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

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This Law Administration Practice Statement provides guidance on the use of the Commissioner's discretion to allow an entity to adopt a SAP under section 18 of the *Income Tax Assessment Act 1936*

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.

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1. Context and scope

1A. While the ITAA 1936[1] expresses an intention that an entity's annual accounting period is ordinarily to be the 12 month period ending on 30 June[2], section 18 provides for an entity to adopt an alternative annual accounting period with leave of the Commissioner.

1B. This practice statement sets out the factors you need to consider when actioning a request to allow an alternative accounting period (known as a substituted accounting period, SAP).

2. Principles

2A. A decision on whether to allow an entity to adopt a SAP involves balancing the interests of that entity with the general public interest of an efficiently administered income tax system. It is not possible to set out all the circumstances in which leave may or may not be granted. Each case must be considered on its merits, taking into account all the relevant facts.

2B. We will generally allow a SAP where it can be demonstrated that the circumstances take the case out of the 'ordinary run'.[3] Factors generally relevant to determining what is out of the 'ordinary run' include the typical business needs of an entity in the market in which the applicant operates.

2C. In considering whether allowing an entity to adopt a SAP would be detrimental to the efficient administration of the income tax system, you should consider the consequences of making the same decision in relation to like-situated entities and the potential effect of granting SAPs to such entities generally.

2D. The following principles must be taken into account when considering applications for a SAP.

- There is a presumption that an annual accounting period ending on 30 June is appropriate in most cases.
- As far as possible, 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 others.
- While taking into account our commitments under the Taxpayers' Charter and compliance model, the Commissioner has a responsibility to ensure that the ATO operates in an efficient and business-like manner.
- The requesting entity must establish that the granting of a SAP is warranted and provide any evidence needed to support their claim.
- Applications for SAPs must be submitted in writing. The application form: Application for a substituted accounting period (SAP) (NAT 5087) – is available at ato.gov.au. Applications should be lodged in a timely fashion, ideally when the circumstances that give rise to need for the SAP first arise.

3. Making the decision – do the entity's circumstances warrant granting a SAP?

3A. When making decisions that affect an entity, the Taxpayers' Charter and the compliance model require you to:

- adopt a fair and reasonable approach

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[1] All legislative references in this practice statement 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; 2003 ATC 5133; (2003) 54 ATR 671 (*MLC case*) at FCR [2]; ATC 5135; ATR 673.
[3] See *MLC* case.

- consider the issues faced by entities in meeting their obligations.

3B. You should apply this approach when making any decision, including a decision on whether to approve a request for a SAP. The discretion in section 18 is broad, and you need to consider the entity's particular circumstances as well as the Commissioner's obligation to ensure that tax laws are efficiently and fairly administered.

3C. Proper consideration of a SAP application requires you deciding whether there is a demonstrated business need that makes 30 June inappropriate or impractical as a balance date. The type of entity requesting a SAP may mean that additional factors have to be considered when reaching your decision.

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

3D. As stated under 'Principles' above, an entity will generally be allowed to adopt a SAP where it can be demonstrated that their circumstances are out of the 'ordinary run'. 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 that makes 30 June inappropriate or impractical as a basis to calculate taxable income, and/or
- membership of an economic group where a SAP would allow synchronised balance dates.

Ongoing circumstances that make 30 June inappropriate or impractical

3E. 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.

3F. While it is not possible to set out all the circumstances in which the discretion may or may not be exercised, the following examples provide an indication of the facts and circumstances that may be relevant, and how they could be weighed up. Cases that appear similar in nature may have different outcomes depending on the specific circumstances.

Example 1 - an ongoing event

3G. A vast cattle station in northern Australia finds that it is impractical to ascertain an accurate inventory for stock valuation purposes as at 30 June. Muster can extend over several months and its timing depends 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 the entity leave to adopt a SAP.

Example 2 – a business driver

3H. To retain its place in first class competition a premier league football club is required to report its financial status to a governing authority at the end of the playing season, which doesn't end on 30 June. While on its own this requirement does not make a 30 June balance date inappropriate or impractical, the additional costs associated with having multiple financial reporting requirements could be a determining factor in deciding whether to approve a SAP request.

Example 3 – an ongoing circumstance

3I. 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.

Example 4 – an ongoing circumstance

3J. A strata title body corporate has an audit date on the anniversary of its incorporation. To avoid having two financial reporting dates, a SAP to align with its audit date is requested. If there are no other factors to support the entity's request, aligning reporting with an audit date is not considered to take an entity's circumstance out of the ordinary run.

