

Our Ref: 63688  
Contact Officer: Ben Stonehouse  
Contact Phone: [REDACTED]

[Insert date]

[Insert contact name]

[Insert contact title]

[Insert business name]

[Insert postal address 1]

[Insert postal address 2]

By email: [\[Insert email address\]](#)

Dear [Insert contact name short]

### **Voluntary provision of tax information to the AER tax review.**

The Australian Energy Regulator (AER) is currently undertaking a review of its approach to setting the regulatory tax allowance for regulated electricity and gas network service providers (NSPs). Information on the tax practices of NSPs will inform the AER's consideration of whether it is appropriate to make changes to the AER's current tax approach. This letter requests that [Insert business name] provides certain relevant tax information to the AER's review on a voluntary basis.

This request flows from stakeholder consultation undertaken since the July public forum. At the forum, and in subsequent meetings, regulated NSPs have been assisting the AER in identifying information that can inform the AER's review. In particular, NSPs have provided suggestions on how we can minimise the amount of information we request. Flowing from these discussions, it appears that there are three pieces of information that are likely to be readily available to NSPs that would be of assistance. Therefore, I am writing to request that you provide the following information on a voluntary basis:

1. An entity ownership diagram illustrating the group holding structure of the NSP as at 30 June 2018 (or most recent financial year end). The group structure diagram would indicate (as relevant) any stapled structures, downstream associated entities, and upstream equity participants (to the extent they are ascertainable and have 10 per cent or greater participation).

2. A copy of any tax returns lodged by the NSP in the last five years (or period of existence if less than five years). This would include (as relevant) any already existing stand-alone NSP tax calculations (where the entity is part of a tax consolidated group) and also the tax return for the Asset Trust or Partnership (where the NSP is in a stapled trust arrangement or partnership). Where possible, this could also include a brief summary of recent or ongoing ATO review interactions.
3. The tax fixed asset register which supports the capital allowance balances reported in the last lodged tax return for the NSP (or consolidated group) and/or Asset Trust/Partnership where the NSP is in a stapled trust arrangement. Please provide this information in .xls or .csv form. Where possible, this could also include any existing policy document on the tax capitalisation policies which distinguishes when expenditure is capitalised as compared to immediately written off for tax purposes, such as repairs and maintenance (refurbishment) expenditure.

The attached appendix A provides a more detailed description of the information we are ideally seeking in respect of each of the items we are requesting, noting stakeholder feedback that a specific, concrete request would be preferable to a general description. The appendix also provides some brief notes on the intended purpose of the information.

We think that it may be necessary to obtain further information, but expect that this set of initial information will assist in targeting future requests.

We have engaged PwC to provide us with expert advice and it has assisted in developing this information request. We have entered into a confidentiality arrangement with PwC and it has established internal processes to protect information obtained by its team.

As a secondary purpose, this request also provides an opportunity for those service providers who would like to briefly comment on the potential impact of recent or possible changes to tax legislation. The form of any overview and observations you are willing to make about the potential impact of these legislative changes are at the discretion of service providers. An optional question on this topic is set out in appendix B.

As per normal practice, any confidential material should be clearly labelled as such when submitted. The AER intends to publish (with its October position paper) aggregated numerical analysis that does not allow confidential data from any NSP to be individually identified. This would be paired with qualitative descriptions of the patterns in the data, including a generic description of the range of different holding structures observed.

We would ask that any information you choose to provide in response to this voluntary information request be submitted by Friday 31 August 2018 via the AER's secure upload portal. The link to this portal will be sent to you in a separate email with upload instructions. Earlier provision of information (including staged provision of material, if this suits) would also be welcome.

If you have any questions, please contact Mr Ben Stonehouse on [REDACTED] or by email on [ben.stonehouse@aer.gov.au](mailto:ben.stonehouse@aer.gov.au).

Yours sincerely

Warwick Anderson  
General Manager  
Network Finance and Reporting  
**Australian Energy Regulator**

## **Appendix A: Detailed description of items requested in voluntary information request**

### **General information – entity structure**

*Please provide the following information to help us confirm our understanding of the broad structures of industry participants.*

1. Provide a diagram illustrating the group holding structure of the NSP (and any related stapled entities), its downstream associated entities<sup>1</sup> and any upstream equity participants<sup>2</sup> as at 30 June 2018, or its most recent financial year end. For completeness, the group structure diagram should indicate:
  - a. The nature of the vehicle (e.g. trust, company, partnership)
  - b. Where entities are stapled (contractually or otherwise)
  - c. The existence of partnership arrangements including any Limited Partnerships
  - d. The jurisdiction in which the entity is a resident for tax purposes
  - e. Entities which are members of a Australian tax consolidated group (where relevant)
  - f. In the case of trusts the Trustee entity
  - g. Whether the entity is classified a Managed Investment Trust
  - h. Where the entity is government owned confirmation that it is subject to the National Tax Equivalent Regime
  - i. The existence of a special purpose finance company
2. Confirm whether there have been any changes to the group structure since 30 June 2018.

### **General information – tax returns and ATO reviews**

*Please provide the following information to help us confirm our understanding of the tax profiles of industry participants.*

3. Provide a copy of any income tax returns lodged by the NSP, whether Federal or NTER, in the last 5 years (or period of existence if less than 5 years).
4. Where the NSP is a member of a tax consolidated group please provide tax calculations for the NSP on a stand-alone basis to the extent these calculations have already been prepared (e.g. these calculations already exist), which support the latest income tax return lodged by the Head Company of the tax consolidated group in the last 5 years (or period of existence if less than 5 years).

