



**COMMERCIAL POLICY FRAMEWORK**

**TAX EQUIVALENT REGIME FOR**  
**GOVERNMENT BUSINESSES**

Office of Financial Management

Policy &  
Guidelines Paper

## PREFACE

The *Tax Equivalent Regime for Government Businesses* is a component of the NSW Government's *Commercial Policy Framework*.

The Framework aims to replicate within NSW Government businesses the disciplines and incentives that lead private sector businesses towards efficient commercial practices.

The purpose of the *Tax Equivalent Regime* is to ensure that all NSW Government businesses are subject to income tax equivalent payments, in accordance with the principle of competitive neutrality.

In accordance with National Competition Policy arrangements, larger State Government businesses generally are subject to the National Tax Equivalent Regime. The *Tax Equivalent Regime* outlined in this Policy and Guidelines Paper applies to those NSW Government commercial businesses that are not subject to the National scheme but which are operating in a competitive market. (Refer Attachment 1)

This policy supersedes the previous NSW Treasury policy document, *A Tax Equivalent Regime for NSW Government Trading Enterprises*, June 1994.



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## EXECUTIVE SUMMARY

Government businesses<sup>1</sup> are not subject to Federal income tax. However, in order to comply with National Competition Policy, which was adopted by Commonwealth, State and Territory governments in 1995, Government businesses must pay Commonwealth tax equivalents<sup>2</sup>.

Under the *Tax Equivalent Regime for Government Businesses* ('*Tax Equivalent Regime*'), the income tax equivalent liability of Government businesses is assessed annually. NSW Government businesses are required to pay quarterly instalments of the expected annual liability to the NSW Office of State Revenue.

### *Policy Application and Objectives*

In 2001, the Commonwealth, State and Territory Governments agreed to establish a *National Tax Equivalent Regime* for larger Government businesses and other enterprises where competitive neutrality issues arise.

The *Tax Equivalent Regime* applies to Government businesses not covered by the *National Tax Equivalent Regime*. In some cases, the *Tax Equivalent Regime* may act as a 'stepping stone' for Government businesses to migrate to the *National Tax Equivalent Regime*.

The *Tax Equivalent Regime* is specifically designed to bring about competitive neutrality between NSW Government businesses and competitors in the private sector. The *Tax Equivalent Regime* subjects Government businesses to income tax equivalent payments which approximate taxes that would be payable if the business were privately owned. The payment of tax equivalents ensures that Government businesses do not have a net competitive advantage over their private sector counterparts due to their public ownership origins.

### *Accounting Profit Model*

The Accounting Profit Model applies to Government businesses falling under the *Tax Equivalent Regime*. Under the Accounting Profit Model, the prevailing rate of company income tax is applied to the accounting profits of participating Government businesses. Accounting profit of a Government business becomes the basis for determining tax payable for the purpose of the *Tax Equivalent Regime*.

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<sup>1</sup> The generic term 'Government business' includes:

- Public Trading Enterprise (or Public Non-Financial Corporations under ABS classifications). State Owned Corporations are included in this classification, but are distinguished by their corporatised status;
- Public Financial Enterprises (or Public Financial Corporations under ABS classifications);
- General Government businesses (or General Government agencies under ABS classifications, which are also non-Budget dependent and operate under the Commercial Policy Framework); and
- Corporate subsidiaries of Government agencies

<sup>2</sup> It was also agreed that Government businesses would pay wholesale sales tax equivalents. The Goods and Services Tax (GST) replaced wholesale sales tax on 1 July 2000. The GST applies to Government businesses.

# 1 INTRODUCTION

NSW Government businesses deliver a range of essential goods and services to the community. The NSW Government expects these businesses to deliver strong financial performance, as well as efficient and reliable services for the NSW community.

Since 1988, the *Commercial Policy Framework* has applied to Government businesses. The Framework consists of a suite of policies aimed at replicating, as far as possible, the disciplines and incentives that lead private sector businesses towards efficient commercial practices.

The fundamental objective of the *Commercial Policy Framework* is to maximise the wealth of the people of New South Wales. This is achieved by requiring the Boards and management of Government businesses to allocate resources efficiently and to be accountable for financial management.

The people of New South Wales are the ultimate shareholders of Government businesses. In practice, however, their interests are represented by Ministers of the NSW Government. The NSW Government has a number of distinct relationships with its businesses, arising from its role as banker, regulator, shareholder and tax collector.

The *Tax Equivalent Regime* is part of the *Commercial Policy Framework*. The *Tax Equivalent Regime* outlines the obligations of certain Government businesses to pay income tax equivalents. It applies to Government businesses that do not fall under the *National Tax Equivalent Regime*.

The *Tax Equivalent Regime* applies an Accounting Profit Model to determine the amount of income tax equivalents payable by Government businesses. The role of the NSW Government under the *Tax Equivalent Regime* is that of regulator and tax collector.