Competitive edge not in itself a basis for refusing leave

3K. A savings in tax or the gaining of a competitive edge over other entities does not constitute a demonstrated business need for a SAP. However, if an entity has otherwise justified being allowed a SAP, the consequence that it would gain an advantage over its competitors has been held not to be a ground in itself to disallow a SAP.[4]

Synchronisation of accounting periods

3L. For the purposes of this practice statement, an economic group (referred to as a SAP group) exists where an entity exercises control over another entity or

[4] See *MLC* case.

entities. In these circumstances there is usually an interrelationship between the financial reporting requirements of group members. This interrelationship is what makes alignment of accounting periods relevant in deciding whether to allow a SAP.

3M. We expect that all entities (both resident and non-resident) that are members of the same SAP group will synchronise their balance dates. For example, if the controlling entity of a SAP group is allowed to adopt a balance date other than 30 June, we expect that all entities within the SAP group will apply for the same balance date.

3N. Synchronisation often arises in relation to SAP groups in the following circumstances:

- Australian subsidiaries seek to align with the balance date of a non-resident controlling entity (but not an individual)
- Australian subsidiaries seek a balance date up to three months prior to the balance date of a non-resident controlling entity
- subsidiary members seek to align with the balance date of a resident controlling entity.

3O. While there is no obligation or requirement for a subsidiary to align with the balance date of its non-resident controlling entity, it has been our practice to allow such subsidiaries to align their balance date with that of the 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.

3P. 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.

3Q. An application for a SAP for the purpose of aligning balance dates is strengthened if it results in all members with a reporting obligation sharing the same balance date. You should look at the balance date of the entire SAP group when considering a SAP application and encourage any non-aligned members with a reporting obligation to take advantage of the current request to align all SAP group members.

3R. Most countries make similar provision to Australia in allowing a SAP. Where a SAP group has subsidiaries or branches in foreign tax jurisdictions but the group is based in Australia, we expected that the offshore subsidiaries should first seek leave from the relevant foreign tax authority to adopt a 30 June year end.

3S. However where the foreign jurisdiction makes no provision for allowing a SAP, or the foreign jurisdiction is a tax haven and all the group's business activity is being conducted in that jurisdiction (that is, the Australian resident head entity does not have any active business activities in its own right in Australia), you should consider approving a SAP. For example, an Australian resident holding company may have several subsidiaries in China, where the balance date is 31 December and there is no provision for SAPs. The Australian entity has no way of avoiding the additional costs of meeting its obligation to balance on 31 December, making it impractical to retain a 30 June year end in Australia.

3T. Where a group has active businesses in both Australia and other jurisdictions you 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

Individuals

3U. There are no restrictions on who can apply for a SAP but it is difficult to identify in what circumstances we would allow a SAP for individual taxpayers.

Partnerships and trusts

3V. While partnerships and trusts are not 'persons' for tax purposes, we have a long standing practice of allowing such entities to adopt a SAP where they can demonstrate circumstances out of the ordinary run.[5]

3W. 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.

3X. Where one or more partners in a partnership have been allowed to adopt a SAP the following principles apply:

- where all partners share the same SAP, the partnership will generally be allowed to adopt the same SAP, but they must apply for it

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

- 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 be expected to retain a 30 June balance date unless it was able to demonstrate circumstances that take it out of the 'ordinary run'.

Joint ventures

3Y. SAP applications by parties in a joint venture are considered differently to applications 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 tax file number although the joint venturers require an Australian business number.

3Z. An SAP application by a party in a joint venture should be considered on the basis of the business of the joint venture or the type of entity it is – that is, company or trust. The business or entity type of the other joint venturer(s) is not relevant.

Widely held trusts

3AA. 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 in determining whether the trust's circumstances are out of the ordinary run. When assessing the merits of the application, you 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 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.

4. How and when the entity transitions to a SAP

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

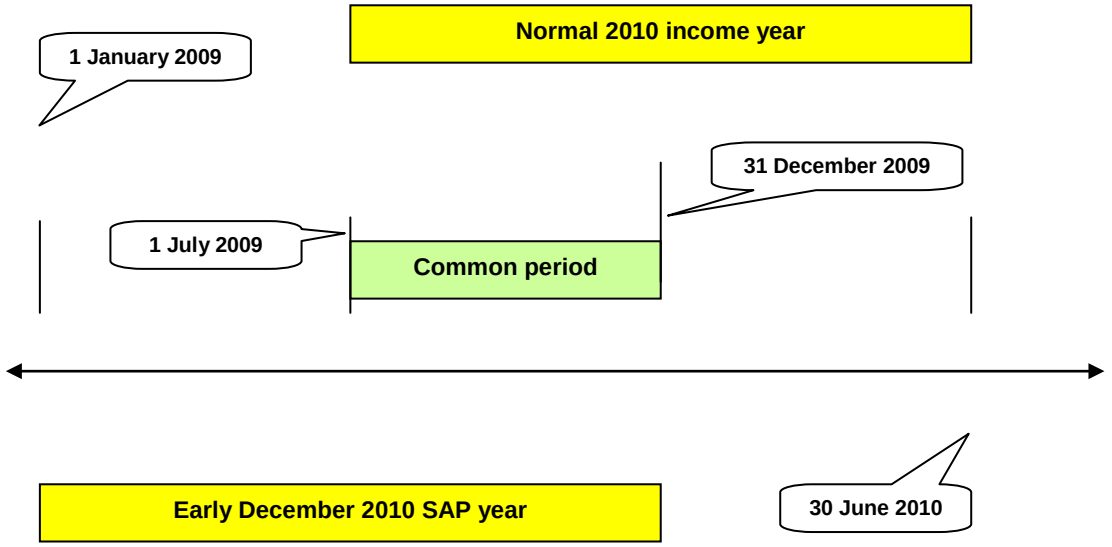
4A. When an entity has been allowed to adopt a SAP, the new accounting period will involve either late or early balancing.

