PS LA 2005/19 - Approved forms

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Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2005/19

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This law administration 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. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.This practice statement must be read in conjunction with Law Administration Practice Statement PS LA 2005/20.

SUBJECT: **Approved forms**

PURPOSE: **To explain:**

- **when a document is in the approved form**
- **the requirements and procedures for approving a form, and**
- **administrative support arrangements to be followed once a form is approved.**

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STATEMENT

When is a document in the approved form?

1. This practice statement is concerned with documents that are required under a taxation law to be in the 'approved form' within the meaning of section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

2. In this practice statement:

   - all legislative references are to Schedule 1 of the TAA unless otherwise stated
   - the reference to documents also includes returns, notices, statements and applications where the context so requires.

3. Subsection 388-50(1) sets out the requirements for a document to be in the approved form. A document is in the approved form if it meets all of the following requirements:

   - it is in the form approved in writing by the Commissioner for that kind of document (paragraph 388-50(1)(a))
   - it contains a declaration signed by a person or persons as the form requires (paragraph 388-50(1)(b))
   - it contains the information that the form requires, and any further information, statement or document as the Commissioner requires, whether in the document or otherwise (paragraph 388-50(1)(c))
   - if it is 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)).

4. An approved form can be a return, notice, statement, application or other document in a form approved in writing by the Commissioner, including in paper form or in a 'virtual form'. A virtual form is one that does not have a physical existence, being lodged electronically or given by telephone.

When section 388-50 does or does not apply

Situations where the requirements of section 388-50 apply

5. The requirements of section 388-50 apply to any provisions which use the term 'approved form' that has the meaning given in section 388-50.

6. 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. This is because section 18A of the *Acts Interpretation Act 1901* (AIA) provides that 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.

7. 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 (see subsection 46(1) and section 18A of the AIA). In the circumstances referred to in this paragraph and

paragraph 6 the requirements of section 388-50 for a document to be in the approved form will also apply, provided no contrary intention appears from the legislative context.

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

8. 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 will apply instead of the requirements of section 388-50.

9. Further, section 388-50 does not apply where an Act 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/her power of general administration of a taxation law. The *Delegations and Authorisations Manual* contains explanations concerning implied powers and the power of general administration.

Requirements and procedures for approving a form

10. A document is in the approved form, if it is in the form the Commissioner has approved in writing for it; if it contains required declarations, signed as required; if it contains the required information; and if it is to be given to the Commissioner it is given in the manner required.

11. Some of these requirements may not be specifically stated in the document. Also, some instructions stated in the document (for example complete in black ball point pen), are not necessarily requirements for the document to be in the approved form.

Commissioner's approval

12. The approval of the form of the document must be recorded in writing in an instrument of approval in paper form. The instrument of approval must have an Appendix which:

- in relation to the approval of a paper form, comprises the actual return, notice, statement, application or other document, including schedules, if any
- in relation to the approval of a virtual form, sets out a description of the components comprising the form, including any declarations and signature requirements (and, if necessary, any TFN and privacy statements)
- in relation to both form types, includes a reference to, or attaches copies of, any ancillary documents which are designed to assist an entity to comply with the requirements of the document. This includes publications such as instructional materials or explanatory statements.

13. 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 approving officer must complete an instrument of approval containing the following:

- the approving officer's name, position title, position number and signature

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

- the manner in which the approved form should be lodged or given, which may be in a paper form and/or in a virtual form
- details of the entity, or class of entity, that must prepare or provide the document or information in the approved form
- a reference to the legislative provision which requires the document to be in the approved form.

14. Documents in the approved form require signed declarations, under paragraph 388-50 (1)(b) and sections 388-60, 388-65 and 388-70. Under subsection 388-75(3) the signature must be by electronic signature if the document is lodged electronically. Under subsection 388-75(4) the signature must be by telephone signature if the document is lodged by telephone.

15. Where the form can be lodged electronically or by telephone 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 the approving officer must ensure that an instrument or instruments of approval for an electronic and/or telephone signature as required have been properly executed. Procedures for the approval of electronic and telephone signatures for approved forms are set out in Law Administration Practice Statement PS LA 2005/20 Signature requirements for approved virtual forms, which are forms which are to be lodged electronically or given by telephone (PS LA 2005/20).

