PS LA 2011/15 - Lodgment obligations, due dates and deferrals

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Practice Statement Law Administration

PS LA 2011/15

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This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs, tax officers must follow their business line's escalation process.

SUBJECT: **Lodgment obligations, due dates and deferrals**

PURPOSE: **To provide guidelines on:**

- **lodgment obligations including special lodgment requirements and lodgment requirements for certain classes of person**
- **lodgment due dates and how these are determined, and**
- **deferring the lodgment due date**

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BACKGROUND

1. In this practice statement all legislative references are to schedule 1 to the *Taxation Administration Act 1953* (TAA) unless otherwise specified.

2. The efficient administration of the taxation and superannuation systems relies on information that entities[1] give to the Commissioner. Generally, this information is required to be given to the Commissioner in the approved form[2] or in a prescribed form.[3]

3. An approved form must contain all required information, declarations and signatures and must be lodged in the manner required by the Commissioner that may include electronic lodgment (such as e-tax, tax agent and business portals, interactive voice recognition, telefiling), telephone and paper lodgment.

4. Law Administration Practice Statement PS LA 2005/19 Approved forms explains the requirements and procedures for the approval of approved forms, that are paper or virtual forms.

5. A consolidated list of forms approved by the Commissioner is available on the ATO's website http://www.ato.gov.au. Examples include:

   - Goods and services tax (GST) returns:
     - business activity statements
     - annual GST returns
   - income tax returns for the 2001 and subsequent income years
   - fringe benefits tax (FBT) returns commencing from the 1 April 2001 year of tax
   - instalment notices and instalment activity statements
   - pay as you go (PAYG) withholding annual report for the 2001 and subsequent income years
   - tax file number (TFN) declarations since 1 July 2000
   - early payment claims for fuel tax (FT) credits, and
   - FT returns for non-business payers.

   An approved form also includes any other form where there is a specific legislative requirement for lodgment in the approved form as defined by section 388-50.

6. In the context of the above, this practice statement provides guidance on:

   - obligations to lodge returns, forms, elections and other documents including special lodgment requirements and lodgment requirements for certain classes of persons
   - various lodgment due dates and how these dates are determined, and
   - the Commissioner's discretionary power under subsection 388-55(1) to defer the time for lodgment of an approved form, discretionary power to grant a deferral of time to lodge prescribed forms according to the various provisions requiring lodgment of those forms and power to suspend lodgment enforcement action.

[1] Entity takes the meaning of Section 960-100 of the *Income Tax Assessment Act 1997* (ITAA 1997).
[2] Section 388-50.
[3] In a prescribed form means in the form required under and for the purpose of a specific legislative provision that is not required to be in the approved form for the purposes of 388-50.

STATEMENT

Lodgment obligations

7. Entities are required to lodge forms by the due date regardless of whether any related liability is paid.

8. Generally, only one lodgment of a form per period is required. However, an entity may be required to lodge:

   - further or fuller returns for a period, and / or
   - different forms for different liabilities within one period.

9. In limited cases where there is little revenue at risk, or the value of information to be provided in a document is minimal, and where follow up action would not be cost effective, the Commissioner may consider that it is not appropriate to pursue lodgment of forms which have not been lodged by the due date. This decision may be reviewed at any time. A review of this decision is not dependant on the receipt of new information.

10. A decision not to pursue the lodgment of a form does not remove the entity's obligation to lodge that document.

11. Entities will not be advised if a decision is made not to pursue lodgment of a form.

Income tax

12. At law, the Commissioner is required to publish a notice in the Commonwealth of Australia Gazette that sets out the lodgment requirements and lodgment due dates for income tax returns of the year of income[4]

13. In this notice, the Commissioner may exempt from liability to lodge returns such classes of person not liable to pay income tax.[5]

14. From 1 January 2005, the Commissioner can satisfy the requirement to publish a Gazette notice by registering a legislative instrument[6] on the Federal Register of Legislative Instruments.[7]

15. The Commissioner may require a person to give a further or fuller return or information about the person's financial affairs.[8]

[4] Section 161 of the *Income Tax Assessment Act 1936* (ITAA 1936).
[5] Subsection 161(1A) of the ITAA 1936.
[6] Legislative instrument – means an instrument registered on the Federal Register of Legislative Instruments as required by the *Legislative Instruments Act 2003*. It is an instrument in writing: (a) that is of a legislative character, and (b) that is or was made in the exercise of a power delegated by the Parliament. It determines the law or alters the content of the law, rather than applying the law in a particular case and it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right. ATO rulings are not legislative instruments.
[7] Section 56 of the *Legislative Instruments Act 2003.*
[8] Sections 162 and 163 of the ITAA 1936.

Activity statements and instalment notices

16. Lodgment of the activity statement is accepted as notification of all the obligations contained in the statement where the Commissioner may combine several approved forms into one.[9] Lodgment obligations may include GST, GST instalments, wine equalisation tax (WET), luxury car tax (LCT), FT, PAYG instalments, PAYG withholding and FBT instalments. The activity statement is the form used to lodge a GST return. Where no amount is notified against a liability it will be considered to be notification that the amount is nil. Where it is subsequently determined that there should have been an amount included, the entity may be liable to an administrative penalty relating to false or misleading statements.[10]

17. Activity statement reporting obligations are generally monthly or quarterly, however, in certain circumstances an entity may report annually or biannually. Where entities choose to report GST and/or PAYG withholding branch[11] activities separately, they will need to lodge an activity statement for each branch for each period.

18. Lodgment of GST returns is required where an entity is registered or required to be registered for GST. This applies whether the net amount is a refund, nil or the entity is liable for GST on taxable supplies attributable to that period.

19. The Commissioner may, at any time, require a further or fuller GST return and for more than one tax period.[12]

20. Entities using the 'income times rate' option[13] in the PAYG instalment system are required to notify the Commissioner of their PAYG instalment liability even where this is 'nil'.

21. A 'nil' notification is also required when a payer has made a PAYG withholding payment or provided a benefit treated as a PAYG withholding payment, but the amount withheld is 'nil'

22. Entities with a substituted accounting period[14] (SAP) for income tax purposes who report GST and PAYG withholding on a quarterly basis will report those liabilities in accordance with the standard reporting periods.[15] SAP entities reporting PAYG instalments on a quarterly basis will report those amounts consistent with the quarters aligned to the entity's SAP.

[9] Subsection 388-50(2).
[10] Section 284-75.
[11] PAYG withholding branch has the meaning given by section 16-142.
[12] Section 31-20 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
[13] Subsection 45-110(1) , 45-115(1) and 45-125(1)(b).
[14] Substituted accounting period is an accounting period that has a balancing date different to the normal balancing date of 30 June. For further information refer to PS LA 2007/21 Substituted Accounting Periods (SAPs).
[15] The standard quarterly reporting periods are the tax periods ending 30 September, 31 December, 31 March and 30 June.

23. An entity with a GST turnover[16] of $20 million or more must lodge GST returns electronically.[17] Entities participating in the deferred GST scheme[18] must also report GST electronically and on a monthly basis. An entity that is required to lodge GST returns electronically must also notify all other BAS amounts[19] electronically where notification of these amounts is required on the same day.[20] Any entity may also choose to lodge and pay electronically.[21]

24. The Commissioner will allow reasonable time for the entity to arrange their affairs to meet electronic reporting and payment requirements.

25. Reporting periods for tax obligations such as GST and PAYG withholding can be varied in certain circumstances. Generally a change in reporting period will be triggered by one or more of the following:

    - change in eligibility
    - poor compliance history
    - client request.

26. GST law provides for the revision of monthly/quarterly status based on GST turnover with effect from the first day of a three month tax period.[22] Where the monthly tax periods have been determined based on GST turnover the tax period cannot be varied within 12 months of the date of the determination.[23]

27. PAYG withholding law requires that a payer's status be changed from small to medium if the total amount withheld in the preceding financial year exceeded $25,000 or, from small or medium to large if the total amount withheld in the preceding financial year exceeded $1 million.[24] Each year the Commissioner will conduct a review and advise affected payers if there is a change in their status.

