

**Manual for the**

**National Tax Equivalent Regime**

**January 2008**  
**(Version 6)**

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## PRELIMINARY

### ABOUT THIS MANUAL

#### Manual for the NTER

1. This is a Manual of the administrative and technical operating features of the National Tax Equivalent Regime (the NTER).
2. The Manual facilitates the establishment of the NTER, as foreshadowed in the Inter-Governmental Agreement on the Reform of Commonwealth-State Financial Relations, and is consistent with:
  - i) the November 2000 Final Report of the Heads of Treasuries Working Party on NTER; and
  - ii) the Memorandum of Understanding on NTER (the Memorandum), between the Commonwealth of Australia, the Commissioner of Taxation (the Commissioner) and all of the States and Territories.

#### Application

3. This Manual applies on or after 1 July 2001 to the State and Territory government-owned enterprises (the NTER entities) listed in the NTER entity register.

[History: Paragraph 3 amended by January 2008 (Version 6), with effect from 1 January 2008, by replacing reference to 'at Attachment 1' with reference to 'in the NTER entity register'.]

#### Amending the Manual

4. This Manual may be amended only as set out in the Memorandum.

[History: Paragraph 4 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 4 formerly read:

This Manual may be amended as follows:

- (i) a State or Territory at any time may amend that part of Attachment 1 which concerns the NTER entities of that State or Territory, subject to the amendment being consistent with an amendment by the State or Territory to schedule 1 of the Memorandum;
- (ii) the Commissioner at any time may amend Attachment 5 which concerns the Commissioner's address and the ATO contact officers in relation to NTER matters; and
- (iii) all other amendments to this Manual may be made only with the unanimous agreement of the Commissioner and all of the States and Territories. ]

## Interpretation

5. In this Manual, unless a contrary intention appears:

'**ATO**' means the Australian Taxation Office;

'**Commissioner**' means the Commissioner of Taxation;

'**ITAA 1936**' means the *Income Tax Assessment Act 1936*;

'**ITAA 1997**' means the *Income Tax Assessment Act 1997*;

'**Memorandum**' means the Memorandum of Understanding on NTER between the Commonwealth of Australia, the Commissioner and all of the States and Territories;

'**NTER**' means the National Tax Equivalent Regime;

'**NTER entity**' means a State or Territory government-owned enterprise listed in the NTER entity register;

[History: Meaning of 'NTER entity' amended by January 2008 (Version 6), with effect from 1 January 2008, to replace reference to 'Attachment 1' with reference to 'the NTER entity register'.]

'**NTER entity register**' means the register of the NTER entities referred to in the Memorandum;

[History: Paragraph 5 amended by January 2008 (Version 6), with effect from 1 January 2008, to insert meaning of 'NTER entity register'.]

'**NTER related activities**' means the activities of NTER administration, to be undertaken by the Commissioner, which are set out in Attachment 2;

'**NTER Work Plan**' means a work plan as described in clause 12 of the Memorandum;

[History: Paragraph 5 amended by January 2008 (Version 6), with effect from 1 January 2008, to insert meaning of 'NTER Work Plan'.]

'**PAYG instalment report**' means the form provided at Attachment 3 on which NTER entities advise the Commissioner of their quarterly NTER income and quarterly instalment of expected income tax equivalent liability;

'**Relevant taxation laws**' means the federal income tax laws listed in Attachment 4, modified in accordance with this Manual. The relevant taxation laws constitute the administrative and technical rules of the NTER;

'**TAA 1953**' means the *Taxation Administration Act 1953*; and

'**TER**' means a tax equivalent regime of a State or Territory.

## PART 1: THE NATIONAL TAX EQUIVALENT REGIME

### NTER IS AN ADMINISTRATIVE ARRANGEMENT

6. The NTER is an administrative arrangement under which relevant taxation laws will be applied notionally to the NTER entities as if they were subject to those laws.
7. Each NTER entity will be assessed annually as to its income tax equivalent liability and will be required to pay quarterly instalments of the (expected) liability to the Treasury or Revenue Office of the State or Territory to which the NTER entity belongs. However, NTER entities do not become subject directly to the income tax laws as a result of their participation in the NTER.

### OBJECTIVE OF NTER

8. The primary objective of the NTER is to promote competitive neutrality, through a uniform application of income tax laws, between the NTER entities and their privately held counterparts.

### RELEVANT TAXATION LAWS

9. The relevant taxation laws constitute the technical and administrative rules of the NTER, and consist of these two elements:
  - (i) the federal income tax laws listed at Attachment 4; and
  - (ii) modifications to the federal income tax laws as set out in this Manual.
10. The modifications to the federal income tax laws are considered necessary to take into account the NTER entities' tax history, ownership by State or Territory governments and activities which may be regarded as unique to public sector enterprises.

### RELATIONSHIP WITH STATE AND TERRITORY TERS

11. The NTER represents an evolution of the concepts and practices of the State and Territory based tax equivalent regimes (the TERS) which have been established for a number of years. An entity commencing in the NTER between 1 July 2001 and 1 July 2002 will have been subject to a TER during the period immediately preceding its commencement in the NTER.

## PART 2: THE NTER ENTITIES

### STATE AND TERRITORY GOVERNMENT-OWNED ENTERPRISES

12. The NTER entities to which this Manual applies, are the State and Territory government-owned business enterprises which are listed in the NTER entity register.

[History: Paragraph 12 amended by January 2008 (Version 6), with effect from 1 January 2008, to replace reference to 'Attachment 1' with reference to 'the NTER entity register'.]

13. An NTER entity may be listed to participate in the NTER, or removed from the listing, at the sole discretion of its State or Territory owner-government.
14. Subsidiaries or other enterprises wholly-owned by an NTER entity will not automatically participate in the NTER. To participate, the subsidiaries or other enterprises must also be listed in the NTER entity register by the relevant State or Territory.

[History: Paragraph 14 amended by January 2008 (Version 6), with effect from 1 January 2008, to replace reference to 'Attachment 1' with reference to 'the NTER entity register'.]

15. Entities which are actually subject to federal income tax are not eligible to participate in the NTER.

### NTER ENTITIES REQUIRED TO FOLLOW THIS MANUAL

16. Each NTER entity is required to follow this Manual, and thereby to comply with the relevant taxation laws, pursuant to the TER legislation of the State or Territory to which the NTER entity belongs. That requirement may be provided for directly in the legislation, or through an instrument (e.g. a Treasurer's Instruction) prepared in accordance with the legislation, or by some other means.
17. NTER entities will not be entitled to use an accounting profits model to determine their (equivalent) taxable income or instalment income for the purposes of the NTER.

## PART 3: ADMINISTRATION OF THE NTER

### COMMISSIONER TO ADMINISTER NTER

18. The Commissioner will undertake administration of the NTER and may delegate any or all of the NTER related activities, listed at Attachment 2, to officers of the Australian Taxation Office.

### RELATIONSHIP BETWEEN ENTITIES & COMMISSIONER

19. The relationship between the Commissioner and the NTER entities will be based substantially on the same rights and responsibilities which exist between taxpayers and the Commissioner under the federal income tax laws.
20. However, the clear intention is for the NTER to be carried on in a spirit of cooperation between the Commissioner, the States and Territories and the NTER entities. As such, the relationship between the Commissioner and the entities should be less formal than a relationship based purely on the law.
21. Unless a contrary intention is provided in this Manual, the Commissioner will be subject to the same performance standards, principles and obligations with respect to dealings with the NTER entities as exist under the federal income tax laws and the Commissioner's administrative practices in relation to taxpayers.
22. The standards, principles and obligations to be followed by the Commissioner in the NTER include those contained in the relevant taxation laws, the *Taxpayers' charter*, the ATO's annual *Compliance program* and the ATO publication titled *Large business and tax compliance 2006*.

[History: Paragraph 22 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 22 formerly read:

The standards, principles and obligations to be followed by the Commissioner in the NTER include those contained in the relevant taxation laws, the *Taxpayer's charter* and the *Co-operative compliance model*.]