Compliance by entity with requirements of the document

16. For a document to be in the approved form under section 388-50, it must contain information that either meets the requirement of paragraph 388-50(1)(c), being the information the form requires, and any further information, statement or document the Commissioner requires; or that meets the requirement of subsection 388-50(1A), being the information the Commissioner otherwise specifies in writing as being required.

17. If the document is to be given to the Commissioner it must have a signed declaration and be given in the manner required by the Commissioner.

Administrative support arrangements to be followed once a document is approved

18. 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.

19. The documentation should be filed using the Total Records Information Management (TRIM) record management system. The TRIM file must be reassigned to the subsequent occupants of the approving officer's position.

20. Where an instrument of approval is created for an electronic signature for a document that can be lodged electronically the instrument of approval must be held as ancillary material to the instruments of approval for the related approved forms in accordance with paragraph 14 of PS LA 2005/20.

21. Where an instrument of approval is created for a telephone signature for a document that can be lodged by telephone the instrument of approval must be held as ancillary material to the instruments of approval for the related approved forms in accordance with paragraph 15 of PS LA 2005/20.

22. A copy of the instrument of approval in an electronic format which captures the signature of the approving officer, such as in a portable document format (PDF), should be sent to the area responsible for in-house prosecutions (via the Administrative Prosecutions Referrals mail box). They will keep copies of the instruments of approval electronically which will ensure that this is held by more than one person within the office. Any advice to Administrative Prosecutions should also advise of the location of the original paper authorisation.

23. In addition the area in which the approving officer is located must ensure that the approved form is added to the list of all the approved forms available on our external website so it is available for taxpayers.

24. These administrative support arrangements are intended to ensure ready access to the instruments when and if they are 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'?

25. 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.

26. Paragraph 388-50(1)(d) provides that, for a document that is required to be given to the Commissioner, the document is in the 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 are read together[2] and from the relevant Explanatory Memorandum.[3]

What are the approved form requirements?

27. Subsection 388-50(1) sets out the four requirements for a document to be in the 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))
- it must contain a declaration signed by a person or persons as the form requires (paragraph 388-50(1)(b))

[2] Paragraph 388-50(1)(b) refers readers to section 388-75. Subsections 388-75(1) and 388-75(2) refer to documents in 'paper form'. Subsections 388-75(3) and 388-75(4) refer to documents that are lodged electronically or 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.

- it must contain the information that the document requires and any further information, statement or document as the Commissioner requires, whether in the document 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)).

It should be noted that all four requirements must be met for the document to be in the approved form and are discussed in detail in paragraphs 28 to 54 of this practice statement.

Requirement 1 – The approval process

28. Section 388-50 refers to the Commissioner giving the approval in writing for an approved form. Under section 6D of the TAA, the Second Commissioners have 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) of the TAA deems an 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 approval by the Commissioner.

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

30. The instruments which are at Attachments A and B to this practice statement contain the 'Instrument of Approval of a Paper Form'. Attachment B is an example of an instrument of approval for an approved form that prescribes the information to be provided but is not required in a specific format.

31. The instrument at Attachment C to this practice statement contains the 'Instrument of Approval of a Virtual Form'.

32. In situations in which a form can be given in either a paper form or a virtual form, the instrument of approval can be modified to cover both form types.

33. However, in some instances, approved forms may be approved in writing by methods other than the execution of instruments at Attachments A, B and C. For example, in relation to income years prior to 2008-09, 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]

34. 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 instrument of approval in such a way that an entity or its agent lodging or giving the form will know what components comprise the form that has been approved.

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

[4] See subsection 139E(1) of the ITAA 1936 (repealed as of 1 July 2008).

36. Whether the approved form is a paper form or a virtual form, the approving officer must sign an instrument of approval in accordance with the requirements set out in paragraphs 30 and 31 of this practice statement.

37. A document to which the instrument of approval relates only becomes an approved form from the date on which the instrument of approval is signed or such future date as is indicated in the instrument of approval.

38. Once the approved form comes into existence, information that is required to be given under the relevant provision must be made using that form.