This document explains how income tax equivalents are applied and calculated. It also explains the rationale behind the *Tax Equivalent Regime*.

## 2. BACKGROUND

### 2.1 DEFINITION OF TERMS

**‘Accounting profit’** is the difference between the gross revenue and operating expenses represented as profit from ordinary activities in the Statement of Financial Performance in accordance with Australian Accounting Standards.

**‘Base assessment instalment income’** is the TER adjusted accounting profit disclosed in the most recent income tax year. Where a loss was disclosed, this amount will be zero.

**‘ITAA’** refers to:

- the *Income Tax Assessment Act* tax equivalent model as applied by Government businesses under the *NTER*; and/or
- the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax Assessment Act 1936* (Cth) as applied by privately owned businesses.

**‘NTER’** refers to the *National Tax Equivalent Regime*, as produced by the Australian Taxation Office.

**‘Notional Tax’** is the amount of tax expected to be paid in the current year with reference to a number of factors including: the amount of tax paid in the previous year; industry trends; business forecasts; and other relevant information.

**‘Tax equivalents’** are income tax equivalent payments made by Government businesses to the NSW Office of State Revenue under the *TER* or *NTER*. Tax equivalents are classified as a business expense and not a financial distribution.

**‘TER’** refers to the *Tax Equivalent Regime for Government Businesses*.

**‘TER adjusted accounting profit’** is accounting profit adjusted for any actuarial adjustments to unfunded superannuation that impact the Statement of Financial Performance.

### 2.2 NATIONAL COMPETITION POLICY

In February 1994, the Council of Australian Governments (COAG) agreed to accelerate and broaden the process of micro-economic reform in Australia. In April 1995, a *National Competition Policy* was established through a series of inter-governmental agreements and the passing of the *Competition Policy Reform Act 1995* (Cth)<sup>3</sup>.

The *Competition Principles Agreement*, which forms part of the *National Competition Policy*, promotes the principle of ‘competitive neutrality’ in circumstances where Government businesses compete with the private sector.

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<sup>3</sup> NSW has passed the *Competition Policy Reform (New South Wales) Act 1995* (NSW) to fulfil its obligations under National Competition Policy.

The objective of competitive neutrality is to eliminate resource allocation distortions arising out of the public ownership origins of entities engaged in significant business activities<sup>4</sup>. Competitive neutrality stresses that Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership<sup>5</sup>.

NSW Government businesses and their subsidiaries are exempt from paying Federal income tax<sup>6</sup>. However, in order to ensure competitive neutrality, Government businesses that fall under the *Commercial Policy Framework* are required to pay Federal and State tax equivalents<sup>7</sup>, including:

- Capital Gains tax;
- Fringe Benefits tax;
- Goods and Services Tax;
- Income Tax;
- Land tax;
- Payroll tax; and
- Stamp duty.

However, as NSW Government businesses are exempt from Commonwealth taxes under the *State and Territories Bodies Provisions* of the ITAA, they should not register with the Commonwealth for income tax directly. Instead, income tax is administered through the *NTER* or the *TER*.

### 2.3 NATIONAL TAX EQUIVALENT REGIME

The primary objective of income tax equivalents is to promote competitive neutrality and to expose Government businesses to the commercial disciplines of paying income tax.

In June 1999, the Commonwealth, State and Territory Governments signed the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*. This agreement committed governments to establish a *National Tax Equivalent Regime*. A *Manual for the National Tax Equivalent Regime (NTER Manual)* became operational from 1 July 2001.

The *NTER Manual*:

- covers the administrative and technical operating features of the *NTER*;
- provides a list of participating entities; and
- where appropriate, identifies the legislation upon which the *NTER* is based.

The *NTER* was introduced to ensure consistency in the income tax treatment of Government businesses across Australian jurisdictions.

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<sup>4</sup> *Competition Principles Agreement*, section 3(1).

<sup>5</sup> *Competition Principles Agreement*, section 3(1).

<sup>6</sup> *Income Tax Assessment Act 1936* (Cth), division 1AB.

<sup>7</sup> *Competition Principles Agreement*, section 4(b)(i).

Although the *TER* and the *NTER* both aim to expose Government businesses to the disciplines of paying tax equivalents, there are significant differences in the application of these policies and the methodologies that are used.

While the *NTER* is monitored by the Australian Taxation Office (ATO) and applies an ITAA model to assess the amount of income tax equivalents payable, the *TER* is administered by the NSW Office of State Revenue and applies an Accounting Profit Model to participating businesses.

The *NTER* applies to corporatised and non-corporatised Government businesses that are nominated by their respective owners. Government businesses nominated for inclusion in the *NTER* are sufficiently commercial to comply with ITAA based income tax regime. Government businesses that have not been nominated for inclusion in the *NTER* but which have not received an exemption from paying tax equivalents are covered by the *TER*.

