# *PS LA 2007/21 - Substituted Accounting Periods (SAPs)*

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# Practice Statement Law Administration

# PS LA 2007/21

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**SUBJECT:** **Substituted Accounting Periods (SAPs)**

**PURPOSE:** **To provide guidance on the use of the Commissioner's discretion in section 18 of the *Income Tax Assessment Act 1936* to grant leave to adopt a SAP**

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## BACKGROUND

1. The *Income Tax Assessment Act 1936*[1] expresses a legislative intention that ordinarily a person's accounting period is to be the period of 12 months ending on 30 June.[2] However the Act makes provision for a substituted accounting period (SAP) to balance on some other date.

2. Section 18 states:

> Any person may, with the leave of the Commissioner, adopt an accounting period being the 12 months ending on some date other than 30 June. For the purposes of this Act, the person's accounting period in each succeeding year shall end on the corresponding date of that year, unless:
>
> (a) with the leave of the Commissioner some other date is adopted; or
>
> (b) the accounting period ends earlier under section 18A.

3. Section 18 provides for an entity to adopt a balance date other than 30 June. However, it is clear that the law intended that the Commissioner's discretion be exercised in appropriate cases. This practice statement provides a framework within which the merits of each case are considered.

4. The principal guidelines for ATO personnel exercising the Commissioner's discretion under section 18 were previously set out in Taxation Rulings IT 2360 and IT 2497 which issued in 1986 and 1988 respectively. Since those rulings were issued, there have been a number of significant reforms to the tax system including A New Tax System (ANTS), the consolidation regime as well as the decision of the Federal Court in *MLC Investments Ltd v. Commissioner of Taxation* (2003) 137 FCR 288; 2003 ATC 5133; (2003) 54 ATR 671 (*MLC*) which examined the application of the relevant rulings. This practice statement replaces Taxation Rulings IT 2360, IT 2497 and Taxation Determination TD 95/32, which will be withdrawn upon release of this practice statement.

5. This practice statement sets out ATO policy in light of the *MLC* decision and provides clarity for decision makers, by setting forward the principles on which a decision to grant a SAP will be made as well as outlining the factors taken into account when making this decision.

[1] All legislative references in this Ruling are to the *Income Tax Assessment Act 1936* unless otherwise indicated.
[2] See comments made by Lindgren J in *MLC Investments Ltd v. Commissioner of Taxation* (2003) 137 FCR 288 at [2]; 2003 ATC 5133 at 5135; (2003) 54 ATR 671 at 673.

## SCOPE

6. This practice statement will outline to ATO staff the steps to follow in the decision-making process when assessing a SAP application:

   ***Step 1 – Do the entity's circumstances warrant granting a SAP?***

   This step involves considering the merits of the application to determine whether or not to exercise the Commissioner's discretion in section 18.

   ***Step 2 – How and when the entity moves from one accounting period to another***

   This step involves determining:

   (a) how a SAP relates to a 30 June year end ('late and early balancing')

   (b) the length of a transitional period, and

   (c) when the transitional period will occur.

   ***Step 3 – Advising the applicant***

   This step explains how the decision should be conveyed to the applicant, including information the entity will need to meet its ongoing income tax obligations.

7. The practice statement outlines how the Commissioner may use his powers (see sections 162 and 168) to require a return of income for a transitional period when an entity changes from one year end to another. This practice statement explains how these powers will ordinarily be exercised.

## STATEMENT

8. An entity's income year for the purposes of the tax law will be the period of 12 months ending on 30 June, unless the Commissioner grants leave under section 18 to adopt a SAP of 12 months in lieu of the income year ending 30 June.

9. The Commissioner considers that Parliament has required a taxpayer to obtain the Commissioner's leave to adopt a substituted accounting period because income tax, an annual tax, would be very difficult to administer if every taxpayer was able to nominate his or her own accounting period, with the result that no one period was normal or standard. Regard must be had to this legislative purpose. A decision to grant or withhold leave to adopt a substituted accounting period therefore involves a balancing of convenience to the taxpayer with the general public interest in efficient administration of the Act. It is thus not possible to set out all the circumstances in which leave may or may not be exercised. Cases that appear similar in nature may have different outcomes based upon their particular facts. Each case has to be considered on its own merits and on the basis of all the relevant facts.

