

Manual for the National Tax Equivalent Regime October 2019 (Version 11)

[History:

Version 1 of the Manual released in June 2001
Version 2 of the Manual released in July 2002
Version 3 of the Manual released in March 2004
Version 4 of the Manual released in February 2005
Version 5 of the Manual released in January 2006
Version 6 of the Manual released in January 2008
Version 7 of the Manual released in March 2010
Version 8 of the Manual released in February 2012
Version 9 of the Manual released in April 2014
Version 10 of the Manual released in April 2016

[Archived:

History notes for amendments to the Manual made by Versions 2, 3, 4, 5 & 6 have been archived. For the wording of these history notes, see Version 8.]

PART 5: NTER ADMINISTRATIVE FEATURES

REGISTRATION

31. Each NTER entity must register as such with the Commissioner.
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*; in *Income Tax Determination TD 2007/2*; and in the *ATO's Law Administration Practice Statement PS LA 2008/14*.

[**History:** Paragraph 38 amended by February 2012 (Version 8), with effect from 1 February 2012, to insert reference to PS LA 2008/14.]

[**History:** Paragraph 38 amended by March 2010 (Version 7), with effect from 1 March 2010, to insert reference to TD 2007/2.]

PAYG INSTALMENT SYSTEM

[**History:** Paragraphs 39 to 51 amended by April 2014 (Version 9), with effect from the instalment month and instalment quarter starting on 1 January 2014, to take account of the introduction of the monthly PAYG instalment rules.]

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 Division 45 in Schedule 1 to the TAA 1953.
40. In respect of monthly (or quarterly) instalments, the amount is worked out by multiplying instalment income for the month (or quarter) by the rate given by the Commissioner, or by a self-selected rate. The Commissioner may provide additional methods of working out monthly instalments. 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 (even if it is a nil amount) must notify the Commissioner in the '**approved form**' of the amount of their instalment income for the relevant period.

[**History:** Paragraph 41 amended by February 2012 (Version 8), with effect from 1 February 2012, by inserting reference to '(even if it is a nil amount)'.]

PAYG instalments payable in the NTER

42. All NTER entities will be liable to pay instalments of their (expected) income tax equivalent liability for an income year. However, instalments will not be payable by an NTER entity unless it has been given written notice of an instalment rate by the Commissioner.
- 42A. An NTER entity will be liable to pay monthly instalments if it satisfies the "monthly payer" requirements in Subdivision 45-DA, having regard to the transitional provisions in *Tax Laws Amendment (2013 Measures No. 2) Act 2013*, which will be applied with the following modifications:
- (i) every NTER entity will be deemed to be a "corporate tax entity"; and

- (ii) the exemption (for certain entities that lodge GST returns on a quarterly or annual basis) in subsection 45-138(2) will be disregarded.

42B. All other NTER entities will be liable to pay quarterly instalments.

43. The processes by which monthly and quarterly NTER instalments are to be reported and paid by NTER entities will be substantially in accordance with the PAYG instalment provisions contained in Division 45 in Schedule 1 to 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 instalment month or instalment quarter.

44. [Archived.]

[Archived: Paragraph 44 concerning "Instalment rate deemed to be given by the Commissioner" archived by April 2014 (Version 9). For the wording of paragraph 44, see February 2012 (Version 8).]

An NTER entity may vary rate

45. An NTER entity may elect to use an instalment rate given by the Commissioner or may vary that rate in accordance with Subdivision 45-F. 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 under Subdivision 45-G.

Instalment information to be given to the Commissioner

46. NTER entities which are liable to pay instalments (unless it is a nil amount worked out using a nil rate given by the Commissioner) will be required to lodge with the Commissioner their NTER instalment details calculated in accordance with Division 45. For NTER purposes, the **'approved form'** is the PAYG instalment report provided at Attachment 3.

[History: Paragraph 46 amended by February 2012 (Version 8), with effect from 1 February 2012, by inserting reference to '(even if it is a nil amount)'.]

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

49. NTER entities which have not been given an instalment rate by the Commissioner will not be required to pay 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 subsection 5-5(4) of the ITAA 1997, and paragraph 60A below.

