PS LA 2005/19 - Approved forms

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Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2005/19

FOI status: may be released

This practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax office staff unless doing so creates unintended consequences. Where this occurs Tax Office staff must follow their Business Line's escalation process.

SUBJECT: **Approved forms**

PURPOSE: **To explain:**

- **what an approved form is;**
- **the requirements and procedures for the approval of approved forms; and**
- **basic administrative support arrangements to be followed once a form is approved.**

STATEMENT

1. This practice statement sets out the procedures to be followed in administering the approved form requirements in section 388-50 in Schedule 1 to the *Taxation Administration Act 1953* (TAA) and answers the following questions:

   - what returns, notices, statements, applications or other documents are approved forms for the purposes of section 388-50?
   - what do officers have to do in order to satisfy the approved form requirements?

   Unless otherwise specified all legislative references are to Schedule 1 of the TAA.

2. The term 'approved form' has been given a wide meaning by section 388-50. An 'approved form' can be a return, notice, statement, application or other document. An approved form may be either a paper form or a 'virtual form'. A virtual form is one that does not have a physical existence, being lodged electronically or given by telephone.

3. As at 30 June 2005 the following provisions of the taxation laws define 'approved form' as having the meaning given in section 388-50:

   - section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*;
   - subsection 4(1) of the *Excise Act 1901*;

- subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*;
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 202A of the ITAA 1936 provides that 'approved form' has the same meaning as in the *Income Tax Assessment Act 1997* (ITAA 1997);
- subsection 221AZKD(3) of the ITAA 1936;
- subsection 995-1(1) of the ITAA 1997;
- section 2 of the *Petroleum Resource Rent Tax Assessment Act 1987*;
- subsection 3AA(2) of the TAA provides that an expression in Schedule 1 to that Act has the same meaning as in the ITAA 1997;
- regulation 9D of the Superannuation Guarantee (Administration) Regulations 1993.

Situations where the requirements of section 388-50 apply

4. The requirements of section 388-50 apply to any Act which defines 'approved form' as having the meaning given in section 388-50. Provisions to which the requirements of section 388-50 apply are referred to as *operative provisions* for the purposes of this practice statement.

5. Sometimes provisions of a taxation law use expressions other than 'approved form'; for example, 'in a form approved by the Commissioner' or 'in a form approved in writing by the Commissioner'. Where an Act defines 'approved form' as having the meaning in section 388-50, another grammatical form of that expression has a corresponding meaning to the defined term, unless the contrary intention appears. This is because section 18A of the *Acts Interpretation Act 1901* (AIA) provides that, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

6. Where an expression which is another grammatical form of a defined term appears in regulations made under the Act in question, it will also have a corresponding meaning to the defined term, unless the contrary intention appears: subsection 46(1) and section 18A of the AIA. In the circumstances referred to in this and paragraph 5, the requirements of section 388-50 for a form to be in the approved form will also apply.

Situations where the requirements of section 388-50 do not apply

7. There are situations in which the requirements of section 388-50 do not apply. For example, where an Act administered by the Commissioner has its own definition of 'approved form' the requirements of that definition apply and not the requirements of section 388-50. This situation is exemplified by the *Superannuation (Unclaimed Money and Lost Members) Act 1999*. Section 8 of that Act defines the expression 'approved form' as 'a form approved by the Commissioner, in writing, under section 49 for the purposes of the provision in which the expression appears'. Two further examples are where the law is silent in respect of any requirements for a form – paper or virtual – but where the Commissioner requires a form to be created in connection with the exercise of either an implied power or his power of general administration of a taxation law. The *Delegations and Authorisations Manual* contains explanations concerning implied powers and the power of general administration.

When a document can be treated as an approved form

8. Before a document can be treated as an approved form three separate documents must be created:

   (1) an approval instrument in paper form documenting the approval in writing of the format of the approved form;

   (2) the form itself which has been approved under the approval instrument; and

   (3) the document in that form containing the required declaration and information which is given to the Commissioner in the manner the Commissioner requires.