### NTER RELATED ACTIVITIES OF THE COMMISSIONER

23. The Commissioner will undertake administration of the NTER by undertaking the NTER related activities listed at Attachment 2.
24. The Commissioner will also report periodically to State and Territory Treasuries, providing information about payments due and payable by or to

their NTER entities, NTER related activities and general 'health of the system' matters.

- 24A. The State or Territory to which an NTER entity belongs will be entitled to copies of any NTER related information (e.g. NTER PAYG instalment reports, NTER annual returns) about that entity provided to or held by the Commissioner in undertaking his administration of the NTER.

[History: Paragraph 24A inserted by March 2004 (Version 3) with effect from 1 July 2001.]

#### **ATO CONTACT DETAILS FOR NTER**

25. The address of the Commissioner for lodgment of all NTER related material (including general correspondences, requests, returns and statements), and the contact details for officers of the ATO to whom NTER related inquiries may be directed, are provided at Attachment 5.

## PART 4: NTER GENERAL FEATURES

### COMMENCEMENT DATE OF THE NTER

26. The NTER commences on 1 July 2001.

[History: Paragraph amended by March 2004 (Version 3).

Paragraph 26 formerly read:

The NTER commences on 1 July 2001 and applies from that date to the NTER entities listed in Attachment 1.]

### FEDERAL INCOME TAX LAWS

27. The NTER is based on the federal income tax laws, listed at Attachment 4, which are to be strictly observed by NTER entities except to the extent that those laws are expressly altered or modified by this Manual.

### RELEVANT TAXATION LAWS

28. The relevant taxation laws are comprised of the federal income tax laws and the modifications thereto set out in this Manual. The relevant taxation laws constitute the administrative and technical rules to be applied in the NTER and to which NTER entities are to comply.

### AVOIDANCE OF DOUBLE TAXATION

29. As a fundamental principle, the NTER will operate in a manner which ensures that:
- (i) NTER entities are not, through the NTER, subjected to actual federal income taxes; and
  - (ii) NTER entities are not subjected to double taxation involving an actual federal tax liability and an NTER tax equivalent liability in respect of the same item of income or expenditure.
30. To the extent that an actual income tax liability (i.e. non NTER tax equivalent), or double taxation, occurs then application for relief from the NTER tax equivalent liability should be lodged with the Commissioner. Such applications are to be in writing and provide all the relevant circumstances. The Commissioner will consider any such application received, and will provide relief as appropriate in accordance with this Manual.

## PART 5: NTER ADMINISTRATIVE FEATURES

### REGISTRATION

31. Each NTER entity must register as such with the Commissioner.

[History: Paragraph 31 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 31 formerly read:

Each NTER entity must register as such with the Commissioner and should do so at least 28 days prior to commencing in the NTER.]

32. In order to register, NTER entities will be required to provide the Commissioner with their details as set out in the example registration form provided at Attachment 6.

### RECORD KEEPING

33. There are general and various specific provisions of the income tax laws which require taxpayers to maintain records in certain form.

#### General record keeping requirements

34. Section 262A of the ITAA 1936 provides the general record keeping requirements for the purposes of the ITAA 1936 and ITAA 1997. Under section 262A, a person carrying on a business is required to keep records that record and explain all transactions and other acts engaged in by the person that are relevant for any purpose of the Act. The records which are to be kept include any documents which are relevant for the purpose of ascertaining the person's income and expenditure and any documents that contain particulars of any elections, estimates, etc., made by the person under the ITAA 1936 or ITAA 1997.
35. Records must be kept in such a manner as to enable the person's liability under the ITAA 1936 or the ITAA 1997 to be readily ascertained. Generally, a person must keep the records for five years after the person prepared or obtained them, or five years after the completion of the transaction or acts to which they relate (whichever is the later).

#### CGT record keeping requirements

36. In respect of CGT, section 121-20 of the ITAA 1997 requires taxpayers to keep records of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether a capital gain or capital loss is made from a CGT event. (It does not matter whether the CGT event has already happened or may happen in the future.)

## Record keeping requirements in the NTER

37. Subject to the grandfathering rules, all NTER entities will be required to keep records in accordance with the provisions of the relevant taxation laws which are concerned with record keeping, including section 262A of the ITAA 1936 and Division 121 of the ITAA 1997.

## References

38. Further guidance on record keeping may be found in Income Tax Rulings TR 96/7 and TR 2005/9.

[History: Paragraph 38 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 38 formerly read:

Further guidance on record keeping may be found in Income Tax Ruling TR 96/7; and the ATO Publication titled *Record Retention – A Guide for Companies.*]

## PAYG INSTALMENT SYSTEM

39. Pay As You Go (PAYG) instalments is an integrated system for certain taxpayers, including businesses and companies, to report and pay instalments of their income tax. The PAYG instalment system is set out in Part 2-10 of schedule 1 of the TAA 1953.
40. In respect of quarterly instalments, the amount is worked out by multiplying instalment income for the quarter by the rate given by the Commissioner, or by a self-selected rate. There is no requirement under the PAYG instalment system to pay instalments unless the Commissioner has given an instalment rate.
41. A taxpayer liable to instalments must notify the Commissioner in the 'approved form' of the amount of their instalment income for the relevant period.

[History: Paragraph 41 amended by January 2006 (Version 5) with effect from the instalment quarter ending 30 September 2005, by deleting second sentence.

Paragraph 41 formerly read:

A taxpayer liable to instalments must notify the Commissioner in the 'approved form' of the amount of their instalment income for the relevant period. Instalments are usually to be reported and paid within 28 days after the end of each quarter.]

**Quarterly instalments payable in the NTER**

42. All NTER entities will be liable to pay quarterly instalments of their (expected) income tax equivalent liability for an income year. However, quarterly instalments will not be payable by an NTER entity unless it has been given or is deemed to have been given written notice of an instalment rate by the Commissioner.
43. The processes by which NTER instalments are to be reported and paid by NTER entities will be substantially in accordance with the PAYG instalment provisions contained in Part 2-10 of schedule 1 of the TAA 1953 – save that instalments will be paid by NTER entities directly to the Treasury or Revenue Office of the State or Territory to which they belong; and that instalments will be reported and paid by all NTER entities on or before the 21st day of the month after the end of each quarter.

[History: Paragraph 43 amended by January 2006 (Version 5) with effect from the instalment quarter ending 30 September 2005, by inserting concluding words.

Paragraph 43 formerly read:

The processes by which NTER instalments are to be reported and paid by NTER entities will be substantially in accordance with the PAYG Instalment provisions contained in Part 2-10 of schedule 1 of the TAA 1953 – save that instalments will be paid by NTER entities directly to the Treasury or Revenue Office of the State or Territory to which they belong.]

**Instalment rate deemed to be given by the Commissioner**

44. At the time of their commencement in the NTER, certain NTER entities will be deemed to have been given written notice of a PAYG instalment rate by the Commissioner. The relevant NTER entities are those which were given a PAYG instalment rate under a predecessor TER, or have lodged an annual return under a predecessor TER. The instalment rate deemed to have been given to an NTER entity by the Commissioner will be as follows:
- (i) where a rate was given under a predecessor TER, the rate last given; or
  - (ii) where a rate was not given under a predecessor TER, the rate chosen by the NTER entity.

**An NTER entity may vary rate**

45. An NTER entity may elect to use an instalment rate given or deemed to have been given by the Commissioner or may vary that rate in accordance with subdivision 45-F of Part 2-10 of the TAA 1953. Where an NTER entity uses a varied instalment rate which is less than 85% of the instalment rate which would have covered an income tax equivalent liability, the NTER entity will be liable to pay an NTER interest charge. This liability to the NTER interest charge will be on the same basis that a taxpayer would be liable to the general interest charge in like circumstances.

**Instalment information to be given to the Commissioner**

46. NTER entities which are required to pay quarterly instalments will be required to lodge with the Commissioner their NTER instalment details calculated in accordance with Part 2-10 of the TAA 1953. For NTER purposes, the 'approved form' is the PAYG instalment report provided at Attachment 3.
47. Details of an NTER instalment must not be included on a business activity statement prepared by an NTER entity pursuant to an actual federal tax obligation.