- where a SAP ends on any date between 1 July and 30 November, the SAP is in lieu of the income year ending on the preceding 30 June – this is a 'late' balance date
- where a SAP ends on any date between 1 December and 31 May the period adopted is in lieu of the income year ending on the succeeding 30 June – this is an 'early' balance date.

4B. There will always be a period that is common to both a year ending on 30 June and a SAP year.

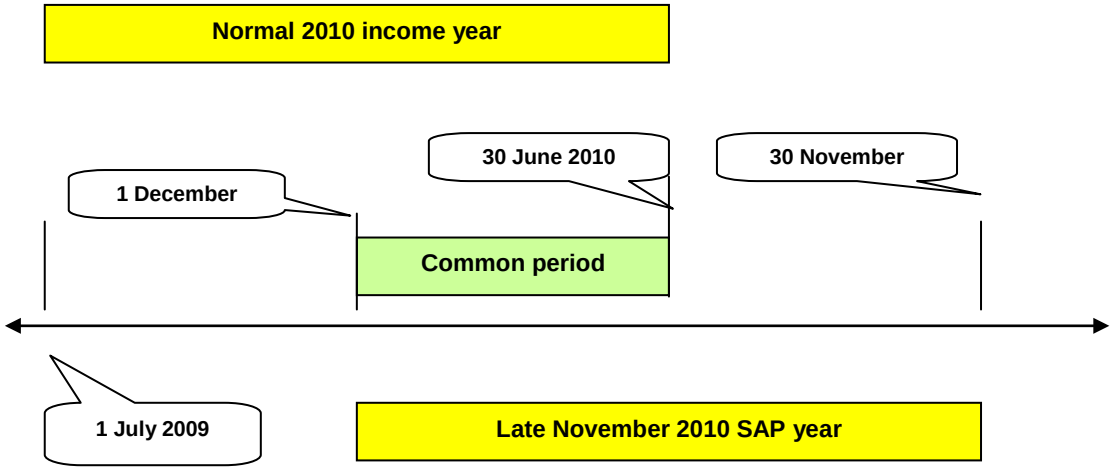
Example 5 – early December SAP

4C. For the 2010 income year an income tax return would normally cover the period 1 July 2009 to 30 June 2010. However, an entity allowed to adopt a SAP ending on 31 December would be regarded as an early balancer – that is the SAP balance date is in lieu of the following 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. The period 1 July 2009 to 31 December 2009 is common to both the normal income year ending on 30 June 2010 and the SAP year.



Example 6 – late November SAP

4D. An entity allowed to adopt a SAP ending on 30 November would be regarded as a late balancer – that is the SAP balance date is in lieu of the preceding 30 June. Its 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 both the normal income year ending on 30 June 2010 and the SAP year.



(b) Determining the length of a transitional period

4E. The changeover from one balance date to another (whether from the normal income year to a SAP or from one SAP to another) requires a return to be lodged for the transitional period. Although the transitional period will necessarily be for a period of other than 12 months and therefore will not constitute an accounting period or year of income for which a return is required, the Commissioner has the power under sections 162 and 168 to require a return of income for a transitional period when an entity's balancing date changes.

4F. The length of a transitional period depends on the entity's current accounting period and its new SAP and will be less than or greater than 12 months. For example, an entity changing from a balancing period ending on 30 June to a SAP ending on 31 March (that is, an early balance date) would have a 9 month SAP transitional period. The table below shows 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

4G. We recognise that in practical terms a transitional period of less than 3 months would be administratively inconvenient. Therefore, where application of the normal rules would result an entity (other than a newly registered or dormant entity) having a transitional period of less than 3 months we allow a transitional period of 13 or 14 months instead. This situation is indicated by # in the above table and will mean that the entity 'misses' a year. For income tax purposes there are no adverse income tax consequences from missing a year.