28. A payer's PAYG withholding status may be varied from small to medium or large, or from medium to large, for failing to comply with withholding obligations.[25] This will result in more frequent reporting and payment obligations. Any such variation made on the basis of a poor compliance history will apply for a twelve month period. If an entity is also registered for GST, both the PAYG withholding and GST reporting will be changed to monthly.

29. More frequent reporting and payment obligations will not necessarily be applied on each and every occasion that a taxpayer fails to comply with an obligation. Those taxpayers who consistently fail to meet their obligations may benefit from the more frequent reporting/payment requirements. Additionally, it offers an opportunity for those taxpayers who are having difficulty managing cash flows, to account for their liabilities monthly on a more structured arrangement than through the voluntary payments option.

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[16] GST turnover takes the meaning given by Division 188 of the GST Act.
[17] Subsection 31-25(2) of the GST Act.
[18] Deferred GST scheme takes the meaning given in GSTR 2003/15.
[19] BAS amounts means any debts or credits that arise directly under the *BAS provisions. BAS provisions are (1) indirect tax law that is any of GST law, wine tax law, luxury car tax law, fuel tax law (2) Part VII of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and (3) Parts 2-5 and 2-10 that are about the PAYG system.
[20] Section 388-80.
[21] Subsection 31-25(1) of the GST Act and subsection 33-10(1) of the GST Act.
[22] Subsection 27-15(2) of the GST Act.
[23] Paragraph 27-25(2)(b) of the GST Act.
[24] Sections 16-95 and 16-100.
[25] Paragraph 16-115(5)(c).

30. Further, the payer may apply in writing to have the withholder status varied downwards. Generally an application will only be approved where the payer's amounts withheld are likely to have fallen permanently below the relevant threshold or where other unusual circumstances apply. There is no set period of time for which this new reporting period applies. The Commissioner will notify the withholder of the decision that will only have effect for a particular month if it is given before that month.[26] Where a more frequent reporting period is required following a review (for example a change in status from a 'medium' withholder to a 'large' withholder) we will allow a reasonable amount of time for the entity to arrange their affairs.

31. The Commissioner refusing to revoke monthly GST periods and varying a payer's PAYG withholding status are reviewable decisions where entities have the right to object against these decisions.

Activity statements and instalment notices – circumstances where notification not required

32. Entities that have elected or defaulted to the GDP-adjusted notional tax[27] method for calculating their PAYG instalment amount do not need to lodge an instalment notice unless they are varying the instalment amount. The instalment or the varied instalment amount must be paid by the due date.

33. Eligible annual PAYG instalment payers who choose to pay an annual PAYG instalment amount advised by the Commissioner do not need to lodge the instalment notice. However, they will need to lodge this notice if they wish to vary the instalment amount or calculate their instalment using the 'income times rate' method.

34. Similarly, where the entity's only obligation is GST and they have elected to pay the GST instalment amount, the Commissioner will not require notification unless they vary the instalment amount. For FT purposes, these entities must treat each GST instalment quarter as if it were a tax period. They may choose whether to give a FT return[28] for any instalment quarter, however, they must lodge a return in the last quarter of a financial year if they have an increasing FT adjustment. There is no lodgment obligation except in these circumstances.

35. Where the entity has GST and PAYG instalment obligations only and pays both using the instalment amount option, there is no lodgment obligation unless they are varying one or both of the instalment amounts.

Income tax – consolidated groups[29]

36. For the year in which a consolidated group is formed, the head company only needs to lodge one income tax return that will cover any pre- and post-consolidation periods. The income tax return lodged by a head company of a consolidated group includes the consolidated details of all subsidiary members for the duration of their time in the group.

37. An entity that is a subsidiary member of a consolidated group is not required to lodge an income tax return for the duration of their time in the group.

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[26] Section 16-110.
[27] GDP adjusted notional tax has the meaning given by section 45-405.
[28] Subsection 61-15(2) of the *Fuel Tax Act 2006*.
[29] Consolidated group has the meaning given by Section 703-5 of the ITAA 1997.

38. An entity that moves in and out of a consolidated group during an income year only has to lodge one return for that year but must account for all the periods the entity was not a subsidiary member of a group.

39. Where a group has made a choice to either consolidate or form a multiple entry consolidated (MEC) group[30] it is the responsibility of either the head company or the provisional head company to ensure the relevant information related to the choice is given to the Commissioner in the approved form.

40. The Consolidation Reference Manual and Chapter 35 of the *ATO Receivables Policy* on the ATO's website http://www.ato.gov.au provide more information about consolidations (links to these documents are provided in the 'Other references' section of this practice statement).

PAYG withholding annual reports

41. Under the PAYG withholding system, payers who withhold amounts from particular kinds of payments have an obligation to report annually[31] either electronically or in paper form. Common payments from which amounts are withheld include:

- payments for work or services (individuals) including retirement payments
- annuities, benefits and compensation payments
- superannuation lump sums
- superannuation income streams
- voluntary agreements
- labour hire arrangements and other specified payments
- employment termination payments
- alienated personal service payments
- departing Australia superannuation payments', and
- supplies where the recipient does not quote their Australian business number (ABN).

42. If lodging using an ATO printed form, the obligation to lodge is not fulfilled unless the payer lodges both a completed PAYG withholding payment summary statement and all the relevant payment summaries.

43. Payers (employers) who choose to self-print their payment summaries must lodge them electronically with the Commissioner. Payers who lodge electronically are not required to complete a PAYG withholding payment summary statement or send paper payment summaries to the Commissioner.

44. Any payer registered for PAYG withholding must lodge an annual report if there were any withholding events for the income year. This applies even if the withheld amount is 'nil'.

45. Any of the requirements for providing an annual report may be varied either for one payer or a class of payers.[32] Variations for a class of payers can be given to each entity or made by way of a notice contained in a Legislative Instrument.

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[30] MEC group has the meaning given by Section 719-5 of the ITAA 1997.
[31] Sections 16-152 and 16-153.
[32] Subsections 16-153(6) and 16-153(7).

46. Variations for an individual payer must be made by written notice to the payer. For example, the Commissioner may forgo the need for a payer to lodge an annual report where that payer had 'nil' withholding for the income year and is no longer in business.

47. Payers required to report no ABN withholding events have an obligation to lodge an annual report listing all those events.[33] This report is called the PAYG withholding where ABN not quoted – annual report.

48. Payers of dividends, interest and royalties to overseas entities have an obligation to lodge an annual report of the payments made. This report is called the PAYG withholding from interest, dividends and royalty payments – annual report.

49. Payers making payments to foreign residents engaged in certain activities, such as sports and entertainment, construction and related activities and organising casino gaming junkets, have an obligation to lodge an annual report of the payments made and the amounts withheld. This report is called a PAYG withholding annual report – payments to foreign residents.

Elections – activity statements and instalment notices

50. Where the law allows an entity to vary their lodgment requirements, an election is the accepted mechanism.

51. Failure to make an election by the date required may exclude the entity from their preferred option.

52. Certain entities may elect to report GST and/or PAYG withholding obligations more frequently than otherwise required by law. Reasons for this may include early access to credits, including FT credits, and more control over cash flow. For example, where an entity would otherwise be eligible to report GST obligations on a quarterly basis there is provision for them to elect to report monthly. Entities making such elections must accept the responsibilities of changing their tax period, including more frequent exposure to a failing to lodge on time (FTL) penalty and the general interest charge (GIC) for failing to pay on time.

53. However, entities wishing to make more frequent payments towards their expected activity statement liabilities are able to do so voluntarily without the requirement to change their lodgment period.