**Instalments payable to State/Territory Treasury or Revenue Office**

48. NTER instalments of income tax equivalents, and any penalties or interest payable under the NTER instalment system, become due and payable by the NTER entity to the Treasury or Revenue Office of the State or Territory to which the NTER entity belongs. Under no circumstances should any NTER related debt of an NTER entity be remitted to the Commissioner at the Australian Taxation Office.

**Where no instalment rate given or deemed**

49. NTER entities which have not been given or deemed to have been given a PAYG instalment rate by the Commissioner will not be required to pay quarterly instalments of their expected income tax equivalent liability. The income tax equivalent liabilities of any such NTER entity will become due and payable in accordance with section 204(1A) of the ITAA 1936, and paragraph 60A below.

[History: Paragraph 49 amended by January 2006 (Version 5) with effect from the 2005 income year, by inserting the concluding words 'and paragraph 60A below'.]

50. However, NTER entities which 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.

**References**

51. The provisions relating to PAYG instalments are found in Division 45 of Part 2-10 of schedule 1 of the TAA 1953. Further information on instalments may be found in the ATO publication titled *PAYG instalments – how to complete your activity statement (NAT 7393-08.2007)*.

[History: Paragraph 51 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 51 formerly read:

The provisions relating to PAYG Instalments are found in Division 45 of Part 2-10 of schedule 1 of the TAA 1953. Further information on instalments may be found in the ATO publication titled *Activity statement instructions – PAYG instalments (NAT 7393-10.2003)*.]

[History: Paragraph 51 amended by January 2006 (Version 5), by replacing reference to 'Business Activity Statement Instructions, (at Section 7 - Pay As You Go Instalment)' with reference to '*Activity statement instructions – PAYG instalments (NAT 7393-10.2003)*'.

## DEFERRED COMPANY INSTALMENT

52. An NTER entity may be liable to pay, after 30 June 2001, a number of quarterly instalments of a deferred TER company instalment of income tax equivalent. A particular quarterly instalment of the deferred amount is to be reported in the PAYG instalment report, a copy of which is provided at Attachment 3, for the quarter ending on the date the quarterly instalment becomes due and payable.
53. The quarterly instalment will be netted with the PAYG instalment amount for the quarter. The net amount shown in the PAYG instalment report will be paid to, or received as a credit from, the Treasury or Revenue Office of the State or Territory to which the NTER entity belongs.

## ANNUAL NTER RETURNS

54. The legislative requirements relating to lodgment of income tax returns and to assessments are contained in Part IV of the ITAA 1936.
55. The requirement for taxpayers to lodge income tax returns is found in section 161 of the ITAA 1936. Under section 161, the Commissioner, in a notice published in the Gazette, specifies persons that are required to lodge annual income tax returns.
56. Part IV also contains the provisions relating to the form, content and manner of lodging annual returns.

## NTER return for companies

57. For the purposes of the NTER, all NTER entities will be required to lodge NTER annual returns with the Commissioner in the same manner required of taxpayers under the provisions of Part IV of the ITAA 1936 and the lodgment requirements for companies as specified by the Commissioner in the Gazette. The due dates for the lodgment of annual NTER returns by all NTER entities will be substantially in accordance with the due dates for large companies outlined in the Commissioner's annual tax agent *Lodgment Program*. The Commissioner will issue an *NTER Lodgment Circular* outlining the due dates for the lodgment of annual NTER returns by NTER entities for

a particular income year. Each annual *NTER Lodgment Circular* will be attached at Attachment 8.

[History: Current version of paragraph 57 inserted by January 2006 (Version 5) with effect from the 2005 income year.

Paragraph 57 formerly read:

For the purposes of the NTER, all NTER entities will be required to lodge NTER annual returns with the Commissioner in the same manner required of taxpayers under the provisions of Part IV of the ITAA 1936 and the lodgment requirements for companies as specified by the Commissioner in the Gazette.]

58. Exemptions from lodging a return, which are also specified in the Gazette, will not be available to NTER entities.

### **NTER return form & content**

59. The form and content of the NTER return is identical to the Commissioner's 'C' return for company taxpayers, save that the NTER return is appropriately identified as such. The Commissioner will issue the annual NTER 'C' return form at the same time as his annual *NTER Lodgment Circular* referred to at paragraph 57 above.

[History: Paragraph 59 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 59 formerly read:

The form and content of the NTER return is identical to the Commissioner's 'C' return for company taxpayers, save that the NTER return is appropriately identified as such. A copy of the NTER return for the 2001/02 year is provided at Appendix 7. The NTER return for the 2002/03 year was sent to NTER entities in Bulletin 4 of September 2003.]

[History: Paragraph 59 amended by March 2004 (Version 3), with effect from 1 July 2002.]

60. The NTER 'C' return is to be completed by every NTER entity irrespective of whether it is a separately legal entity or otherwise.

### **Balancing payments for NTER income year**

- 60A. All NTER entities will be liable to pay a balancing payment of any income tax equivalent liability for an NTER income year that is owing, worked out in accordance with the calculation statement contained in the NTER 'C' return. Balancing payments will be paid by NTER entities directly to the Treasury or Revenue Office of the State or Territory to which they belong. The due date for the payment of balancing payments by all NTER entities will be substantially in accordance with the due dates for large companies outlined in the Commissioner's annual tax agent *Lodgment Program*. In his annual *NTER Lodgment Circular* referred to at paragraph 57 above, the

Commissioner will outline the due dates for the payment of balancing payments by NTER entities for a particular income year.

[History: Paragraph 60A inserted by January 2006 (Version 5), with effect from the 2005 income year.]

## **ASSESSMENTS**

61. Under the full self assessment system, and pursuant to section 166A of the ITAA 1936, an assessment of taxable income is deemed to have been made by the Commissioner and served on a 'full self-assessment taxpayer' (includes a company) on the day on which the return is furnished. The return is deemed to be the served notice of assessment.

[History: Paragraph 61 amended by January 2006 (Version 5), with effect from 1 July 2001, by replacing reference to 'relevant entity' with reference to 'full self-assessment taxpayer'.]

### **NTER Assessments**

62. The deemed assessment provisions contained in section 166A of the ITAA 1936 will apply for the purposes of the NTER. The NTER annual return will be deemed to be an assessment of income tax equivalent for that year, and to have been served on the NTER entity by the Commissioner.

### **Amended assessments**

63. The Commissioner's power to amend assessments is contained in section 170 of the ITAA 1936.
64. The Commissioner will have the power to amend an NTER assessment, and to further amend amended NTER assessments, by making such alterations and additions as considered necessary.
65. The Commissioner's power to amend NTER assessments will be subject to the same constraints as applies to the Commissioner's power to amend assessments under section 170 of the ITAA 1936.
66. An NTER entity may apply for an amendment to an NTER assessment in accordance with subsection 170(5) of the ITAA 1936. The Commissioner may effect the amendment in accordance with the NTER entity's application without verification of the details provided in the application – in effect enabling NTER entities to self-amend assessments. However, where it is later found that relevant details of the NTER entity's application were incorrect, the Commissioner may further amend the amended assessment and, in appropriate circumstances, penalties may apply.

[History: Paragraph 66 amended by January 2006 (Version 5), with effect from the 2005 income year, by replacing reference to 'sub-section 170 (6)' with reference to 'sub-section 170 (5)'.]

67. The Commissioner will not be entitled to amend any assessment of an NTER entity which relates to a time prior to the time at which the NTER entity first commenced in the NTER.

## **PENALTIES & INTEREST**

68. An administrative penalty regime applying to taxpayers is contained in schedule 1 to the TAA 1953. Under that regime, penalties may be applied in respect of statements and schemes (Division 284), lodgment of documents (Division 286) and record retention/production and access (Division 288). The penalty regime also allows for remission of penalties under certain circumstances.
69. NTER entities will be subject to the penalty regime contained in schedule 1 to the TAA 1953, except that prosecution will not be an alternative to the administrative penalties.

