

Australian Capital Territory

# Taxation Administration (Special Arrangements—Energy Industry Levy Returns and Payment) Approval 2019

Disallowable instrument DI2019–76

made under the

*Taxation Administration Act 1999*, s 42 (Special arrangements for classes of people)

## EXPLANATORY STATEMENT

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### Background

The energy industry levy is imposed annually in accordance with Part 3A of the *Utilities Act 2000* (the Act), a tax law under the *Taxation Administration Act 1999* (TAA).

This levy is payable by an energy utility that provides a service in the electricity distribution sector, the electricity supply sector, the gas distribution sector, the gas supply sector, or an energy industry sector prescribed by regulation, at any time during a year (the levy year) – see the Act, section 54C.

Section 54D of the Act defines ‘energy utility’, ‘energy utility service’ and ‘energy industry sector’.

Under section 54I of the Act an energy utility must lodge a statement for a levy year if the utility provided an energy utility service in the ACT at any time before 30 August in the levy year or during the previous year. The statement must be in writing, must be lodged with the administrator no later than 30 August in the year, and must state:

- a. for an electricity distributor—the total number of megawatt hours of electricity distributed by the distributor in the ACT in the previous year;
- b. for a NERL retailer that supplies electricity—the total number of megawatt hours of electricity sold by the retailer in the ACT in the previous year;
- c. for a gas distributor—the total number of megajoules of gas distributed by the distributor in the ACT in the previous year;
- d. for a NERL retailer that supplies gas—the total number of megajoules of gas sold by the retailer in the ACT in the previous year; and

- e. the way the energy utility calculated the number of megawatt hours or megajoules.

The same requirement applies to an energy utility under section 54M of the Act except that the energy utility must lodge a ‘return’ containing the same production of distribution and sales information that is in the statement, to the commissioner for revenue no later than 31 October in the year, or another date agreed by the commissioner.

Under the TAA the commissioner may approve a special arrangement that varies the provisions of a tax law for the lodging of returns and the way of payment of amounts of tax due – see the TAA, section 42. An approval under section 42 is a disallowable instrument. This approval seeks to remove duplication of regulatory reporting on energy utilities so they only have to lodge the information once a year.

### **The special arrangement for lodgement of returns**

By this instrument, pursuant to section 42 (1) of the TAA, the commissioner approves a special arrangement that varies the requirement to lodge returns under section 54M of the Act as follows.

An energy utility will be taken to have complied with the requirement to lodge a return for a levy year with the commissioner for revenue if the energy utility has already lodged a statement for that same levy year with the levy administrator in accordance with the requirements of section 54I of the Act. In this way, such a registered energy utility will not breach the requirement in section 54M if it does not lodge a return under that section.

### **Payment of energy industry levy—no change**

For the purposes of working out when the energy industry levy is due and payable, section 54M of the Act is read with section 51 of the TAA. Section 51 of the TAA provides that tax is due and payable in accordance with the relevant tax law, or if that law makes no provision in relation to the time for payment—on the last day when the return or other document in relation to the tax is required to be lodged under that law. The Act makes no such provision in relation to the time for payment of the energy industry levy.

Under section 54M (2) (b) of the Act, an energy utility must lodge a return for the year not later than the ‘return deadline’. The return deadline for a return for a year is defined in section 54M (3) as 31 October in the year, or if the deadline is extended by the commissioner under 40 of the TAA—the date by which the return must be lodged under that section.

It is intended that the time at which the energy industry levy is due and payable is not changed by this approval. Section 4 (2) is intended to make clear that the energy industry levy is due and payable on the return deadline, even though the energy utility is not required to lodge a return under section 54M of the Act by virtue of the operation of this approval.

## **Application**

The energy industry levy is a tax payable to the commissioner (see section 48 of the TAA). In practice, the levy administrator will provide to the commissioner the information he or she obtains in each statement lodged under section 54I of the Act the purpose of the commissioner collecting the energy industry levy. This is permitted under the secrecy provisions in division 9.4 of the TAA as the levy administrator (a tax officer) is permitted to disclose information obtained under or in relation to a tax law in connection with the administration or execution of a tax law – see the TAA, section 97 (c).

This instrument applies to energy utilities registered under section 54K of the Act. It commences on the day after its notification date.

Authorised by the Commissioner for ACT Revenue  
Kim Salisbury