39. For example, a document for the year ended 30 June 2008 with a due date of 31 August 2008 may not have been approved as the approved form until 30 September 2009. Taxpayers who lodged the document for the year ended 30 June 2008 after the approved form came into existence on 30 September 2009 are required to lodge the document in that approved form.

40. When an approved form is revised an instrument of approval must be executed. The revised approved form replaces the previous approved form from the date the instrument of approval is signed. An example is where a BAS is revised and new information is required to be provided, or existing information is changed - it is necessary to have a new instrument of approval for the revised BAS.

Requirement 2 – The signed declaration

41. Where a signed declaration is required in the approved form, the declaration must be approved in the instrument of approval. The declaration must include the statement that the information in the approved form is true and correct.

42. The declaration can also include additional information applicable to the particular document, such as: that all income has been declared; that the taxpayer has receipts for deductions claimed; and/or that an income tax return is not required to be lodged.

43. For a document to be given to the Commissioner in the approved form:

    (a) in the case of a paper form, an entity or its agent must sign the declaration, or

    (b) in the case of a virtual form, it must contain the declaration of the entity or its agent with their electronic signature or telephone signature (examples of electronic and telephone signatures can be found in PS LA 2005/20).

44. The instrument of approval should specify the entity that is required to sign the declaration. This should also be explained in the declaration section of the form.

45. For example where the declaration is not made by a tax agent it could be required to be signed by an individual, proprietor (for FBT returns), partner, public officer, trustee or, for government departments and authorities, the delegated officer.

46. Where the declaration is signed by a tax practitioner it might be stipulated that where the tax agent is a partnership or a company, the declaration must be signed by an individual who is authorised to sign on behalf of the partnership or company.

47. If there is to be no declaration, for example in forms that are not to be given to the Commissioner, the instrument of approval must state that.

Requirement 3 – The information required

48. In determining the content of the approved form, the approving officer should consider what information is necessary to satisfy the requirements of the provision(s) that requires a document to be in an approved form, or is otherwise necessary for the Commissioner in administering the relevant taxation laws.

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

50. All forms that collect personal information (both paper and virtual forms) must comply with the *Privacy Act 1988*, in particular with the requirements of *Australian Privacy Principle 5* and the *Tax File Number Guidelines 2011*. Advice on these requirements is available from the General Counsel section, through your Business Line Privacy Network member.

Requirement 4 – The manner the approved form is given to the Commissioner

51. 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 in paper form only, or must be given in virtual form only, or in either form.

52. The term 'manner' in paragraph 388-50(1)(d) includes the place of lodgment.

53. If the relevant document is given to the Commissioner in paper form, it may be required to be addressed to a particular postal address specified in the form (or in the instructions to the form), or it may placed in a lodgment box at a specified ATO site. If no address is specified, the relevant document may be placed in any lodgment box at any ATO site or sent to a general ATO address, such as those listed in ATO publications.

54. If the relevant document is to be given to the Commissioner electronically, it may be required to be sent to an electronic address or one of a number of electronic addresses specified in the form, or be required to be given to the Commissioner using specified software.

55. If the relevant document is to be given to the Commissioner by telephone, it can only be given by using the telephone number or numbers specified in the form.

56. Where the document can be given by any means, it should be clear in the document, or the instructions for its completion provided by the Commissioner the requirements of each method of lodgment.

57. If the document does not have to be given to the Commissioner, the instrument of approval must state that.

ATTACHMENT A

AUSTRALIAN TAXATION OFFICE

INSTRUMENT OF APPROVAL OF A PAPER FORM

Under section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant approval provision], I (the approving officer) approve the form set out in Appendix 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 .....20…

Name: .....

Position Title: .....

Position Number: .....

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 PAPER FORM

Under section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant approval provision], I (the approving officer) approve the provision of the information below as set out in Appendix 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].

The approval is subject to the eligibility rules for the use of the form used by persons or entities, as contained in the instructions relating to the form or as otherwise advised by the Commissioner.

Signed this .....day of .....20…

Name: .....

Position Title: .....

Position Number: .....

Signature:

Delegate of the Commissioner of Taxation.

