

# Policy and Guidelines Paper

## Tax Equivalent Regime

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## Preface

The purpose of the *Tax Equivalent Regime and Policy* (TPP21-05) is to ensure that NSW Government businesses that operate in competitive markets 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 are generally subject to the National Tax Equivalent Regime. The *Tax Equivalent Regime and Policy* applies to those NSW Government commercial businesses that are not subject to the National scheme but which are operating in a competitive market.

The *Tax Equivalent Regime and Policy* is a component of the NSW Government's Commercial Policy Framework. The Framework is a suite of policies aiming to replicate in commercially focused Government businesses the disciplines and incentives that lead private sector businesses towards efficient commercial practices.

This 2021 edition of *Tax Equivalent Regime and Policy* withdraws and supersedes the previously issued edition (TPP03-4).

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**Secretary**  
**NSW Treasury**

May 2021

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### Note

General inquiries concerning this document should be initially directed to your relevant Treasury Relationship Lead.


This publication can be accessed from the Treasury's website [www.treasury.nsw.gov.au/](http://www.treasury.nsw.gov.au/).

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## Executive Summary

NSW Government businesses are not subject to Federal income tax.<sup>1</sup> However, in order to comply with the National Competition Policy adopted by Commonwealth, State and Territory governments in 1995, Government businesses must pay Commonwealth tax equivalents.<sup>2</sup> This will be in accordance with the National Tax Equivalent Regime (NTER) or the Tax Equivalent Regime (TER).

This paper sets out the reasons and processes for compliance with the TER.

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<sup>1</sup> Government business includes:

- Public Non-Financial Corporations under ABS classifications. State Owned Corporations are included in this classification, but are distinguished by their corporatised status;
- Public Financial Corporations under ABS classifications;
- General Government businesses (those General Government agencies under ABS classifications which operate in competitive market); and
- Corporate commercial 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

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

The TER for NSW applies to Government businesses not covered by the NTER. In some cases, the TER may act as a 'stepping stone' for Government businesses to migrate to the NTER.

The TER is specifically designed to bring about competitive neutrality between NSW Government businesses and competitors in the private sector. The TER subjects applicable 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 applicable Government businesses do not have a net competitive advantage over their private sector counterparts due to their public ownership origins.

## 1.1 National Competition Policy

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In February 1994, the Council of Australian Governments 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*<sup>4</sup>, which forms part of the *National Competition Policy*, promotes the principle of 'competitive neutrality' in circumstances where Government businesses compete with the private sector.

*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. Competitive neutrality stresses that Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities.*

NSW Government businesses and their subsidiaries are exempt from paying Federal income tax.<sup>5</sup> However, in order to ensure competitive neutrality, Government businesses that operate in a competitive market are required to pay Federal and State tax equivalents,<sup>6</sup> including:

- Capital Gains tax (CGT)
- Fringe Benefits tax (FBT)
- Goods and Services Tax (GST)
- 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 *Income Tax Assessment Act (ITAA)*, they should not register

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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.

<sup>4</sup> *Competition Principles Agreement* 11 April 1995 as amended 20017, section 3(1).

<sup>5</sup> *Income Tax Assessment Act 1936 (Cth)*, division 1AB.

<sup>6</sup> *Competition Principles Agreement*, section 4(b)(i).

with the Commonwealth for income tax directly. Instead, income tax equivalent payments are administered through the NTER or the TER.

## 1.2 National Tax Equivalent Regime (NTER)

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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 NTER. A *Manual for the National Tax Equivalent Regime* (NTER Manual) became operational from 1 July 2001<sup>7</sup>.

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.

The NTER represents an evolution of the concepts and practices of the TER. In some cases, the TER may act as a 'stepping stone' for Government businesses to migrate to the NTER.

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.

The NTER is monitored by the ATO and applies an ITAA model to assess the amount of income tax equivalents payable, while the TER is administered by Revenue NSW 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 and this Policy.

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 ATO. 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).

## 1.3 Legislative Basis for Tax Equivalents in NSW

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The legislative basis for payment of tax equivalents is set out in both the *Government Sector Finance Act 2018* (GSF Act) and the *State Owned Corporations Act 1989* (SOC Act).

### **Government Sector Finance Act 2018 (NSW) (GSF Act)**

Under section 5.3 of the GSF Act, the Treasurer has discretionary power to direct a GSF agency (or part of GSF agency) to pay amounts to the Treasurer under the relevant tax-equivalent regime,<sup>8</sup> or grant an exemption to a GSF agency for payment of any amount under this section. The Treasurer may delegate this function, including to another Minister; the accountable authority for the Treasury; or a government officer of the Treasury.