10. Leave will generally be granted to adopt a SAP where it can be demonstrated that the circumstances take the case out of the 'ordinary run' (*MLC* case). Generally factors that would be relevant to determining what is the 'ordinary run' is a consideration of the various typical business needs relevant to the efficient administration of the taxpayers business in their market. In considering whether granting leave would result in inconvenience in the administration of the Act, generally it is appropriate to consider the consequences of making the same decision in relation to like-situated taxpayers; it is also appropriate to have regard to the aggregate effect of grants of substituted accounting periods.

11. Bearing in mind that the Commissioner has the responsibility for general administration of the Act the following matters of policy or purpose should be taken into account when considering applications for leave to adopt a SAP:

- there is a basic initial presumption that an annual accounting period ending on 30 June is appropriate, at least in the generality of cases
- as far as it permits, the income tax law must be administered to operate fairly over the whole range of entities so that no one entity is advantaged or disadvantaged in relation to other entities, and
- the Commissioner has a responsibility to ensure that the affairs of the ATO are conducted in an efficient and business-like manner while taking into account our commitments under the taxpayers' charter and compliance model.

12. It is incumbent on the ATO to ensure that the administration of taxpayer affairs is conducted in an efficient and timely manner. To that end the Commissioner requires all applications for SAPs to be in writing, lodged in a timely fashion and ideally at the time when the circumstances which form the basis of the SAP application first arise. An application form is available on the ATO's external website – http://www.ato.gov.au. The application must be signed by a person authorised to sign on behalf of the entity. The onus is on the applicant to provide evidence and establish that the granting of leave for a SAP is warranted.

13. An entity that wishes to adopt a SAP can only do so by seeking leave from the Commissioner. This is to be contrasted with elections available under the laws that the Commissioner administers, which do not depend on the Commissioner exercising a discretion (for example, the functional currency election available under subsection 960-60(1) of *the Income Tax Assessment Act 1997*).

## EXPLANATION

### Decision Making Process

#### *Step 1 – Do the entity's circumstances warrant granting a SAP?*

14. An important principle contained in the taxpayers' charter and the compliance model is that the Commissioner will adopt a fair and reasonable approach in his administration of the tax system, and in doing so, will take into consideration the issues faced by entities in meeting their obligations. This principle applies to decisions on SAP applications, in the same way as it applies to any other decision that the Commissioner may make which affects an entity.

15. The discretion in section 18 is broad. In order to properly exercise the discretion the decision maker must ensure that they give proper consideration to the facts and circumstances of the applicant for a SAP, and also to the Commissioner's obligation to ensure that the tax laws are efficiently and fairly administered.

*Demonstrated business need that makes 30 June inappropriate or impractical as a balance date*

16. As stated above, leave will generally be granted to adopt a SAP where it can be demonstrated that 'the circumstances take the case out of the 'ordinary run' (see *MLC* case). Generally determining whether an entity's circumstances take the case out of the ordinary run involves examining the business attributes relating to the efficient administration of the entity's business. Circumstances indicative of being out of the ordinary run include, but are not limited to:

    - an ongoing event, industry practice, business driver or other ongoing circumstance which makes 30 June either inappropriate or impractical as a basis to calculate taxable income, and/or
    - alignment (also known as synchronisation) of balance dates within a group.

17. Whether or not an entity is able to demonstrate that their business involves an ongoing event, industry practice, business driver or other ongoing circumstance that takes them out of the *ordinary run* will be determined on a case-by-case basis.

18. While it is not possible to set out all the circumstances in which the discretion may or may not be exercised, the examples that follow provide an indication of the facts and circumstances which may be considered relevant, and how those factors could be weighed up. Cases that appear similar in nature may have different outcomes based upon their particular facts.

***Example 1 – an ongoing event***

19. A vast cattle station in northern Australia finds that it is impractical and highly demanding to ascertain an accurate inventory for stock valuation purposes as at 30 June. Muster can extend over several months and its timing is dependent on the cattle season which extends from April to November – stock valuations can therefore only be made at certain times of the year. These circumstances make an accurate calculation of taxable income at 30 June impractical, and it may therefore be appropriate to grant leave to adopt a SAP.