[**History:** Paragraph 49 amended by February 2012 (Version 8), with effect from 1 July 2010, by replacing reference to 'section 204(1A) of the ITAA 1936' with reference to 'subsection 5-5(4) of the ITAA 1997'.]

50. However, NTER entities which are not required to make instalment payments may make voluntary instalment payments and avoid having to pay an annual liability as well as instalments in one income year.

References

51. The provisions relating to PAYG instalments are found in Division 45 in 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 7393-11.2012)*.

An additional simplified method of working out monthly instalments is set out in the Commissioner's determination named *Additional method of working out the amount of monthly instalment liabilities in accordance with the Taxation Administration Act 1953* (F2013L01933, registered on 14 November 2013).

[**History:** Paragraph 51 amended by March 2010 (Version 7), with effect from 1 March 2010, to replace reference to "(NAT 7393-08.2007)" with reference to "(NAT 7393-04.2009)".]

[History: Paragraph 51 amended by April 2016 (Version 10), with effect from 1 April to replace reference to "(NAT 7393-04.2012)" with reference to "(NAT 7393-11.2012)".]

52. [Archived.]

53. [Archived.]

[**Archived:** Paragraphs 52 & 53 concerning "DEFERRED COMPANY INSTALMENT" archived by April 2014 (Version 9). For the wording of paragraphs 52 & 53, see February 2012 (Version 8).]

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.
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.
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.

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 lodged. The return is deemed to be the served notice of assessment.

[**History:** Paragraph 61 amended by April 2014 (Version 9), with effect from 1 April 2014, by replacing reference to 'furnished' with reference to 'lodged'.]

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.
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 2011/19, 2011/30, 2012/4, 2012/5 & 2014/4*; and in *Miscellaneous Taxation Rulings MT 2008/1, 2008/2 & 2012/3*.

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 ATO's *Law Administration Practice Statement PS LA 2011/12*.

[History: Paragraph 70 amended by April 2014 (Version 9), with effect from 1 April 2014, by deleting references to MT 2008/3 & PS LA 2006/2 and inserting references to MT 2012/3 and PS LA 2011/19, 2011/30, 2012/4 & 2012/5.]

[History: Paragraph 70 amended by February 2012 (Version 8), with effect from 1 February 2012, by deleting references to PS LA 2000/9 & 2002/8 and by replacing reference to the ATO receivables policy with reference to PS LA 2011/12.]

[History: Paragraph 70 amended by March 2010 (Version 7), with effect from 1 March 2010, to insert references to MT 2008/1, 2008/2 and 2008/3.]

[History: Paragraph 70 amended by April 2016 (Version 10), with effect from 1 April 2016, to insert references to PS LA 2014/4.]

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*.
74. [Archived.]

[**Archived:** Paragraph 74 concerning substituted years under a preceding TER archived by April 2014 (Version 9). For the wording of paragraph 74, see February 2012 (Version 8).]

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.

Additional information on the private rulings system may be found in *Income Tax Ruling TR 2006/11* and in the *ATO's Law Administration Practice Statement PS LA 2008/3*.

[**History:** Paragraph 75 amended by March 2010 (Version 7), with effect from 1 March 2010, by inserting the final sentence.]

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.
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.

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.
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 online publication titled [Insight: building trust and confidence](#) and the *Taxpayers' charter*.**

[History: Paragraph 85 amended by February 2012 (Version 8), with effect from 1 February 2012, by deleting reference to '2006'.

Paragraph 85 amended by April 2016 (Version 10), by deleting reference to 'the ATO's annual Compliance program and the ATO publication titled 'Large business and tax compliance' and inserting 'the ATO's online publication titled Building Confidence and the ATO's annual *Large business focus* document.

Paragraph 85 amended February 2020 (Version 11), by deleting reference to 'the ATO's online publication titled Building Confidence, the ATO's annual *Large business focus*

document.’ and inserting reference to ‘the ATO’s online publication titled *Insight: building trust and confidence*’.]

- 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.