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<sup>7</sup> The NTER manual is available on the ATO legal database.

<sup>8</sup> Relevant tax-equivalent regime, for the purposes of the GSF Act, means arrangements for income tax equivalent payments (whether for the purposes of New South Wales or any national scheme) of a kind prescribed by the regulations: GSF Act s5.3(5).

A direction may:

- make provision for the assessment of the amount payable as a tax-equivalent (including the appointment or selection of assessors and the manner of assessment and the entry into agreements concerning payments of tax-equivalents),
- specify the timing and manner for payments,
- impose any other terms and conditions (including concerning the preparation and provision of accounting or other statements) that the Treasurer considers should be imposed, and
- be contained in the Treasurer's directions or in a separate written direction given to the GSF agency concerned.<sup>9</sup>

***State Owned Corporations Act 1989 (NSW) (SOC Act)***

Section 20T of the *State Owned Corporations Act 1989* (NSW) (SOC Act) provides that a statutory SOC must, from time to time, pay to the Treasurer an amount that would be payable by the SOC if it were liable to pay taxes under the law of the Commonwealth.

In accordance with *National Competition Policy* arrangements, all SOC's are generally subject to the NTER. In limited circumstances, SOC's may instead be placed under the TER prior to migrating to the NTER.

Note that section 20T of the SOC Act in relation to statutory State owned corporations operates concurrently with the GSF Act. However, section 5.3 of the GSF Act, being a paramount provision, prevails where there is any contradiction between the two Acts.

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<sup>9</sup> *Government Sector Finance Act 2018* (NSW) s5.3(3)(a)-(d).



## 2 Tax Equivalent Regime

### Key points

- NSW Government businesses are exempt from Commonwealth taxes under the State and Territories Bodies Provisions of the ITAA and should not register with the Commonwealth for income tax.
- Government businesses operating in competitive markets are expected to make income tax equivalent payments comparable to their private sector counterparts.
- An Accounting Profit Model is applied to participating Government businesses to determine the tax equivalent.
- Accounting profit is adjusted for any actuarial adjustments to unfunded superannuation impacting the Statement of Financial Performance to derive TER adjusted accounting profit.
- The prevailing rate of company income tax is applied to TER adjusted accounting profit to determine the tax equivalent.
- The Chief Commissioner may, in exceptional circumstances, adjust the TER adjusted accounting profits for a reporting period.
- Where accounting treatment and taxation treatment differ, the TER will apply accounting treatment.

### 2.1 Application of the Policy

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In accordance with the principle of competitive neutrality, the purpose of the TER is to subject Government businesses to the commercial disciplines of making income tax equivalent payments.

The TER can apply to any Government businesses which comes under the Commercial Policy Framework, except those covered by the NTER. It can also apply to any GSF agency or part of a GSF agency that has been assessed as operating in a competitive market. Treasury may undertake periodic reviews of these Government businesses to consider which the TER may apply.

Newly formed Government businesses 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.

This policy refers to a 'TER entity'. A TER entity is a Government business or other GSF agency to which the Treasurer has directed to pay amounts under the TER in accordance with section 5.3 of the GSF Act.

The roles and responsibilities of stakeholders under the TER are summarised in the **Practice Guide** at **section 5.1**.

### 2.2 Exemptions

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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 grant an exemption where specific conditions warrant the consideration and competitive neutrality issues are unlikely to arise.<sup>10</sup>

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<sup>10</sup> Competitive neutrality issues may arise when the Government business or entity 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

An exemption may be granted 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>11</sup>

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

## 2.3 Accounting Profit Model

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The TER adopts an Accounting Profit Model. Under the Accounting Profit Model, the prevailing rate of company income tax is applied to the TER adjusted accounting profit of the relevant TER entity. The accounting profit of a TER entity 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.

For further information about the Accounting Profit Model, see the **Practice Guide 5.2**.

## 2.4 Exceptional Circumstances

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Revenue NSW is responsible for monitoring the application of the Accounting Profit Model to TER entities. Revenue NSW will give particular attention to addressing and minimising the 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.

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.

## 2.5 Accounting Treatment

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Where, under normal circumstances accounting treatment and taxation treatment differ, the accounting profits model will apply accounting treatment. For examples of where differences between accounting treatment and taxation treatment occur, see the **Practice Guide 5.3**.