## **References**

70. Additional information on the penalty regime may be found in the ATO's Law Administration Practice Statements PS LA 2000/9, 2002/8 and 2006/2. Additional information on shortfall interest charge and general interest charge for shortfall periods may be found in PS LA 2006/8. Additional information on general interest charge for late payments may be found in the chapter 'General interest charge' in the *ATO receivables policy*.

[History: Paragraph 70 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 70 formerly read:

Additional information on the penalty regime may be found in the ATO's Law Administration Practice Statements PSLA 2000/9, 2002/8 and 2004/5.]

[History: Paragraph 70 amended by March 2004 (Version 3), with effect from 1 July 2001. Paragraph 70 amended by February 2005 (Version 4) with effect from 1 April 2004 by inserting reference to PSLA 2004/5.]

## **PAYMENT ARRANGEMENTS**

71. NTER related debts of an NTER entity include but are not limited to debts for equivalent income tax, penalties and interest which arise under the NTER. All NTER related debts of an NTER entity become due and payable to the Treasury or Revenue Office of the State or Territory to which the NTER entity belongs.

72. The processes for payment by an NTER entity of an NTER related debt will be the same as for the payment of predecessor State or Territory TER related debts, unless otherwise notified by the Treasury or Revenue Office of the relevant State or Territory.

### TAXATION YEAR END

73. NTER entities may seek leave for a substituted (i.e. non-30 June) year end by making a formal application for such to the Commissioner in the first year in which the business need arises. Substantial business reasons must be shown to support an application for a non-30 June substituted tax accounting period. Additional information on substituted tax accounting periods may be found in the ATO's Law Administration Practice Statement PS LA 2007/21.

[History: Paragraph 73 amended by January 2008 (Version 6), with effect from 1 January 2008, by inserting final sentence.]

74. NTER entities which commence in the NTER with a substituted year end granted under their preceding TER, will retain that year end unless they seek and the Commissioner grants leave to substitute it with another.

### NTER PRIVATE RULINGS

75. In accordance with the provisions of Division 359 in schedule 1 to the TAA 1953, taxpayers may seek from the Commissioner a private ruling on the way in which the Commissioner considers a relevant tax provision would apply to the taxpayer in relation to a specified scheme.

[History: Current version of paragraph 75 substituted by January 2006 (Version 5), with effect from 1 January 2006.]

Paragraph 75 formerly read:

In accordance with the provisions of Part IVAA of the TAA 1953, taxpayers may seek from the Commissioner a private ruling on the way in which, in the Commissioner's opinion, a tax law or laws would apply to the taxpayer in relation to a year of income in relation to an arrangement.]

76. NTER entities will be able to seek from the Commissioner an NTER private ruling on the way in which the relevant taxation laws would apply to the NTER entity in relation to an arrangement entered into during an NTER year of income.
77. Applications for NTER private rulings are to be made in the same manner and on the same grounds as are set out for taxpayers in Division 359 in schedule 1 to the TAA 1953.

[History: Paragraph 77 amended by January 2006 (Version 5), with effect from 1 January 2006, by replacing reference to 'Part IVAA of' with reference to 'Division 359 in schedule 1 to']

78. NTER private rulings will be binding on the Commissioner only in the context of the NTER, and only to the extent they are favourable to the particular NTER entity.

### **LIABILITY OF PUBLIC OFFICERS**

79. The public officer of an NTER entity will not be held answerable or made liable for penalties for defaults by the NTER entity under any provision of the relevant taxation laws, including section 252A(9) of the ITAA 1936.

### **OBJECTIONS AND REVIEWS**

80. NTER entities will be entitled to object against an NTER related decision of the Commissioner in accordance with the provisions of Part IVC of the TAA 1953.
81. An objection against an NTER related decision will be dealt with only by way of internal review by ATO officers. The reviewing ATO officer will be independent from and at an equal or a higher level than the ATO officer who made the disputed decision.
82. NTER entities will not be entitled to seek an external review of, or appeal against, an NTER related decision of the Commissioner, whether under a provision of the relevant taxation laws, including section 14ZZ of the TAA 1953, or otherwise. Divisions 4 and 5 of Part IVC of the TAA 1953 will not apply accordingly.
83. NTER related objections must be lodged in writing with the Commissioner within the time period set out in section 14ZW of the TAA 1953. An NTER related decision includes the issue of a NTER private ruling, the deemed assessment upon lodgment by a NTER entity of a NTER return, and the amendment of an NTER assessment. For example, an objection against a deemed NTER assessment must be lodged within four years of that deemed assessment.

[History: Paragraph 83 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 83 formerly read:

NTER related objections must be lodged in writing with the Commissioner within four years of his decision being made. An NTER related decision includes the issue of a NTER private ruling, the deemed assessment upon lodgment by a NTER entity of a NTER return, and the amendment of an NTER assessment.]

**COMPLIANCE ASSURANCE MEASURES**

84. The Commissioner will be entitled to conduct compliance assurance activities in relation to NTER entities to ensure the integrity of the NTER. These compliance assurance activities will be outlined in an agreed NTER Work Plan.

[History: Paragraph 84 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 84 formerly read:

The Commissioner will be entitled to conduct compliance assurance activities in relation to NTER entities to ensure the integrity of the NTER. These compliance assurance activities will take the form of risk assessment and audit activities.]

85. The Commissioner's approach to these compliance assurance activities and the rights and obligations as between the Commissioner and the NTER entities in that respect are to be found in the ATO's annual *Compliance program* and the ATO publications titled *Large business and tax compliance 2006* and the *Taxpayers' charter*.

[History: Paragraph 85 amended by January 2008 (Version 6) with effect from 1 January 2008.

Paragraph 85 formerly read:

The Commissioner's approach to these compliance assurance activities and the rights and obligations as between the Commissioner and the NTER entities in that respect are to be found in the ATO publications titled 'Cooperative Compliance' and the 'Taxpayers' Charter'.]

- 85A. The Commissioner will adopt a consultative approach, with the affected NTER entities and the States and Territories, towards the resolution of potential compliance risks identified by the Commissioner in these compliance assurance activities.

[History: Paragraph 85A inserted by January 2008 (Version 6) with effect from 1 January 2008.

## PART 6: NTER TECHNICAL FEATURES

### GOVERNMENT EXEMPTIONS DO NOT APPLY

86. The relevant taxation laws are to be applied in all respects as if the following provisions were not applicable to the NTER entities:
- (i) Section 50-25 of the ITAA 1997 (dealing with the income tax exemption afforded to public authorities); and
  - (ii) Division 1AB of the ITAA 1936 (dealing with the income tax exemption afforded to State/Territory bodies)
87. For example, whether or not a tax deduction is allowed under section 8-1 of the ITAA 1997 is to be considered as if the reference in paragraph 8-1(2)(c) to gaining or producing exempt income did not apply to the extent that the above exemptions are involved.
88. As a further example, section 51AD of the ITAA 1936 and Division 16D of the ITAA 1936 and Division 250 of the ITAA 1997, to the extent that these provisions might otherwise apply in relation to various arrangements (e.g. leases) under the NTER, do not apply if they are invoked only by virtue of the above exemptions applying to NTER entities.

[History: Paragraph 88 amended by January 2008 (Version 6), with effect from 1 January 2008, by inserting reference to 'and Division 250 of the ITAA 1997'.]

### COMMENCEMENT POSITIONS

89. Division 57 of schedule 2D of the ITAA 1936 requires corporate entities making the transition from exempt to taxable to ensure that only income, deductions, gains and losses relating to the taxable period are taken into account to determine their taxable position.

[History: Heading for paragraph 89 amended by January 2008 (Version 6) with effect from 1 January 2008.

Heading for paragraph 89 formerly read: 'Commencement book values'.]