***Example 2 – a business driver***

20. A premier league football club is required to report its financial status to a governing authority at the end of the playing season to retain its participation in first class competition. The playing season does not end on 30 June. This additional obligation does not make a 30 June balance date inappropriate or impractical, as such. However, the additional costs associated with having multiple financial reporting requirements could be a determining factor.

***Example 3 – an ongoing circumstance***

21. A company operates under a franchise. The franchisee is not a subsidiary of the franchisor, but is an independent entity. The terms of the franchise agreement require the franchisee to report its annual financial position to the franchisor as at 31 May each year. In these circumstances, it may be appropriate to grant the franchisee a SAP on the basis of the additional costs associated with satisfying multiple financial reporting requirements.

22. A savings in tax or the gaining of a competitive edge over other entities does not constitute a demonstrated business need warranting the granting of leave to adopt a SAP. However if a taxpayer has otherwise justified the grant of a SAP the consequence that it would gain an advantage over its competitors has been held to be not a ground in itself to refuse leave. In *MLC* Lindgren said:

> …[A]n applicant for leave to use a SAP must demonstrate that its circumstances take it out of the 'ordinary' category. If the Commissioner thinks an applicant for leave has demonstrated this, and that the circumstances otherwise support a granting of leave, it is difficult to see why leave should be refused only because it would give the taxpayer an advantage over its competitors. It is, after all, open to them to apply for a SAP. That they have not done so should not tell against a taxpayer who has. With respect, I agree with Hill J in *Brown* in this regard.
>
> 107. Paragraph 11 of IT 2360 states only that 'a substantial business need does not mean... the gaining of a competitive edge over other taxpayers.' I accept that if a taxpayer could show nothing more than that the granting of leave would give it a competitive edge over other taxpayers in the same industry, that would not be a proper basis on which to grant leave. Exercising the discretionary power given by subs 18(1) of the ITA Act for the purpose of giving a particular taxpayer a competitive advantage over others is foreign to the subject.[3]

*Synchronisation of accounting periods*

23. It is expected that all entities within the same economic group (referred to as a SAP group) will synchronise their balance dates. This practice is not restricted to resident companies. For example, if one entity in a SAP group is granted leave to adopt a SAP, it is expected that all entities within the SAP group apply for leave to adopt the same SAP.

24. For the purposes of this practice statement, a SAP group exists where an entity is controlled by, or exercises control over, another entity or entities. In these circumstances, there is usually an interrelationship between the financial reporting requirements of members in the group – for example, in a corporate group. This interrelationship is what makes alignment of accounting periods a relevant consideration in deciding whether to grant leave to adopt a SAP.

25. Synchronisation encompasses three general categories:

- alignment with the balance date of a non-resident controlling entity (but not an individual)
- a balance date up to three months prior to the balance date of a non-resident controlling entity, and
- alignment with the balance date of another entity which already has a SAP.

26. There is no obligation or requirement to align with the balance date of a non-resident controlling entity; however it has been the practice for many years to allow the subsidiaries of such entities to align their balance date with that of the non-resident controlling entity. This practice also extends to branches of such entities. Evidence of the non-resident controlling entity's balance date may be required if it is not the normal balance date in the foreign tax jurisdiction.

[3] Op cit, FCR at [106-7], ATC at 5150, ATR at 691.

27. It has equally been the practice for many years to allow a balance date not more than 3 months prior to the balance date of the non-resident controlling entity. A letter or other evidence from the non-resident controlling entity will be required in support of an application for a SAP on this basis. For example, the subsidiary of a Japanese parent company (Japan having a standard 31 March balance date) that applies for a 31 December year end will be asked to provide evidence that the parent company requires its subsidiaries to balance on that date.

28. An application for alignment is enhanced by having all members share the same balance date. For example a SAP group with multiple balance dates including June may find it difficult to demonstrate that 30 June is inappropriate or impractical for one of its members. ATO personnel should look at the balance date of the entire SAP group when processing a SAP request and encourage non-aligned members to take advantage of the current request to align all SAP group members.

29. Most countries make similar provision to Australia in allowing a SAP. Where a group has subsidiaries or branches in foreign tax jurisdictions but the group is based in Australia, it is expected that those subsidiaries should first seek leave from the relevant foreign tax authority to adopt a 30 June year end.