# 3 Tax Equivalent Regime (TER) Manual

## 3.1 Chief Commissioner to Administer TER

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The Chief Commissioner of Revenue NSW administers the TER. 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 Revenue NSW officers.

The relationship between the Chief Commissioner and entities under the TER is based substantially on the same rights and responsibilities that exist between taxpayers and the Federal Commissioner of Taxation. **Manual Appendix 4.1** summarises the administration of tax equivalent payments under the TER.

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- The business' influence on the market  
- Resources commanded, and/or  
- Effect of poor performance.

<sup>11</sup> For further details, refer to Treasury's Policy & Guidelines Paper "Policy Statement on the Application of Competitive Neutrality" (TPP 02-1), January 2002.

## 3.2 Registration

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NSW Treasury is responsible for determining which Government businesses or other GSF agencies will participate in the TER. Treasury is also responsible for notifying entities of their inclusion in the TER.

Following notification, participating TER entities are required to register with the Chief Commissioner. Registration should occur at least 28 days prior to commencement in the TER using the Registration Form (see **Manual Appendix 4.2**).

## 3.3 Quarterly Instalment System

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All TER entities 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 is substantially in accordance with the Federal Pay As You Go (PAYG) Instalment provisions. The main difference is that the instalments are paid directly to Revenue NSW. Where applicable, penalties and interest are also paid to Revenue NSW.

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 Revenue NSW, or by a self-selected/varied rate. There is no requirement to pay instalments unless the Chief Commissioner has notified the TER entity in writing of the instalment rate.

TER entities that are liable to pay instalments must notify the Chief Commissioner of their instalment income for the relevant period by completing a Quarterly Instalment Report (see **Manual Appendix 4.3**). Instalments are usually reported and paid within 28 days after the end of each quarter.

## 3.4 Transitional Instalment Rate

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Those already participating in the TER at the time of this policy release:

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

If an 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 an instalment rate was not given under the previous TER, the instalment rate payable is that chosen by the TER entities.

## 3.5 Calculation of Instalment Rate

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Revenue NSW calculates the instalment rate payable by a TER entity 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 TER entity 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 (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.

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

### 3.6 Varying the Instalment Rate

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A TER entity may use the instalment rate given by Revenue NSW or it can choose to vary that rate. TER entities must provide Revenue NSW with reasons for varying the given rate. Typical reasons for variation 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 TER entity chooses to vary the rate, Revenue NSW will check the varied rate against the benchmark instalment rate calculated when that TER entity lodges its annual income tax equivalent return.

Consistent with the ATO's approach to private taxpayers, a TER entity 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, Revenue NSW.

A TER entity may also apply for a change in the instalment rate by making an application in writing to Revenue NSW. Revenue NSW will make a determination within 28 days of receipt of the application.

Revenue NSW may also advise changes to a TER entity's 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.

### 3.7 Instalment Information to be Given to the Chief Commissioner

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TER entities 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 (see **Manual Appendix 4.3**) 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).

### 3.8 Where no Instalment Rate is given

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TER entities 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 TER entities become due and payable on the due date for lodgement of the income tax equivalent annual return for the relevant year of income.

However, TER entities 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.

### 3.9 Annual Returns

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All TER entities 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.

Revenue NSW will formally notify TER entities in July of each year of the form, content and manner of lodging annual returns. TER entities are to use the Annual Return Form (see section **Manual Appendix 4.4**) or a form approved by the Chief Commissioner.

TER entities 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.

### 3.10 Assessments

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Under the full self-assessment system, the Annual Return will be deemed to be an assessment of income tax equivalent for that year, and to have been served on the TER entity by the Chief Commissioner. The return is deemed to be the served notice of assessment.

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 constraints under the *Taxation Administration Act 1996*.

A TER entity 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 TER entities 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.

### 3.11 Penalty Tax and Interest Payable for Tax Shortfalls

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

- 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 TER entity exercises reasonable care and has a reasonably arguable position, they will not be subject to tax shortfall penalties.

Penalty tax is reduced where the TER entity voluntarily discloses the tax shortfall. The reduction is much greater if the disclosure is made before the TER entity is notified of any audit/investigation action by Revenue NSW.

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.

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

### **3.12 Advice, Public and Private Rulings**

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A TER entity may seek advice from the Chief Commissioner, and/or a public or private ruling on how the TER applies to the entity. 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 entity.