   In relation to the second item, if the approved form is a paper form it will be attached as an Appendix to the approval instrument. If the approved form is a virtual form, a description of the components that comprise the form must be set out in an Appendix to the approval instrument.

9. Approval may only be given by the Commissioner, a Second Commissioner or an SES officer who is a delegate of the Commissioner (the approving officer)[1]. The approval instrument must be in paper form. The approving officer must complete an approval instrument containing the following:

   - the approving officer's name, position and signature;
   - the manner in which the approved form must or can be lodged or given, which may be in a paper form and/or in a virtual form;
   - the name of the entity, or class of entity, that must prepare or provide the information in the approved form;
   - the legislative reference to the operative provision(s).

   The approval instrument must have an Appendix which:

   - in relation to a paper form, comprises the actual return, notice, statement, application or other document, if any, including schedules;
   - in relation to a virtual form, sets out a description of the components comprising the form, including declarations and signature requirements (and, if necessary, any TFN and privacy statements);
   - in relation to both types of form, includes a reference to, and copies of any additional documents, information or statements required and developed as part of the approval process, such as schedules and instruction material.

   An approving officer may also approve any electronic and/or telephone signature required by the form. Alternatively, at the time of executing the instrument of approval of an approved form, the approving officer must ensure that an instrument or instruments of approval for the required electronic and/or telephone signature have been properly executed. Procedures for the approval of electronic and telephone signatures for approved forms are set out in PSLA 2005/20.

[1] See Guideline 1.2.1 of the *Taxation Authorisations Guidelines.*

10. Approving officers, and subsequent occupants of their positions, must hold the instruments of approval that they have executed unless the business line has made other arrangements. Instruments of approval of electronic and telephone signatures must be held as ancillary material to the instruments of approval for the related approved forms in accordance with paragraph 11 of Law Administration Practice Statement PSLA 2005/20. In addition, the business lines are required to create and maintain either their own or one Tax Office wide central register:

- which lists the forms approved by approving officers and includes details of the location of each instrument of approval, including those held as ancillary material; and

- develop procedures to make the register accessible to appropriate parties.

These administrative support arrangements are intended to ensure ready access to the instruments when and if this is required; for example, during litigation. However, these arrangements are not part of the approval process for either approved forms or electronic and telephone signatures.

EXPLANATION

What is an 'Approved Form'?

11. The idea of an 'approved form' in section 388-50 replaces and extends beyond the old concepts of a 'prescribed form' or a 'pro-forma' in earlier law. 'Approved form' broadens the concept of a 'form' beyond the traditional idea of a regularly drawn document or a document with blanks to be filled in. For example, in certain circumstances an oral communication of information by telephone may satisfy the requirements of section 388-50 for a document to be in the approved form. 'Approved form' also moves away from the idea that the details of forms will be set out in the regulations to an Act.

12 Paragraph 388-50(1)(d) provides that a document is an approved form if it is given in the manner that the Commissioner requires, which may include electronically. The taxation law contemplates approved forms being given to the Commissioner either in paper form or in what may be termed 'virtual form' - a term which refers to a document that does not have a physical existence because, for example, it is given electronically or by telephone. This is clear when section 388-50 and section 388-75 in Schedule 1 to the TAA are read together[2] and from the relevant Explanatory Memorandum.[3]

[2] Paragraph 388-50(1)(b) refers readers to section 388-75. Subsection 388-75(1) and subsection 388-75(2) refer to documents in 'paper form'. Subsections 388-75(3) and 388-75(4) refer to any return, notice, statement, application or other document that is lodged electronically or is given by telephone, respectively.

[3] Under the heading 'What is an approved form?' paragraph 1.162 of the Revised Explanatory Memorandum to the A New Tax System (Tax Administration) Bill (No. 2) 2000 states, among other things, that the manner in which a form is to be given to the Commissioner can be by electronic transmission or by telephone.

What are the approved form requirements?