54. If an entity makes an election to report GST obligations on a monthly basis, they may:

- withdraw the election if more than twelve months have passed since the election took effect[34], or
- ask the Commissioner to revoke the election if less than twelve months have passed.[35]

55. While the Commissioner would normally allow an early revocation of a monthly election, it would not be approved where the Commissioner considers that the entity is exploiting the provision. Particular consideration would be given to the level of purchases (and hence claims for GST credits on a monthly basis) and the expected level of sales made in the following quarters (thereby delaying their GST payments).

[33] Paragraph 16-153(1)(a).
[34] Section 27-20 of the GST Act.
[35] Section 27-22 of the GST Act.

56. The Commissioner will only backdate the revocation of an entity's monthly election where the application is received on or before the last day of the first month in the relevant quarter. In all other cases, the revocation will generally take effect from the start of the next quarterly tax period after the entity lodges their application.

57. If an entity is required, based on GST turnover being $20 million or more to report GST obligations on a monthly basis, the entity may apply to have the monthly reporting period revoked. The Commissioner would generally change the entity to a quarterly reporting period if the GST turnover falls below $20 million and the entity has been using monthly tax periods for at least 12 months.

58. GST law has a specific provision for the Commissioner to determine that one month tax periods apply to an entity that has a history of failing to comply with any taxation obligation, when the entity would otherwise qualify for quarterly tax periods.[36] If monthly tax periods have been imposed because of a poor compliance history, the entity reporting requirement will not revert to quarterly tax periods for a minimum of twelve months.[37]

59. Where monthly tax periods apply for GST, they will also apply for FT, LCT and WET.

60. Entities that are eligible and elect to pay GST by instalments quarterly are required to lodge an annual GST return.[38] This is in addition to the notification[39] of the instalment amount on quarterly activity statements where they have other activity statement obligations.

61. Where GST lodgments are not up to date, an otherwise eligible entity will not be offered the option of a quarterly GST instalment amount set by the Commissioner.[40]

62. Entities who are eligible and elect to report and pay (or claim a refund of) GST annually must lodge an annual GST return. These entities have an annual tax period and will report and calculate their annual GST liability on the annual GST return. Where entities have registered for FT and have elected to report and pay their GST annually, they must also lodge their FT return annually. The FT return and the annual GST return are combined on the same form.

63. Entities may need to make elections to access streamlined reporting and instalment payment options. In some instances such elections may place additional lodgment obligations on entities such as the requirement to lodge an annual GST information report to complete their reporting.

64. Eligible entities may elect to pay PAYG instalments annually.[41] Once the annual election has been made, it will remain in force until either the entity is no longer eligible for the annual option or they choose to revert to quarterly reporting. Any change to a reporting period will occur at the beginning of the income year.

65. Head companies of consolidated groups that would otherwise be eligible do not have the option of reporting and paying PAYG instalments annually.[42]

[36] Paragraph 27-15(1)(c) of the GST Act.
[37] Paragraph 27-25(2)(b) of the GST Act.
[38] Section 162-60 of the GST Act.
[39] Section 162-75 of the GST Act.
[40] Paragraph 162-5(1)(d) of the GST Act.
[41] Section 45-140.
[42] Section 45-720.

Special lodgment requirements

GST groups

66. An entity that is the representative member of a GST group[43] for the whole of a tax period is required to lodge an activity statement accounting for the GST obligations of the group.[44] Non-reporting members of GST groups may have to lodge activity statements in respect of non-GST obligations. All members of the group must have the same tax period for the period of time that they are grouped.

67. If an entity lodges a valid application to form a GST group within a tax period, the date of effect of the application will be backdated to the beginning of that tax period. The representative member must ensure that each non reporting member of the group has not notified GST amounts for that tax period.

GST joint ventures

68. The joint venture operator of a GST joint venture[45] must lodge a GST return for the GST joint venture for each tax period applying to the joint venture operator.[46] The tax periods applying to the joint venture operator may not be the same as the tax periods otherwise applying to other participants in the joint venture.

69. Where an entity is a joint venture operator for more than one GST joint venture, a separate activity statement is required for each GST joint venture, unless the joint venture operator has elected to consolidate GST returns relating to all the GST joint ventures of the joint venture operator.[47]

GST branches

70. Where an entity separately registers each of its branches as GST branches,[48] it is required to lodge a separate GST return for each branch for each tax period that applies to the entity.[49]

71. If the entity carries on enterprises outside its GST branches, it must also lodge a GST return in relation to those other enterprises.[50]

Fuel tax

72. Several of the special rules, that modify the general rule about who is required to lodge a GST return, are also adopted for the purposes of the FT law.[51]

73. An entity that is the representative member of a GST group for the whole of a tax period is required to account for the FT obligations of the group in their activity statement for the period.

[43] GST group has the meaning given by section 48-5 of the GST Act.
[44] Section 48-60 of the GST Act.
[45] GST joint venture takes the meaning of section 51-5 of the GST Act.
[46] Section 51-50 of the GST Act.
[47] Subsection 51-52(1) of the GST Act.
[48] GST branch has the meaning given by Section 54-5 of the GST Act.
[49] Subsection 54-55(1) of the GST Act.
[50] Subsection 54-55(3) of the GST Act.
[51] Subdivision 70A of the *Fuel Tax Act 2006* (FT Act).

74. The joint venture operator of a GST joint venture must account for the FT obligations of the GST joint venture for a tax period in the activity statement that they lodge on behalf of the joint venture. An entity who is the joint venture operator for more than one GST joint venture and has elected to consolidate the GST returns relating to all of the GST joint ventures for which the entity is the joint venture operator, must also consolidate all of the FT returns relating to those GST joint ventures.

75. An entity that has separately registered each of its branches as GST branches is also required to lodge a separate FT return for each branch for the tax periods that apply to the entity. Entities carrying on an enterprise outside its GST branches must also lodge a FT return in relation to those other enterprises.

Large PAYG withholders

76. Large withholders, who make a payment that is equal to the total liability for the reporting period, are not required to lodge a separate notification at the time of the payment. However, where the payment is less than the liability (for example partial payment), the remitter must contact the Commissioner to advise the total liability for the period.

77. Where the payment is less than the liability because the remitter is utilising a net GST credit, the remitter must notify the Commissioner of their full liability using a PAYG withholding liability notification form.

78. Large withholders are required to report the total amount paid for salary, wages and certain other payments on their activity statement, either monthly or quarterly. Where a large withholder has no other activity statement reporting obligations, a quarterly activity statement will be provided to allow this figure to be reported.

PAYG withholding branches

79. An entity may choose to divide its PAYG withholding reporting and paying responsibility into separate PAYG withholding branches where it meets certain conditions related to its accounting systems, and activities or locations.[52]

80. The entity remains responsible for all reporting obligations although it has divided into branches.

81. Where the entity is a large withholder, each branch will have large withholder status because they still remain part of the large withholder entity.

Income tax exemptions – partnerships

82. The Commissioner may grant an exemption from lodging a partnership return where:

- the partnership's only income is either rent from an investment property held by the individual partners as co-owners or interest derived jointly by the partners; or both and each partner shows their share of the income and expenses in their own tax return
- an application for exemption from lodging a partnership tax return has been approved by the Commissioner.

[52] Section 16-142.

83. An exemption is not granted where a partner is claiming a credit for amounts withheld, under the no ABN withholding rules, from payments made to a partnership.

84. Further information concerning exemptions to lodge partnership returns is found in the partnership income tax return instructions for the relevant income year.

Special classes of persons

Public officers

85. Every company that carries on a business or derives income from property in Australia is required to be represented by a public officer appointed by the company, unless exempted by the Commissioner.[53]

86. The public officer is responsible for the carrying out of all responsibilities required of the company under the *Income Tax Assessment Act 1936* (ITAA 1936), the *Income Tax Assessment Act 1997* (ITAA 1997), schedule 1 to the TAA, regulations related to these Acts and an indirect tax law. If the company does not meet all of its requirements, the public officer will be liable to the same penalties that would accrue to the company.

