

ATO RECEIVABLES POLICY

PART D Registration of Entities

Chapter 63 APPLYING FOR REGISTRATION ONTO THE AUSTRALIAN BUSINESS REGISTER

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in 'plain English' and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

Date of effect: 24 July 2008 (This version replaces the 2006 version.)

Key legislation: Sections 5 to 10 of the *A New Tax System (Australian Business Number) Act 1999*

PURPOSE

1. This chapter deals with the requirements to apply for an Australian business number (ABN) and to be registered on the Australian Business Register (ABR).

INTRODUCTION

2. The ABN was introduced as part of the 1999 tax reform measures and commenced operation on 1 July 2000 to make it easier for businesses to conduct their dealings with the Australian Government using a single, unique business identifier. Legislative provisions regarding the ABN are contained in the *A New Tax System (Australian Business Number) Act 1999* (ABN Act).
3. The ABR is the central collection, storage and verification system for basic business identity information for all entities with an ABN. In registering an entity in the ABR, the Registrar will allocate an ABN to the entity and record the applicant's details in the ABR. ABN details are only released to third parties as provided for by legislation, but may be released as provided for in legislation too.
4. Registration for an ABN is voluntary. The Registrar cannot compel an entity to register. An ABN is never given without application by the entity.
5. Where an entity registers for both an ABN and goods and services tax (GST), the ABN will be the registration number for GST. Registration for an ABN is not compulsory even where an entity is required to register for GST. There may, however, be consequences of not having an ABN including being subject to withholding tax.

THE ABN ACT

6. To apply for an ABN and to be placed on the ABR is voluntary. The main object of the Act is to make it easier for businesses to conduct their dealings with the Australian Government.

7. The Tax Office has maintained an approach to make the application and obtaining of an ABN to be as open and inclusive as possible. As a result, the Registrar has sought to foster a broad based approach to allow registrations to proceed smoothly.
8. However, this would not extend to registering an entity that does not meet the eligibility requirements or where the purpose for applying does not come under the ABN Act, such as receiving discounted benefits or goods. An example of this is when an entity that is otherwise not eligible to hold an ABN (for example, an individual not carrying on an enterprise) obtains an ABN for the purpose of acquiring a discounted motor vehicle as a result of a dealership offering discounts to ABN holders.

POLICY

9. An applicant is entitled to an ABN if they meet the requirements of being both an entity and an enterprise. It is the entity not the enterprise that is entitled to register for an ABN. An entity carrying on more than one enterprise is entitled to only one ABN. For a full definition of 'entity' and 'enterprise' refer to Miscellaneous Taxation Ruling MT2006/1 - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number.
10. An entity is entitled to an ABN as long as that entity is carrying on an enterprise in Australia or is making supplies that are connected with Australia in the course of carrying on an enterprise. This includes residents and non-residents of Australia. A supply will be connected with Australia where:
 - goods are delivered or made available in Australia to the recipient of the supply
 - goods are removed from Australia
 - goods are imported or installed or assembled in Australia
 - the supply is of real property, the real-property or land to which it relates is in Australia, or
 - if it is anything other than goods or real property, the thing must be:
 - supplied in Australia
 - supplied through an enterprise that the supplier carries on in Australia, or
 - such that all the following apply:
 - the thing is not supplied in Australia
 - the thing is not supplied through an enterprise that the supplier carries on in Australia, and
 - the thing is a right or option to acquire another thing and the supply of the other thing would be connected with Australia.
 - it is a telecommunication supply where the recipient of the supply will effectively use or enjoy the supply in Australia.

Corporations Act company

11. A Corporations Act company is entitled to hold an ABN, without needing to meet the enterprise test. The ABN allocated to companies will include its Australian Company Number (ACN).

Entities carrying on superannuation activities

12. Superannuation funds (complying and non-complying) are deemed to be entities carrying on an enterprise for ABN registration purposes and may apply for an ABN on the approved form. Superannuation fund has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993*. Other superannuation entities as defined by that Act, such as a regulated superannuation fund or a pooled superannuation fund, must satisfy the usual requirements for entitlement to an ABN.

Religious practitioners

13. Where a religious practitioner undertakes activities in pursuit of a vocation as a religious practitioner, is a member of a religious institution and does not undertake the activities as an employee or agent of the religious institution or another entity, the Act applies as if the religious institution, and not the religious practitioner, undertook the activities. The religious practitioner is not entitled to an ABN in respect of these activities. The activities will be an enterprise of the religious institution and not an enterprise of the religious practitioner.