Appendix A

Details of information required to be provided (see example below)

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

Example of information that might be included in Appendix A

A written notice with the following information will satisfy the requirement of 'an approved form' for [type of form] that is required to be given to the Commissioner in paper form, under [insert relevant legislative provision], by [entity or class of entities required to use the form] for the [insert relevant period or relevant approved period in lieu]

- Name of the entity
- Address of the entity
- TFN or ABN
- Name of Registered Agent
- Words to reflect the intent of the form, (for example, I wish to lodge an objection against an income tax assessment for the year of income)
- A declaration that the information is true and correct where the document is lodged by the entity

- If the document is lodged by a registered agent, that:
  - (a) the document has been prepared in accordance with the information supplied by the other entity
  - (b) the agent has received a declaration from the other entity stating that the information provided to the agent is true and correct, and
  - (c) the agent is authorised by the other entity to give the document to the Commissioner
- Signature of the entity or agent authorised by the entity.

ATTACHMENT C

AUSTRALIAN TAXATION OFFICE

INSTRUMENT OF APPROVAL OF A VIRTUAL FORM

Under section 388-50 of 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 Appendix 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 .....20…

Name: .....

Position Title: .....

Position Number: .....

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.

Example of description of the components comprising the form

The form for lodgment of the **[insert type of form]** that is required to be lodged electronically or given by telephone known as **(name for ELS version) in the (year) ELS Software Specifications),** 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]**, being an electronic form equivalent to the **[name of the paper version of this form]**, which includes the lodgment declaration requirements specified in the attached instrument of approval of electronic signature for lodging **[type of form]**.

Amendment history

Date of amendment	Part	Comment
xx March 2014	Paragraph 50	• Replace words 'Information Privacy Principle 2' with Australian Privacy Principle 5. • Italicise 'Tax File Number Guidelines' and add '2011' at end of sentence. • Replace words 'ATO's Legal Services Branch' with 'General Counsel section'.
3 January 2012	Paragraphs 6 & 7	Remove words "unless the contrary intention appears"
12 November 2010	Paragraph 11 Paragraph 17 Paragraphs 18 to 24 Various Paragraph 39 Paragraph 40 Paragraph 41 Paragraphs 41 to 46 Attachment B Various Legislative references	Example of what may not be required as part of the approved form Clarifying requirement for a declaration to be included on an approved form given to the Commissioner Administrative support processes to be followed once a document has been approved Changed 'approval instrument' to 'instrument of approval' for consistency Requiring information in an 'approved form' created after the original due date for lodgment Guidance on when a new 'approved form' should be prepared Clarifying the requirement to have a declaration that the information in the form is 'true and correct' Guidance on what should be included in the declaration Example of an instrument of approval where there is a description of the information to be provided rather than a specific form itself. Tax Office updated to ATO Additional references added
21 February 2007	References	Unnecessary legislative references removed and other references added.

Legislative references	ANTS(GST)A 1999 195-1 Acts Interpretation Act 1901 18A Acts Interpretation Act 1901 46(1) Electronic Transactions Act 1999 Excise Act 1901 4(1) FBTAA 1986 136(1) ITAA 1936 6(1) ITAA 1936 former 139E(1) ITAA 1936 202A ITAA 1997 995-1(1) PRRTAA 1987 2 Privacy Act 1988 Superannuation (Unclaimed Money and Lost Members) Act 1999 8 Superannuation (Unclaimed Money and Lost Members) Act 1999 former 49 TAA 1953 3AA(2) TAA 1953 6D TAA 1953 8 TAA 1953 8(2) TAA 1953 Sch 1 388-50 TAA 1953 Sch 1 388-60 TAA 1953 Sch 1 388-65 TAA 1953 Sch 1 388-70 TAA 1953 Sch 1 388-75 Superannuation Guarantee (Administration) Regulations 1993 reg 9D
Related public rulings	TD 93/224W; TD 97/23; TD 98/26; IT 2417; IT 2573; IT 2617; IT 2654
Related practice statements	PS LA 2005/20 – Signature requirements for approved virtual forms, which are forms which are to be 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) Approved forms web page
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Date issued	11 November 2005
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Contact email	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au
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