

LODGE 2020/1 -



Legislative Instrument

Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2020

I, Vivek Chaudhary, Deputy Commissioner of Taxation and delegate of the Commissioner of Taxation (the Commissioner) under section 8 of the *Taxation Administration Act 1953* (TAA), make the following instrument regarding lodgment of returns for the *income year ended 30 June 2020 consistent with:

Income Tax Assessment Act 1936 (ITAA 1936):

Section 18; Section 23AF; Section 23AG; Section 130; Section 160AAAA; Section 161; Subsection 161A(1); Section 162; Section 163; Section 255; former subsection 485AA(1); former subsection 485AA(2); Division 1AB of Part III; Division 5 of Part III; Division 5A of Part III; and Division 15 of Part III

Income Tax Assessment Act 1997 (ITAA 1997):

Section 61-215; Section 204-75; Section 205-50; Section 210-135; Section 214-15; Subsection 214-25(2); Section 303-10; paragraph 830-10(2)(b); Subsection 830-15(5); paragraph 830-15(5)(b); Section 960-195; Section 995-1; Division 50; Subdivision 61-G; Division 405; Division 703; Division 719; Division 830; and Part 3-90

Income Tax (Transitional Provisions) Act 1997 (ITTPA 1997):

Division 205 and Division 214

Taxation Administration Act 1953 (TAA):

Section 8C

Taxation Administration Act 1953 (Schedule 1) (TAA Schedule 1):

Section 12-140; Section 12-145; Section 12-319A; Section 12-320; Section 260-140; Section 286-75; Section 388-50; Section 388-55; Section 390-5; Subdivision 12A-C; Subdivision 12-F; Subdivision 12-FA; and Subdivision 12-H

Superannuation Industry (Supervision) Act 1993 (SISA):

Section 35D

Higher Education Support Act 2003 (HESA):

Subsection 154-18(3)

Trade Support Loans Act 2014 (TSLA):

Subsection 47C(3)

VET Student Loans Act 2016 (VETSLA):

Subsection 23ED(3)

Signed Vivek Chaudhary

Deputy Commissioner of Taxation

7 May 2020

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1. Name of instrument

This instrument is the *Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2020*.

2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3. Application

3.1 Definitions

Many of the terms used in this instrument are defined and most of the defined terms are identified by an asterisk at the start of the term.

Once a defined term has been asterisked, later occurrences of the term in the same paragraph are not usually asterisked. Terms are not asterisked in notes and headings.

The fact that a defined term is not asterisked is not relevant to interpreting the term.

In this instrument:

Adopted accounting period means an accounting period that a *person has been granted leave to adopt instead of the *year of income ended 30 June 2020, under section 18 of the ITAA 1936.

Approved form has the meaning given by section 388-50 of Schedule 1 to the TAA.

Assessable income has the meaning given by sections 6-5, 6-10, 6-15, 17-10 and 17-30 of the ITAA 1997.

Attribution managed investment trust (AMIT) has the meaning given by section 276-10 of the ITAA 1997.

Australia has the meaning affected by section 960-505 of the ITAA 1997.

Corporate tax entity has the meaning given by section 960-115 of the ITAA 1997.

Full self-assessment taxpayer means:

- (1) a company;
- (2) a trustee of a public trading trust;
- (3) a trustee of an approved deposit fund;
- (4) a trustee of a superannuation fund;
- (5) a trustee of a pooled superannuation trust; or
- (6) a corporate limited partnership that is treated as a company by virtue of the provisions of Division 5A of Part III of the ITAA 1936.

Foreign hybrid has the meaning given by section 830-5 of the ITAA 1997.

Income year means the *year of income ended 30 June 2020 or the *adopted accounting period.

In relation to a partnership:

- (1) ***net income*** has the meaning given by section 90 of the ITAA 1936;
- (2) ***partnership loss*** has the meaning given by section 90 of the ITAA 1936.

Managed investment trust (MIT) has the meaning given by section 275-10 of the ITAA 1997.

Person includes:

- (1) a partner of a partnership, including a *foreign hybrid, and subject to Table H or Table N, the descriptions in the Tables apply to a partner's duty to provide a partnership return, as if the partnership was a person and meets those descriptions;
- (2) a trustee of a trust estate;
- (3) a *full self-assessment taxpayer.