Government entities & non-profit sub-entities

14. Government entities and non-profit sub-entities are entitled to register for an ABN as if they were entities carrying on enterprises in Australia. Therefore, a government entity or non-profit sub-entity may choose to register even if it does not meet the ordinary meaning of entity or enterprise.

Other Matters

Partnerships between entities represented by the same person in different capacities

15. Where a person acts in the capacity as a trustee of a trust or in the capacities as the trustee of more than one trust then that person is a different entity in each of those capacities. They are also a separate entity in their own capacity as an individual.
16. Where the Registrar receives an application from a partnership for an ABN, GST or other role registration or issue of a TFN, and is satisfied that:
 - two or more entities being an individual or company in their own right and that individual or company as trustee of one or more trusts, or
 - two or more entities being an individual or company as trustee of two or more trusts
 - are together proprietors of the relevant business or assets that are being used to carry on a business or to derive income jointly,

the Registrar may accept the application and issue the requested ABN, role registration or TFN.

Reconstituted partnerships

17. Where there are changes to the membership of a general law partnership ('the partnership') and the partnership continues to trade without interruption, and the remaining partners also agree that the business or firm may be carried on by the continuing partners (with or without new partners), a technical rather than a general dissolution has occurred. This is known as a reconstituted partnership.

18. A reconstituted partnership, provided certain conditions are met, need not register for a new ABN and can continue to use the same ABN as the previous partnership. The partnership will only be required to complete one income tax return for the income year in which the reconstitution took place. Note that the reconstituted partnership treatment only applies to general law partnerships and does not apply to tax law partnerships.
19. The following conditions must be satisfied if a reconstituted partnership wishes to not register for a new ABN and to continue to use its existing ABN:
- (i) There must be at least one continuing partner who is a member of the partnership prior to and following the reconstitution.
 - (ii) There must be an express or implied continuity clause agreed to by the continuing, incoming and outgoing partners. This includes a clause in the partnership agreement, a statement signed by the partners or an oral agreement by the partners.
 - (iii) The following must be satisfied:
 - substantially all of the partnership assets remain with the continuing partnership
 - the nature of the enterprise remains substantially unchanged
 - the client or customer base remains substantially unchanged
 - the business name or name of the firm remains unchanged

‘Substantially’ means largely or considerably. This is taken to mean more than 50%. Each case will need to be decided on its own facts.
 - (iv) When lodging the partnership tax return, the following details must be supplied:
 - the date of the dissolution
 - the date of the reconstitution
 - the names of the new, continuing and retiring partners
 - the TFN or address and date of birth of all new partners, and
 - details of the changes if the persons authorised to act on behalf of the partnership have changed.
20. If all of the conditions set out in paragraph 19 above are not met, the reconstitution will result in the formation of a new partnership. This new partnership will be required to register for a new ABN. Both partnerships (the old and the new) will need to lodge a partnership tax return. One tax return will be lodged for the old partnership from the beginning of the income year to the date of dissolution and another will be lodged for the new partnership from the date of its formation to the end of the income year.

Date of effect

21. To be entitled to an ABN most entities must carry on an enterprise. The definition of ‘carrying on’ includes activities done in the course of commencement or termination of the enterprise. Activities that are considered to be carried on in the commencement of an **enterprise** may include a genuine feasibility study, or signing a franchise. However, the mere intention to commence an enterprise is not.

22. An entity is not entitled to an ABN prior to coming into existence. This could be the date of incorporation if the entity is a company. For a partnership, it is the date the partnership commences. For a trust, it is the date when the obligations under the trust first apply to trust property and the trustee begins to conduct an enterprise subject to those obligations, which is generally no earlier than the date the trust is settled. For further information see Miscellaneous Taxation Ruling MT 2006/1.
23. Activities that are undertaken to establish an **entity** are not commencement activities. An example of this would be the drawing up a trust deed where this activity is undertaken prior to setting up the trust activity or enterprise.