30. Notwithstanding this expectation, where the foreign jurisdiction makes no provision for granting leave to adopt a SAP or that location is a tax haven and all the group's business activity is being conducted in that foreign tax jurisdiction – that is, the Australian resident head entity does not have any active business activities in its own right in Australia – then ATO personnel should give consideration to approving a SAP. For example an Australian resident holding company may have several subsidiaries in China - which makes no provisions for a SAP and has a 31 December year end. The Australian entity has no way of avoiding additional costs incurred in meeting its obligation to balance on 31 December making it impractical to retain a 30 June year end in Australia.

31. However where a group has active business activities in both Australia and overseas tax jurisdictions or tax havens then ATO personnel should consider factors such as the nature and size of those activities in the context of the group as a whole in determining the merits of the application. For example an Australian resident group may have one subsidiary in China but the bulk of the group's activities and income is derived in Australia.

*Additional considerations for particular types of entities*

32. There are no restrictions on who can apply for a SAP but it is expected most applicants would be entities, other than individual taxpayers, carrying on a business. It is difficult to identify circumstances in which leave under section 18 should be granted to individual taxpayers deriving income by way of salary and wages, pensions and or rents, dividends and interest.

33. While they are not a 'person' for tax purposes, the Commissioner has a long standing practice of granting leave to a partnerships and trusts which can demonstrate circumstances which are out of the ordinary run.[4]

34. The decision of the Full High Court in *FC of T v. Galland* (1986) 68 ALR 403; 86 ATC 4885; (1986) 18 ATR 33 establishes that the net income of a partnership or a partnership loss is not attributable to a partner until the end of the partnership income year. Therefore, a partner with a different income year to the partnership must include their share of the net income or loss of the partnership in their tax return for the income year in which the partnership income year ends.

[4] Note that limited partnerships are treated as companies for Australian income tax purposes.

35. Where one or more partners in a partnership have been granted leave to adopt a SAP then the following principles apply:

- Where all partners share the same SAP, the partnership will ordinarily be granted leave to adopt the same SAP. The partnership must, however, still apply for the SAP. For example, if two partners both have SAPs ending 31 March, leave should be granted to the partnership to also adopt a SAP ending on 31 March.
- Where two or more partners do not share common income tax balance dates and there is no clear control by any partner, the partnership would normally be expected to retain 30 June, in the absence of any other demonstrated business need.

36. SAP applications made by parties involved in a joint venture should be given different consideration to applications made by partners in a partnership. Broadly, a joint venture is two separate entities coming together for only a limited period or purpose. A joint venture does not require a TFN although the joint venturers require an ABN. If a joint venturer lodges an application for a SAP, that application is to be considered on the basis of the business of the joint venture or the type of entity the joint venturer is – that is, company or trust. Consideration of the application does not involve the other joint venturer(s).

37. Where a widely held trust applies for a SAP, the balance dates of the trust's manager, beneficiaries or unit holders and any other related trusts will be relevant considerations in determining whether the trust's circumstances are out of the ordinary run. While assessing the merits of the application, ATO personnel should also take into account the following guidelines.

- The trust itself does not necessarily form part of the SAP group of the trustee; the circumstances of the trust itself must therefore be out of the ordinary run to warrant granting a SAP.
- Synchronisation of related trusts that are similarly managed may provide sufficient grounds to take a particular trust out of the ordinary run, particularly where there is a significant cross holding of units or where the trusts are interrelated.
- Alignment with the balance date of the major unit holder in a widely held trust would generally satisfy the synchronisation requirements.