The ATO assesses each *NTER* entity on its income tax equivalent liability. However, quarterly instalments of the expected tax liability are paid to the Treasury of the relevant State or Territory, not the Australian Taxation Office. Quarterly instalments under the *NTER* or *TER* are not to be included as part of other payments that Government businesses are required to make to the ATO (e.g. GST and FBT).

## **2.4 APPLICATION OF THE POLICY**

The concept of competitive neutrality is a key principle underpinning the Commercial Policy Framework. Tax equivalents are designed to encourage Government businesses to operate in a more commercial manner and to ensure they do not gain a net competitive advantage over their private sector counterparts.

In accordance with the principle of competitive neutrality, the purpose of the *Tax Equivalent Regime* is to subject Government businesses to the commercial disciplines of making income tax equivalent payments. Note that as NSW Government businesses are exempt from Commonwealth taxes under the *State and Territories Bodies Provisions* of the ITAA, they should not register with the Commonwealth for income tax.

The *TER* applies to all Government businesses in the *Commercial Policy Framework*, except those covered by the *NTER*. Government businesses participating in the *TER* are listed in Attachment 1. Treasury may also undertake periodic reviews of additional Government business to which the *TER* may apply.

In some cases, the *TER* may act as a ‘stepping stone’ for Government businesses to migrate to the *NTER*.

Newly formed Government businesses that come under the *Commercial Policy Framework* should, in the first instance, be considered for placement under the *NTER*. If participation in the *NTER* is considered inappropriate, the Government business should be placed in the *TER*.

## ***Exemptions***

A Government business may be exempted from both the *TER* and *NTER*. An exemption may be granted in exceptional circumstances to suit the specific situation of a Government business. An application for an exemption must be submitted to NSW Treasury for consideration by the Treasurer.

The Treasurer may only grant an exemption where both the following apply to the Government business:

- Firstly, specific conditions warrant the Government business being regarded as non commercial specifically with regards to this Policy.

Consideration of whether a Government business is non commercial with regards to this Policy may include, but is not limited to, the following:

- The general nature of its primary purpose or purposes as being “non commercial”;
- The Charter for the Government business; and/or
- The Government Budget classification, as determined by the Australian Bureau of Statistics

- Secondly, competitive neutrality issues are unlikely to arise.

Competitive neutrality issues may arise when the Government business undertakes significant business activities. Relevant considerations in determining whether a business activity has a significant impact on a market may include, but are not limited to, the following factors:

- The business’ size or the size of the parts of the business which undertakes the business activities;
- The business’ influence on the market;
- Resources commanded; and/or
- Effect of poor performance.

A business may be exempt from compliance with competitive neutrality requirements including in situations where it is demonstrated that the benefits of introducing competitive neutrality are outweighed by the costs<sup>8</sup>.

An assessment of whether a Government business will be granted an exemption will be made on a case by case basis.

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<sup>8</sup> For further details, refer to Treasury’s Policy & Guidelines Paper “*Policy Statement on the Application of Competitive Neutrality*” (TPP 02-1), January 2002

### 3. ACCOUNTING PROFIT MODEL

The *TER* adopts an Accounting Profit Model. Under the Accounting Profit Model, the prevailing rate of company income tax<sup>9</sup> is applied to the *TER* adjusted accounting profit of the relevant Government business. The accounting profit of a Government business is used as the basis for determining the tax equivalent.

The Accounting Profit Model is intended to cover situations where the cost of calculating liability under the *NTER* is disproportionate to the benefit of complying with, and implementing, the *NTER*.

#### 3.1 CONCEPTUAL BASIS FOR THE ACCOUNTING PROFIT MODEL

The Accounting Profit Model, as applied under the *TER*, possesses the following characteristics: efficiency, equity, integrity and simplicity.

##### *Efficiency*

A taxation system is considered efficient if it is neutral and does not influence individual and business choice. In the context of the *TER*, the concept of efficiency requires competitive neutrality between Government businesses and their private sector counterparts. The *TER* removes the potential for commercial decisions by Government businesses from being distorted by the absence of any requirement to pay income tax.

The Accounting Profit Model is efficient if the amount of tax equivalents payable ensures competitive neutrality between Government businesses and their private sector competitors.

##### *Equity*

A taxation system is equitable if taxpayers in like circumstances are treated alike. Conversely, a taxation system may also be equitable if it prescribes special rules to account for differences in the circumstances of individual taxpayers.

To the extent that the accounting profit of a Government business is a reasonable estimate of its taxable income as would be calculated under the *ITAA* model, there are unlikely to be equity issues arising under the Accounting Profit Model.

##### *Integrity*

Newly formed Government businesses that come under the *Commercial Policy Framework* should, in the first instance, be considered for placement under the *NTER*. If participation in the *NTER* is considered inappropriate, the Government business should be placed in the *TER*.

The integrity of the Accounting Profit Model depends on whether it can be sustained as an alternative to the *Income Tax Assessment Act 1997* (Cth). It should also provide for a smooth transition to the *NTER* or to the Federal taxation regime in the event of a change in ownership or governmental policy.

