



Explanatory Statement

Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2023

General outline of instrument

1. This legislative instrument sets out which persons are required and which persons are exempt from the requirement to lodge an income tax return for the income year, and the date by which it must be lodged. The return must be in the approved form.
2. It further provides details on other lodgment requirements for:
 - (a) franking account returns, including special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability
 - (b) venture capital deficit tax returns
 - (c) ancillary fund returns
 - (d) trustees of self managed superannuation funds.
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument is effective from the day after it is registered on the Federal Register of Legislation.

What this instrument is about

Requirement to lodge

6. This instrument defines a person and sets out the requirements for a person to lodge a return in the approved form for the income year and the date by which they are to lodge under section 161 of the *Income Tax Assessment Act 1936* (ITAA 1936).
7. Section 161 of the ITAA 1936 refers to the legislative instrument made by the Commissioner of Taxation (the Commissioner) to require an income tax return to be lodged by a date specified.
8. The instrument also provides for certain classes of persons to be exempt from lodgment requirements in accordance with subsection 161(1A) of the ITAA 1936.

Other lodgment requirements

9. The instrument provides details on the approved form and due date for lodgment for:

- (a) a corporate tax entity to lodge a franking return, including the special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability. Section 214-15 of the *Income Tax Assessment Act 1997* (ITAA 1997) refers to the legislative instrument to be made by the Commissioner to require corporate tax entities to give a franking return
- (b) an entity to lodge a venture capital deficit tax return under section 214-15 of the ITAA 1997
- (c) a trustee of a public ancillary fund or a private ancillary fund to lodge an ancillary fund return.

10. It also provides details for a trustee of a self managed superannuation fund to lodge their income tax return as part of the *Self-managed superannuation fund annual return*. Section 35D of the *Superannuation Industry (Supervision) Act 1993* (SISA) refers to the Commissioner's requirement to specify by legislative instrument, a reporting period, if the length of the period is not prescribed by the *Superannuation Industry (Supervision) Regulations 1994*.

11. The lodgment of member information statements by superannuation providers is required under section 390-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). The instrument provides the due date for lodgment for the superannuation plans that are self managed superannuation funds.

Additional lodgment information

12. Additional lodgment information is also provided including that:

- (a) the return must be in the approved form
- (b) the Commissioner may defer the time for lodgment of any return specified in this instrument
- (c) nothing in this instrument prevents the Commissioner from issuing a notice of requirement to lodge a return or a notice of requirement to provide information under section 162 or section 163 of the ITAA 1936
- (d) nothing in this instrument prevents the Commissioner or an authorised person of the Australian Taxation Office from granting an exemption from lodgment, and
- (e) penalties for non-compliance with lodgment requirements may apply.

What is the effect of this instrument

13. The instrument satisfies the requirements of the Commissioner to publish certain information in a legislative instrument.

14. The instrument advises who must lodge, when they must lodge, how they should lodge and that penalties may apply if they don't lodge.

Compliance cost impact

15. Minor – There will be no additional regulatory impacts as the instrument is minor and machinery in nature.

Background

16. Since the commencement of the ITAA 1936, section 161 of that Act refers to the requirement to lodge an annual return. Every person must, if required by the Commissioner, give to the Commissioner a return for a year of income within the period specified in the legislative instrument.

17. This legislative instrument satisfies the requirements under section 161 and related section 130 of the ITAA 1936, as well as the requirements of section 214-15 of the ITAA 1997, paragraph 35D(2)(b) of the SISA and subsection 390-5(6) of Schedule 1 to the TAA.

Consultation

18. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a legislative instrument, that the Commissioner is satisfied that appropriate and reasonably practicable consultation has been undertaken.

19. Public consultation has been undertaken. The draft legislative instrument and draft explanatory statement were published on the ATO Legal Database at ato.gov.au on 16 March 2023 seeking feedback and comments until the closing date of 14 April 2023. The ATO Legal Database sends emails and news feeds to direct subscribers such as tax professionals and other industry stakeholders. Consultation on the draft legislative instrument and draft explanatory statement was also announced on “What we are consulting about” at ato.gov.au. The response from the consultation process was limited but supportive of the draft legislative instrument and draft explanatory statement.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

This Disallowable Legislative Instrument sets out which persons are required to lodge an income tax return or a self managed superannuation fund annual return, franking return, venture capital deficit tax return or ancillary fund return for the income year ended 30 June 2023. It includes the date by which the returns must be lodged, the requirements to lodge in the approved form and the penalties that may apply.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms as it simply provides notice for taxpayers on their obligations to lodge returns.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.