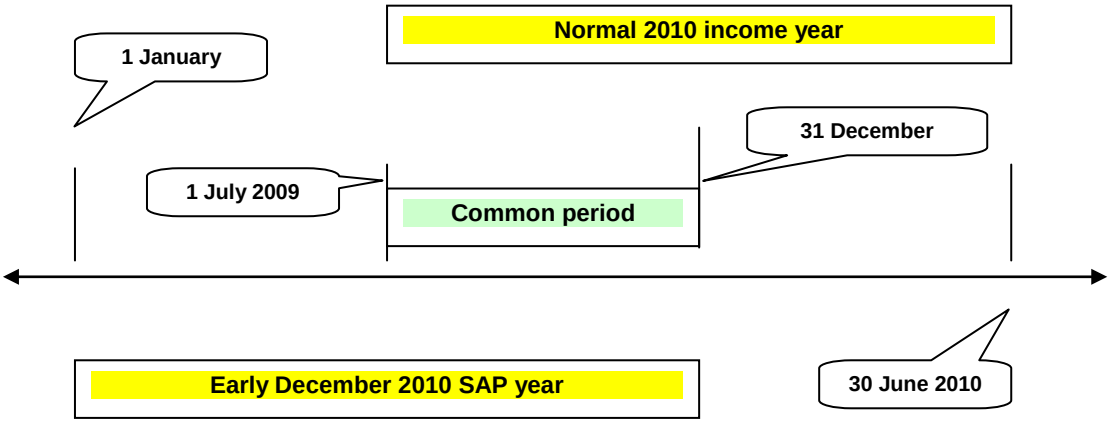
***Step 2 – How and when the entity moves from one accounting period to another***

*(a) Determining how a SAP relates to a 30 June year end – 'Late and early balancing'*

38. Where leave is granted to adopt an accounting period ending on any date between 1 July and 30 November the period adopted shall be in lieu of the income year ending on the preceding 30 June – this is called a 'late' balance date. Where leave is granted to adopt an accounting period ending on any date between 1 December and 31 May the period adopted shall be in lieu of the income year ending on the succeeding 30 June – this is called an 'early' balance date. There will always be some common calendar period between a 30 June year and a SAP year.

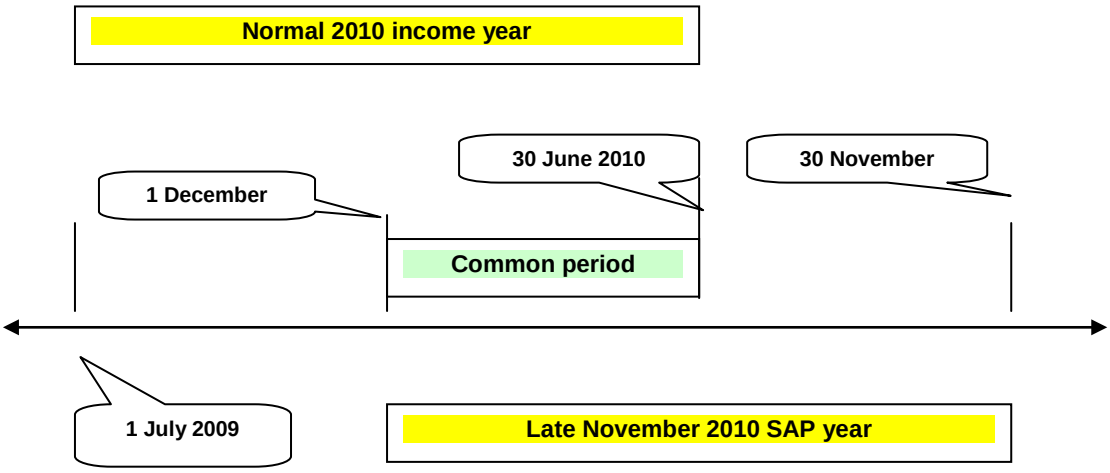
***Example 4 – early December SAP***

39. For the 2010 income year an income tax return would normally cover the period 1 July 2009 to 30 June 2010. However, if an entity applied for and was granted leave to adopt a SAP ending on 31 December they would be regarded as an early balancer – that is the SAP balance date is in lieu of the next succeeding 30 June. The entity's income tax return for the 2010 income year would cover the period from 1 January 2009 to 31 December 2009, of which the period 1 July 2009 to 31 December 2009 is common to the 2010 year for both.




***Example 5 – late November SAP***

40. If an entity applied for and was granted leave to adopt a SAP ending on 30 November they would be regarded as a late balancer – that is the SAP balance date is in lieu of the preceding 30 June. Their income tax return for the 2010 income tax year would cover the period 1 December 2009 to 30 November 2010, of which the period 1 December 2009 to 30 June 2010 is common to the 2010 year for both.



