legislative measures

21. On occasions, the Australian Government may announce new legislative measures that will have retrospective application once enabling legislation is enacted. The general approach of the ATO to administering retrospective changes is to apply the existing law until the proposed changes are enacted. The ATO cannot insist on the application of a proposed law that has the effect of increasing taxpayers' liabilities or of paying money to taxpayers where there is no legal basis. However, tax laws generally allow the Commissioner to accept taxpayers' self-assessments. It is within the Commissioner's powers under section 44 of the *Financial Management and Accountability Act 1997* and the general administration provisions of the various tax laws, that the Commissioner may decide whether or not it would be an efficient, effective and ethical use of the Commissioner's limited resources to enforce compliance with the existing law where a taxpayer chooses to self-assess by anticipating an announced law change.
22. In limited circumstances, it may be appropriate to grant a general deferral of the due date for lodgment. Generally, however, 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.

Labour hire firms

23. 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.

Concessional lodgment arrangements

24. We 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. An example of these concessional arrangements to encourage electronic lodgment is the two-week deferral that applies to most quarterly activity statements lodged using the Business Portal or Electronic Commerce Interface.

Registered tax agents

25. Tax agents have an important role in assisting taxpayers to meet their lodgment obligations. The 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 Lodgment Program.
26. Tax agents may be granted deferrals of time to lodge approved forms or other prescribed forms, where circumstances exist that affect their ability to lodge these forms by the due date. Such circumstances include:
- 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
 - natural and other disasters (flood, fire, drought, cyclone, earthquake or similar events)
 - impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
 - 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.
27. Deferral requests from a tax agent must:
- (i) be in writing or other means approved by the ATO (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)
 - (iii) be made before:
 - the end date assigned under the Lodgment Program

- where the obligation is not covered by the Lodgment Program – the due date for lodgment.
28. 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 provide a detailed explanation of the circumstances that prevented the request being made before the due date.
29. Deferral requests from tax agents will be considered having regard to some or all of the following factors:
- the circumstances that gave rise to the request
 - past lodgment performance
 - reporting period
 - approved form or other prescribed form type
 - number of deferrals
 - size of the practice
 - value of the information required, and
 - risk to revenue.
30. 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 Lodgment Program.

Self assessment of lodgment deferral by tax agents

31. From 5 February 2007, tax agents have been able to self assess lodgment deferrals for specific lodgment dates and form types. Further information regarding the deferral period and form types eligible for self-assessed lodgment deferrals can be found in the Lodgment Program.

Registered BAS agents

32. BAS agents also have an important role in assisting clients to meet their activity statement lodgment obligations. They were previously entitled to the concessional two-week deferral offer for most quarterly activity statements where they lodged online on behalf of their clients. Lodgment concessions have now been extended to BAS agents in the Lodgment Program 2010-11. For example, BAS agents are now allowed a four week lodgment and payment concession from quarter 1 for the 2010-11 income year for lodging quarterly activity statements but only if the activity statements are lodged electronically. However, they are not entitled to all of the due date concessions extended to tax agents and cannot self assess lodgment deferrals. Where a BAS agent requests additional time to lodge activity statements on behalf of a taxpayer, they must make the request in writing.

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 apply or 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, we will advise the taxpayer or their representative:
 - (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
 - (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 tax agent self-assessed deferral is granted, tax agents may be notified by means of a changed due date for the form in the Tax Agent Portal or ELS.
36. 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...
37. If a deferral request is **disallowed** or **varied**, we 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.

Lodgment deferrals and payment consequences

38. 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.
39. The legislative linkage between lodgment and payment does not exist for activity statements and therefore any request for lodgment and payment deferrals for activity statements will need to be considered **independently**.
40. 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.
41. Alternatively, there will be circumstances, such as the situation where payment can be made but lodgment information is not yet available, where it is appropriate to defer the due date for lodgment but not payment.
42. 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.
43. 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. In this situation the individual circumstances of a participant may be such that a deferral is warranted.

SUSPENSION OF LODGMENT ENFORCEMENT ACTION

44. If a taxpayer or their 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, we agree not to actively pursue lodgment of the overdue form for a given time. However, a failure to lodge on time penalty may be applied from the original due date.
45. Alternatively, a taxpayer or a taxpayer's representative may apply directly to us to suspend lodgment enforcement action for a period of time. If the request meets certain criteria, we 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.
46. Matters that will be taken into consideration when deciding whether to suspend lodgment enforcement action include:
 - information provided by the taxpayer and other information that may be held (or obtained) by us
 - the circumstances that led to the inability to lodge on time and the effect of requiring immediate lodgment
 - the stage that current lodgment enforcement action has reached and the grounds put forward by the taxpayer to justify suspension of that action
 - 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
 - whether there is a likely risk to the revenue or to the efficient operation and administration of the taxation system
 - compliance history (that is lodgment of taxation returns, activity statements and other approved forms as well as payment of amounts on time and the history of the taxpayer's previous dealings with us)
 - the likelihood of the taxpayer lodging the form within the period allowed.
47. 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 us 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.
48. If a suspension of lodgment enforcement action request is either not granted or is varied, we 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 forms, such as income tax returns, will not generally be granted, as potential prosecution action may be compromised.

TERMS USED

Activity Statement – an approved form that allows the taxpayer or representative to report obligations for goods and services tax (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.

Approved form – a form that has been approved by the Commissioner as acceptable to provide information required by us. An example of an approved form is any income tax return or activity statement. Law Administration Practice Statement PS LA 2005/19 outlines what an approved form is and the requirements and procedures for the approval of approved forms.

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.

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:

- that is of a legislative character, and
- 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. ATO 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.

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 versions

Version 4 – July 2006 (will link to chapter 55 pdf)
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Version 5 – July 2008 (will link to chapter 55 pdf)
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