



Lodgment of returns and statements in accordance with the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* for the year ended 30 June 2005

I, Michael Joseph Carmody, make the following Legislative Instrument regarding lodgment of returns and statements in accordance with the *Income Tax Assessment Act 1936* the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* for the year ended 30 June 2005.

Citation

This Instrument may be cited as *Lodgment of returns and statements in accordance with the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 and the Taxation Administration Act 1953 for the year ended 30 June 2005*.

Lodgment of Income Tax Returns

In accordance with section 161 and related provisions of the *Income Tax Assessment Act 1936* ("ITAA 1936"), I require every person described in Tables A, B, C, D, E, F, G, H, I, J or K to give me a return of income for the year of income ended 30 June 2005 (or approved period in lieu).

In this instrument a 'person' includes a partner of a partnership, including a foreign hybrid under Division 830 of Part 4-5 of the Income Tax Assessment Act 1997 ("ITAA 1997") and, subject to Table J, the descriptions in the Tables apply to a partner with respect to their duty to give me a partnership return as if the partnership were regarded as a person and meets the descriptions.

A 'person' also includes a trustee of a trust estate.

A 'person' also includes a 'full self-assessment taxpayer'. A 'full self-assessment taxpayer' as defined in Part 1 - Preliminary of the ITAA 1936, means a company, a trustee of a corporate unit trust, a trustee of a public trading trust, a trustee of an approved deposit fund, a trustee of a superannuation fund, a trustee of a pooled superannuation trust or a corporate limited partnership treated as a company by virtue of the provisions of Division 5A, Part III of the ITAA 1936.

In this instrument, a reference to "the year of income" or "income year" means the year of income ended 30 June 2005, or the approved period in lieu where a person has been granted leave to adopt a substituted accounting period.

Every person required to lodge a return (with the exception of those covered in Table I) whose year of income ends on 30 June 2005 must do so by 31 October 2005.

Where a person required to lodge a return (with the exception of those covered by Table I) has been granted leave to adopt a substituted accounting period in lieu of the year of income ended 30 June 2005, the return must be lodged with me no later than the 15th day of the 7th month after the end of their year of income if they are a full self-assessment taxpayer. If they are not a full self-assessment taxpayer, the return must be lodged with me no later than 4 months after the close of the accounting period adopted.

Where a person is described in Table I and is required to lodge a return in that capacity for the year of income ended 30 June 2005, or approved period in lieu, a return must be lodged with me no later than the 1st day of the 6th month of the following year of income. Where Table I applies, a person is required to furnish a separate return for each person for whom they are an agent, in addition to their own return (if one is required).

In accordance with subsection 161A(1) of the ITAA 1936, the return must be in the approved form.

TABLE A

Every person not covered by Table N who during the year of income:

- (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:
 - withholding payments covered by Subdivision 12-F in Schedule 1 to the *Tax Administration Act 1953* ("TAA 1953") (relating to certain dividend, interest and royalty payments); or
 - withholding payments covered by Subdivision 12-FA in Schedule 1 to the TAA 1953 (relating to departing Australia superannuation payments); or
 - withholding payments covered by section 12-140 in Schedule 1 to the TAA 1953 that relate to an unfranked or partially franked dividend where the total amount of dividends or distributions received and franking credits (if any) was \$6000 or less; or
 - withholding payments covered by section 12-320 in Schedule 1 to the TAA 1953 (relating to mining payments); or
- (2) incurred a tax loss or net capital loss or is entitled to a deduction for a tax loss or net capital loss of an earlier year of income, or being a company or trust estate has undeducted tax losses and/or unapplied net capital losses of any earlier year of income where those losses exceed \$1000 or, being a company, transfers a tax loss or net capital loss to another group company; or

- (3) was liable to pay child support under the Child Support (Assessment) Act 1989; or
- (4) carried on a business; or
- (5) was entitled to income as a beneficiary in a trust estate that has operated a primary production business (as defined in section 995-1 of the ITAA 1997) in Australia; or
- (6) had an individual interest in the net income or the partnership loss of a partnership which operated a primary production business (as defined) in Australia; or
- (7) was under 18 years of age and whose income for the year of income was more than \$772 (excluding salary and wages or other payments for work that was personally performed), or whose income from dividends or distributions and franking credits for the year of income was more than \$416; or
- (8) received income subject to the provisions of sections 23AF or 23AG of the ITAA 1936 and received \$1 or more of other income; or
- (9) paid an instalment amount under the PAYG instalment system; or
- (10) was a special professional as defined by Division 405 of the ITAA 1997; or
- (11) was entitled to claim the private health insurance tax offset under Subdivision 61-H of the ITAA 1997; or
- (12) had a reportable fringe benefits amount identified on their PAYG payment summary; or
- (13) received a distribution from a trust, company or partnership on which family trust distribution tax has been paid; or
- (14) received a distribution of income from a trust on which the trustee was liable for ultimate beneficiary non-disclosure tax; or
- (15) derived assessable income from dividends or distributions and franking credits that exceeded \$6000; or
- (16) was eligible to receive a Super Co-contribution on personal contributions made to a complying superannuation fund or retirement savings account.