### **3.13 Application for Internal Review**

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A TER entity 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 60 days of service of the TER related decision. A TER related decision includes:

- TER advice
- a private ruling
- the deemed assessment upon lodgement by an entity of a TER return, and
- the amendment of a TER assessment.

### **3.14 Compliance Assurance Measures**

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The Chief Commissioner is entitled to conduct compliance assurance activities in relation to a TER entity. 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 the TER entity is found in Revenue NSW publications available on the Revenue NSW website.

## 4 Manual Appendices

### 4.1 Administration of Tax Equivalent Payments

The following table summarises the administration of tax equivalent payments. Treasury will advise the TER entity of any changes in timing in the context of the annual updates to the *Reporting Calendars*.

Item	Timing	Responsibility
<b>For entities new to the TER</b>		
Notification to the entity regarding their inclusion in the TER	Following formal endorsement of TER policy	NSW Treasury
Following notification, registration with the Chief Commissioner of Revenue NSW (Manual Appendix 4.2)	At least 28 days prior to commencement in the TER	TER entity
Instalment rate advised by Revenue NSW to the TER entity	At time of registration	Revenue NSW
<b>For all Government businesses subject to the TER</b>		
Quarterly Instalment Report as per Manual Appendix 4.3	On or before payment of quarterly instalment	TER entity
Payment of quarterly instalment	Within 28 days after the end of the quarters ending 30 September, 31 December, 31 March and 30 June	TER entity
Notification of TER entity of the form, content and manner of lodging annual returns	July after the financial year	Revenue NSW
Lodgement of income tax equivalent annual returns to Revenue NSW including Manual Appendix 4.4	1 December after the financial year or as advised by Revenue NSW	TER entity
Changes in the instalment rate as advised by Revenue NSW	At least 28 days before the end of the quarter to which the amended rate applies	Revenue NSW
Changes in the instalment rate as requested by a TER entity	Revenue NSW to make a determination within 28 days of receipt of application	Revenue NSW

## 4.2 Registration Form

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Available online at <https://www.revenue.nsw.gov.au/help-centre/resources-library/forms/reqime/ote002.pdf>

TAX EQUIVALENT REGIME	
1. Name of NSW entity	
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. Email address of Contact Office	
9. Description of Principal Business Activity	
10. ANZIC Code	
11. Date of Commencement in TER	

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



## 4.3 Quarterly Instalment Report

Available online at <https://www.revenue.nsw.gov.au/help-centre/resources-library/forms/regime/ote003.pdf>

TAX EQUIVALENT REGIME FOR NSW Pay As You Go Instalment Report of Income Tax Equivalent For the period __/__/____ to __/__/____	
1. Name of NSW TER entity	
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. PAYG Calculation	
A. Instalment income	\$
B. Instalment rate	%
C. New varied instalment rate*	%
D. Credit arising from reduced PAYG instalments	\$
E. PAYG Tax Equivalent Instalment ((A x B or C) – D)	\$
12. Deferred company/fund instalment	\$
13. Net Amount This Report (11E + 12) \$	\$

\* Provide reason and supporting information for change.

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

## 4.4 Annual Return Form

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Available on the Revenue NSW website at <https://www.revenue.nsw.gov.au/help-centre/resources-library/forms/regime/ote001.pdf>

## 5 Practice Guides

### 5.1 Roles and Responsibilities of Stakeholders

Stakeholder	Roles and Responsibilities under the TER
<b>Boards and management of TER entity</b>	<p>Required to:</p> <ul style="list-style-type: none"> <li>▪ comply with the TER and pay income tax equivalents to Revenue NSW;</li> <li>▪ provide information to satisfy quarterly reporting requirements; and</li> <li>▪ advise the Treasurer of any significant changes to the profitability of the entity and the potential impact on tax equivalent payments.</li> </ul>
<b>NSW Treasury</b>	<p>Responsible for developing and administering the TER Policy. This involves:</p> <ul style="list-style-type: none"> <li>▪ developing, promulgating and promoting the TER;</li> <li>▪ consulting with stakeholders;</li> <li>▪ updating and revising the TER where necessary; and</li> <li>▪ acting as an arbitrator in disputes between Revenue NSW and the TER entity about the intended operation of the TER.</li> </ul> <p>Performs the following tasks on behalf of the Treasurer:</p> <ul style="list-style-type: none"> <li>▪ monitoring tax equivalent amounts paid by the TER entities;</li> <li>▪ reporting movements in the tax equivalent payments upon finalisation of the annual accounts and associated reasons in quarterly reports;</li> <li>▪ advising Revenue NSW of participating entities prior to their commencement in the TER and their date of commencement; and</li> <li>▪ liaising with Revenue NSW on the amount of tax equivalents collected from TER entities.</li> </ul>
<b>Revenue NSW</b>	<p>Responsible for administering the TER. This involves:</p> <ul style="list-style-type: none"> <li>▪ advising TER entities on the amount of tax equivalents payable</li> <li>▪ maintaining a register of participating TER entities</li> <li>▪ processing TER tax returns and amending assessments</li> <li>▪ conducting audits and imposing penalties and/or interest where necessary</li> <li>▪ undertaking compliance risk assessment activities, and</li> <li>▪ providing rulings, instructions, guidelines and interpretative advice to participating TER entities.</li> </ul>

