

LI 2024/15 - Explanatory statement -



Explanatory Statement

Taxation Laws (Requirement to Lodge a Return for the 2024 Year) Instrument 2024

General outline of instrument

1. This legislative instrument is made under sections 130, 161, and 163 of the *Income Tax Assessment Act 1936* (ITAA 1936), section 214-15 of the *Income Tax Assessment Act 1997* (ITAA 1997), section 35D of the *Superannuation Industry (Supervision) Act 1993* (SISA), and section 390-5 in Schedule 1 to the *Taxation Administration Act 1953* (TAA).
2. The instrument specifies which persons are required to lodge an income tax return for the income year, and when a return must be lodged. This includes a new requirement for not-for-profit (NFP) self-review returns to be lodged. A return must be lodged in the approved form.
3. The instrument also deals with other lodgment requirements for:
 - (a) franking returns,
 - (b) venture capital deficit tax returns,
 - (c) ancillary fund returns, and
 - (d) trustees of self managed superannuation funds.
4. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. 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

6. This instrument commences on the day after it is registered on the Federal Register of Legislation.

Effect of this instrument

Requirement to lodge an income tax return

7. Section 6 of this instrument requires certain persons to lodge an income tax return for the '2024 year'. This includes the requirement for certain entities whose income is exempt under Division 50 of ITAA 1997 to lodge an 'NFP self-review return' (see subsection 6(11) of the instrument). For persons who do not have a 'substituted accounting period', the 2024 year is the year of income ended on 30 June 2024. For persons with a substituted accounting period – that is, a period they have been granted leave to adopt under section 18 of the ITAA 1936 instead of the year of income ended 30 June 2024 – the 2024 year is their substituted accounting period.

8. Section 7 of the instrument sets out specific exceptions to the requirement to lodge an income tax return. That is, it identifies certain classes of persons who are not required to lodge a return. This includes exceptions to the requirement to lodge an 'NFP self-review return' (see subsection 7(4) of the instrument).

9. Section 8 specifies the date by which an income tax return must be lodged. For many persons, a return must be lodged by 31 October 2024. But there are different rules set out in section 8 for persons with a substituted accounting period, and certain other persons (specifically, persons covered by subsections 6(7) and 6(8) of the instrument).

Other lodgment requirements

10. The instrument also sets out the requirement and due date for:

- (a) a corporate tax entity to lodge a franking return, noting that there are special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability (see sections 9 and 10 of the instrument),
- (b) a corporate tax entity to lodge a venture capital deficit tax return (see sections 11 and 12 of the instrument), and
- (c) a trustee of a public ancillary fund or a private ancillary fund to lodge an ancillary fund return (see sections 13 and 14 of the instrument).

11. In addition, section 15 of the instrument deals with when returns and member information statements for self managed superannuation funds must be lodged.

12. Section 35D of the SISA requires the trustee of a self managed superannuation fund to give the Commissioner a return. Subsection 15(1) of the instrument requires such a return, which forms part of an income tax return, to be given by the day that the trustee is required to lodge their income tax return under the instrument.

13. Section 390-5 in Schedule 1 to the TAA requires a superannuation provider to give member information statements to the Commissioner. Subsection 15(2) of the instrument requires member information statements for self managed superannuation funds to be given by the day the trustee is required to lodge their income tax return under the instrument. It also determines that the 2024 year is the period during which an individual must have held an interest in a self-managed superannuation fund for the trustee to be required to give a member information statement.

Compliance cost impact

14. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature (The Office of Impact Assessment reference: OIA24-07120).

Background

15. Certain laws enable the Commissioner of Taxation (Commissioner) to require persons to give a return. For example, section 161 of the ITAA 1936 says that every person must, if required by the Commissioner by legislative instrument, give to the Commissioner a return for a year of income within the period specified in the instrument. The Commissioner may also require certain persons to give returns under section 130 of the ITAA 1936 and section 214-15 of the ITAA 1997. This instrument specifies classes of persons who are required to give a return.