Agents and trustees (including receivers)

87. An agent or trustee will have the same responsibilities as the entity for complying with income tax law in respect of the income, or any profits, or gains of a capital nature, derived in a representative capacity, or derived by the principal by virtue of an agency, and for payment of tax.[54]

Liquidators

88. A liquidator[55] may be personally liable for the income tax requirements and liabilities arising under the ITAA 1936 from the date of their appointment[56] or from the date of the Commissioner's notification.[57] As the liquidator takes control of a company's affairs on behalf of creditors, members and, in court initiated cases, the Court, the liquidator's responsibility overrides the responsibility of the public officer under section 252 of the ITAA 1936 to lodge the return.

89. Further, the Commissioner can also require the liquidator to lodge returns for periods before the liquidator's date of appointment.

90. The Commissioner will only require lodgment of any returns by a liquidator after having regard to the following factors:

- the prospect for, and likely size of, a dividend being paid to unsecured creditors
- the likelihood that the return would, if lodged, reveal an increase in the tax liabilities owed to the Commissioner;

[53] Section 252 of the ITAA 1936 and Section 444-10.
[54] Section 254 of the ITAA 1936.
[55] Liquidator means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company.
[56] Section 254 of the ITAA 1936.
[57] Section 260-45.

- the availability of books and records of the company entity that would make it possible for the liquidator to prepare the returns;
- the likelihood that the liquidator's cost of preparing those returns would be covered by the assets of the liquidated company without resulting in an inordinate adverse impact on returns to other creditors, and
- the wider community benefits of having the tax returns lodged.

Deceased estates

91. In respect of the trustees of deceased estates, the Commissioner has the same powers and remedies for the assessment and recovery of tax payable on income derived by the deceased up to the time of death as the Commissioner would have had against the deceased if the deceased were still alive. That is, the trustee is obliged to provide any returns or other information that the deceased was liable to provide or would have been liable to provide if still alive.

Bankruptcy

92. In the *Deputy Commissioner of Taxation v. Jones* [1999] FCA 308, it was held that the Commissioner of Taxation has the power under section 168 of the ITAA 1936 to issue two part-year assessments in respect of the one year of income.

93. From the date of that decision (29th March 1999), individuals who become bankrupt during an income year will be assessed for the period from the beginning of the income year to the day the individual became bankrupt, and assessed separately for the period from the day after the date of bankruptcy to the end of the income year. This may require lodgment of separate returns for the pre and post-bankruptcy periods.

94. Where bankruptcy occurs during an activity statement period, separate activity statements may be required for both the periods before and after the date of bankruptcy.

95. There is no requirement in relation to PAYG instalments or PAYG withholding to complete separate activity statements for pre and post-bankruptcy. However, for GST, LCT and WET the Commissioner may determine that another tax period applied to an individual from the date of bankruptcy to what would otherwise have been the end of the tax period.[58] This will place a requirement on the individual and their representative to lodge separate activity statements for both the periods before and after the date of bankruptcy detailing GST amounts.

Incapacitated entities

96. A representative of an incapacitated entity[59]must take on the GST reporting period that applied to the incapacitated entity.[60] The representative must also take on the GST reporting period that applied to the incapacitated entity for the purpose of lodging a FT return.[61]

[58] Subsection 27-40(1) of the GST Act.
[59] Incapacitated entity means (i) an individual that is bankrupt or (ii) an entity that is in liquidation or receivership or (iii) an entity that has a representative in accordance with section 195-1 of the GST Act.
[60] Section 58-50 of the GST Act.
[61] Section 70-25 of the FT Act.

Lodgment due dates

97. Approved and prescribed forms are due for lodgment by either due dates specified in a legislative instrument, legislated due dates, within prescribed periods or as required by the Commissioner. Entities or their representatives are required to lodge such forms as and when they fall due.

98. Where the lodgment due date falls on a day that is a Saturday, Sunday or public holiday, lodgment may be made on the first business day after the lodgment due date without incurring an FTL penalty.[62] A public holiday refers to a day that is a public holiday for the whole of any state, the Australian Capital Territory or the Northern Territory.[63]

99. Forms delivered to our premises are considered lodged on the day delivery is made. Forms given to ATO staff, for example at a tax agent's office, a taxpayer's business or residence or a court are considered lodged on the day they are received by the ATO officer.

100. Generally, documents lodged electronically, for example using electronic lodgment system (ELS), are considered lodged on the day the validation certificate is issued. Returns lodged using *e-tax*, are considered lodged when you receive a lodgment confirmation.

101. Where a form is sent by an entity but is not recorded as lodged by the Commissioner, the date of lodgment in the approved or prescribed form is the date where lodgment of the form could reasonably have been made. Depending on an entity's compliance history, evidence that the form was lodged may be required to establish the lodgment date.

102. Lodgment due dates are located on the ATO's website http://www.ato.gov.au.

Due dates – Legislative Instrument[64]

103. The due dates for lodgment of income tax returns and other statements as set out in the legislative instrument are currently as follows:

Individuals, partnerships and trusts:

- for the income year ended 30 June, on or by 31 October following the end of the income year, or
- for those persons who have adopted a SAP, no later than 4 months after the close of their accounting period.

Full self-assessment taxpayers[65] ***(including head companies of consolidated groups and non-regulated superannuation funds):***

- for the income year ended 30 June, on or by 31 October following the end of the income year, or
- for those entities that have adopted a substituted accounting period, on or by the 15th day of the 7th month after the close of their accounting period.

Non full self-assessment taxpayers[66]

- first day of the sixth month following their year of income.

[62] Section 388-52.
[63] See definition of 'business day' under Section 995-1 of the ITAA 1997.
[64] Registered on the Federal Register of Legislative Instruments at www.frli.gov.au.
[65] Full self-assessment taxpayer is a taxpayer as defined in subsection 6(1) of the ITAA 1936.
[66] Non full self-assessment taxpayers are companies whose activities cover overseas shipping (section 129 of the ITAA 1936) or insurance and re-insurance (sections 144 and 148 of the ITAA 1936) or control of non-residents' money (section 255 of the ITAA 1936).

104. Companies that are required to pay a franking deficit tax or venture capital deficit tax for the relevant income year must lodge by the last day of the month following the end of the income year.

Annual superannuation return and statements

105. From the 2008 income year, trustees of self-managed superannuation funds must give an annual return that combines the income tax and regulatory return as well as the member contributions statement to the Commissioner, by the same date they are required to lodge their income tax return. Before the 2008 income year, self managed superannuation funds were required to lodge their member contributions statements by 31 March or such later date as the Commissioner allowed.

106. A superannuation provider, other than a self-managed superannuation fund must give the member contributions statement to the Commissioner on or by 31 October following the end of the financial year.

107. Before the 2006 income year, superannuation providers were required to give a statement to the Commissioner for superannuation surcharge purposes by the same date they were required to lodge their income tax return.