*(b) Determining the length of a transitional period*

41. The changeover from one balance date to another requires a return to be lodged for the transitional period. The Commissioner may use his powers in sections 162 and 168 to require a return of income for a transitional period when an entity changes from one year end to another. However, the transitional period, being other than a period of 12 months, is not an 'accounting period', and therefore not a 'year' of income: see *Norwich Superannuation Services Pty Ltd v. FC of T* (1998) 41 ATR 1091; 99 ATC 2015. References in the Act to years of income do not of themselves refer to periods that are not twelve months long. Note also, however, that the beginning and end of that period are deemed to be the beginning and end of a year of income for certain purposes by subsection 168(2).

42. The length of a transitional period depends on an entity's current accounting period and its new accounting period and can be either less than or greater than 12 months. For example, an entity moving from a current balancing period ending 30 June to a new balancing period ending 31 March (that is, an early balance date) would have a 9 month SAP transitional period. The following table indicates the length of transitional periods:

| | | | **New Accounting Period** | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | **Early** | | | | | | | **Late** | | | | |
| | | | ***DEC*** | ***JAN*** | ***FEB*** | ***MAR*** | ***APR*** | ***MAY*** | ***JUN*** | ***JUL*** | ***AUG*** | ***SEP*** | ***OCT*** | ***NOV*** |
| **Current Accounting Period** | **Early** | **DEC** | - | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| | | **JAN** | 11 | - | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| | | **FEB** | 10 | 11 | - | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| | | **MAR** | 9 | 10 | 11 | - | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| | | **APR** | 8 | 9 | 10 | 11 | - | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| | | **MAY** | 7 | 8 | 9 | 10 | 11 | - | 13 | 14 | 15 | 16 | 17 | 18 |
| | | **JUN** | 6 | 7 | 8 | **9** | 10 | 11 | - | 13 | 14 | 15 | 16 | 17 |
| | **Late** | **JUL** | 5 | 6 | 7 | 8 | 9 | 10 | 11 | - | 13 | 14 | 15 | 16 |
| | | **AUG** | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | - | 13 | 14 | 15 |
| | | **SEP** | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | - | 13 | 14 |
| | | **OCT** | **2 #** | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | - | 13 |
| | | **NOV** | **1 #** | **2 #** | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | - |
| | | **DEC** | **-** | **1 #** | **2 #** | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |

43. The ATO recognises that in practical terms a transitional period of less than 3 months would be an administrative inconvenience to entities. Therefore, where a transitional period from one balance date to another is less than 3 months (as indicated by # in the above table) the ATO will allow the transitional period to be 13 or 14 months. In such cases the entity will miss a year in the same way as a late to early December change will miss a year.

44. A newly registered entity that is granted a SAP will be treated as though the SAP year is their first year. Therefore, a new entity's first year will be the period starting on their date of incorporation or commencement of trading and ending on the next succeeding balance date of their requested SAP. The first income tax return will therefore be limited to a maximum period of 12 months. A dormant entity may be treated in the same way as a new registration.

45. Where the transitional period is not a multiple of 3 months, then there will be a one or two month adjustment to an activity statement in the transitional period. For example a June to late July results in a 13 month transitional period which requires 4 activity statements of 3 months and one activity statement of one month.

*(c) Determining when the transitional period will occur*

46. The approval of SAPs on a retrospective basis can result in:

- Pay as You Go Instalments being incorrectly allocated to a wrong year
- incorrect lodgment due dates being recognised
- delays in the processing of refunds
- possible application of penalties in inappropriate circumstances, and
- increased administration costs for entities and the ATO in correcting the above errors.

47. Therefore, in order to reduce these additional costs for both the taxpayer and the ATO, it is preferred that an application for leave to adopt a SAP is made on a prospective basis so the transition can occur in either a current or a future year.

48. It is reasonable to expect that an application for a SAP could be made and should be made as soon as the change in circumstances arises. For a newly incorporated entity it can be made with the application for a tax file number.

49. SAP applications will be processed within ATO service standards upon receipt by the ATO of all the required information. When an application is approved, ATO systems must be reprogrammed in order to implement the new balance date.