90. Division 58 of the ITAA 1997 sets out special rules that apply in calculating depreciation deductions and balancing adjustments in respect of depreciating assets previously owned by an exempt entity.

[History: Paragraph 90 amended by January 2008 (Version 6), with effect from 1 January 2008, by replacing reference to 'plant' with reference to 'depreciating assets'.]

91. An NTER entity will be taken not to be a transition taxpayer for the purposes of Division 57 of schedule 2D of the ITAA 1936, nor a transition entity for the purposes of Division 58 of the ITAA 1997, where the following conditions apply:

- (i) the NTER entity ceased participation in a State or Territory TER on or before 30 June 2002; and
- (ii) immediately thereafter, commenced participation in the NTER. In those circumstances, the NTER entity's commencing positions for the purposes of the NTER will be equal to its closing positions in the TER.

[History: Final sentence of paragraph 91 amended by January 2008 (Version 6) with effect from 1 January 2008.

Final sentence of paragraph 91 formerly read:

In those circumstances, the NTER entity's commencing book values for the purposes of the NTER will be equal to its closing book values in the TER.]

- 91A. An NTER entity will be taken not to be a transition taxpayer for the purposes of Division 57, nor a transition entity for the purposes of Division 58 where the following conditions apply: 'The NTER entity commenced participation in the NTER immediately after ceasing to be actually subject to federal income tax.'

[History: Paragraph 91A inserted by February 2005 (Version 4), with effect from 1 July 2003.]

92. For all other NTER entities (i.e. those which do not meet the above conditions) commencement in the NTER will be taken to be a transition event for the purposes of Division 57 and Division 58.

### **GRANDFATHERED TER RULES**

93. Unless provided for otherwise in this Manual, certain NTER entities will be able to grandfather the rules of their predecessor TERs to apply to certain of their transactions occurring under the NTER.
94. Grandfathering is intended to be a transitional measure available only to those NTER entities which commenced in the NTER on or before 1 July 2002 immediately after ceasing to participate in a TER. Grandfathering will apply only to transactions which arise out of pre-existing contractual or other formal arrangements – i.e. those which were entered into by the NTER entity during the time it was subject to the TER. It would normally be the case that those pre-existing contracts or arrangements will be finite in nature and reflected in the NTER entity's closing balance sheet at the time of its cessation in the TER.
95. NTER entities may choose not to apply grandfathering, except where the result of that choice, in the NTER, would be income not being assessable, or expenditure being deductible, where otherwise that income would have been assessable or that expenditure would not have been deductible.
96. When it applies, grandfathering will include all tax treatments permitted under the relevant TER by way of instructions, public rulings, private

determinations or otherwise. For the relevant NTER entities, grandfathering will determine the manner in which their opening assets and liabilities (at commencement in the NTER) are depreciated, amortised, written down or otherwise brought to account as assessable income or allowable deductions, or a capital gain or loss.

97. For example, an item of plant on hand at commencement will retain its unit status, historical cost and written down value, and continue to be depreciated at the rate which applied in the TER. Should that plant be the subject of a disposal in the NTER period, balancing adjustments will be calculated in accordance with the TER rules. A CGT asset on hand at commencement will retain its acquisition date details and cost base determined according to TER rules.
98. The same reasoning applied in the above examples on depreciation and CGT can also be applied in relation to other commencement items, including carried forward losses, deferred income, accrued expenses, undeducted capital expenditure, investment assets etc.
99. To the extent that there is otherwise any difference in treatment as between the NTER and a State or Territory TER, the rules of the NTER are to take priority. This priority is subject to the rights of NTER entities to seek private rulings in respect of matters which do not translate directly from the pre-existing tax equivalent system to the NTER.

### **COMMENCEMENT POSITIONS – IF A FEDERAL TAXPAYER IMMEDIATELY BEFORE ENTRY**

- 99A. Where paragraph 91A applies, the NTER entity's closing positions on all items for federal income tax purposes (e.g. adjustable values of depreciating assets, cost bases of CGT assets, carry forward losses, etc) will become its commencement positions on those items for the purposes of the NTER. Where the NTER entity joins an existing NTER consolidated group immediately after commencing in the NTER, Part 3-90 of the ITAA 1997 will apply to its commencement positions.

[History: Paragraph 99A inserted by February 2005 (Version 4), with effect from 1 July 2003]

### **COMMUNITY SERVICE OBLIGATIONS**

100. Costs incurred by an NTER entity in satisfying community service obligations as part of its total charter will be treated as necessary incidents of the broader activities conducted by the NTER entity. As a result, deductions are available for community service expenditure which is of a revenue character.
101. NTER entities which have responsibilities and/or obligations imposed upon them by external agencies of their State or Territory government will

ordinarily be entitled to treat any related costs or losses as an ordinary incident of their conventional business activities. On this basis, a deduction will typically be claimable by the NTER entity in respect of such costs or losses of a revenue nature.

102. This treatment will not extend to costs or losses which so clearly relate to the restructuring or reorganisation of the NTER entity in any significant sense. Where there is any debate regarding the proper treatment of costs or losses arising in these situations, then an application for a private ruling should be lodged with the Commissioner.

### **GOVERNMENT IMPOSED RESTRUCTURES & PRIVATISATIONS**

103. A renegotiation of arrangements or a restructure by an NTER entity may be the result of requirements externally imposed on the NTER entity by its State or Territory government.

A privatisation of assets (including an entity) owned by an NTER entity may be externally imposed on the NTER entity by its State or Territory Government, as evidenced by a parliamentary process or public announcement by that government, in circumstances where all of the resultant sale proceeds, net of any agreed sale related costs, are compulsorily repatriated to its State or Territory government.

- 103A. Such an imposed renegotiation, restructure or privatisation will be treated in a tax neutral manner for NTER purposes. (For example, on an imposed transfer of CGT assets, there will be no CGT consequences for the transferor and the transferee will inherit the CGT cost bases of the transferor.)
- 103B. Alternatively, such an imposed renegotiation, restructure or privatisation may be treated in a manner which the NTER administrator approves as appropriate in the circumstances, including taking into account;
- (i) whether the proposed tax treatment gives an NTER entity involved an unfair advantage over its competitors in other States or Territories; and
  - (ii) the arrangements and structures that have previously existed in relation to the business operations of the NTER entities involved.

(For example, on an imposed remerging of two NTER entities to form a new NTER entity, the NTER administrator may approve a tax treatment which allows the new NTER entity to utilise any carry forward losses of the two former NTER entities.)

[History: Paragraphs 103, 103A & 103B amended by January 2008 (Version 6) with effect from 1 July 2006.

Paragraphs 103, 103A, and 103B formerly read:

103. A renegotiation of arrangements or a restructure by an NTER entity may be the result of requirements externally imposed on the NTER entity by its State or Territory government.
- 103A. Such an imposed renegotiation or restructure will be treated in a tax neutral manner for NTER purposes. (For example, on an imposed transfer of CGT assets, there will be no CGT consequences for the transferor and the transferee will inherit the CGT cost bases of the transferor.)
- 103B. Alternatively, such an imposed renegotiation or restructure may be treated in a manner which the NTER administrator approves as appropriate in the circumstances, including taking into account;

(i) whether the proposed tax treatment gives an NTER entity involved an unfair advantage over its competitors in other States or Territories; and

(ii) the arrangements and structures that have previously existed in relation to the business operations of the NTER entities involved.

(For example, on an imposed remerging of two NTER entities to form a new NTER entity, the NTER administrator may approve a tax treatment which allows the new NTER entity to utilise any carry forward losses of the two former NTER entities.)]

[History: Paragraph 103 amended and paragraphs 103A & 103B inserted by March 2004 (Version 3) with effect from 1 July 2001.

Paragraph 103 formerly read:

#### **Government Imposed Restructures & CGT**

A renegotiation of arrangements or a restructure by an NTER entity may be the result of requirements externally imposed on the NTER entity by its State or Territory government. Where such an imposed renegotiation or restructure does not result in an uplift of asset values for any purpose of the relevant taxation laws, then the renegotiation or restructure will be treated in a neutral manner for NTER purposes. For example, in such cases neither a capital gain nor a capital loss, as the case may be, will be taken to have occurred.]