Due dates – Legislation

Annual FBT returns

108. Entities with an FBT obligation are required to lodge an annual FBT return. The FBT year differs from the standard financial year. The FBT year is from 1 April to 31 March of the following year. Lodgment of annual FBT returns is due by 21 May following the close of the year of tax.[67]

Superannuation

109. Superannuation providers, other than self-managed funds, must report lost members to the Lost Members Register (that is maintained by the Commissioner) at the end of each half year. A Lost Members Statement in relation to 1 January – 30 June period is due 31 October, and in relation to the 1 July – 31 December period, the statement is due 30 April of the following year.[68]

110. Superannuation providers must also give a statement of unclaimed money to the Commissioner at the end of each half-year. The statement in relation to 1 January – 30 June period is due 31 October, and in relation to the 1 July – 31 December period, the statement is due 30 April of the following year.[69]

111. Where a superannuation guarantee shortfall occurs in any quarter, employers must give superannuation guarantee charge statements by 28 May, 28 August, 28 November and 28 February respectively. These due dates relate to quarters that commence on 1 January, 1 April, 1 July and 1 October each year.[70]

[67] Section 68 of the FBTAA.
[68] Regulation 6 of *Superannuation (Unclaimed Money and Lost Members) Regulations 1999.*
[69] Section 15A of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and SPR 2009/2.
[70] Section 33 of the *Superannuation Guarantee (Administration) Act 1992.*

112. A superannuation provider must give the Commissioner a statement where the provider has been given a release authority and has paid an amount out of the superannuation plan in accordance with that release authority. The statement must be given within 30 days after the date of the payment.[71]

113. Where contraventions of the *Superannuation Industry (Supervision) Act 1993* by a trustee(s) of a self managed superannuation fund are required to be reported to the Commissioner by an auditor or an actuary, the auditor/actuary contravention report must be lodged as soon as practicable.[72]

Activity statements, instalment notices and annual GST reporting

114. The due date for any activity statement that reports:

- a monthly GST obligation is 21 days after the period end[73] (This is notwithstanding any other monthly or quarterly obligation that may also be reported on that form)
- a monthly PAYG withholding obligation only will have a due date of 21 days after the period end[74]
- quarterly PAYG instalments for the head company of a consolidated group is 21 days after the period end[75], and
- quarterly obligations that include one of more of GST, WET, LCT, FT, GST instalments, PAYG instalments, FBT instalments and PAYG withholding is 28 days after the period end, except the December quarter where the due date is 28 February.[76]

115. The due date for quarterly instalment notices that report variations in PAYG and / or GST instalments is 28 days after the period end, except the December quarter where the due date is 28 February.[77]

116. The legislated due dates for entities required to lodge monthly or quarterly activity statements are as set out in Appendix A.

117. Notwithstanding the above due dates, where the Commissioner notifies a PAYG instalment amount, the payment (and any reporting) is due on or before the 21st day after the day notice is given.[78]

118. The due date for lodgment and/or payment for entities with SAPs that:

- have not chosen to pay GST monthly, or are not required to pay GST monthly, and
- have a quarterly PAYG instalment obligation that does not align with the standard quarters ending September, December, March and June

will generally be the 28th day of the month after the end of the instalment quarter.

Where a monthly PAYG withholding obligation also exists, the withholding obligation for that month will also fall due on the 28th day and not the 21st day as would otherwise be the case.

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[71] Subsection 390-65(2).
[72] Subsection 129(3) of the *Superannuation Industry (Supervision) Act 1993.*
[73] Section 31-10 of the GST Act.
[74] Section 16-150 and subsection 16-75(2).
[75] Section 45-715.
[76] Section 31-8 of the GST Act & Part 2-10 of the *A New Tax System (Luxury Car Tax) Act 1999* & Division 21 of *A New Tax System (Wine Equalisation Tax) Act 1999* & subsection 61-15(1) of the FT Act and Section 16-150 & subsections 13-5(4), 13-5(5), paragraph 13-20(2)(b), paragraph 16-75(4)(b) and subsection 45-61(2) and subsection 103(2) of the FBTAA.
[77] Subsection 45-61(2) and subsection 162-70 (4) of the GST Act.
[78] Subsection 45-112(3).

119. Where an obligation exists to notify the Commissioner of an annual PAYG instalment amount, notification is due on or before the 21st day of the fourth month after the end of the income year. For June 30 balancers this will be 21 October following the end of the income year.[79]

120. Generally, the due date for lodgment of an annual GST return or information report will be the due date for lodgment of the income tax return. Where an entity has no obligation to lodge an income tax return, the due date for the annual GST return will be 28 February.[80]

Miscellaneous – GST

121. Where an entity, who is not registered or required to be registered for GST, makes a supply during a month in satisfaction of a debt and the supply is a taxable supply, then the entity must lodge a GST return within 21 days after the end of the month in relation to supplies made in that month.[81]

122. Entities who are not registered or required to be registered for GST, who make a taxable supply or an increasing adjustment to any such supplies (whether made in that month or a previous month) must lodge a GST return within 21 days after the end of the month in relation to supplies made in that month and those adjustments.

123. Non-residents are not required to lodge a GST return for a tax period where either the net amount for the period is nil or their taxable supplies/importations are all made through a resident agent[82]

124. Where an entity makes any taxable supplies under section 78-50 of the *A New Tax System (Goods and Services Tax) Act 1999* during a month and the entity is not registered or required to be registered during that month, it must lodge a GST return within 21 days of the end of the month relating to those supplies.[83]

125. When an individual who has been making GST instalment payments becomes bankrupt, an annual GST return accounting for the period up to the date of bankruptcy must be lodged by the 21st day of the month following bankruptcy.[84]

126. Returns for GST instalment payers or annual GST reporters who become bankrupt or for instalment payers or annual reporters, (not an individual), who go into liquidation, receivership or for any reason ceases to exist, are due on or by the 21st day of the month following the instalment or annual tax period that ends because of bankruptcy, liquidation, receivership or cessation.

127. A GST group that has a change in membership must lodge a GST return for the instalment / reporting period by the 21st of the month following the change of membership where the GST group has elected to;

- pay and if applicable report by GST instalments[85], or
- report and pay GST annually.

The instalment / reporting period ends when the membership of the group changes.

[79] Section 45-70.
[80] Section 151-45 of the GST Act and Section 162-60 of the GST Act.
[81] Paragraph 105-15(1) of the GST Act.
[82] Section 57-40 of the GST Act.
[83] Section 78-85 of the GST Act.
[84] Section 162-90 of the GST Act.
[85] Section 162-95 of the GST Act.

PAYG withholding annual reports

128. There are three due dates for reporting PAYG withholding information for the year:

- The due date is 14 August[86] for payers who have an obligation to report on:
  - payments for work and services (individuals) including retirement payments
  - annuities, benefits and compensation payments
  - superannuation lump sums
  - superannuation income streams
  - voluntary agreements
  - labour hire and other specified payments
  - employment termination payments
  - alienated personal services payments
  - non-cash benefits
  - reportable fringe benefit amounts
  - reportable employers superannuation contributions.

Note: where the PAYG withholding annual report has been prepared by a registered agent, concessionary due dates may apply as set out in the Lodgment Program.

- The due date is 31 October[87] for payers who have an obligation to report on:
  - supplies where the recipient has not quoted an ABN
  - certain payments to foreign residents
  - interest, dividend and royalty payments to non-residents.
- The due date is 30 September for payers with an obligation to report on:
  - payments made to beneficiaries of closely held trusts where the beneficiaries have not provided their TFN to the trustee.

Transitional arrangements apply to the reporting requirements and can be located in the TFN withholding for closely held trust guide on the ATO's website http://www.ato.gov.au.

A list of PAYG withholding forms can be filtered from the consolidated list of approved forms on the ATO's website http://www.ato.gov.au.

129. The Departing Australia Superannuation Payment (DASP) annual report is due on or by 31 October each year.[88]

130. If DASP data records are reported as part of the PAYG withholding payment summary annual report, then the due date for the annual report is 14 August each year or such later date as the Commissioner may allow.[89]

[86] Subsection 16-153(2).
[87] Subsection 16-153(1).
[88] Paragraph 16-153(1)(a).
[89] Subsection 16-153(2).

Other obligations

131. With one exception, where a person[90] gives a TFN declaration to a payer, this must be lodged with the Commissioner within 14 days of the declaration being made.[91] The exception is where the payer is a labour hire firm and the payee has not commenced work.