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<sup>1</sup> For the purpose of this request, “downstream associated entities” refers to “associates” of the NSP as that term is defined in section 318 of the *Income Tax Assessment Act 1936*, however only to the extent that the NSP has a direct or indirect control interest in that entity of greater than 10%.

<sup>2</sup> For the purpose of this request, “upstream equity participants” includes any entities which have a direct or indirect equity interest in the NSP of greater than 10%. This would include a total participation interest as defined in section 960-180 of the *Income Tax Assessment Act 1997*, but only to the extent that the participation interest is greater than 10%. Direct and indirect interests held by a foreign entity in the NSP only need to be disclosed to the extent the foreign entity has a direct interest in an Australian resident vehicle. For the avoidance of doubt, an equity interest for these purposes would also include a partner’s interest in a partnership.

5. Where the NSP is part of a stapled entity arrangement please also provide the income tax returns lodged for the other stapled entity(s) that hold direct interests in the network asset (i.e. the Asset Trust/Partnership) in the last 5 years (or period of existence if less than 5 years).<sup>3</sup>

*Please provide the following information to help us assess the impact of recent ATO activity and proposed legislative changes on the tax profile of industry participants*

6. Provide a summary<sup>4</sup> of any non-routine engagement between the ATO and the NSP (and any related stapled entities i.e. Asset Trust/Partnership)<sup>5</sup>, any of its downstream associated entities, or any of its upstream equity participants (to the extent relevant to the financing of or investment in the NSP (and any related stapled entities)) during the last five years, including identifying whether the following is applicable:
- a. Review (for example streamlined review, Pre-Lodgement Compliance Review, Annual Compliance Agreement Review)
  - b. Audit including details of the issue under audit
  - c. NTER Lodgement Visits
  - d. Other engagements (for example, Advanced Pricing Arrangement, Tailored Compliance Engagement, Private Binding Ruling or Tailored Advice)
7. Where ATO has provided a formal clearance letter or position paper in respect of any of the engagements noted in question 6, please provide a copy of this.
8. Has the NSP (and any related stapled entities i.e. Asset Trust/Partnership), any of its downstream associated entities, or any of its upstream equity participants entered into a Tax Deed with the ATO?

Yes ☐

No ☐

#### Fixed asset registers and policies

*Please provide the following information to assist us perform general analytical investigations into the tax capitalisation practices made within the industry (e.g. depreciation method adopted, effective lives applied, asset categorisation).*

9. Provide the tax fixed asset register which supports the capital allowance balances reported in the last lodged tax return for the NSP (and any related stapled entities that hold direct interests in the network assets, e.g. the Asset Trust/Partnership).<sup>6</sup> This should include, without limiting the information to be provided:
- a. Description of asset;
  - b. Effective life of asset;
  - c. Depreciation method applied;

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<sup>3</sup> For clarification, we are not requesting tax return information for upstream stapled entities (e.g. holding trusts).

<sup>4</sup> Note, we are not asking for any actual correspondence with the regulatory authorities to be provided, but rather a summary of the relevant ATO compliance engagements, reviews and audit activity.

<sup>5</sup> If the NSP is a member of a tax consolidated group, please provide this information only to the extent it is relevant to the tax calculations of the NSP.

<sup>6</sup> If the NSP is a member of a tax consolidated group, please provide the tax fixed asset register which includes the NSP's assets, which has been reflected in the income tax return disclosures for the Head Company of that tax consolidated group.

- d. Depreciation claimed; and
- e. Original cost, including a starting cost determined under Division 58.

To the extent this information is already broken down by regulated versus non-regulated assets, please provide the information only for the regulated assets.

10. Provide existing documented capitalisation policies of the NSP (and any related stapled entities that hold direct interests in the network assets, e.g. the Asset Trust/Partnership) for tax purposes which provides guidelines for distinguishing when expenditure should be classified as capital or immediate deductible on revenue account (e.g. repairs and maintenance) and the identification of functional assets.
11. Provide a summary which identifies the total quantum of expenditure which is included in the regulatory fixed asset register (e.g. the regulatory capex allowance), but has been treated as immediately deductible for income tax purposes (e.g. refurbishment), in respect of income tax returns lodged in the past five years.

## Appendix B: Additional optional question

*This question is intended to provide an opportunity for those NSPs who would like to comment on the potential impact of upcoming changes to the tax landscape, including possible legislative changes. It is strictly optional.*

12. Please briefly describe the likely positive or negative impact on the tax profile of the NSP, its downstream associates or its upstream equity investors, of upcoming changes to the tax legislative framework. This may include consideration of:
- a. the proposed legislative measures contained in the Draft Treasury Laws Amendment (Making sure foreign investors pay their fair share of tax and other Measures) Bill 2018
  - b. any transitional measure associated with the above legislation
  - c. the anti-hybrid mismatch legislation contained in the Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018
  - d. the reform of the R&D tax incentive claim announced in the 2018/19 Federal Budget (and as outlined in the draft Treasury Laws Amendment (Research and Development Incentive) Bill 2018)
  - e. any other proposed tax landscape changes.