

LI 2025/D1 - Explanatory statement -



Explanatory Statement

Taxation Laws (Requirement to Lodge a Return for the 2025 Year) Instrument 2025

General outline of instrument

1. This legislative instrument is made under sections 130, 148, 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 requirement for not-for-profit (NFP) self-review returns to be lodged, which was included for the first time in the *Taxation Laws (Requirement to Lodge a Return for the 2024 Year) Instrument 2024*. 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.

Background

7. 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 and 163 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.

8. 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.

9. As part of the 2021-22 Federal Budget, the Government announced a requirement for income tax exempt 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. Income tax exempt non-charitable NFPs are required to lodge their annual self-review using an NFP self-review return (see subsection 6(11) of the instrument). Exceptions to this requirement are listed in subsection 7(4) of the instrument, which outlines that an entity covered by subsection 6(11) is not required to lodge the return if:

- (a) they did not have, at any time during the 2025 year, an ABN recorded on the Australian Business Register with a status that indicated that the ABN was active, or
- (b) their income is exempt from income tax:
 - i. 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),
 - ii. because they are a government entity that is exempt under section 50-25 of the ITAA 1997, or
 - iii. because they are specifically named as an exempt entity in Division 50 of the ITAA 1997.

Paragraph 7(4)(a) of the instrument ensures that only income tax exempt non-charitable NFPs with an ABN recorded on the Australian Business Register with a status that indicated the ABN was active at any time during the 2025 year, will have an obligation to lodge an NFP self-review return.

Effect of this instrument

Requirement to lodge an income tax return

10. Section 6 of this instrument requires certain persons to lodge an income tax return for the '2025 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 2025 year is the year of income ended on 30 June 2025. 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 2025 – the 2025 year is their substituted accounting period.

11. Section 7 of the instrument provides exceptions to certain classes of persons covered by section 6. That is, the classes of persons listed in section 7 are not required to lodge a return for the 2025 income year. This includes exceptions to the requirement to lodge an 'NFP self-review return' (see subsection 7(4) of the instrument).

12. Section 8 prescribes the date by which an income tax return must be lodged. For many persons, a return must be lodged by 31 October 2025. 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

13. 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).
14. In addition, section 15 of the instrument deals with when returns and member information statements for self managed superannuation funds must be lodged.
15. 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.
16. 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 2025 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

17. To be advised.

Consultation

18. 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.

19. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

Due date:	26 March 2025
Contact officer:	Victoria Rogers
Email:	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au
Phone:	(07) 3119 9886

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*

Taxation Laws (Requirement to Lodge a Return for the 2025 Year) Instrument 2025

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 2025 year (which, for many persons, is the income year ended 30 June 2025). 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.