Primary production business has the meaning given by section 995-1 of the ITAA 1997.

Taxable income has the meaning given by section 4-15 of the ITAA 1997.

Year of income means the same as in subsection 6(1) of the ITAA 1936 but does not include the *adopted accounting period.

3.2 Requirement to Lodge

Income Tax Returns

Under section 161 and related sections 91, 130 and 148 of the ITAA 1936, I require every *person described in any of Tables A, B, C, D, E, F, G, H, I, and J to give me a return for the *income year.

3.3 Information on when and how to lodge

Every *person required to lodge a return with me (with the exception of those covered in Table F and Table G) whose *year of income ends on 30 June 2020 must do so by 31 October 2020.

Adopted accounting period

*Full self-assessment taxpayers must lodge their return with me by the 15th day of the seventh month after the end of their *adopted accounting period. This does not apply to those persons covered by Table F or Table G.

Other persons must lodge their return with me by the last day of the fourth month after the end of their *adopted accounting period.

Persons in Table F or Table G

The following are persons described in Tables F or G:

- (1) the master of the ship or agent or other representative in *Australia of the owner or charterer (see Table F);
- (2) a person having control of a non-resident's money (see Table F);
- (3) an agent for a non-resident insurer, or an agent for a non-resident reinsurer (see Table G).

Where a person described in Table F or Table G is required to lodge a return in one of these capacities for the *income year, they must lodge the return with me by the first day of the sixth month of the following income year.

Where Table F applies, the person must provide a separate return for each person for whom they are an agent, in addition to their own return (if one is required).

Where Table G applies, the person must provide an aggregate return for their position as agent, in addition to their own return (if one is required).

Note: The return must be in the approved form.

3.4 Tables A to J

Table A

Every *person not covered by Table L or Table M who during the *income year met one or more of the following conditions:

- (1) had an amount withheld from payments or an amount paid to the Commissioner under the pay as you go (PAYG) withholding system other than:
 - (a) payments covered by one of the following:
 - (i) sections 12-140 and 12-145 of Schedule 1 to the TAA (relating to an unfranked or partially franked dividend where the amount of dividends or distributions received and any franking credits totalled \$18,200 or less); or
 - (ii) Subdivision 12-F of Schedule 1 to the TAA (relating to certain dividend, interest and royalty payments); or
 - (iii) Subdivision 12-FA of Schedule 1 to the TAA (relating to departing Australia superannuation payments); or
 - (iv) section 12-319A of Schedule 1 to the TAA (relating to payments to persons participating in the Seasonal Labour Mobility Program); or
 - (v) section 12-320 of Schedule 1 to the TAA (relating to mining payments); or
 - (vi) Subdivision 12-H of Schedule 1 to the TAA (relating to fund payments from withholding *MITs); or
 - (vii) Subdivision 12A-C of Schedule 1 to the TAA (relating to deemed payments by *AMITs); or
 - (b) payments withheld from a superannuation lump sum to which section 303-10 of the ITAA 1997 applies (relating to certain superannuation lump sum payments received by a person with a terminal medical condition);
- (2) incurred a tax loss or is entitled to deduct a tax loss;
- (3) made a net capital loss, or is entitled to apply a net capital loss of an earlier *income year;
- (4) was a company or trust estate that has undeducted tax losses or unapplied net capital losses of **more than \$1,000** from any earlier *income year;
- (5) was a company that transferred a tax loss or net capital loss to another group company;
- (6) carried on a business;
- (7) was entitled to income as a beneficiary of a trust estate that has operated a *primary production business in Australia;
- (8) had an individual interest in the *net income or *partnership loss of a partnership which operated a *primary production business in Australia;
- (9) was at all times under 18 years of age and whose income was **more than \$416** (excluding salary or wages or other payments for work that was personally

performed), or whose income from dividends or distributions and franking credits was **more than \$416**;