50. Each year prior to 1 July the Commissioner inserts in the Federal Register of Legislative Instruments (www.frli.gov.au) a notice calling for the lodgment of returns in the approved form. The notice, when calling for lodgment of returns from entities using a SAP, uses the words '… has been granted leave to adopt a SAP…', indicating that the entity must have already been granted leave to adopt a SAP prior to lodging their return. Where an entity has not yet been granted leave, the ordinary lodgment due date applies. Further, an entity's lodgment due date sets the parameters within which the entity's ongoing tax obligations are determined. Any change to an entity's accounting period, which affects the lodgment due date, must be updated in ATO systems before that date has passed. Therefore, in order to be eligible for a current or future year transition, a SAP application should be lodged at least 28 days prior to the **earlier** of:

- the due date for lodgment of the tax return for the current accounting period, or
- the due date for lodgment of the tax return for the proposed new accounting period.

51. For applications involving more complex circumstances and during peak periods (such as the periods leading up to the end of the financial and calendar years), prospective applicants should be advised to allow more than 28 days wherever possible. This allows sufficient time to assess the merits of the application and reprogram ATO systems. ATO personnel should be mindful that applicants lodging towards the end of this timeframe may experience difficulties in meeting their income tax lodgment obligations. Applicants should be advised that they may need to apply for an extension of time to lodge their income tax return.

***Example 6 – newly incorporated entities***

52. Company A was incorporated on 15 January 2008 and Company B was incorporated on 15 March 2008 and both companies have a business need for an early March balance date. The lodgment due date for the year ending 31 March 2008 is 15 October 2008. Therefore, both companies need to apply by 17 September 2008 (28 days before early March balance date of 15 October) in order for the application to be given due consideration for transition in the current (2008) year. The length of the transitional period is 15 January 2008 to 31 March 2008 for Company A and 15 March 2008 to 31 March 2008 for Company B.

***Example 7 – existing entity***

53. Company X has an existing SAP with an early March balance date and is acquired in July 2008 by a group with a late September balance date. It needs to change its balance date to synchronise reporting. The existing early March balance date has the earlier lodgment due date, being 15 October 2008 for the 2008 income year. For due consideration to be given for a transition in 2008 the application should be lodged by 17 September 2008, at the latest. Since Company X already has a SAP, they should apply when their circumstances change, that is in July 2008 when the company is acquired. The length of the transitional period is 1 April 2007 to 30 September 2008.

***Step 3 – Advising the applicant***

54. The ATO will respond in writing in each case advising the outcome of the applicant's request. While advice may be given to entities about making a SAP application, ATO personnel cannot verbally approve SAP applications. Where allowed the advice will contain details of the transitional period and other information relating to forthcoming obligations. Where disallowed in part or in full the advice will contain reasons as to why the application was disallowed.

55. Entities will be notified of the outcome of their application in accordance with ATO service standards, ordinarily within 28 days, unless contacted by the ATO within 14 days for additional information at which point a finalisation date will be negotiated. Where a decision has been made not to grant leave a full explanation of the reasons for the decision will be provided, along with an explanation of the avenues available to have the decision reviewed.

*Review rights*

56. There are no objection rights in respect of the decision by the Commissioner not to grant leave to an applicant to adopt a SAP, or not to grant leave in a prior year. However, the letter advising the entity the application has been refused should encourage them to contact the case officer if they have further questions.

57. In the interests of good administration, the ATO will review the decision not to grant leave to adopt a SAP when requested to do so by the applicant. The applicant will need to provide reasons, usually in writing, why they feel the decision is incorrect. The applicant's letter should include the heading 'Request for Review of Decision' and quote the case reference number. It should be sent to the address given on the SAP application form.

58. The entity may also seek to have the decision reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*. However, as there are generally costs to the entity in this case, we encourage them to discuss their concerns with the case officer first.

## Ongoing administration of SAPs

### *Tax return lodged for a different balance date to ATO records*

59. Where an entity has not made formal application to adopt an accounting period other than 30 June, but lodges a return for some different period, the entity must be contacted and advised that without approval under section 18 the income tax return may be returned as incomplete with a request to submit the return in accordance with the approved balance date. An application for leave should be requested from the entity, or evidence provided that the Commissioner has granted leave.

60. If as a result of the lodgment of the SAP application the entity's circumstances warrant the granting of leave, then the Commissioner may deem lodgment requirements to have been met and ATO records updated.

61. If a SAP is not approved income tax returns should be returned as incomplete and amendments sought to processed returns.