TABLE B

Every person, except where they are described in Table N, who has received from my High Wealth Individuals Task Force a letter described as:
'Notification of requirement for a detailed form of return for the year of income ended 30 June 2005 (or approved period in lieu).'

TABLE C

Every person (not being a full self-assessment taxpayer), except where they are described in Table L, who was an Australian resident for the whole of the year of income and

- (1) whose taxable income for the year of income exceeded \$6000, or
- (2) who ceased full-time education for the first time during the year of income and whose taxable income exceeded the lesser of \$6000 or the equivalent of \$500 multiplied by the number of months since they were engaged in full-time education (including the month in which full-time education ceased) plus pre-workforce income derived during the year of income.

TABLE D

Every person (not being a full self-assessment taxpayer), except where they are described in Table L, who at any time during the year of income was not an Australian resident and derived income (including capital gains) that is taxable in Australia other than dividend, interest or royalty income subject to withholding payments covered by Subdivision 12-F in Schedule 1 to the TAA 1953.

TABLE E

Every person (not being a full self-assessment taxpayer), except where they are described in Table L, who was an Australian resident for only part of the year of income and whose taxable income exceeded the amount obtained by multiplying \$500 by the number of months the person was an Australian resident (including the month in which the person became, or ceased to be, an Australian resident).

TABLE F

Every person being a full self-assessment taxpayer (excluding trustees of superannuation funds, approved deposit funds and pooled superannuation trusts) not covered by Table M or Table N that:

- (1) is an Australian resident, and derived income (including capital gains) from sources in Australia or from outside Australia during the year of income; or
- (2) is a non-resident of Australia, and derived income (including capital gains) that is taxable in Australia other than dividend, interest or royalty income subject to withholding payments covered by Subdivision 12-F in Schedule 1 to the TAA 1953 during the year of income.

TABLE G

Every trustee of a superannuation fund, an approved deposit fund or pooled superannuation trust, not covered by Table M or Table N, that :

- (1) is an Australian resident; or
- (2) is a non-resident of Australia, and derived income (including capital gains) that is taxable in Australia, other than dividend, interest or royalty income subject to withholding payments covered by Subdivision 12-F in Schedule 1 to the TAA 1953 during the year of income.

TABLE H

Every person that during the year of income was a head company of a consolidated group or a MEC group pursuant to Part 3-90 of the ITAA 1997.

TABLE I

Every person liable for tax as 'agent for a non-resident insurer', 'agent for a non-resident reinsurer', 'master of the ship or agent or other representative in Australia of the owner or charterer' or from being in 'control of a non-resident's money'.

TABLE J

A partnership return required under this instrument, including for a “foreign hybrid” treated as a partnership by Division 830 of the ITAA 1997, is to be lodged by the partners resident in Australia or by any of them who satisfies the conditions set out below:

- (a) if all those partners have equal individual interests in the net income, or partnership loss, of the partnership of the year of income, as the case may be – by any one of those partners;
- (b) if 2 or more of those partners have equal individual interests in the net income, or partnership loss, of the partnership of the year of income, as the case may be, and those interests are greater than the individual interest of any other of those partners in that net income or partnership loss – by any one of the first-mentioned partners; or
- (c) if paragraph (a) or (b) does not apply – by whichever of those partners has the greater or greatest individual interest in the net income, or partnership loss, of the partnership of the year of income, as the case may be.

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

TABLE K

Where a trust estate has derived income (including capital gains) and the trustee is not covered by Tables L, M or N, a trust return is required to be lodged by the trustee resident in Australia. If there is no trustee resident in Australia, the return is to be lodged by the trust's public officer or, where no public officer is appointed, by the trust's agent in Australia.

TABLE L

- (1) Every person whose assessable income during the year of income included payments received in respect of one or more of:
- Social security benefits and allowances, that is, newstart allowance, sickness allowance, youth allowance, special benefit, widow allowance, partner allowance, parenting payment (partnered), mature age allowance, austudy payment;
 - Exceptional circumstances relief payments, farm help income support (previously known as restart income support);
 - Specified Commonwealth education and training payments, that are payments made under ABSTUDY (including the ABSTUDY Masters and Doctorate Award), the Veterans' Children Education Scheme;
 - Commonwealth labour market programs, such as Green Corps Training Allowance, New Enterprise Incentive Scheme Allowance, Textile, Clothing and Footwear Special Allowance;
 - Income support component of wages paid to participants in the Community Development Employment Projects (CDEP) Scheme and CDEP Scheme participant supplement;

AND

- (a) who had no other assessable income; or
 - (b) whose taxable income **was less than or equal to \$7,383.**
- (2) Every person who qualified for a tax offset under section 160AAAA of the ITAA 1936 during the year of income and whose taxable income **was less than or equal to** the following amounts:
- (A) if at any time during the year of income the person was single, widowed or separated - **\$20,500**
 - (B) if at any time during the year of income 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 - **\$19,383**
 - (C) if at any time during the year of income the person and their spouse (married or de facto) lived together - **\$16,806**

If a person is covered by more than one category during the year of income, the person is taken to be covered by category A or, if category A does not apply, category B.