- (10) received income that was subject to the provisions of sections 23AF or 23AG of the ITAA 1936 (relating to exempting certain income derived in respect of approved overseas projects and exempting income earned in overseas employment respectively) and received **\$1 or more** of other income;
- (11) paid an instalment amount under the PAYG instalment system;
- (12) was a special professional as defined by Division 405 of the ITAA 1997 (relating to authors, inventors, performing artists, production associates and sportspersons);
- (13) was entitled to claim the private health insurance tax offset under Subdivision 61-G of the ITAA 1997 and did not claim the correct offset as a premium reduction, unless a choice has been made under section 61-215 of the ITAA 1997 (relating to reallocation of the private health insurance offset between spouses);
- (14) had identified on their payment summary or income statement:
 - (a) reportable fringe benefits; or
 - (b) reportable employer superannuation contributions;
- (15) derived *assessable income from dividends or distributions and franking credits that was **more than \$18,200**;
- (16) made one or more personal contributions to a complying superannuation fund or retirement savings account and will be eligible to receive a super co-contribution in relation to those contributions;
- (17) has exceeded their concessional or their non-concessional contributions cap for the corresponding financial year;
- (18) received an Australian superannuation lump sum that included:
 - (a) an untaxed element when aged 60 years or over; or
 - (b) a taxed element or an untaxed element when aged under 60 years.

Table B

Every *person who was not a *full self-assessment taxpayer, except where they are described in Table K, and who was:

- (1) an Australian resident:
 - (a) for the whole of the *income year, and whose *taxable income for the income year was more than \$18,200; or
 - (b) for only part of the *income year, and whose *taxable income exceeded the lesser of \$18,200 or \$13,464 plus \$395 for each month the person was an Australian resident (including the month in which the person became, or ceased to be, an Australian resident); or
- (2) not an Australian resident at any time during the *income year and derived income (including capital gains) that is taxable in *Australia other than payments listed in Table A(1)(a)(ii), or Table A(1)(a)(vi) or Table A(1)(a)(vii).

Table C

Every *full self-assessment taxpayer (excluding trustees of superannuation funds, approved deposit funds and pooled superannuation trusts) not covered by Table L or Table M that during the *income year was:

- (1) an Australian resident, and derived income (including capital gains) from sources in or outside *Australia; or
- (2) a non-resident of *Australia, and derived income (including capital gains) that is taxable in Australia, other than payments listed in Table A(1)(a)(ii), or Table A(1)(a)(vi) or Table A(1)(a)(vii).

Table D

Every trustee of a superannuation fund, an approved deposit fund, or a pooled superannuation trust, not covered by Table L or Table M, that during the *income year was:

- (1) an Australian resident; or
- (2) a non-resident of *Australia, and derived income (including capital gains) that is taxable in *Australia other than payments listed in Table A(1)(a)(ii), or Table A(1)(a)(vi) or Table A(1)(a)(vii).

Note: Trustees of self managed superannuation funds to which this Table applies must lodge the *Self-managed superannuation fund annual return 2020*.

Other entities to which this Table applies are required to lodge the *Fund income tax return 2020*.

Table E

Every trustee of a trust estate not covered by Tables K, L, M, or O that derived income (including capital gains) during the *income year. The return must be lodged by the trustee resident in *Australia. If there is no trustee resident in Australia, the return must be lodged by the trust's public officer or, if no public officer is appointed, by the trust's agent in Australia.

Note: The trustee of an AMIT to which this Table applies is required to lodge an *Attribution managed investment trust tax return 2020*.

Other trustees to which this Table applies are required to lodge the *Trust tax return 2020*.

Table F

Every person liable to pay tax as:

- (1) the master of the ship, or the agent or other representative in *Australia of the owner or charterer, under Division 12 of the ITAA 1936; or
- (2) a person having control of a non-resident's money under section 255 of the ITAA 1936.

Table G

Every person liable to pay tax under Division 15 of Part III of the ITAA 1936, as an agent for a non-resident insurer, or as an agent for a non-resident reinsurer.

Note: The prescribed time for lodging a return under subsection 148(4) of the ITAA 1936 is stipulated above at section 3.3 as being the first day of the sixth month of the following income year.