132. For each financial year, investment bodies must give the Commissioner a written report in relation to all investments in the investment body (Annual Investment Income Report). The report must be lodged within four months after the end of the financial year; that is, 31 October following a financial year ending 30 June.[92]

133. An obligation to lodge a Petroleum Resource Rent Tax annual return arises where a person derives assessable receipts in relation to a petroleum project.[93] The due date for lodgment of an annual return is 60 days after the end of the year of tax in which a person derives the assessable receipts for financial years commencing on or after 1 July 2006[94] and 42 days after the end of the year of tax for previous years.

Elections

134. Eligible entities may elect to pay PAYG instalments annually. Entities must make an election to report annually by the date on which the first quarterly instalment would otherwise be due[95] – generally 28 October.

135. Eligible entities will be able to elect to pay GST by instalments. This election generally must be made on or before 28 October of the financial year to which it relates.[96] The election is usually made on the first quarterly activity statement in the income year (or the first quarterly activity statement issued after eligibility. criteria are met).

136. Those entities that are eligible to report and pay, or claim a refund of, GST annually (that is, elect annual tax periods) must make an election by the due date. Annual GST tax period elections are generally due:[97]

- for quarterly reporters, on or before 28 October in the financial year to which it relates, or
- for monthly reporters, on or before 21 August in the financial year.

137. New GST registrants will be allowed up to six months from the date of effect of their GST registration to elect the annual GST option if this is later than the dates above.

138. The Commissioner may accept elections after the due date in certain circumstances.

Deferring lodgment obligations

139. At times, entities may experience circumstances that prevent them from lodging by the due date. The law generally allows the Commissioner to defer the time for lodgment of an approved form and a prescribed form.

[90] Section 202A of the ITAA 1936.
[91] Section 202CD of the ITAA 1936.
[92] Sub-regulation 56(3) of the *Income Tax Regulations 1936.*
[93] Section 59 of the *Petroleum Resource Rent Tax Assessment Act 1987* (PRRTAA).
[94] Section 82 of the PRRTAA.
[95] Subsection 45-140(2).
[96] Section 162-25 of the GST Act.
[97] Section 151-20 of the GST Act.

140. Subsection 388-55(1) provides the Commissioner with the discretionary power to defer the time within which an approved form is to be given to the Commissioner or another entity.

141. The existence of this discretion does not mean that the entity has an entitlement to it being exercised, but it does enable the time for lodgment to be deferred where warranted.

142. The Commissioner will generally grant a deferral where it is fair and reasonable to do so having taken into account all of the material facts. This approach seeks to achieve a balance between the Commissioner's obligation to administer tax law consistently and to do so fairly having regard to the relevant circumstances.

143. The purpose of deferring the due date for lodgment is to facilitate the lodgment of forms by entities (or their representatives) that are unable to be lodged by the due date but have the ability or potential to lodge at a particular time in the future. Deferring the due date for lodgment provides a further period of time in which to lodge without incurring an FTL penalty or other administrative penalties and provides the Commissioner with an alternative to undertaking further compliance action.

144. A deferral of time to lodge does not defer the time for payment.[98] However, the Commissioner does have power under a separate provision to defer the time for payment of a tax-related debt.[99] Refer to PS LA 2011/14 General debt collection powers and principles.

145. Where possible, a lodgment deferral request should be made before the lodgment due date. A request may be made by telephone, but in some cases it may be necessary to apply in writing to assist the Commissioner to make a more informed decision. Requests by registered agents will generally need to be in writing. The preferred method for receiving deferral requests made by registered agents is through the Tax Agent Portal or the BAS Agent Portal.

146. In any request for a deferral of the due date to lodge a form, an entity or the entity's representative will need to:

- provide details of the particular circumstances that make them unable to lodge on time
- propose a deferred date for lodgment, and
- give an assurance that future obligations will be met on time once the stated circumstances are resolved.

147. In determining whether it is fair and reasonable to grant a deferral the Commissioner will consider:

- the reason why the entity or their representative is unable to lodge on time
- the value of the information contained in the form
- the size and structure of the entity (large corporate entities are more likely to have the ability to overcome circumstances that might otherwise adversely affect their ability to lodge by the due date)
- the risk to revenue

[98] Subsection 388-55(2).
[99] Section 255-10.

- the entity's compliance history as a whole (that is lodgment of taxation returns, activity statements and other forms, payment of amounts on time and previous dealings with the Commissioner, to gain a view of the entity's level of compliance)
- the length of time needed to lodge the form (a deferral will usually be granted where an entity has good compliance history and requests a short period of additional time to lodge a form), and
- any other relevant information.

148. Each request will be considered on its merits and the deferred due date will be determined having regard to the particular circumstances of the entity.

149. If a lodgment deferral is granted it is done so on a short term basis to allow time to overcome problems preventing the lodgement of the relevant form. Lodgment deferrals will not be extended on a permanent basis.

Exceptional or unforseen circumstances

150. The Commissioner will generally consider it fair and reasonable to grant a deferral where the inability to lodge by the due date is reasonably attributed to exceptional or unforseen circumstances, such as:

- natural disasters (flood, fire, drought, cyclones, earthquake and similar events) or other disasters or events that may have, or have had, a significant impact on an entity, region or particular industry or grouping of entities
- the serious illness or death of the individual or their representative
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
- the advanced age or the youth of an individual, the serious illness or death of a family member or a problem due to language difficulties.

151. A deferral can be granted even where the circumstances leading to their inability to lodge on time continue to be beyond the entity's control so that they may not be able to meet future obligations on time. For example, where arm's length partners or beneficiaries of a partnership or trust cannot influence the preparation timeframe of the main return.

152. The fact that an entity may have a poor lodgment compliance history should not prevent granting a request for a deferral of time to lodge, where the inability to lodge was caused by circumstances beyond their control or if it would be otherwise fair and reasonable to grant the deferral.

Other circumstances

153. In circumstances such as an individual being overseas or away from home the individual should, where possible, make arrangements to deal with their taxation affairs either before or during their absence. Where an individual is absent at the time of normal bulk activity statement generation, it may be possible to generate an activity statement in advance so that the individual can meet lodgment and payment obligations on time.

154. If an entity presents a lodgment deferral proposal that is either unacceptable or has some aspects that are unacceptable to the Commissioner, a more suitable arrangement may be negotiated.

155. Where fraudulent alterations made by an entity's representative without the authority of the entity are detected in a form already lodged, the Commissioner will generally advise the entity of the requirement to lodge a fresh form. The due date for lodgment of this form will be deferred for 30 days from the date of the advice from the Commissioner. A longer deferral period may be granted, if requested, depending on the entity's circumstances.

Collective deferrals

156. Deferrals may be granted to a class of entities affected by a common event such as bushfire or delayed legislation. Where the Commissioner can reasonably assume that a common event has sufficiently impacted on all of a defined population, a deferral may be granted without individual applications being made by the entities involved. For example, where industrial instruments prevent employees of schools and associated bodies from working over the Christmas holiday shutdown period, deferrals may be granted to all entities affected in this way.

New legislative measures

157. On occasions, the Australian Government may announce new legislative measures that will have retrospective application once enabling legislation is enacted. The general approach of the Commissioner to administering retrospective changes is to apply the existing law until the proposed changes are enacted. The Commissioner cannot insist on the application of a proposed law that has the effect of increasing entities' liabilities or of paying money to entities where there is no legal basis. However, the tax law allows the Commissioner to accept returns as lodged. PS LA 2004/6 Tax Office role in providing information or advice on the potential application of announced changes to the tax law, or where legislative change is contemplated but not announced, discusses the limited situations in which the Commissioner may advise entities that they can satisfy their obligations by anticipating the effects of a proposed legislative change. These decisions are not taken lightly and must be defensible having regard to the *Financial Management and Accountability Act 1997*.

158. In limited circumstances, it may be appropriate to grant a general deferral of the due date for lodgment. Generally, however, the fact that a new legislative measure will have retrospective application but has not been enacted will not be sufficient for a deferral of the due date for lodgment.