## 5.2 Conceptual Basis for the Accounting Profit Model

### Key points:

The Accounting Profit Model applied under the TER possesses the following characteristics:

- Efficiency
- Equity
- Integrity, and
- Simplicity.

Characteristic	Applicability to Tax Equivalent Regime
<b>Efficiency</b>	<p>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 TER entities and their private sector counterparts. The TER removes the potential for commercial decisions by a NSW government entities from being distorted by the absence of any requirement to pay income tax.</p> <p>The Accounting Profit Model is efficient if the amount of tax equivalents payable ensures competitive neutrality between TER entities and their private sector competitors.</p>
<b>Equity</b>	<p>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.</p> <p>To the extent that the accounting profit of a TER entity 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.</p>
<b>Integrity</b>	<p>Newly formed Government businesses 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.</p> <p>The integrity of the Accounting Profit Model depends on whether it can be sustained as an alternative to the <i>Income Tax Assessment Act 1997</i> (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.</p> <p>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.</p> <p>Smaller entities that fall under the TER face an appropriate tax discipline, without the imposition of undue costs.</p>
<b>Simplicity</b>	<p>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.</p> <p>This is especially important for small entities where the cost of calculating taxable income under the ITAA would be disproportionate to the benefits received.</p>

### 5.3 Examples of where differences between accounting treatment and taxation treatment occur

Example	Treatment to apply
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
Trading stock	Accounting treatment to apply

## 6 Glossary

Term	Meaning
<b>Accounting profit</b>	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.
<b>Base assessment instalment income</b>	The TER adjusted accounting profit disclosed in the most recent income tax year. Where a loss was disclosed, this amount will be zero.
<b>ITAA</b>	Refers to: <ul style="list-style-type: none"> <li>▪ The <i>Income Tax Assessment Act</i> tax equivalent model as applied by entities under the NTER, and/or</li> <li>▪ The <i>Income Tax Assessment Act 1997 (Cth)</i> and the <i>Income Tax Assessment Act 1936 (Cth)</i> as applied by privately owned businesses.</li> </ul>
<b>NTER</b>	Refers to the <i>National Tax Equivalent Regime</i> , as produced by the ATO.
<b>Notional tax</b>	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.
<b>Tax equivalents</b>	Income tax equivalent payments made to Revenue NSW under the TER or NTER. Tax equivalents are classified as a business expense and not a financial distribution.
<b>TER</b>	Refers to the <i>Tax Equivalent Regime</i> , administered by the Chief Commissioner of Revenue NSW and the basis for this Policy.
<b>TER adjusted accounting profit</b>	Accounting profit adjusted for any actuarial adjustments to unfunded superannuation that impact the Statement of Financial Performance.

## 7. Further information and contacts

For NSW entities, general inquiries should initially be directed to your Treasury Relationship Lead for your Cluster or government business.

For further information or clarification on competitive neutrality issues raised in this Policy, please contact:

Productivity Reform, Economic Strategy Division, NSW Treasury  
Telephone: 02 9228 4567  
Email: [contact@treasury.nsw.gov.au](mailto:contact@treasury.nsw.gov.au)

For TER specific inquiries, please contact:

The Tax Equivalent Regime Administrator, Revenue NSW  
GPO Box 4042  
Sydney NSW 2001  
Telephone: 1300 139 817  
Email: [tax.equivalents@revenue.nsw.gov.au](mailto:tax.equivalents@revenue.nsw.gov.au)

For further information on the Commercial Policy Framework, please contact:

Email: [CommercialPolicy@treasury.nsw.gov.au](mailto:CommercialPolicy@treasury.nsw.gov.au)