### *Change in circumstances that gave rise to a SAP*

62. A SAP remains in effect until the Commissioner grants leave to the taxpayer to adopt another balance date. An entity that wishes to adopt an alternative SAP or to revert to a 30 June balance date must seek leave from the Commissioner. Where an entity has been granted a SAP it is no longer necessary for the entity to advise the Commissioner of any material change in the circumstances that gave rise to that SAP.

### *Consolidated groups*

63. When a consolidated group is formed the head company continues to use its existing tax accounting period. Payment, reporting and lodgment obligations for the head company (as the head company of the consolidated group) will be based on this period.

64. A consolidated group member retains its own balance date when entering a group. A subsidiary may apply to align its balance date with that of the head company at any time although there is no requirement to do so. On exit from the group the subsidiary will continue with the balance date it had on entry unless it has applied for and had a different balance date approved.

65. If an entity is undertaking R&D activities for which it wishes to make a claim under the R&D tax concessions and for which registration with Innovation Australia (through Ausindustry) will be sought, they may find it in their interests to seek leave to adopt a SAP for those purposes, even though there is no requirement to lodge an income tax return.

### *Existing SAPs with a late December balance date*

66. Historically, the ATO has administered a small number of entities with a balance date of 31 December in lieu of the preceding 30 June (late December balancers). Administration is made more difficult if 31 December can be both an early balance date and a late balance date. The ATO is contacting entities who have previously been granted leave to adopt a late December balance date, seeking their agreement to adopt an early December balance date.

67. New applicants seeking a 31 December year end can be accommodated by the grant of an early December balance date. When the applicant is the subsidiary of a late December balancer the ATO will invite the entire group to take the opportunity to adopt an early December balance date or another balance date if circumstances take them out of the ordinary run.

68. In converting from late to early December, the entity will effectively miss a year in the sequence of their income tax returns. This missing year will depend on when the entity is approached to switch from late to early December. For example, a transition in 2010 would result in the entity lodging income tax returns as follows:

| Period | Lodged As | Year | Due |
|---|---|---|---|
| 1 January 2009 to 31 December 2009 | late December | 2009 | 15 July 2010 |
| | | 2010 | not required |
| 1 January 2010 to 31 December 2010 | early December | 2011 | 15 July 2011 |

In this example, the entity will not lodge an income tax return for the year ending 30 June 2010. The year not required will depend on when the ATO contacts the entity. For income tax purposes, there are no adverse consequences arising from missing a year. In changing the application of the SAP to a succeeding income tax year, without disturbing the actual reporting period, that year becomes the next income year for all purposes of the Act.

### *Tax return forms*

69. Clients who are unable to lodge electronically via ELS or where the relevant paper tax return is not yet available at the time lodgment is due, should be advised to lodge using a prior year paper return, clearly marking the year they are lodging. In addition:

- the entity should indicate the start and end dates covered by the return, and
- should the income tax labels change, additional information as required on the return form and schedule for the year in lieu of which the accounting period has been adopted is to be provided within a reasonable time. Failure to do so may result in the lodged return being rejected.

**Amendment history**

| Date of amendment | Part | Comment |
|---|---|---|
| 9 April 2014 | Contact details | Updated. |
| 21 April 2011 | Contact details | Updated. |
| 16 September 2009 | Contact details | Updated. |
| 10 March 2009 | Paragraph 40 | Error corrected: '2008' updated to 2010. |
| 11 February 2009 | Paragraphs 40 and 68; TOC | Minor amendments. |
| 16 December 2008 | Paragraph 65<br>Various | Replaced.<br>Minor amendments. |

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|---|---|
| Subject references | substituted accounting period |
| Legislative references | ITAA 1936 18<br>ITAA 1936 18A<br>ITAA 1936 162<br>ITAA 1936 168<br>ITAA 1997 960-60(1)<br>AD(JR)Act 1977 |
| Related public rulings | IT 2360; IT 2497; TD 95/32 |
| Case references | MLC Investments Ltd v. Commissioner of Taxation (2003) 137 FCR 288; 2003 ATC 5133; (2003) 54 ATR 671<br>FC of T v. Galland (1986) 68 ALR 403; 86 ATC 4885; (1986) 18 ATR 33<br>Norwich Superannuation Services Pty Ltd v. FC of T (1998) 41 ATR 1091; 99 ATC 2015 |
| File references | 07-5294 |
| Date issued | 29 August 2007 |
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| Other business lines consulted | All |