PS LA 2005/19 - Approved forms

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PS LA 2005/19
Approved forms

This Law Administration Practice Statement provides guidance in relation to approved forms.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What this practice statement is about

This practice statement sets out:

- when a form will need to meet the requirements of an approved form contained in section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).[1]
- what you need to consider in creating and obtaining approval for an approved form, and
- how approved forms should be managed.

Note: section 388-50 (and this practice statement) does not apply where:

- it appears in an Act administered by the Commissioner which has its own definition of 'approved form'. In these cases, the requirements of that definition will apply.
- the relevant Act is silent in respect of any requirements for a form 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.[2]

2. What is an approved form?

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 digitally or given by telephone.

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

3. Approved form v Form approved in writing or other names for approved forms

Sometimes a provision of a taxation law may 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'.

Generally, these expressions will be considered to mean ‘approved form’ and so be subject to the requirements of section 388-50, except where the Act in which the term appears has its own definition of approved form.

4. When is a document in the approved form?

For a document to be in the approved form, it must satisfy the four requirements set out in subsection 388-50(1). They are:

(a) it must be in the form approved in writing by the Commissioner for that kind of document (paragraph 388-50(1)(a))

(b) it must contain a declaration signed by a person or persons as the form requires (paragraph 388-50(1)(b))

(c) 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

(d) if it is required to be given to the Commissioner, it must be given in the manner that the Commissioner requires (which may include digitally) (paragraph 388-50(1)(d)).

[1] All legislative references in this practice statement are to Schedule 1 of the TAA, unless otherwise indicated.
[2] The *Delegations and Authorisations Manual* contains explanations concerning implied powers and the power of general administration.

5. What to consider when creating and approving an approved form

When creating an approved form, you need to consider several specific factors as detailed below. Over and above these, you also need to consider that:

- All approved forms should be designed to minimise the cost of compliance.
- All forms that collect personal information (both paper and virtual forms) must comply with the *Privacy Act 1988*.[3]

You should also note that in rare circumstances the approved form will not be an ATO form, so the requirements of the form will depend on the agency to which the form belongs. For example, some excise amendments are required to be made in the form approved by Customs. The signature, declaration and manner in which the form is required to be lodged will be in accordance with the requirements by Customs.

What is the purpose of the approved form?

This includes things such as:

- The legislation requiring the form to be lodged in the approved form. For example, if the form is an income tax return the approval will make reference to section 161 of the *Income Tax Assessment Act 1936* as that is the legislation requiring lodgment of an income tax return in the approved form.
- Whether the form will serve other purposes. For example, the form might also serve to notify a change of name or address for the taxpayer or allow them to nominate a third party (this may require legislative reference in approval).

What information is required to process the form?

When looking at the content the approved form should have, you need to consider what information is necessary to satisfy the requirements of the provision for which it is being created, and the information that may be needed in order to process that form.

How is the approved form to be given to the Commissioner?

When designing a form preference should be given to developing a form that can be given to the Commissioner digitally.

Where the document can be given by various means, it should be clear in the document, or in the instructions for its completion, what the requirements are for each method of lodgment. Note that providing several methods of lodgment may be required, or preferable.

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

- **Digital:** what channels are acceptable, for example Standard Business Reporting, Agent or Business Portal, online lodgment including via myTax.

  Consider whether there is a need to specify the way it is lodged digitally and whether there are existing processes which might be used in the future even if not to be used at the time the form is approved.

  If the relevant document is to be given to the Commissioner digitally, it may be required to be sent to one or more electronic addresses, or to be given to the Commissioner using specified software.
- **Telephone:** what telephone number is to be used and whether there are any restrictions on accepting the form via telephone, such as only accepting the current year forms or a certain number of forms at one time.

  Unless there is a very specific reason that the form can never be accepted by telephone, it is prudent to include telephone lodgment as an option.
- **Paper:** if the form can be lodged in paper, consider what address it should be sent to and whether it can also be accepted by fax.

What type of signature is required?

Where a signed declaration is required in the approved form, the declaration:

- **must** include the statement that the information in the approved form is true and correct.
- **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.

In the case of a **paper** form, an entity or its agent must sign the declaration as the form requires so a decision should be made whether to include a declaration for an agent.

[3] In particular, the requirements of *Australian Privacy Principle 5* and *The Privacy (Tax File Number) Rule 2015*. Advice on these requirements is available from General Counsel, through your business line Privacy Network member.

In the case of a **virtual** form, a digital signature or telephone signature will be required by the entity or its agent.[4]

Where the form is to be provided digitally by an agent the agent must declare that:

- the document has been prepared in accordance with the information supplied by the other entity, and
- the agent has received a declaration from the other entity stating that the information provided to the agent is true and correct, and
- the agent is authorised by the other entity to give the document to the Commissioner.