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<sup>9</sup> As at April 2003, the company income tax rate was 30 per cent.

Tax equivalent policies possess integrity. Large Government businesses that fall under the *NTER* face roughly the same rules as privately owned businesses operating under the ITAA. Smaller Government businesses that fall under the *TER* face an appropriate tax discipline, without the imposition of undue costs.

### ***Simplicity***

A taxation system is simple if the costs of compliance (for taxpayers) and the costs of administration (for the tax assessor) are relatively low. The Accounting Profit Model is relatively simple, with low administrative and compliance costs.

This is especially important for small Government businesses where the cost of calculating taxable income under the ITAA would be disproportionate to the benefits received.

## 4. TAX EQUIVALENT REGIME FOR GOVERNMENT BUSINESSES

### 4.1 POLICY STATEMENT

The *Tax Equivalent Regime* can be summarised as follows:

- 1) Government businesses under the *Commercial Policy Framework* are expected to make income tax equivalent payments comparable to their private sector counterparts.
- 2) An Accounting Profit Model is applied to participating Government businesses to determine the tax equivalent.
- 3) Accounting profit is adjusted for any actuarial adjustments to unfunded superannuation impacting the Statement of Financial Performance to derive TER adjusted accounting profit.
- 4) The prevailing rate of company income tax is applied to TER adjusted accounting profit to determine the tax equivalent.
- 5) The Chief Commissioner may, in exceptional circumstances, adjust the TER adjusted accounting profits for a reporting period.
- 6) Where accounting treatment and taxation treatment differ, the TER will apply accounting treatment.

### 4.2 GUIDANCE FOR PRACTICAL APPLICATION

A simple example of applying a 30 per cent tax rate to the accounting profit of a Government business is provided below:

	Year 1	Year 2	Year 3	Year 4
Accounting Profit Before Tax	1,000	1,200	-1,100	2,000
Tax Equivalent (assumes 30%)	300	360	0	600
Accounting Profit after tax	700	840	-1,100	1,400

### 4.3 ADMINISTRATION OF TAX EQUIVALENT PAYMENTS

Tax equivalents are paid in quarterly instalments, in accordance with Federal Pay As You (PAYG) Legislation.

The following table summarises the administration of tax equivalent payments. Treasury will advise Government businesses of any changes in timing in the context of the annual updates to the *Reporting Calendars*. For more information, refer section 6.

<b>Item</b>	<b>Timing</b>	<b>Responsibility</b>
<b>For Government businesses new to the TER</b>		
Notification to the Government business regarding their inclusion in the TER	Following formal endorsement of TER policy	NSW Treasury
Following notification, registration with the Chief Commissioner of the NSW Office of State Revenue (OSR) as per Attachment 2	At least 28 days prior to commencement in the TER <sup>10</sup>	Government business
Instalment rate advised by the OSR to the Government business	At time of registration	OSR
<b>For all Government businesses subject to the TER</b>		
Quarterly Instalment Report as per Attachment 3	On or before payment of quarterly instalment	Government business
Payment of quarterly instalment	Within 28 days after the end of the quarters ending 30 September, 31 December, 31 March, 30 June	Government business
Notification to Government businesses of the form, content and manner of lodging annual returns.	July after the financial year	OSR
Lodgement of income tax equivalent annual returns to OSR including Attachment 4	1 December after the financial year or as advised by OSR	Government business
Changes in the instalment rate as advised by OSR	At least 28 days before the end of the quarter to which the amended rate applies	OSR
Changes in the instalment rate as requested by a Government business	OSR to make a determination within 28 days of receipt of application	OSR

<sup>10</sup> For agencies not currently covered by the TER but listed in Attachment 1, the *Tax Equivalent Regime for Government Businesses Policy* is due to commence on 1 July 2003.

## **5. TECHNICAL ISSUES**

The NSW Office of State Revenue (OSR) is responsible for monitoring the application of the Accounting Profit Model to Government businesses. The OSR will give particular attention to addressing and minimising adverse impact of applying accounting profits for the calculation of taxation treatment. Apart from the adjustments allowed for unfunded superannuation, further adjustment to accounting profits will only be made in exceptional circumstances and will be treated on a case by case basis.

### **5.1 EXCEPTIONAL CIRCUMSTANCES**

The Chief Commissioner may, in exceptional circumstances, adjust the TER adjusted accounting profits for a reporting period. Each instance will be considered on a case by case basis. However, the presumption is that normal accounting practices apply.