4H. A newly registered or dormant entity that is allowed a SAP will be treated as though the SAP year is its first year. The first year will be the period starting on the entity's date of incorporation or commencement of trading and ending on the first balance date of their requested SAP. The first income tax return will therefore be limited to a maximum period of 12 months.

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

(c) Determining when the transitional period will occur

4J. The normal lodgment date, which affects the entity's ongoing tax obligations, applies until a SAP has been allowed. To minimise costs for both the entity and the ATO we prefer that an application for a SAP is made on a prospective basis as this allows the transition to occur in either a current or future year.

4K. An application for a SAP should be made as soon as the change in circumstances arises. For a newly registered entity, a SAP application can be made in conjunction with an application for a tax file number.

4L. To ensure the lodgment date can be updated in ATO systems before the lodgment date has passed, a SAP application should be lodged at least 28 days before the earlier of:

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

Example 7 – newly incorporated entities

4M. Company A was incorporated on 15 January 2008 and Company B was incorporated on 15 March 2008. Both 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 should apply by 17 September 2008 (28 days before early March balance date of 15 October) in order for the application to be considered 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 8 – existing entity

4N. 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 a transition in 2008 the application should be lodged by 17 September 2008. Since Company X already has a SAP, it should apply when its 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.

Applications for retrospective SAPs

4O. Approval of a retrospective SAP may result in the need to update ATO systems to correct situations such as:

- pay as you go instalments being allocated to the wrong year
- incorrect lodgment due dates being recognised
- delays in the processing of refunds
- inappropriate penalties

4P. As such, when considering a request to approve a SAP on a retrospective basis, it is appropriate to take into account the extent to which ATO records will need to be updated to give effect to the changed balance date.

4Q. Having regard to the above, where an entity has otherwise justified being allowed a SAP and the changes to ATO records are minor (for example, no income tax returns have been lodged and / or there are no historical pay as you go instalments), the fact that an application is retrospective is not of itself a ground to disallow the request.

5. Advising the applicant

5A. We notify the applicant in writing of the outcome of their SAP request. Where the request is allowed, the notification will contain details of the transitional period and other information on forthcoming obligations. Where disallowed in part or in full, the notification will include the reasons and invite the applicant to contact the case officer if they have any questions.

5B. We will normally notify applicants of the outcome within 28 days, unless we need to contact them (normally within 14 days) for additional information, at which point a finalisation date will be negotiated. Where we decide not to allow a SAP, we will provide a full explanation of the reasons, along with information on how the applicant can seek to have the decision reviewed.

Review rights

5C. Where an entity is dissatisfied with our decision not to allow a SAP, or not to allow a SAP to start in a prior year, we encourage them to discuss their concerns with the case officer in the first instance. We also provide the opportunity for an entity to request a review such decisions.

5D. A request for review needs to be in writing and provide the reasons why the applicant feels the decision is incorrect. The request should be headed 'Request for Review of Decision', quote the case reference number and be sent to the address given on the SAP application form.

5E. While there are no objection rights against a decision not to allow a SAP, however the entity may seek to have the decision reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

6. Ongoing administration of SAPs

Tax return lodged for a different balance date to that recorded in ATO systems

6A. Where an entity has not formally applied for a SAP, but lodges a return for a period other than the income year ending on 30 June, the entity should be requested to either:

- submit a SAP application
- provide evidence that the Commissioner previously approved a SAP.

6B. 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.

6C. 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

6D. An entity with a SAP is not required to advise the Commissioner of any material change in the circumstances that gave rise to that SAP.

6E. A SAP remains in effect until the entity applies for and is granted leave to adopt another balance date. Where an entity seeks to revert to a 30 June balance date it is required to submit a SAP application.

Consolidated groups

6F. A subsidiary member of a tax consolidated group has no payment, reporting and lodgment obligations – these are based on the on the tax accounting period of the head company of that group. As such there is no requirement or need for a subsidiary member to align with the balance date of the head company and it retains its existing balance date.

6G. An entity that is exiting a consolidated group may seek to align its balance date with the balance date of the head entity on the basis that its existing systems reflect the balance date of the head entity. In such circumstances it may be appropriate to grant the entity a SAP in view of the costs associated with adjusting its reporting systems to a new balance date.

Existing SAPs with a late December balance date

6H. While a small number of entities retain a balance date of 31 December in lieu of the preceding 30 June (late December balancers), all new applicants seeking a 31 December year end will receive an early December balancing date.

6I. If an entity transitions from a late to early December, they will effectively miss a year in the sequence of their income tax returns. As mentioned previously, there are no adverse income tax consequences from missing a year.

Tax return forms

6J. You should advise taxpayers who are unable to lodge electronically via ELS or where the relevant paper tax return is not yet available at the lodgment due date 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
- 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.

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