Table H

A partnership return required under this instrument, including for a *foreign hybrid treated as a partnership by Division 830 of the ITAA 1997, must be lodged by the following (other than a partner described in Table N):

- (1) the partners resident in *Australia; or
- (2) any partner resident in *Australia who satisfies the conditions set out below:
 - (a) if all resident partners have equal individual interests in the *net income, or *partnership loss, of the partnership in the *income year, by any one of those partners; or
 - (b) if two or more resident partners have equal individual interests in the *net income, or *partnership loss, of the partnership, in the *income year, and those interests are greater than the individual interest of any other resident partners, by any one of the first mentioned partners; or
 - (c) if paragraphs (a) or (b) do not apply, by the resident partner who has the greatest individual interest in the *net income, or *partnership loss, of the partnership in the *income year.

If there is no partner resident in *Australia, the return is required to be lodged by the partnership's agent in Australia.

Table I

Every *person that during the *income year was a head company of either a consolidated group or a multiple entry consolidated (MEC) group under Part 3-90 of the ITAA 1997.

Table J

Any *person who was a foreign resident (within the meaning of subsection 995-1(1) of the ITAA 1997) during the *income year, and:

- (1) on 1 June immediately preceding the *income year had an accumulated Higher Education Loan Program (HELP) debt (within the meaning of section 140-25 of the HESA) or a Trade Support Loan (TSL) debt (within the meaning of section 35 of the TSLA) or a VET Student Loan (VETSL) debt (within the meaning of section 23CC of the VETSLA); and
- (2) their income was **more than** \$11,470 for the *income year.

Note: A person under Table J must also give me a notice relating to the person's foreign-sourced income (see subsection 154-18(3) of the HESA, subsection 47C(3) of the TSLA, and subsection 23ED(3) of the VETSLA).

4. Exemptions from the requirement to lodge a return (Tables K to P)

A *person described in Tables B or E **is not** required to lodge an income tax return under this instrument if they are described in Table K. However, a person described in Table K may have a lodgment requirement under the legislative instrument: *Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2020*.

A person described in Tables L, M, O or P **is not** required to lodge an income tax return.

A person described in Table N **is not** required to lodge a partnership tax return.

Table K (to be read with Tables B and E)

- (1) Every *person whose *assessable income during the *income year included one or more of the following payments:
- (a) Jobseeker payment
 - (b) Austudy;
 - (c) Disaster income support allowance for special category visa (subclass 444) holders;
 - (d) Disaster recovery allowance;
 - (e) Farm Household allowance;
 - (f) Income support component of wages paid to participants in the Community Development Employment Projects (CDEP) Scheme and CDEP Scheme participant supplement;
 - (g) New Enterprise Incentive Scheme allowance;
 - (h) Newstart allowance;
 - (i) Parenting payment (partnered);
 - (j) Partner allowance;
 - (k) payments to persons 16 years or older made under:
 - (i) ABSTUDY (including the ABSTUDY Masters and Doctorate Award);
 - (ii) Military Rehabilitation and Compensation Act Education and Training Scheme;
 - (iii) Veterans' Children Education Scheme;
 - (l) Sickness allowance;
 - (m) Special Benefit;
 - (n) Widow allowance;
 - (o) Youth allowance;
 - (p) Youth disability supplement as a component of ABSTUDY living allowance or Youth allowance

AND

- (q) who had no other *assessable income; or
 - (r) whose *taxable income was **less than \$20,543**.
- (2) Every *person who:
- (a) qualified for a tax offset under section 160AAAA of the ITAA 1936 (relating to the tax rebate for low-income aged persons and pensioners) during the *income year;

AND

- (b) whose rebate income was **less than**:
 - (i) **\$32,280** – if at any time during the *income year the person was single, widowed or separated; or
 - (ii) **\$31,280** – if at any time during the *income year the person and their spouse (married or de facto) had to live apart due to illness, or the person or their spouse was in a nursing home; or
 - (iii) **\$28,975** – if at any time during the *income year the person and their spouse (married or de facto) lived together.

If a person is covered by more than one category during the *income year, the person is taken to be covered by category (2)(b)(i) or, if category (2)(b)(i) does not apply, category (2)(b)(ii).

Table L

An Australian resident non-profit company whose *taxable income for the *income year **was \$416 or less**.

An entity within the meaning of section 960-100 of the ITAA 1997, the income of which is exempt from income tax under Division 50 of the ITAA 1997.