### **5.2 ACCOUNTING TREATMENT**

Where, under normal circumstances accounting treatment and taxation treatment differ, the accounting profits model will apply accounting treatment. Examples where differences between accounting treatment and taxation treatment occur include:

- Accruals – Accounting treatment to apply;
- Bad Debts – Accounting treatment to apply;
- Borrowing costs – Accounting treatment to apply;
- Capital Gains – Accounting treatment to apply;
- Depreciation – Only accounting depreciation to apply;
- Foreign Exchange Gains and Losses – Accounting treatment to apply;
- Group Income Tax Consolidations – Does not apply;
- Prepayment – Accounting treatment to apply;
- Prior year losses – Do not apply and cannot be used to reduce accounting profits;
- Provisions – Accounting treatment to apply;
- Repairs – Accounting treatment to apply;
- Research and Development – Concessional treatment does not apply;
- Spare parts – Accounting treatment to apply;
- Superannuation – Accounting treatment to apply, adjusted for the impact of unfunded superannuation liability;
- Tax effect accounting – Does not apply; and
- Trading stock – Accounting treatment to apply.

## **6. MANUAL FOR THE TAX EQUIVALENT REGIME**

### **6.1 CHIEF COMMISSIONER TO ADMINISTER TAX EQUIVALENT REGIME**

The Chief Commissioner of the NSW Office of State Revenue (OSR), NSW Treasury, administers the *Tax Equivalent Regime*. The Chief Commissioner may create rulings, instructions and other guidelines for the administration of the TER. The Chief Commissioner may delegate any or all of his or her responsibilities to OSR officers.

The relationship between the Chief Commissioner and Government businesses under the *TER* is based substantially on the same rights and responsibilities that exist between taxpayers and the Federal Commissioner of Taxation.

### **6.2 REGISTRATION**

The Office of Financial Management, NSW Treasury is responsible for determining which Government businesses will participate in the *TER*. The Office of Financial Management is also responsible for notifying Government businesses of their inclusion in the *TER*.

Following notification, participating Government businesses are required to register with the Chief Commissioner. Registration should occur at least 28 days prior to commencement in the *TER*.

The Registration Form in Attachment 2 should be completed for this purpose.

### **6.3 QUARTERLY INSTALMENT SYSTEM**

All Government businesses are liable to pay quarterly instalments of their (expected) income tax equivalent liability for an income year.

The process by which *TER* instalments are reported and paid by Government businesses are substantially in accordance with the Federal Pay As You Go (PAYG) Instalment provisions. The main difference is that Government businesses pay the instalments directly to the OSR. Where applicable, penalties and interest are also paid to the OSR.

Quarterly instalments are calculated by multiplying the *instalment income* by the *instalment rate*. The *instalment income* is a gross income measure, including gross trading income but excluding capital gains and statutory income. The *instalment rate* is normally calculated by the Chief Commissioner based on information held by the OSR, or by a self-selected/varied rate. There is no requirement under the modified PAYG Instalment System to pay instalments unless the Chief Commissioner has notified the Government business in writing of the instalment rate.

Governments businesses, that are liable to pay instalments, must notify the Chief Commissioner of their instalment income for the relevant period by completing the Quarterly Instalment Report in Attachment 3. Instalments are usually reported and paid within 28 days after the end of each quarter.

## 6.4 TRANSITIONAL INSTALMENT RATE

Some Government businesses participating in the *TER*:

- may have already been given a PAYG instalment rate under the previous *TER* policy; and/or
- may have lodged an annual return under the previous *TER*.

If a PAYG instalment rate was given under the previous *TER*, the last instalment rate given is deemed to be the instalment given by the Chief Commissioner.

If a PAYG instalment rate was not given under the previous *TER*, the instalment rate payable is that chosen by the Government business.

## 6.5 HOW INSTALMENT RATES ARE CALCULATED

The OSR calculates the instalment rate payable by a Government business by reference to information from its most recent income tax equivalent return. The most recent income tax year where an assessment has been made is known as the base year.

The calculation is made by dividing the ‘notional tax’ of a Government business by its ‘base assessment instalment income’, then multiplying the result by 100. The instalment rate is calculated as a percentage to two decimal places.

An instalment rate will be 0.00 (that is, NIL), if the notional tax or the base assessment instalment income is equal to or less than \$0. Therefore, a NIL instalment rate is valid.

$$(\text{Notional Tax} \div \text{Base Assessment Instalment Income}) \times 100 = \text{Instalment Rate}$$

## 6.6 VARYING THE INSTALMENT RATE

A Government business may use the instalment rate given by the OSR or it can choose to vary that rate. Entities must provide the OSR with reasons for varying the given rate. Typical reasons for varying may include:

- a change in profit margins;
- significant (abnormal) transactions affecting income or expenses; or
- changes in trading conditions affecting income or expenses.

If a Government business chooses to vary the rate, the OSR will check the varied rate against the benchmark instalment rate calculated when that Government business lodges its annual income tax equivalent return.

Consistent with the Australian Tax Office’s approach to private taxpayers, a Government business may be liable for interest charge penalties if its varied rate is less than 85 per cent of the benchmark instalment rate. These interest rate charges are imposed by, and payable to the OSR.

A Government business may also apply for a change in the instalment rate by making an application in writing to the OSR. OSR will make a determination within 28 days of receipt of the application.