### **GOVERNMENT EQUITY CONTRIBUTIONS**

104. A State or Territory government may make contributions in the nature of equity to its NTER entities, notwithstanding that those contributions are not made in connection with an issue of shares.
105. For the purposes of the NTER, a contribution in the nature of equity, by a State or Territory government to one of its entities, which is properly documented and accounted for as such, will not be assessable as ordinary or statutory income under any provision of the relevant taxation laws, including section 6-5 of the ITAA 1997 and section 15-10 of the ITAA 1997. This treatment applies to all such contributions in the nature of equity, including by way of asset contribution, notwithstanding the equity contribution did not relate to a government imposed restructure envisaged by paragraphs 103 to 103B.

105A. For the purposes of Division 40 of the ITAA 1997, the cost of a depreciating asset to which paragraph 105 applies will be its value at the contribution time recognised in the audited accounts of the NTER entity.

[History: Current version of paragraphs 105-105A inserted by February 2005 (Version 4) with effect from 1 July 2001.

Paragraph 105 formerly read:

For the purposes of the NTER, a contribution in the nature of equity, by a State or Territory government to one of its entities, which is properly documented and accounted for as such, will not be assessable as ordinary or statutory income under any provision of the relevant taxation laws, including section 6-1 ITAA 1997 and section 15-10 ITAA 1997.]

105B. For the purposes of section 70-120 of the ITAA 1997, the amount you paid to acquire land carrying trees or a right to fell trees to which paragraph 105 applies will be its value at the contribution time recognised in the audited accounts of the NTER entity.

[History: Paragraph 105B inserted by January 2006 (Version 5) with effect from 1 July 2004.]

## DEDUCTIONS IN RELATION TO DEPRECIATING ASSETS

106. Pursuant to Division 40 of the ITAA 1997, a taxpayer is entitled to a deduction for an amount equal to the decline in the value of a 'depreciating asset' that the taxpayer 'holds'.

107. The meaning of the term 'hold' in relation to a depreciating asset, which is found in section 40-40 of the ITAA 1997, extends beyond strict legal ownership. For example, the owner of a quasi-ownership right over an improvement to land and a lessee with a right to recover an asset fixed to land in each case can be the holder of a depreciating asset.

[History: Paragraph 107 amended by January 2008 (Version 6), with effect from 1 January 2008, by replacing reference to 'lessor' with reference to 'lessee'.]

108. On that basis, an NTER entity with contractual or statutory rights of severance, or other quasi-ownership rights, in relation a depreciating asset affixed to private land (e.g. electrical poles on rural land), can be the holder of that depreciating asset for the purposes of Division 40 of the ITAA 1997.

109. To ensure certainty of treatment for NTER entities' depreciating assets located on Crown land, for NTER purposes the NTER entity will be taken to be the holder of such assets for the purposes of Division 40.

[History: Paragraphs 104 – 106 in Version 1 of the NTER Manual replaced with paragraphs 106 – 109 in Version 2, with effect from 1 July 2001.

Paragraphs 104 – 106 in Version 1 formally read:

**'Ownership for depreciation purposes**

104. In certain circumstances, the Commissioner recognises that strict legal ownership is not necessarily a prerequisite for the claiming of depreciation.

105. An NTER entity with contractual or statutory rights of severance, or other quasi-ownership rights, in relation to items of plant affixed to private land (e.g. electrical poles on rural land), will be taken to be the owner of that plant for the purposes of Division 42 of the ITAA 1997.

106. Where assets are located on Crown land, then for depreciation purposes that land will be treated as land owned by the entity and thus the issue does not arise.']

## **DIVIDEND REBATES**

110. For NTER purposes, every NTER entity is deemed to constitute a public company for the purposes of applying section 46 of the ITAA 1936 to determine eligibility for rebates on dividend income received by them from resident companies.

111. NTER entities receiving dividend income are required to return the cash amount of the dividend (excluding franking credits) as assessable income and are entitled to a tax rebate equal to the tax otherwise payable on the cash amount of the dividend. This treatment will not apply to franked dividends paid to NTER entities after 30 June 2002 and to unfranked dividends paid to NTER entities after 30 June 2003.

[History: Paragraph 111 amended by March 2004 (Version 3), with effect from 1 July 2002 by inserting second sentence.

Paragraph 111 formerly read:

NTER entities receiving dividend income are required to return the cash amount of the dividend (excluding franking credits) as assessable income and are entitled to a tax rebate equal to the tax otherwise payable on the cash amount of the dividend.]

## **FRANKED DIVIDENDS AFTER 30 JUNE 2002**

111A. The 'gross-up' and tax offset treatment provided for by Division 207 of ITAA 1997 will apply to franked dividends paid to NTER entities after 30 June 2002. An NTER entity must gross up any dividend by an amount equal to the franking credit on the dividend. The grossed up amount is included in assessable income and the NTER entity is entitled to a tax offset (non refundable) equal to the amount of the gross up.

[History: paragraph 111A inserted in March 2004 (Version 3) with effect from 1 July 2002]

## FRANKING CREDITS

112. The issue of franking credits in relation to dividends is not expected to arise in the NTER since ultimately the only shareholder in NTER entities will be a State or Territory government.

## RESEARCH & DEVELOPMENT EXPENDITURE

113. There are a number of pre-requisites to claiming deductions for research and development expenditure under sections 73B and 73BA of the ITAA 1936. However, for the purposes of applying the R&D provisions in the NTER;
- (i) all NTER entities will be deemed to be 'eligible companies'; and
  - (ii) registration with the IR&D Board will not be necessary.
114. On those bases, it will be the primary responsibility of an NTER entity to determine whether its research & development activities are eligible under section 73B of the ITAA 1936. NTER entities seeking to claim tax deductions under sections 73B and 73BA, in relation to projects commencing after 30 June 2001, are to complete an IR&D Board registration form and lodge that form with the Commissioner. Grandfathering will apply to R&D projects approved and begun prior to 1 July 2001.

[History: Paragraphs 113 and 114 amended by March 2004 (Version 3), with effect from 1 July 2001 by inserting references to section 73BA of ITAA 1936.]

115. [Deleted]

[History: Paragraph 115 deleted by January 2008 (Version 6), with effect from 1 January 2008.

Paragraph 115 formerly read:

The Commissioner will review R&D registration forms and advise the NTER entity whether or not it accepts that relevant expenditure can be claimed as a deduction under Section 73B of the ITAA 1936.]

## SUPERANNUATION

116. Under section 290-60 of the ITAA 1997, employers are entitled to a deduction for contributions to a fund to provide superannuation benefits payable to an employee. Section 290-60 of the ITAA 1997 provides that a deduction is allowed in this respect only where an actual payment has been made, and not for mere provision of an amount.

[History: Paragraph 116 amended by January 2008 (Version 6), with effect from the 2008 income year, by replacing references to 'section 82AAR of the ITAA 1936' and 'section 82AAR(2) of the ITAA 1936' with references to 'section 290-60 of the ITAA 1997'.]

117. For NTER purposes, the employer superannuation contribution provisions will be applied with the following modifications:
- (i) the employee need not be currently employed by the NTER entity; and
  - (ii) the fund need not be a complying superannuation fund within the meaning of Part IX of the ITAA 1936.
118. Apart from those modifications, in all other respects NTER entities are required to follow Division 290 of the ITAA 1997 in relation to claiming deductions for contributions to superannuation funds for the benefit of employees.

[History: Paragraph 118 amended by January 2008 (Version 6), with effect from the 2008 income year, by replacing reference to 'subdivision AA of Division 3 of Part III of the ITAA 1936' with reference to 'Division 290 of the ITAA 1997'.]