Labour hire firms

159. Labour hire firms and recruitment agencies acting in the capacity of a labour hire firm, are given a deferral for lodgment of TFN declarations. These firms are required to forward TFN declarations to the Commissioner within 14 days from the commencement of the relationship, that is, from when the payee actually commences working for the payer (the labour hire firm), and not from the date the payee has made the declaration. This is because the labour hire firm will usually have the payee complete a TFN declaration at the time of registering with the labour hire firm (for convenience only), but the payee may not commence a working relationship until a substantial time later, if at all.

Concessionary lodgment arrangements

160. The Commissioner may also introduce concessionary lodgment arrangements subject to certain conditions being met. These arrangements are subject to review and may be revoked at any time. An example is the two-week deferral that applies to most quarterly activity statements lodged using the Business Portal or Electronic Commerce Interface.

Registered tax agents

161. Tax agents have an important role in assisting entities to meet their lodgment obligations. The Lodgment Program has been specifically developed to assist tax agents in managing their workload throughout the year. Nevertheless, circumstances may arise that prevent tax agents from meeting all of their obligations under the Lodgment Program.

162. Tax agents may be granted deferrals of time to lodge forms, where circumstances exist that affect their ability to lodge by the due date. Such circumstances include:

- practice management factors, for example
  - the serious illness of a sole practitioner
  - prolonged but unexpected staff absences
  - prolonged and expected staff absences where other factors have prevented replacement by suitably qualified staff.
- natural and other disasters (flood, fire, drought, cyclone, earthquake or similar events)
- impeded access to records (for example, records seized during a police search or retained as evidence in a court matter)
- where, despite making a concerted effort to achieve lodgment for a period, a small number of forms will not be lodged by the due date.

163. Deferral requests from a tax agent must:

- be in writing or submitted by other means approved by the Commissioner (for example, the Tax Agent Portal)
- contain sufficient information for the Commissioner to make a decision (except where tax agents can self assess deferrals of eligible forms), and
- be made before:
  - the end date assigned under the Lodgment Program
  - where the obligation is not covered by the Lodgment Program – the due date for lodgment.

These requirements may be relaxed where circumstances associated with natural or other disasters exist so that it is unreasonable to expect that the request be submitted in writing. Requests made after the due or end dates generally will only be considered where the tax agent can provide a detailed explanation of the circumstances that prevented the request being made before the due date.

164. Deferral requests from tax agents will be considered having regard to some or all of the following factors:

- the circumstances that gave rise to the request
- past lodgment performance
- reporting period
- form type
- number of deferrals
- size of the practice
- value of the information required
- risk to revenue.

165. Lodgment deferrals may be granted to tax agents subject to certain conditions being met (for example, the electronic lodgment of forms and electronic payment of any associated liability). Representations from tax practitioners and accounting professional associations may result in further concessions to either a particular group of entities or to entities with a particular end date in the Lodgment Program.

Self assessment of lodgment deferral by tax agents

166. Tax agents are able to self assess lodgment deferrals for specific lodgment dates and form types. Further information regarding the deferral period and form types eligible for self assessed lodgment deferrals can be found in the Lodgment Program. Where a tax agent self-assessed deferral is granted, tax agents may be notified by means of a changed due date for the form in the Tax Agent Portal or Electronic Lodgment Service.

Registered BAS agents

167. BAS agents also have an important role in assisting entities to meet their activity statement lodgment obligations. From 1 July 2010, the Lodgment Program covers both tax agents and BAS agents. To assist in managing their workloads, BAS agents now receive some concessions for quarterly activity statements and PAYG withholding annual summary reports. BAS agents cannot self assess lodgment deferrals but must make the lodgment deferral request in writing.

Communication of deferral decision

168. Generally, in cases where it has been decided to defer the due date for lodgment, the Commissioner will advise the entity or their representative:

- of the year or tax period to which the deferral applies
- of the deferred due date by which lodgment is to be made and from which an FTL penalty may be calculated if lodgment is not made by the deferred due date
- that action to secure lodgment may be commenced without further notice if lodgment is not made by the deferred due date.

169. The Commissioner may also communicate collective lodgment deferral decisions through the ATO's website http://www.ato.gov.au and other external mediums. For example, entity's impacted by natural disasters would be notified in this manner.

170. Where a deferral to lodge an income tax return is granted, any other returns, statements or notices that are due on the same date as the income tax return will therefore become due on the deferred date, for example, an annual GST return.

171. If a deferral request is disallowed or varied, the Commissioner will document factors considered and reasons for making the decision and communicate those reasons to the entity. Entities will also be advised of their rights of review.

Lodgment deferrals and payment consequences

172. Where payment of a tax liability is legislatively linked to lodgment, any deferral of the lodgment date recalculates the payment date.

173. The legislative linkage between lodgment and payment does not exist for activity statements and therefore any request for lodgment and payment deferrals for activity statements will need to be considered independently.

174. There will be cases where it is inappropriate to defer the due date for lodgment but it may be appropriate to defer the due date for payment. An inability to pay by the due date is not a valid reason for failing to lodge on time.

175. Alternatively, there will be circumstances, such as the situation where payment can be made but lodgment information is not yet available, where it is appropriate to defer the due date for lodgment but not payment.

176. If the lodgment due date is deferred it may also be appropriate to defer the payment date. In such cases, provided lodgment and payment in full are made by the deferred due date, no FTL penalties will apply and no GIC will apply for failing to pay on time.

177. There may be occasions where the late provision of information from a third party delays the issue of an activity statement, for example, Customs data required for inclusion on the activity statement for participants in the deferred GST scheme. The individual circumstances of a participant may be such that a deferral is warranted.

Suspension of lodgment enforcement action

178. The Commissioner may agree to suspend lodgment enforcement action by not actively pursuing overdue forms for a period of time. Such a decision may arise either:

- as the result of an express request from the entity or the entity's representative for enforcement action to be suspended or;
- because the reasons given in a deferral request are not sufficient to allow the deferral.

Where lodgment enforcement action is suspended, FTL penalty may be applied and calculated from the original due date. Notwithstanding suspension of lodgment enforcement action, payment is required by the due date with GIC being applied for any late payment.

179. Matters that will be taken into consideration when deciding whether to suspend lodgment enforcement action include:

- information provided by the entity and other information that may be held (or obtained) by the Commissioner
- the circumstances that led to the inability to lodge on time and the effect of requiring immediate lodgment
- the stage that current lodgment enforcement action has reached and the grounds put forward by the entity to justify suspension of that action
- the offer made by the entity and the ability to meet that offer without seriously impacting on the ability to meet other obligations as and when they fall due
- whether there is a likely risk to the revenue or to the efficient operation and administration of the taxation system
- compliance history (that is lodgment of taxation returns, activity statements and other forms as well as payment of amounts on time and the history of the entity's previous dealings with the Commissioner)
- the likelihood of the entity lodging the form within the period allowed.

180. All arrangements made must stipulate that an FTL penalty may be applied from the original due date until lodgment is received. If a suspension of lodgment enforcement action request is either not granted or is varied, the Commissioner will document factors considered and reasons for making the decision and communicate them to the entity.

181. A request for suspension of lodgment enforcement action after the issue of a final notice for lodgment of certain forms, such as income tax returns, will not generally be granted, as potential prosecution action may be compromised.