A State/Territory body, the income of which is exempt from income tax under the provisions of Division 1AB of Part III of the ITAA 1936.

Table M

Any *person that for the whole of the *income year was a subsidiary member of a:

- (1) consolidated group (as defined in Division 703 of the ITAA 1997); or
- (2) MEC group (as defined in Division 719 of the ITAA 1997).

Table N

A *person who:

- (1) has made an election under former section 485AA of the ITAA 1936 or an election under paragraphs 830-10(2)(b) or 830-15(5)(b) of the ITAA 1997, so that:
 - (a) their interest is treated as an interest in a *foreign hybrid (under Division 830 of the ITAA 1997) for the *income year; and
 - (b) the interest does not pass the non-portfolio interest test within the meaning of section 960-195 of the ITAA 1997, ignoring interests held by associates of the holding entity;
- (2) is an individual and the only income derived jointly (or in common) with another individual was:
 - (a) rent from a jointly owned property;
 - (b) interest from a jointly held account in a financial institution;
 - (c) dividends from jointly held shares;

and were not in a partnership carrying on a business.

Note: A partner is required to include details of all relevant income, expenditure and deduction items, as well as distribution details in their own tax return.

Table O

Any trustee of a resident trust estate of a deceased person where each of the following apply:

- (1) The deceased person died less than 3 years before the end of the *income year.
- (2) No beneficiary is presently entitled to a share of the income of the trust estate.
- (3) The net income of the trust estate under section 95 of the ITAA 1936 is **less than \$18,201**.
- (4) There are no non-resident beneficiaries of the trust estate.

Table P

Every *person who during the *income year derived *assessable income from sources in *Australia as a working holiday maker (within the meaning of subsection 3A(1) of the *Income Tax Rates Act 1986*), and:

- (1) had no other *assessable income; and
- (2) whose *taxable income (excluding any superannuation remainder or employment termination remainder) **was less than \$37,001**.

5. Other lodgment requirements

5.1 Lodgment of franking returns

Under section 214-15 of the ITAA 1997, I require a *corporate tax entity to lodge a franking return for the *income year if:

- (1) the entity, at any time during the *income year, incurs a liability to pay franking deficit tax or over-franking tax, or has an obligation to disclose information to the Commissioner under section 204-75 of the ITAA 1997; or
- (2) a refund of income tax is taken to have been paid to the entity at any time during the *income year under section 205-50 of the ITAA 1997.

Note: If a corporate tax entity is **not** required to lodge a franking return because of subsections 5.1(1) and (2) above, then it is only required to lodge the return if it is specifically requested to do so by the Commissioner.

Date of lodgment of franking return

The franking return must be lodged by:

- (1) the last day of the month following the end of the *income year in which the liability was incurred, the disclosure obligation arose, or the refund is taken to have been paid; unless
- (2) the franking deficit tax payment date listed in the taxation law where a refund of income tax is received (namely, 14 days after that refund is received).

Note: The franking return must be in the approved form.

5.2 Special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability

Late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability, under the rules contained in Division 205 of the ITTPA 1997, are required to lodge a franking return and meet their liability for franking deficit tax under the rules contained in Division 214 of the ITTPA 1997.

A late balancing corporate tax entity may elect to have its franking deficit tax liability determined on 30 June 2020. Where the entity elects this and incurs a liability to pay franking deficit tax under Division 205 of the ITTPA 1997, the franking return must be lodged in the *approved form by:

- (1) 31 July 2020; unless
- (2) the franking deficit tax payment date is listed in the taxation law where a refund of income tax is received (namely, 14 days after that refund is received).

5.3 Lodgment of a venture capital deficit tax return

Under section 214-15 of the ITAA 1997, I require a corporate tax entity to lodge a venture capital deficit tax return for the *income year if the entity has a liability to pay venture capital deficit tax under section 210-135 of the ITAA 1997.

A corporate tax entity that does not have a liability to pay venture capital deficit tax is not required to lodge a venture capital deficit tax return.

Date of lodgment of venture capital deficit tax return

The venture capital deficit tax return must be lodged in the *approved form by the last day of the first month following the end of the *income year.