OSR may also advise changes to a Government business' instalment rate from time to time. Such advice will be made at least 28 before the end of the quarter to which the amended rate will apply.

## **6.7 INSTALMENT INFORMATION TO BE GIVEN TO THE CHIEF COMMISSIONER**

Government businesses that are required to pay quarterly instalments (even if it is a NIL amount) are required to notify the Chief Commissioner of their *TER* quarterly instalment details – as calculated in accordance with the above principles.

Notification occurs by lodging the Quarterly Instalment Report in Attachment 3 with the Chief Commissioner on or before the day on which the amount is due to be paid (regardless of when it is actually paid).

## **6.8 WHERE NO INSTALMENT RATE GIVEN**

Government businesses which have not been given or deemed to have been given a quarterly instalment rate by the Chief Commissioner are not required to pay quarterly instalments of their expected income tax equivalent liability.

The income tax equivalent liabilities of these Government businesses become due and payable on the due date for lodgement of the income tax equivalent annual return for the relevant year of income.

However, Government businesses that are not required to make quarterly payments may make voluntary instalment payments and avoid having to pay an annual liability as well as quarterly instalments in one income year.

## **6.9 ANNUAL RETURNS**

All Government businesses are required to lodge income tax equivalent annual returns with the Chief Commissioner on or before 1 December after the financial year that the relevant return relates.

The OSR will formally notify Government businesses in July of each year of the form, content and manner of lodging annual returns.

The Annual Return Form to be used by Government businesses is included in Attachment 4.

Government businesses may seek leave for a substituted (i.e. non-30 June) year-end by making a formal application to the Chief Commissioner. Substantial business reasons must be shown to support an application for a non-30 June substituted tax accounting period.

## **6.10 ASSESSMENTS**

Under the full self assessment system, an assessment of taxable income is deemed to have been made by the Chief Commissioner and served on a Government business on the day the return is furnished. The return is deemed to be the served notice of assessment.

The Annual Return will be deemed to be an assessment of income tax equivalent for that year, and to have been served on the Government Business by the Chief Commissioner.

The Chief Commissioner has the power to amend a *TER* assessment, and to further amend amended *TER* assessments, by making such alterations and additions as considered necessary. However, the Chief Commissioner's power to amend *TER* assessments is subject to the same constraints as applies to the Federal Commissioner of Taxation's power to amend assessments under section 170 of the *Income Tax Assessment Act 1936* (Cth).

A Government business may apply for an amendment to a *TER* assessment. The Chief Commissioner may approve the amendment in accordance with the application without verifying the details provided in the application. This will effectively allow Government businesses to self-amend assessments.

However, if the details of the application for amendment were incorrect, the Chief Commissioner may further amend the amended assessment and, in appropriate circumstances, charge interest and/or a penalty.

## **6.11 PENALTY TAX AND INTEREST PAYABLE FOR TAX SHORTFALLS**

A modified administrative penalty regime applies where there is a tax shortfall. This penalty applies if a Government business:

- makes a false or misleading statement;
- takes a position or adopts an argument, which in the opinion of the Chief Commissioner, is unreasonable;
- enters into various tax minimisation schemes;
- disregards a private ruling; or
- fails to provide documents to the Chief Commissioner.

The base penalty amount varies according to the degree of culpability in understating the taxable income. Generally, where a Government business exercises reasonable care and has a reasonably arguable position, they will not be subject to tax shortfall penalties.

Penalty tax is reduced where the Government business voluntarily discloses the tax shortfall. The reduction is much greater if the disclosure is made before the Government business is notified of any audit/investigation action by the OSR.

Penalties may also apply for the late lodgement of annual returns. All entities are liable for the base penalty amount where they fail to lodge documents as required.

The General Interest Charge is payable where an assessment is amended to increase liability and where tax is not paid by the due date. The General Interest Charge is based on market rates and may be deductible.

## **6.12 ADVICE, PUBLIC AND PRIVATE RULINGS**

Government businesses may seek:

- advice from the Chief Commissioner; and/or
- a public or private ruling on how the *TER* applies to the Government business.

There is no prescribed format that must be followed in making an application for a ruling or advice. However, a full and true disclosure of all relevant facts is required.

Private rulings are binding on the Chief Commissioner only in the context of the *TER*, and only to the extent they are favourable to the particular Government business.

## **6.13 APPLICATIONS FOR INTERNAL REVIEW**

Government businesses can appeal against a *TER* related decision. Appeals will be dealt with initially through an internal review. The officer conducting the review will be independent from, and equal or higher than, the officer who made the initial decision.

External review or appeal is not available for *TER* related decisions.

*TER* related objections must be lodged in writing with the Chief Commissioner within four years of his or her decision being made. A *TER* related decision includes:

- *TER* advice;
- a private ruling;
- the deemed assessment upon lodgement by a Government business of a *TER* return; and
- the amendment of a *TER* assessment.