## FOREIGN INCOME

119. Primarily due to the compliance burden imposed by the controlled foreign corporation and foreign investment funds provisions contained in the ITAA 1936, all foreign source income derived by NTER entities until 30 June 2003 will be ignored for the purposes of the NTER.
120. In effect, foreign sourced income will be treated as 'non-income' for NTER purposes – i.e. it neither will be assessable nor used to reduce carried forward losses. As a consequence of that treatment, expenditure incurred to derive foreign source income will also be ignored for NTER purposes and will not be allowed as a deduction.
121. An NTER entity, including an entity that is carrying on an insurance type business, which subsequently disposes of an investment asset (e.g. foreign shares) that was on hand at 30 June 2003 will use the asset's original acquisition cost for the purposes of calculating the foreign source profit derived after 30 June 2003 to be included in the NTER entity's assessable income.

[History: Paragraph 121 inserted by March 2004 (Version 3), with effect from 1 July 2003]

## ATTACHMENT 1

**[DELETED]**

[History: Attachment 1 deleted by January 2008 (Version 6), with effect from 1 January 2008.]

## ATTACHMENT 2

### NTER RELATED ACTIVITIES

#### General Activities

- (i) Apply the relevant taxation laws;
- (ii) Maintain the NTER entity register;
- (iii) Process NTER income tax returns;
- (iv) Process NTER instalment statements;
- (v) Advise entities of their instalment rates;
- (vi) Liaise with the State and Territory Treasuries and Revenue Offices in relation to NTER related receivables management;
- (vii) Maintain the NTER Manual;
- (viii) Keep proper accounts, records and timesheets in respect of NTER related activities, expenditure, billing and fees and all NTER related amounts payable by the States and Territories to the Commissioner.
- (ix) Prepare the Commissioner's annual report on the operation of the NTER for each financial year, and the individual reports specific to each State and Territory; and
- (x) Undertake other activities outlined and classified as 'general activities' in an agreed NTER Work Plan.

[History: Paragraphs (ix) and (x) inserted by January 2008 (Version 6), with effect from 1 January 2008.]

[History: Paragraphs (vi), (vii), (viii) and (ix) amended by January 2006 (Version 5) with effect from 1 June 2005 by deleting former paragraph (vi) and by renumbering former paragraphs (vii), (viii) and (ix) as paragraphs (vi), (vii) and (viii) respectively.

Paragraph (vi) formerly read:

Undertake compliance risk assessment activities (in relation to NTER commencement and later years only)]

**Specific Activities**

- (i) Provide interpretive advice to the NTER entities (in relation to their arrangements in the NTER commencement and later years only);
- (ii) Carry out appropriate compliance assurance activities in respect of the NTER entities (in relation to NTER commencement and later years only) as outlined in an agreed NTER Work Plan; and
- (iii) Undertake other activities outlined and classified as 'specific activities' in an agreed NTER Work Plan.

[History: Paragraph (ii) amended, and paragraph (iii) inserted by January 2008 (Version 6), with effect from 1 January 2008.

Paragraph (ii) formerly read:

Carry out appropriate compliance assurance activities in respect of the NTER entities (in relation to NTER commencement and later years only) as outlined in an agreed Compliance Plan under clause 25A of the Memorandum.]

[History: Paragraph (ii) amended by January 2006 (Version 5) with effect from 1 June 2005.

Paragraph (ii) formerly read:

Carry out appropriate compliance assurance audits of the NTER entities.]

## ATTACHMENT 3

## PAYG INSTALMENT REPORT

<b>NATIONAL TAX EQUIVALENT REGIME</b>	
<b>Pay As You Go Instalment Report of Income Tax Equivalent</b>	
for the period __ / __ / ____ to __ / __ / ____	
<b>1. Name of NTER entity</b>	
<b>2. Postal address for Service of Notices</b>	
	<b>Postcode</b>
<b>3. Address of Place of Central Management</b>	
	<b>Postcode</b>
<b>4. Telephone Number</b>	
<b>4A. Email address</b>	
<b>5. Name of Principal Accounting Officer or Public Officer</b>	
<b>6. Description of Principal Business Activity</b>	
<b>7. PAYG calculation:</b>	
<b>A. Instalment income</b>	\$
<b>B. Instalment rate</b>	%
<b>C. New varied instalment rate*</b>	%
<b>D. Credit arising from reduced PAYG instalments</b>	\$
<b>E. PAYG Tax Equivalent Instalment ((A x B or C) - D)</b>	\$
<b>8. Deferred company/fund instalment</b>	\$
<b>9. Net amount this report (7E + 8)</b>	\$

\* Provide reason and supporting information for change.

I, \_\_\_\_\_ the duly authorised representative of the above named NTER entity certify that this statement has been completed to the best of my knowledge and in accordance with the requirements of the NTER Manual and the relevant taxation laws.

## ATTACHMENT 4

### FEDERAL INCOME TAX LAWS

The NTER is based on the following federal income tax laws:

- (i) *Income Tax Assessment Act 1936*
- (ii) *Income Tax Regulations 1936*
- (iii) *Income Tax Assessment Act 1997*
- (iv) *Income Tax Assessment Regulations 1997*
- (v) *Taxation Administration Act 1953*
- (vi) *Taxation Administration Regulations 1976*
- (vii) *Taxation (Interest on Overpayments and Early Payments) Act 1983*
- (viii) *Taxation (Interest on Overpayments and Early Payments) Regulations 1992*
- (ix) *Income Tax Rates Act 1986*
- (x) *International Tax Agreements Act 1953*
- (xi) *Income Tax (Transitional Provisions) Act 1997*
- (xii) *General Interest Charge (Imposition) Act 1999*
- (xiii) *Income Tax Act 1986*
- (xiv) *Shortfall Interest Charge (Imposition) Act 2005*

[History: Paragraph (xiv) inserted by January 2008 (Version 6), with effect from the 2005 income year.]

## ATTACHMENT 5

**ADDRESS & ATO CONTACT OFFICERS FOR LODGMENT OF ALL NTER DOCUMENTS & MATERIAL**

**ALL NTER related material MUST be lodged with the Commissioner at the following address:**

The NTER Administrator  
 Australian Taxation Office  
 Large Business & International (NTER)  
 990 Whitehorse Road  
 Box Hill VIC 3128

**NTER related inquiries should be directed to the following officers in ATO :**

Name	Contact details	
John Yeung	Telephone:	(03) 9275 2410
	Facsimile:	(03) 9275 2526
	e-mail:	john.yeung@ato.gov.au
Kwee Chan	Telephone:	(03) 9275 2902
	Facsimile:	(03) 9275 2526
	e-mail:	kwee.chan@ato.gov.au
Sharon Spry	Telephone:	(03) 9946 9197
	Facsimile:	(03) 9275 2526
	e-mail:	sharon.spry@ato.gov.au
Peter Maher	Telephone:	(03) 9946 9049
	Facsimile:	(03) 9275 2526
	e-mail:	peter.maher@ato.gov.au

# ATTACHMENT 6

## NTER REGISTRATION DETAILS

**Name of NTER entity:**

.....  
.....

Australian Business Number:

.....

Postal address for service of notices (include e-mail address where applicable):

.....  
.....

Address of place of central management:

.....  
.....

Name and contact details of public officer or principal accounting officer:

.....  
.....

ANZSIC Code and description of principal business activity:

.....  
.....

Tax equivalent year end: \_\_ \_\_ (day) of \_\_\_\_\_ (month)

**Entity's NTER commencement date:** .....

[History: Attachment 6 amended by January 2008 (Version 6), with effect from 1 January 2008, by inserting details of 'Entity's NTER commencement date'.]

## ATTACHMENT 7

### **NTER ANNUAL RETURN**

The NTER annual return will be identical to the 'C' return for companies except that it will be headed as an NTER tax equivalent return.

The Commissioner will issue an NTER 'C' return form for each NTER income year.

[History: Attachment 7 amended by January 2008 (Version 6), with effect from 1 January 2008, by inserting second sentence.]