5.4 Requirement to lodge an ancillary fund return

An entity that is a trustee of a public ancillary fund (within the meaning of subsection 426-102(1) of Schedule 1 to the TAA) or a private ancillary fund (within the meaning of subsection 426-105(1) of Schedule 1 to the TAA) is required to lodge an ancillary fund return in the *approved form for the *income year, whether or not the ancillary fund is exempt from income tax.

Note:

- (a) For public ancillary funds and private ancillary funds registered as a charity with the Australian Charities and Not-For-Profits Commission (ACNC), the ACNC annual information statement that must be lodged with the ACNC Commissioner is the approved form for the ancillary fund return.
- (b) A trustee of a public ancillary fund or a private ancillary fund that is not registered as a charity with the ACNC and that derived income (including capital gains) during the *income year is also required to lodge an income tax return under Table E of this instrument.

Date of lodgment of an ancillary fund return

An entity required to lodge an ancillary fund return must lodge the return:

- (1) by 31 December 2020, if the entity's *year of income ends on 30 June 2020; or
- (2) by the last day of the sixth month after the end of the entity's *adopted accounting period.

If an entity must give an annual information statement to the Commissioner of the ACNC under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act), the entity's lodgment date for the ancillary fund return is the lodgment date of the information statement

Note: Section 60-5 of the ACNC Act specifies the lodgment date for the annual information statement. The Commissioner of the ACNC may allow further time.

5.5 Date of lodgment of returns and statements by a trustee of a self managed super fund

5.5.1 Returns under section 35D of the SISA

Where a taxpayer is a trustee of a self managed superannuation fund as defined in the SISA at any time during the *income year, then under paragraph 35D(2)(b) of the SISA I specify that the reporting period for lodgment of a return under section 35D is the period ending on the day that the taxpayer is required to lodge their income tax return.

Note: The return under section 35D of the SISA forms part of the *Self-managed superannuation fund annual return 2020* which must be lodged with the Commissioner in accordance with this instrument.

5.5.2 Member information statements under section 390-5 of Schedule 1 to the TAA

The lodgment of member information statements by superannuation providers is required under section 390-5 of Schedule 1 to the TAA.

Under subsection 390-5(6) of Schedule 1 to the TAA, I determine that for the superannuation plans that are self managed superannuation funds:

- (1) the period mentioned in subsection 390-5(1) is the *income year; and
- (2) the day on which a statement must be given to the Commissioner is the day the trustee of the self managed superannuation fund is required to lodge an income tax return in accordance with this instrument.

Note:

- (a) The member information statements form part of the *Self-managed superannuation fund annual return 2020* which must be lodged in accordance with this instrument.
- (b) Separate legislative instruments detail the lodgment requirements of member information statements by superannuation providers (other than self managed superannuation funds):

Taxation Administration Member Account Attribute Service – the Reporting of Information Relating to Superannuation Account Phases and Attributes 2018

Taxation Administration Member Account Transaction Service – the Reporting of Information Relating to Superannuation Account Transactions 2018.

6. Additional lodgment information

6.1 Deferral of time for lodgment of returns

Under section 388-55 of Schedule 1 to the TAA, the Commissioner may defer the time for lodgment of any return to a date later than the relevant date specified in this instrument.

6.2 Notice of requirement to lodge a return or information

Nothing in this instrument prevents the Commissioner or an authorised person of the Australian Taxation Office from issuing a notice, under sections 162 or 163 of the ITAA 1936, requiring a person to give the Commissioner, in the *approved form, a return, or further returns, or any information, statement or document about the person's financial affairs for any *income year.

6.3 Exemption from requirement to lodge returns

Nothing in this instrument prevents the Commissioner, or an authorised person of the Australian Taxation Office, from granting an exemption from lodgment. Such exemptions may or may not be conditional and may be for specific returns or classes of returns.

6.4 Penalties for non-compliance with lodgment requirements

Any person who does not provide a return, or any other information under the ITAA 1936 or the ITAA 1997, commits an offence under section 8C of the TAA.

Alternatively, any such person may become liable to pay a penalty under Division 286 of Schedule 1 to the TAA.

A trustee of a self managed superannuation fund who contravenes the requirement to lodge a return under section 35D of the SISA, commits an offence under section 35D of the SISA.