16. In addition, section 35D of the SISA enables the Commissioner to determine the period in which the trustee of a self managed superannuation fund must provide a return.

Section 390-5 in Schedule 1 to the TAA enables the Commissioner to determine the day on which superannuation providers must provide member information statements to the Commissioner. The instrument also specifies relevant timeframes for the purpose of these provisions.

17. The format, structure and language of the instrument have been updated in 2024 to align with contemporary legislative drafting styles and make it easier to navigate. This drafting update is not intended to change the general effect of the instrument. That is, the same classes of persons that have been required to lodge a return in previous income years are also required to lodge a return this year, although there is also a new requirement for certain entities to lodge an NFP self-review return.

18. As part of the 2021-22 Federal Budget, the Government announced a new requirement for non-charitable NFPs to submit an online annual self-review to enhance the transparency of income tax exemptions claimed by NFPs. NFPs that self-assess as income tax exempt have always been required to review their entitlement to the exemption and maintain governing documents to satisfy their operation as an NFP. The announced change now requires non-charitable NFPs to lodge their annual self-review using an NFP self-review return (see subsection 6(11) of the instrument). Exceptions to this new requirement to lodge are listed in subsection 7(4) of the instrument. Under subsection 7(4), a NFP is not required to lodge an income return if their income is exempt from income tax:

- (a) under table item 1.1 in section 50-5 of the ITAA 1997 (that is, NFPs registered with the Australian Charities and Not-for-profits Commission (ACNC) and endorsed by the ATO as income tax exempt),
- (b) because they are a government entity that is exempt under section 50-25 of the ITAA 1997, or
- (c) because they are specifically named as an exempt entity in Division 50 of the ITAA 1997.

19. Administrative arrangements supporting lodgment of the NFP self-review return have been designed in consultation with the sector since February 2022. The return collects information that the NFP is already required to have to substantiate eligibility to self-assess as income tax exempt, based on its purpose and activities. The cost of compliance has been minimised by making the return easy to navigate, ensuring an NFP only answers the questions that are applicable to them. Additionally, after the first NFP self-review return is lodged, future returns are expected to be pre-populated. New public guidance is available on the ATO website to support NFPs to understand when and how to lodge the NFP self-review return. The ATO is also taking a practical compliance approach to support NFPs in meeting their lodgment obligations.

Consultation

20. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that any appropriate and reasonably practicable consultation has been undertaken before they make a legislative instrument.

21. Broad public consultation was undertaken from 12 March 2024 to 9 April 2024 for this instrument and explanatory statement.

22. The draft instrument and draft explanatory statement were published to the ATO Legal database and publicised on the database's 'What's new' page. They were also publicised on the ato.gov.au website on the 'Open Consultation' page. Major tax and superannuation publishers and associations commonly monitor these pages and usually include the details in the daily and weekly alerts and newsletters to their subscribers and members.

23. The explanatory statement was updated as a result of feedback received during consultation. In particular, further detail and context were added in relation to the sections of the instrument concerning the NFP self-review return.

Legislative references

Acts Interpretation Act 1901

Human Rights (Parliamentary Scrutiny) Act 2011

Income Tax Assessment Act 1936

Income Tax Assessment Act 1997

Legislation Act 2003

Superannuation Industry (Supervision) Act 1993

Taxation Administration Act 1953

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 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 legislative instrument

This instrument specifies which persons are required to lodge an income tax return, franking return, venture capital deficit tax return or ancillary fund return for the 2024 year (which, for many persons, is the income year ended 30 June 2024). It also specifies the dates by which returns must be lodged, and when other certain information must be provided to the Commissioner of Taxation.

Human rights implications

This instrument does not engage any of the applicable rights or freedoms. It requires certain persons to lodge a return, and specifies when returns and other information must be provided, so that the Commonwealth can properly administer tax and superannuation laws.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.