In some instances, no declaration is technically required, for example, because the form is not to be given to the Commissioner. However, it would be prudent to include a declaration in any case.

What instructions are needed?

The instructions for the completion of an approved form are part of the approved form and should include:

- details of the entity, or class of entity, that must prepare or provide the document or information in the approved form
- methods of lodgment and addresses to be used, and
- clear instructions where information is essential, such as ticking certain boxes, completing certain labels or attaching schedules.

Where the form is to be provided digitally edits should be built into the system so that the form cannot be lodged in an incomplete manner.

6. Approval process for approved forms

Approval of an approved form may only be given by the Commissioner, a Second Commissioner or an SES officer who is a delegate of the Commissioner.[5]

Approval of the form can be given via email. In the approval the approving officer must include the following information:

- a statement indicating that the form is approved.
- a reference to the legislative provision/s which requires the document to be in the approved form.
- a reference to any other relevant legislation.[6]
- a copy of the form, as it has been approved. In instances where there is to be no specific form, the details of the information that is being requested should be clearly specified. A virtual form must be described in such a way that it is clear what components comprise the form that has been approved.
- if instructions have been created as part of the approved form, a copy of the instructions, as approved.
- the approving officer's name and position title.
- the approving officer's signature/e-signature.

Examples of the wording that can be used for approving an approved form are provided as attachments to this practice statement:

- Attachment A – approval of a paper form.
- Attachment B – approval of an approved form that prescribes the information to be provided but is not required in a specific format.
- Attachment C – approval of a virtual form.

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

More than one form can be approved as part of a single approval process. However, the approver must be careful to approve each form in writing in that approval process.

When an approved form is revised or the instructions substantially revised, that is other than to correct grammar or typos, a new approval must be sought. The revised approved form replaces the previous approved form from the date the new approval is granted.

7. Managing approved forms

Approved forms must be stored on a central internal register which contains both the form and its approval (see link provided in the More Information section at the end of this practice statement).

Approved forms (without the approval documentation) must also be stored on the consolidated listing of approved forms on the ATO's external website.

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[4] Examples of digital signatures can be found 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.*

[5] Refer to the *Taxation Authorisation Guidelines*.

[6] For example, where the form can be used to nominate a third party representative reference would be made to paragraph 355-25(2)(g) or, where the form can be used to change or withdraw a preferred address for service reference would be made to regulation 12B of the *Taxation Administration Regulations 1976*.

8. What if the form is not lodged in the approved form?

If a form is not lodged in the approved form, we may consider the form not lodged. This could result in the taxpayer incurring failure to lodge on time penalties and the taxpayer may not have protection of safe harbour provisions.

The Commissioner may choose to accept and action the information provided based on a risk management approach. Please talk to your team leader about the form and whether it can be accepted.

9. More information

For more information, see:

- PS LA 2005/20 *Signature requirements for approved virtual forms, which are forms which are to be lodged electronically or given by telephone*
- Privacy fact sheet 17 – Australian Privacy Principles
- Taxation Authorisation Guidelines
- Delegations and Authorisations Manual

To store forms and approvals, email OPAL at:

- Approved forms publishing

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ATTACHMENT A

Under section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant approval provision], I approve the form attached 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].

It is also an approved form for nominating a third party representative as required by paragraph 355-25(2) (g) of Schedule 1 to the *Taxation Administration Act 1953*

The information required by this form may also be given by telephone and the telephone signature will be the satisfaction of the proof of record ownership requirements in place at the time of lodging the form.

Appendix A

Copy of the relevant form

Copy of ancillary materials

ATTACHMENT B

Under section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant approval provision], I 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].

This form will only be an approved form where the instructions relating to the form or other advice by the Commissioner allows the person or entity to use it.

The information required by this form may also be given by telephone and the telephone signature will be the satisfaction of the proof of record ownership requirements in place at the time of lodging the form.

Appendix A

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

Copy of ancillary materials, such as instructions or advice from the Commissioner setting out who may use this 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

Under section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* [or insert other relevant legislative approval provision], I approve the description of the components set out in Appendix A as comprising the [insert type of form] that is required to be lodged digitally 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].

It is also an approved form for nominating a third party representative as required by paragraph 355-25(2) (g) of Schedule 1 to the *Taxation Administration Act 1953*.

The telephone signature will be the satisfaction of the proof of record ownership requirements in place at the time of lodging the form.

The digital signature will be (add types of digital signature acceptable for this form).