## **6.14 COMPLIANCE ASSURANCE MEASURES**

The Chief Commissioner is entitled to conduct compliance assurance activities in relation to Government businesses. This is necessary to ensure the integrity of the *TER*. These compliance assurance activities include risk assessment and audit/investigation activities.

The Chief Commissioner's approach to these compliance assurance activities and the rights and responsibilities of the Chief Commissioner and Government businesses are found in the OSR publications, *The Investigation Process – Information for Clients*, *Code of Conduct* and *Our Service Commitment*.

## **6.15 CONTACT DETAILS**

*TER* related inquiries should be directed to:

The *TER* Administrator  
NSW OSR  
Locked Bag 5327  
PARRAMATTA NSW 2124

Telephone: (02) 9689 8279  
Facsimile: (02) 9689 6773  
Email: ian.crosbie@osr.nsw.gov.au

## 7. ROLES AND RESPONSIBILITIES OF STAKEHOLDERS

Under the *Tax Equivalent Regime*, the Boards and management of Government businesses are required to:

- comply with the *TER* and pay income tax equivalents to the OSR, NSW Treasury;
- provide information to satisfy quarterly reporting requirements; and
- advise the Treasurer of any significant changes to the profitability of the Government business and the potential impact on tax equivalent payments.

The Office of Financial Management, NSW Treasury is responsible for developing and administering the *TER policy*. This involves:

- developing, promulgating and promoting the *TER*;
- consulting with stakeholders;
- updating and revising the *TER* where necessary; and
- acting as an arbitrator in disputes between the OSR and Government businesses about the intended operation of the *TER*.

The Office of Financial Management performs the following tasks on behalf of the Treasurer:

- monitoring tax equivalent amounts paid by the Government businesses;
- reporting movements in the tax equivalent payments upon finalisation of the annual accounts and associated reasons in quarterly reports;
- advising the OSR of participating Government businesses prior to their commencement in the *TER* and their date of commencement; and
- liaising with the OSR on the amount of tax equivalents collected from Government businesses.

The OSR is responsible for administering the *TER*. This involves:

- advising Government businesses on the amount of tax equivalents payable;
- calculating the amount of tax equivalents payable by Government businesses;
- maintaining a register of participating Government businesses;
- processing *TER* tax returns and amending assessments;
- conducting audits and imposing penalties and/or interest where necessary;
- undertaking compliance risk assessment activities; and
- providing rulings, instructions, guidelines and interpretative advice to participating Government businesses.

### Further Information

General inquiries concerning this document should be initially directed to:

Commercial Policy Section  
NSW Treasury  
Telephone: (02) 9228 4095  
Internet: [www.treasury.nsw.gov.au](http://www.treasury.nsw.gov.au)

## **ATTACHMENT 1**

### **PARTICIPATING GOVERNMENT BUSINESSES**

NSW Government businesses falling under the *Tax Equivalent Regime for Government Businesses (TER)* as at June 2003<sup>11</sup>.

1. Fish River Water Supply Authority
2. Honeysuckle Development Corporation
3. Internal Audit Bureau
4. NSW Land and Property Information
5. NSW Treasury Corporation
6. Parramatta Stadium Trust
7. The Public Trustee
8. Registry of Births, Deaths and Marriages
9. State Rail Authority
10. State Sports Centre Trust
11. Sydney Harbour Foreshore Authority
12. Wollongong Sports Ground Trust

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<sup>11</sup> This list is not exhaustive and other agencies may be added at a later date.

## ATTACHMENT 2

### REGISTRATION FORM

<b>TAX EQUIVALENT REGIME FOR GOVERNMENT BUSINESSES</b>	
1. Name of NSW Government Business	
2. Postal address for Service of Notices	
	Postcode
3. Address of Place of Central Management	
	Postcode
4. Australian Business Number	
5. Telephone Contact Number	
6. Name of Principal Accounting Officer	
7. Name of Contact Officer	
8. E-mail Address of Contact Officer	
9. Description of Principal Business Activity	
10. ANZIC Code	
11. Date of Commencement in TER	

I, \_\_\_\_\_ the duly authorised representative of the above named Government business certify that the above registration details have been completed to the best of my knowledge and in accordance with the requirements of the TER.

## ATTACHMENT 3

### QUARTERLY INSTALMENT REPORT

<b>TAX EQUIVALENT REGIME FOR GOVERNMENT BUSINESSES</b> <b>Pay As You Go Instalment Report of Income Tax Equivalent</b> <b>For the period ___/___/_____ to ___/___/_____</b>	
1. Name of NSW Government Business	
2. Postal address for Service of Notices	
	Postcode
3. Address of Place of Central Management	
	Postcode
4. Australian Business Number	
5. Telephone Contact Number	
6. Name of Principal Accounting Officer	
7. Name of Contact Officer	
8. E-mail Address of Contact Officer	
9. Description of Principal Business Activity	
10. ANZIC Code	
<b>11. PAYG Calculation</b>	
A. Instalment income	\$
B. Instalment rate	%
C. New varied instalment rate*	%
D. Credit arising from reduced PAYG instalments	\$
<b>E. PAYG Tax Equivalent Instalment ((A x B or C) – D)</b>	<b>\$</b>
12. Deferred company/fund instalment	\$
<b>13. Net Amount This Report (11E + 12)</b>	<b>\$</b>

\* Provide reason and supporting information for change.