- (3) Every person who received income during the year of income from the following AND did not qualify for a tax offset under section 160AAAA of the ITAA 1936:

Social security pensions: Age pension, bereavement allowance, disability support pension (where taxpayer is of age pension age), wife pension (where taxpayer or spouse is of age pension age), parenting payment (single), widow B pension, carer payment (where taxpayer or caree is of age pension age); or

Department of Veterans' Affairs service pensions: Invalidity service pension (where taxpayer or spouse is of age pension age), partner service pension (where taxpayer or spouse is of age pension age or the spouse does not receive an invalidity service pension or where the taxpayer is non-illness separated from the spouse), carer service pension (where taxpayer or caree is of age pension age or the spouse does not receive an invalidity service pension), income support supplement (where the taxpayer does not receive the supplement on the grounds of permanent incapacity, or the taxpayer, spouse, or person cared for is of age pension age or the taxpayer's spouse does not receive an invalidity service pension or a disability support pension), Defence Force Income Support Allowance (DFISA) (where the pension, payment or allowance to which it relates is taxable), or DFISA-like payments

AND

(I) who received their payments from Centrelink **and** whose taxable income for the year was **less than or equal to** the amounts shown below:

- (A) if at any time during the year of income while receiving any of the above pensions or allowances, the person was single, widowed or separated - **\$19,252**; or
- (B) if at any time during the year of income while receiving any of the above pensions or allowances, 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 - **\$18,382**; or
- (C) if at any time during the year of income while receiving any of the above pensions or allowances, the person and their spouse (married or de facto) lived together - **\$16,123**

OR

(II) who received their payments from Department of Veterans' Affairs **and** whose taxable income for the year of income was **less than or equal to** the amounts shown below:

- (A) if at any time during the year of income while receiving any of the above pensions or allowances, the person was single, widowed or separated **\$18,652**; or
- (B) if at any time during the year of income while receiving any of the above pensions or allowances, 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 - **\$17,793**; or
- (C) if at any time during the year of income while receiving any of the above pensions or allowances, the person and their spouse (married or de facto) lived together - **\$15,617**

If a person is covered by more than one category during the year of income, the person is taken to be covered by category A or, if category A does not apply, category B.

TABLE M

Any non-profit company that is an Australian resident and whose taxable income for the year of income **does not exceed \$416**.

Any non-profit association, organisation, institution, society or club, the income of which is exempt from liability to income tax under the provisions of section 23 of the ITAA 1936 or Division 50 of the ITAA 1997.

Any 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 N

Any person that for the whole of the year of income was:

- (a) a subsidiary member of a consolidated group (as defined in Division 703 of the ITAA 1997); or
- (b) a subsidiary member of a MEC group (as defined in Division 719 of the ITAA 1997).

This description only operates as an exception to a requirement to give me an income tax return with respect to the entity's activities that are consolidated into the head company of the group under Part 3-90 of the ITAA 1997.

AUSTRALIA INCLUDES TERRITORIES AND CERTAIN SEA INSTALLATIONS AND OFFSHORE AREAS

In this instrument 'Australia' includes Norfolk Island, the Territory of Cocos (Keeling) Islands, the Territory of Christmas Island and certain sea installations and offshore areas. However, income derived by Territory residents, Territory companies or Territory trusts (as defined in Division 1A of Part III of the ITAA 1936) of Norfolk Island, from sources in Norfolk Island and from outside Australia, is exempt from income tax under the provisions of sections 24F and 24G of the ITAA 1936.

DEFERRAL OF TIME FOR LODGMENT OF RETURNS

In accordance with section 388-55 of Schedule 1 to the TAA 1953, I may defer the time for lodgment of any return to a date later than the relevant date specified in this instrument.

NOTICE OF REQUIREMENT TO LODGE A RETURN AND/OR INFORMATION

Nothing in this instrument prevents me or an authorised officer of the Tax Office from issuing a notice, pursuant to section 162 or section 163 of the ITAA 1936, requiring a person to give me a return, or further returns, or any information, statement or document about the person's financial affairs for any year of income.

EXEMPTION FROM REQUIREMENT TO LODGE RETURNS

Nothing in this instrument prevents me or an authorised officer of the Tax Office from granting an exemption from lodgment, whether conditional or not, for specific returns or classes of returns from time to time.