APPENDIX A

Abbreviations

FTC – Fuel tax credit

FBTI – Fringe benefit tax instalment

PAYGI – Pay as you go instalments

PAYGW – Pay as you go withholding

Due dates for lodgment of activity statements in relation to the majority of taxpayers involved in the activity statement processes (excluding those with substituted accounting periods) are as follows:

Quarterly GST (WET, LCT) and (FTC) and any other quarterly obligations (PAYGW, PAYGI, FBTI)

Period	**Due Date**
Quarter 1 (July to September)	28 October
Quarter 2 (October to December)	28 February
Quarter 3 (January to March)	28 April
Quarter 4 (April to June)	28 July

Quarterly GST (WET, LCT) and (FTC) and monthly PAYGW, and any other quarterly obligations (PAYGI, FBTI)

Period	**Due Date**
July Monthly PAYGW	21 August
August Monthly PAYGW	21 September
July – September GST, WET, LCT, PAYGI & FBTI September PAYGW	28 October
October Monthly PAYGW	21 November
November Monthly PAYGW	21 December
October – December GST, WET, LCT, PAYGI & FBT December PAYGW	28 February
January monthly PAYGW	21 February
February Monthly PAYGW	21 March
January – March GST, WET, LCT, PAYGI & FBTI March PAYGW	28 April
April Monthly PAYGW	21 May
May Monthly PAYGW	21 June
April – June GST, WET, LCT, PAYGI & FBTI June PAYGW	28 July

No GST (WET, LCT), and quarterly PAYGW and/or PAYGI and/or FBTI

Period	Due Date
Quarter 1 (July to September)	28 October
Quarter 2 (October to December)	28 February
Quarter 3 (January to March)	28 April
Quarter 4 (April to June)	28 July

Quarterly Consolidated PAYGI – lodged by the head company (regardless of any other obligations)

Period	Due Date
Quarter 1 (July to September)	21 October
Quarter 2 (October to December)	21 January
Quarter 3 (January to March)	21 April
Quarter 4 (April to June)	21 July

No GST (WET, LCT), Quarterly PAYGI, FBTI or monthly PAYGW

Period	Due Date
July Monthly PAYGW	21 August
August Monthly PAYGW	21 September
July – September PAYGI and/or FBTI September PAYGW	28 October
October Monthly PAYGW	21 November
November Monthly PAYGW	21 December
October – December PAYGI and/or FBTI December PAYGW	28 February
January Monthly PAYGW	21 February
February Monthly PAYGW	21 March
January – March PAYGI and/or FBTI March PAYGW	28 April
April Monthly PAYGW	21 May
May Monthly PAYGW	21 June
April – June PAYGI and/or FBTI June PAYGW	28 July

Monthly GST (WET, LCT), (FTC) and other monthly or quarterly obligations, OR

No GST (WET, LCT), PAYGI, or FBTI, and Monthly PAYGW only

Period	Due Date
July	21 August
August	21 September
September	21 October
October	21 November
November	21 December
December	21 January
January	21 February
February	21 March
March	21 April
April	21 May
May	21 June
June	21 July

Amendment history

Date of amendment	Part	Comment
20 May 2011	Paragraph 136	Error amended. Incorrect date in last dot point updated from ’21 October’ to correct date of ’21 August’.

Legislative references	ITAA 1936 6(1) ITAA 1936 129 ITAA 1936 144 ITAA 1936 148 ITAA 1936 202A ITAA 1936 202CD ITAA 1936 255 ITAA 1936 161 ITAA 1936 161(1A) ITAA 1936 162 ITAA 1936 163 ITAA 1936 252 ITAA 1936 254 ITAA 1997 703-5 ITAA 1997 719-5 ITAA 1997 960-100 ITAA 1997 995-1 TAA 1953 Sch 1 Pt 2-5 TAA 1953 Sch 1 13-5(4) TAA 1953 Sch 1 13-5(5) TAA 1953 Sch 1 13-20(2)(b) TAA 1953 Sch 1 16-75(2) TAA 1953 Sch 1 16-75(4)(b) TAA 1953 Sch 1 16-95 TAA 1953 Sch 1 16-100 TAA 1953 Sch 1 16-110 TAA 1953 Sch 1 16-115(5)(c) TAA 1953 Sch 1 16-142 TAA 1953 Sch 1 16-150 TAA 1953 Sch 1 16-152 TAA 1953 Sch 1 16-153 TAA 1953 Sch 1 16-153(1) TAA 1953 Sch 1 16-153(1)(a) TAA 1953 Sch 1 16-153(2) TAA 1953 Sch 1 16-153(6) TAA 1953 Sch 1 16-153(7) TAA 1953 Sch 1 Pt 2-10 TAA 1953 Sch 1 45-61(2) TAA 1953 Sch 1 45-70 TAA 1953 Sch 1 45-110(1) TAA 1953 Sch 1 45-112(3) TAA 1953 Sch 1 45-115(1) TAA 1953 Sch 1 45-125(1)(b) TAA 1953 Sch 1 45-140 TAA 1953 Sch 1 45-140(2) TAA 1953 Sch 1 45-405 TAA 1953 Sch 1 45-715 TAA 1953 Sch 1 45-720 TAA 1953 Sch 1 255-10 TAA 1953 Sch 1 260-45 TAA 1953 Sch 1 388-50 TAA 1953 Sch 1 388-50(2)

	TAA 1953 Sch 1 388-52 TAA 1953 Sch 1 388-55(2) TAA 1953 Sch 1 388-80 TAA 1953 Sch 1 390-65(2) TAA 1953 Sch 1 444-10 ANTS(GST)A 1999 27-15(1)(c) ANTS(GST)A 1999 27-15(2) ANTS(GST)A 1999 27-20 ANTS(GST)A 1999 27-22 ANTS(GST)A 1999 27-25(2)(b) ANTS(GST)A 1999 27-25(2)(b) ANTS(GST)A 1999 27-40(1) ANTS(GST)A 1999 31-8 ANTS(GST)A 1999 31-10 ANTS(GST)A 1999 31-20 ANTS(GST)A 1999 31-25(1) ANTS(GST)A 1999 33-10 (1) ANTS(GST)A 1999 48-5 ANTS(GST)A 1999 48-60 ANTS(GST)A 1999 51-5 ANTS(GST)A 1999 51-50 ANTS(GST)A 1999 51-52(1) ANTS(GST)A 1999 54-5 ANTS(GST)A 1999 54-55(1) ANTS(GST)A 1999 54-55(3) ANTS(GST)A 1999 57-40 ANTS(GST)A 1999 58-50 ANTS(GST)A 1999 78-85 ANTS(GST)A 1999 105-15(1) ANTS(GST)A 1999 151-20 ANTS(GST)A 1999 151-45 ANTS(GST)A 1999 162-25 ANTS(GST)A 1999 162-5(1) ANTS(GST)A 1999 162-60 ANTS(GST)A 1999 162-70(4) ANTS(GST)A 1999 162-75 ANTS(GST)A 1999 162-90 ANTS(GST)A 1999 162-95 ANTS(GST)A 1999 Div 188 ANTS(GST)A 1999 195-1 ANTS(LCT)A 1999 Pt 2-10 ANTS(WET)A 1999 Div 21 FBTAA 1986 68 FBTAA 1986 Pt VII FBTAA 1986 103(2) FTA 2006 61-15(1) FTA 2006 61-15(2) FTA 2006 Subdiv 70A FTA 2006 70-25 LIA 2003 56 PRPTAA 1987 59 PRPTAA 1987 82 SG(A)A 1992 33

	SI(S)A 1993 129(3) S(UMLM)A 1999 15A ITR 1936 56(3) S(UMLM)R 1999 6
Related public rulings	GSTR 2003/15 Goods and services tax: importation of goods into Australia
Related practice statements	PS LA 2004/6 The Tax Office role in providing information or advice on the potential application of announced changes to the tax law or where legislative change is contemplated but not announced PS LA 2005/19 Approved forms PS LA 2007/21 Substituted Accounting Periods (SAPs) PS LA 2011/14 General debt collection powers and principles
Case references	Deputy Commissioner of Taxation v. Jones [1999] FCA 308; 99 ATC 4373; (1999) 41 ATR 460
Other references	*ATO Receivables Policy*: Chapter 35 Collection of consolidated group liabilities Consolidations Reference Manual
Date issued	14 April 2011
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Contact email	**OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au**
Section	Operational Policy, Assurance and Law