13. Subsection 388-50(1) sets out four requirements for a document to be an approved form. They are:

- it must be in the form approved in writing by the Commissioner for that kind of document (paragraph 388-50(1)(a)). (If there is to be no declaration, the approval instrument must state that.);
- it must contain a declaration signed by a person or persons as the form requires (paragraph 388-50(1)(b));
- it must contain the information that the document requires and any further information, statement or document as the Commissioner requires, whether in the form or otherwise (paragraph 388-50(1)(c)); and
- if it is required to be given to the Commissioner, it must be given in the manner that the Commissioner requires (which may include electronically) (paragraph 388-50(1)(d)). (If the relevant document does not have to be given to the Commissioner, the approval instrument should state that).

These four requirements are discussed in detail in paragraphs 14 to 28.

Requirement 1 – The approval process

14. Section 388-50 refers to the Commissioner giving the approval in writing for an approved form. Section 6D of the TAA gives the Second Commissioners all the powers of the Commissioner (with a few exceptions that are not relevant to approved forms). Section 8 of the TAA gives the Commissioner the power to delegate his powers and functions. Subsection 8(2) deems the act of a delegate to be the act of the Commissioner. This explains why Second Commissioners and SES delegates of the Commissioner, can give written approval for forms even though section 388-50 refers only to the Commissioner.

15. There are no delegations or authorisations to officers below the SES level to approve approved forms.

16. The approval instruments are at Attachments A and B to this practice statement. **Attachment A** contains the 'Instrument of Approval of a Paper Form' and **Attachment B** the 'Instrument of Approval of a Virtual Form'.

17. However, in some instances, approved forms may be approved in writing by methods other than the execution of instruments at Attachments A and B. For example, Taxation Determination TD 97/23 sets out the approved form of an election in connection with shares or rights acquired under an employee share acquisition scheme.[4]

18. It is possible to approve more than one form as part of a single approval process. Officers must be careful to approve each form in writing in that approval process. A virtual form must be described in the Appendix to the approval instrument in such a way that the officer, entity or agent lodging or giving the form can satisfy the requirements of section 388-50.

[4] See subsection 139E(1) of the ITAA 1936.

19. As part of the approval process, officers must determine what information must be provided and the manner in which it must be given to the Commissioner. In the process of developing an approved form, a need to create ancillary documents such as instruction material may arise. If it does, that ancillary material must be developed as part of the approval process for the approved form.

20. In situations in which the same form can be given in either a paper form or a virtual form, the approval instrument can be modified to cover both forms.

21. Regardless of the form adopted for an approved form the approving officer must sign an approval instrument satisfying the requirements of paragraph 9.

Requirement 2 – The declaration and signature

22. There may be no declaration requirements for a particular approved form. However, if there are declaration requirements, those requirements must form part of the relevant document that is being approved. Therefore, in practice, the approving officer will approve the declaration requirements as part of the approval instrument.[5]

23. Where there are declaration requirements for a document to be in the approved form, the document must contain the declaration made by the relevant person with:

    (a) their signature in the case of a paper form; or

    (b) in the case of a virtual form, their electronic signature or telephone signature as approved in accordance with Law Administration Practice Statement PSLA 2005/20.[6]

Requirement 3 – The information required

24. In determining the content of the approved form, the approving officer should consider what information is necessary to satisfy the requirements of the operative provision(s) or is otherwise necessary for the Commissioner in administering the relevant taxation laws.

25. All approved forms should be designed to minimise the cost of compliance and to be easier, cheaper and more personalised to work with.

26. All forms that collect personal information (both paper and virtual forms) must comply with the *Privacy Act 1988*, in particular with the requirements of Information Privacy Principle 2 and the Tax File Number Guidelines. Advice on these requirements is available from the Tax Office's Legal Services Branch, through your Business Line Privacy Network member.

[5] See sections 388-60, 388-65 and 388-70 in Schedule 1 to the TAA about declarations.
[6] See section 388-75 in Schedule 1 to the TAA about signing declarations.