I, \_\_\_\_\_ the duly authorised representative of the above named NSW Government business certify that this report has been completed to the best of my knowledge and in accordance with the requirements of the TER.

# ATTACHMENT 4

## ANNUAL RETURN FORM

TT - BU - T

Transaction code 1 1 - - 01

Client number

Specify the period:

Complete year

OR

Part year or approved substitute period

1 July to 30 June

/ / - / /

Client name

DX number DX location

Address Postcode

### Declaration

I, \_\_\_\_\_ (Public officer)  
 declare that the particulars shown in this return and the relevant records used to ascertain the taxable income, as shown, derived from all sources in and out of Australia during the year of income are true and correct.  
 Signature Date / / Phone

Describe the main business activity

What is the estimated gross business income derived from this activity \$

### Calculation statement

Operating profit or loss (Taxable income for TER) **A**  /

TAX PAYABLE **C**

INSTALMENTS PAID **T**

OTHER REFUNDABLE **Z**

Less Instalments paid plus Other refundable **R**

Amount of payment or refund **S**

This form (when completed) can be lodged in person or by post to:

Compliance – Level 7 Lang Centre, Cnr Hunter & Marsden Streets, Parramatta - Locked Bag 5327, Parramatta 2124

## CALCULATION OF TOTAL PROFIT OR LOSS

		<i>Whole \$A</i>		
<b>Income</b>	Gross sales of goods and services where <b>ABN not quoted</b>	<b>A</b>	<input type="text"/>	
	Gross sales of goods and services where <b>ABN quoted</b>	<b>C</b>	<input type="text"/>	
	Gross Distributions from partnerships	<b>D</b>	<input type="text"/>	
	Gross Distribution from trusts	<b>E</b>	<input type="text"/>	
	Gross interest	<b>F</b>	<input type="text"/>	
	Gross rental, leasing and hiring income	<b>G</b>	<input type="text"/>	
	Gross dividend	<b>H</b>	<input type="text"/>	
	Fringe benefit employee contribution		<input type="text"/>	
	Assessable government industry payments		<input type="text"/>	
	Other gross income		<input type="text"/>	
	<b>Total income</b>		<input type="text"/>	
	<b>Expenses</b>	Cost of Sales	<b>A</b>	<input type="text"/>
		Contractor, sub-contractor and commission expenses	<b>C</b>	<input type="text"/>
Employee superannuation		<b>D</b>	<input type="text"/>	
Bad debts		<b>E</b>	<input type="text"/>	
Lease expenses within Australia		<b>F</b>	<input type="text"/>	
Lease expenses overseas		<b>I</b>	<input type="text"/>	
Rent expenses		<b>H</b>	<input type="text"/>	
Interest Expenses within Australia		<b>V</b>	<input type="text"/>	
Interest expenses overseas		<b>J</b>	<input type="text"/>	
Royalty expenses within Australia		<b>W</b>	<input type="text"/>	
Royalty expenses overseas		<b>U</b>	<input type="text"/>	
Depreciation expenses		<b>X</b>	<input type="text"/>	
Motor vehicle expenses		<b>Y</b>	<input type="text"/>	
Repairs and maintenance		<b>Z</b>	<input type="text"/>	
All other expenses		<b>S</b>	<input type="text"/>	
<b>Total expenses</b>		<b>Q</b>	<input type="text"/>	
<b>Operating profit or loss *</b>		<i>Subtract Total expenses from Total income</i>	<b>R</b>	<input type="text"/> / <input style="background-color: #cccccc;" type="text"/>
	<i>Extraordinary revenue or expenses</i>	<b>N</b>	<input type="text"/>	
	<b>Total profit or loss *</b>	<b>T</b>	<input type="text"/> / <input style="background-color: #cccccc;" type="text"/>	

\* Where you are reporting a net loss, insert "L" in the small shaded box to the right of the oblique line.

## References

Australian Taxation Office, *Manual for the National Tax Equivalent Regime*, October 2001.

NSW Treasury, *Financial Distribution Policy for Government Businesses* (TPP 02-03), June 2002.

NSW Treasury, *Public Trading Enterprise Reporting Calendar*.

NSW Treasury Circular, *Accounting for Superannuation* (TC 02/12), November 2002.

NSW Treasury, *Monitoring Policy for NSW Government Trading Enterprises*, October 1992.

NSW Treasury Policy & Guidelines Paper, “*Policy Statement on the Application of Competitive Neutrality*” (TPP 02-1) January 2002