LODGMET OF FRANKING ACCOUNT TAX RETURNS

If a corporate tax entity incurs, at any time during its 2004-05 income year, a liability to pay franking deficit tax or over-franking tax, or an obligation to disclose information to the Commissioner under section 204-75 of the ITAA 1997, it is required to lodge a franking account tax return for that income year.

A corporate tax entity is also required to lodge a franking account tax return for its 2004-05 income year if a refund of income tax is taken by section 205-50 of the ITAA 1997 to have been paid to the entity at any time during that year.

If a corporate tax entity does not incur, during the income year, a liability to pay any amount of franking deficit tax or over-franking tax, or an obligation to disclose information under section 204-75 of the ITAA 1997, and it has not received a refund of income tax mentioned above, then it is not required to lodge a franking account tax return.

DATE OF LODGMENT OF FRANKING ACCOUNT TAX RETURN

The franking account tax return must be lodged in the approved form by the last day of the month following the end of the income year in which the liability was incurred, or the refund is taken to have been paid, or the disclosure obligation arose.

This is also the date on which the franking deficit tax and over-franking tax, if any, is payable. In certain cases where a refund of income tax is received the taxation law provides for a different payment date for franking deficit tax (namely, 14 days after that refund is received).

In these cases the franking account tax return accounting for that refund must be lodged by the payment date provided for in the law.

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 are required to lodge a franking account tax return and meet their liability for franking deficit tax in accordance with the rules contained in Division 214 of the *Income Tax (Transitional Provisions) Act 1997 (the 'IT(TP)A 1997')*.

Where a late balancing corporate tax entity that elects to have its franking deficit tax liability determined on 30 June:

1. incurs at any time during its 2004-05 income year a liability to pay over-franking tax or to pay franking deficit tax under Division 205 of the ITAA 1997 ; or
2. has an obligation to disclose information to the Commissioner under section 204-75 of the ITAA 1997;

it is required to lodge a franking account tax return for that income year.

This franking account tax return is in addition to the one lodged in accordance with Division 214 of the IT(TP)A 1997 and it must be lodged in the approved form by the last day of the month following the income year in which the over-franking tax liability or the Division 205 franking deficit tax liability was incurred or in which the disclosure obligation arose.

This is also the date on which the over-franking tax or the Division 205 franking deficit tax liability, if any, is payable.

LODGMET OF VENTURE CAPITAL DEFICIT TAX RETURNS

A Pooled Development Fund (PDF) for the purposes of the ITAA 1997, that has (or because of a refund of income tax, is taken to have) a deficit balance in the PDF's venture capital sub-account at the end of its 2004-2005 income year, or immediately before the entity ceases to be a PDF during that year, is required to pay venture capital deficit tax and is required to lodge a venture capital deficit tax return for that year.

PDFs which have a nil or credit balance in the venture capital sub-account at the close of the income year or immediately before they cease to be PDFs (and which are not taken to have a deficit at the relevant time by virtue of a refund of income tax) are not required to lodge a venture capital deficit tax return.

DATE OF LODGMET 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 month following the end of the income year. (This is also the date on which the venture capital deficit tax is payable).

LODGMET IN THE APPROVED FORM

A return, notice, statement, or other document **(including any schedule)** required by the Commissioner under this instrument must be lodged in the approved form. In accordance with section 388-50 in Schedule 1 to the TAA 1953 a document is in the approved form if:

- it is in the form approved in writing by the Commissioner;
- it contains a declaration signed by the person or persons as required;
- it contains the information required by the form and is accompanied by any further information, statement, or document **(including any schedule)** required by the Commissioner; and
- it is given in the required manner (which may include electronically).

PENALTIES FOR NON-COMPLIANCE

Any person who fails or refuses to give me a return or any other information under the ITAA 1936 or the ITAA 1997, commits an offence and is liable, on conviction, to a penalty not exceeding \$2,200 if it is the first offence. If convicted of a second offence, that person becomes liable to a penalty not exceeding \$4,400. If convicted of a third or subsequent offence, that person becomes liable to a penalty not exceeding \$5,500 or imprisonment for a period of not more than 12 months, or both. A company may be liable to a fine not exceeding \$27,500. Alternatively:

(1) any person or full self-assessment taxpayer may, in relation to an income tax return, become liable to pay a penalty under section 286-75 in Schedule 1 to the TAA 1953;

(2) companies and trustees of corporate unit trusts, public trading trusts, corporate limited partnerships and pooled development funds may, in relation to a franking account return, or a venture capital deficit tax return, become liable to pay a penalty under section 286-75 in Schedule 1 to the TAA 1953.

Signed M. J. Carmody
(M.J. Carmody)
Commissioner of Taxation
Dated this day of June 2005