Requirement 4 – The manner in which the approved form is to be given

27. The Commissioner may require a form to be given in paper or virtual form. However, it will only satisfy the approved form requirements if it is given in the manner required by the Commissioner. This accords with the Government's strategic framework for the development of the information economy. A central platform of that framework is the *Electronic Transactions Act 1999* which allows business and the community to use electronic communications in their dealings with government. Nevertheless under section 388-50 the Commissioner may stipulate that a document must be given to the Commissioner in paper form only or must be given in virtual form only.

28. The term 'manner' in paragraph 388-50(1)(d) includes the place of lodgment. If the relevant document is given to the Commissioner in paper form, it must be addressed to a particular postal address specified in the form (or in the instructions to the form), or placed in a lodgment box at a Tax Office site. If the relevant document is lodged electronically, it must be sent to the electronic address specified in the form. If given by telephone, it can only be given by using the telephone numbers specified in the form.

Subject references:	approved form declaration electronic signature telephone signature
legislative references:	*A New Tax System (Goods and Services Tax) Act 1999* Section 195-1 *Acts Interpretation Act 1901* Section 18A Subsection 46(1) *Electronic Transactions Act 1999* *Excise Act 1901* Subsection 4(1) *Fringe Benefits Tax Assessment Act 1986* Subsection 136(1) *Income Tax Assessment Act 1936* Subsection 6(1) Subsection 139E(1) Section 202A *Income Tax Assessment Act 1997* Subsection 995-1(1) *Petroleum Resource Rent Tax Assessment Act 1987* Section 2 *Privacy Act 1988* Superannuation Guarantee (Administration) Regulations 1993 Regulation 9D *Superannuation (Unclaimed Money and Lost Members) Act 1999* Section 8 Section 49 *Taxation Administration Act 1953* Subsection 3AA(2) Section 6D Section 8 Section 388-50 in Schedule 1 Section 388-65 in Schedule 1 Section 388-75 in Schedule 1
related public rulings:	TD 93/224; TD 97/23; TD 98/26; IT 2417; IT 2573; IT 2617; IT 2654
related practice statements:	Law Administration Practice Statement PS LA 2005/20 - Signature requirements for approved forms lodged electronically or given by telephone
other references:	Revised Explanatory Memorandum to A New Tax System (Tax Administration) Bill (No. 2) 2000 Delegations and Authorisations Manual (link available internally only) Taxation Authorisations Guidelines (link available internally only)
file references:	2003/5758

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Contact email	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au
Section	Operational Policy, Assurance and Law

ATTACHMENT A

AUSTRALIAN TAXATION OFFICE

INSTRUMENT OF APPROVAL OF A PAPER FORM

Under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant approval provision], I (the approving officer) approve the form set out in Attachment A as the [insert type of form] that is required to be lodged with or given to the Commissioner of Taxation in paper form, under [insert relevant legislative provision], by [insert entity or class of entities required to use the form] for the [insert relevant period or relevant approved period in lieu].

Signed this .....day of 200

By: …….....

Name: …….....

Position: …….....

Signature:

Delegate of the Commissioner of Taxation.

Appendix A

Copy of the relevant form
Copy of ancillary materials, including any instrument approving an electronic and/or telephone signature required by the form.

ATTACHMENT B

AUSTRALIAN TAXATION OFFICE

INSTRUMENT OF APPROVAL OF A VIRTUAL FORM

Under section 388-50 in Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant legislative approval provision], I (the approving officer) approve the description of the components set out in Attachment A as comprising the [insert type of form] that is required to be lodged electronically or given by telephone, under [insert relevant legislative provision], by [insert entity or class of entities required to use the form] for the [insert relevant period or relevant approved period in lieu].

Signed this .....day of 200

By: …….....

Name: …….....

Position: …….....

Signature:

Delegate of the Commissioner of Taxation.

Appendix A

Description of the components comprising the form, including declarations and signature requirements (and, if necessary, any tax file number and privacy statements).

Explanation of procedure for completing the virtual form and paper representation of the virtual form if the software has that facility.

Copy of ancillary materials, including any instrument approving an electronic and/or telephone signature required by the form.