## ATTACHMENT 8

### NTER LODGMENT CIRCULAR 2005-06

This is the annual NTER Lodgment Circular referred to at paragraphs 57 and 60A of the NTER Manual. This circular outlines the due dates that apply to all NTER entities for:

- the reporting and payment of quarterly PAYG instalments for the NTER instalment quarters ending 30 September 2005, 31 December 2005, 31 March 2006 and 30 June 2006;
- the lodgment of tax returns for the NTER income year ended 30 June 2005; and
- the payment of balancing payments of tax equivalent liability for the NTER income year ended 30 June 2005.

The due dates outlined in this circular for NTER entities take precedence over the Commissioner's tax agent Lodgment Program 2005-06 for federal taxpayers.

#### 1. Quarterly PAYG instalments:

The recently amended paragraph 43 of the NTER Manual provides for quarterly PAYG instalments to be reported and paid by all NTER entities by the 21st day of the month after the end of each instalment quarter. The relevant due dates are as follows:

<b>Instalment quarter ending</b>	<b>Due date for reporting &amp; payment</b>
30 September 2005 (Quarter 1, 2006)	21 October 2005
31 December 2005 (Quarter 2, 2006)	21 January 2006*
31 March 2006 (Quarter 3, 2006)	21 April 2006
30 June 2006 (Quarter 4, 2006)	21 July 2006

(\*As 21 January 2006 is a Saturday, reporting and payment can be made on the next business day without penalty.)

## 2. *NTER tax returns for the year ended 30 June 2005*

### 2.1 **NTER entities, other than head companies of an NTER tax consolidated group:**

The lodgment and payment due dates for 2005 tax returns that apply to NTER entities (other than head companies of an NTER tax consolidated group) are as follows:

<b>Due date for lodgment</b>	<b>Due date for payment</b>	<b>Description</b>
15 January 2006**	1 December 2005	Entities whose 2004 tax return was taxable.
28 February 2006	28 February 2006	Entities whose 2004 tax return was non-taxable.
28 February 2006	28 February 2006	Entities who are new registrants (taxable and non-taxable) in the 2005 income year.

(\*\*As 15 January 2006 is a Sunday, lodgment can be made on the next business day without penalty.)

Note that NTER entities that were subsidiary members of an NTER tax consolidated group for the full financial year should not have an obligation to lodge a 2005 tax return.

### 2.2 **NTER entities that are head companies of an NTER consolidated group:**

The lodgment and payment due dates for 2005 tax returns that apply to NTER entities that are head companies of an NTER tax consolidated group are as follows:

<b>Due date for lodgment</b>	<b>Due date for payment</b>	<b>Description</b>
15 January 2006**	1 December 2005	Head companies (including new registrants) whose 2005 tax return will be taxable.
28 February 2006	Not applicable	Head companies (including new registrants) whose 2005 tax return will be non-taxable.

(\*\*As 15 January 2006 is a Sunday, lodgment can be made on the next business day without penalty.)

Michael Carmody  
NTER Administrator  
2 September 2005

## NTER LODGMENT CIRCULAR 2006-07

This is the annual *NTER Lodgment Circular* referred to at paragraphs 57 and 60A of the NTER Manual. This circular outlines the due dates that apply to all NTER entities for:

- the reporting and payment of quarterly PAYG instalments for the NTER instalment quarters ending 30 September 2006, 31 December 2006, 31 March 2007 and 30 June 2007;
- the lodgment of tax returns for the NTER income year ended 30 June 2006; and
- the payment of balancing payments of tax equivalent liability for the NTER income year ended 30 June 2006.

The due dates outlined in this circular for NTER entities take precedence over the Commissioner's tax agent *Lodgment Program 2006-07* for federal taxpayers.

### 1. Quarterly PAYG instalments:

The reporting and payment due dates for quarterly PAYG instalments that apply to all NTER entities are as follows:

Instalment quarter ending	Due date for reporting & payment
30 September 2006 (Quarter 1, 2007)	21 October 2006*
31 December 2006 (Quarter 2, 2007)	21 January 2007*
31 March 2007 (Quarter 3, 2007)	21 April 2007*
30 June 2007 (Quarter 4, 2007)	21 July 2007*

(\*As this day is a Saturday or Sunday, reporting and payment can be made on the next business day without penalty.)

## 2. NTER tax returns for the year ended 30 June 2006

### 2.1 NTER entities, other than head companies of an NTER tax consolidated group:

The lodgment and payment due dates for 2006 tax returns that apply to NTER entities (other than head companies of an NTER tax consolidated group) are as follows:

Due date for lodgment	Due date for payment	Description
15 January 2007	1 December 2006	Entities whose 2005 tax return was taxable.
28 February 2007	28 February 2007	Entities whose 2005 tax return was non-taxable.
28 February 2007	28 February 2007	Entities who are new registrants (taxable and non-taxable) in the 2006 income year.

Note that NTER entities that were subsidiary members of an NTER tax consolidated group for the full financial year should not have an obligation to lodge a 2006 tax return.

### 2.2 NTER entities that are head companies of an NTER consolidated group:

The lodgment and payment due dates for 2006 tax returns that apply to NTER entities that are head companies of an NTER tax consolidated group are as follows:

Due date for lodgment	Due date for payment	Description
15 January 2007	1 December 2006	Head companies (including new registrants) whose 2006 tax return will be taxable.
28 February 2007	Not applicable	Head companies (including new registrants) whose 2006 tax return will be non-taxable.

Michael D'Ascenzo  
NTER Administrator  
July 2006

## NTER LODGMENT CIRCULAR 2007-08

This is the annual *NTER Lodgment Circular* referred to at paragraphs 57 and 60A of the NTER Manual. This circular outlines the due dates that apply to all NTER entities for:

- the reporting and payment of quarterly PAYG instalments for the NTER instalment quarters ending 30 September 2007, 31 December 2007, 31 March 2008 and 30 June 2008;
- the lodgment of tax returns for the NTER income year ended 30 June 2007; and
- the payment of balancing payments of tax equivalent liability for the NTER income year ended 30 June 2007.

The due dates outlined in this circular for NTER entities take precedence over the Commissioner's tax agent *Lodgment Program 2007-08* for federal taxpayers.

### 1. Quarterly PAYG instalments:

The reporting and payment due dates for quarterly PAYG instalments that apply to all NTER entities are as follows:

Instalment quarter ending	Due date for reporting & payment
30 September 2007 (Quarter 1, 2008)	21 October 2007*
31 December 2007 (Quarter 2, 2008)	21 January 2008
31 March 2008 (Quarter 3, 2008)	21 April 2008
30 June 2008 (Quarter 4, 2008)	21 July 2008

(\*As this day is a Sunday, reporting and payment can be made on the next business day without penalty.)

## 2. NTER tax returns for the year ended 30 June 2007

### 2.1 NTER entities, other than head companies of an NTER tax consolidated group:

The lodgment and payment due dates for 2007 tax returns that apply to NTER entities (other than head companies of an NTER tax consolidated group) are as follows:

Due date for lodgment	Due date for payment	Description
15 January 2008	1 December 2007*	Entities whose 2006 tax return was taxable.
28 February 2008	28 February 2008	Entities whose 2006 tax return was non-taxable.
28 February 2008	28 February 2008	New registrants whose 2007 tax return will be taxable or non-taxable.

(\*As this day is a Saturday, reporting and payment can be made on the next business day without penalty.)

Note that NTER entities that were subsidiary members of an NTER tax consolidated group for the full financial year should not have an obligation to lodge a 2007 tax return.

### 2.2 NTER entities that are head companies of an NTER consolidated group:

The lodgment and payment due dates for 2007 tax returns that apply to NTER entities that are head companies of an NTER tax consolidated group are as follows:

Due date for lodgment	Due date for payment	Description
15 January 2008	1 December 2007*	Head companies (including new registrants) whose 2007 tax return will be taxable.
28 February 2008	Not applicable	Head companies (including new registrants) whose 2007 tax return will be non-taxable.

(\*As this day is a Saturday, reporting and payment can be made on the next business day without penalty.)

Michael D'Ascenzo  
 NTER Administrator  
 Commissioner of Taxation  
 August 2007