Trading names

24. The Registrar will record and display in the ABR an entity's trading name when advised by the entity that the name is being used for business purposes.
25. The Registrar will remove a name from the ABR where another Commonwealth agency advises that a name is in breach of a law they administer or where it is brought to the Registrar's attention by another party and it is clear that the name is illegal.
26. Where the Registrar identifies a name that potentially breaches another law (Commonwealth or State) the Registrar will refer the matter to the relevant governing body.
27. Generally the Registrar will refer complaints about offensive trading names or possible misuse of trading names to the relevant State Office of Fair Trading.
28. The Registrar will not accept foreign symbols or characters as part of a trading name.

<p>This section is currently subject to legal advice and may change. It will be removed, confirmed or modified prior to publishing depending on whether and what advice is received.</p>
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Refusal to register

29. An application for an ABN can be refused under certain circumstances, for example:
 - the application is not in a form approved by the Registrar
 - the applicant is already registered with an ABN
 - the applicant is not carrying on an enterprise in Australia or making supplies connected with Australia as part of carrying on an enterprise
 - the Registrar is not satisfied that the identity of the applicant has been established
 - the application contains insufficient information
 - the applicant has requested in writing that their application be treated as refused because a decision to register was not made within 28 days
30. Refusal of an application means that the applicant will not be registered in the ABR and an ABN will not be issued.
31. Should an entity be refused registration, the Registrar is required to give the entity written notice:
 - that the application has been refused, and

- the reasons for the refusal.
32. The notice must also provide details to the applicant's right to seek Administrative Appeals Tribunal review as specified in section 22 of the ABN Act.

Proof of identity (POI)

33. Proof of identity is evidence provided to either the Commissioner of Taxation or the Registrar of the ABR of the applicant's existence and identity. Prior to placing an entity on the ABR, the Registrar must satisfy himself that the applicant exists, that the details provided are accurate and that the applicant has an entitlement to register. In order to be satisfied, the Registrar must be able to uniquely and adequately identify the applicant.
34. Individuals applying for a ABN may be required to provide original documents to establish their identity. Documents required depend on the circumstances, but may include an Australian passport, birth certificate, or certificate of Australian citizenship. Proof of identity is intended to prove that the individual exists and is operating in the community. There are specific requirements for non-residents. Specific details of the documents required are available on the relevant applications for ABN, available at www.abr.gov.au. TFN security is specifically covered in Chapter 61 'Applying for a tax file number'. Please refer to this chapter for further information.
35. POI requirements for non-individual entities include establishing the existence of the entity, and specified natural persons or individuals associated with the entity (associates). Documents required depend on the type of entity and circumstances and may include a certificate of incorporation of a company. The associate's tax file number may be requested, but they are not compelled to supply it. Details of these requirements are available on the relevant applications for ABN, available at www.abr.gov.au.

Information displayed and publicly accessible on the ABR

36. Once registered some of an entity's information will be displayed on the ABR, including (where applicable):
- ABN
 - ABN status
 - Legal name
 - Entity type (such as company, sole trader, trust)
 - Trading name
 - State
 - Postcode
 - GST registration (status and date of effect)
 - Deductible gift recipient status and date/s of effect
 - Tax concession charity status and date/s of effect
 - Australian Company Number or Australian Registered Body Number
 - The date of an ABN change – if the Registrar has changed the entity's ABN

- The date of cancellation.
37. This register is publicly available at www.abr.gov.au. The Registrar may give a person a copy or a certified copy of the information above relating to an entity on the ABR after payment of a fee.
 38. Additional information (such as address and contact details) an entity provides will not be available on the public register.
 39. An entity may request a certified copy of its own register details. The extract will contain all of the information set out above plus additional information including full address for service of notices, correspondence and email addresses.

Disclosure of information to third parties

40. Under certain circumstances the Registrar may disclose information (in addition to that information mentioned in paragraph 34) provided by an entity to other Australian, state, territory and local government agencies where authorised to do so by law. These agencies include law enforcement agencies such as the Australian Federal Police, revenue agencies such as Australian Customs Service, benefit payment agencies such as Centrelink and other agencies such as the Australian Bureau of Statistics.
41. Any disclosures are made in the context of the *Privacy Act 1988*.

ABN suppression

42. The Registrar will consider requests for non-disclosure/suppression of ABN details in extreme circumstances (for example, where a person feels that their details appearing on the public register may cause them or their family harm. This may happen where domestic abuse and violence orders are in place.)

TERMS USED

ABN (Australian business number)– for an entity means the entity's ABN as shown in the Australian Business Register.

Corporations Act company – is defined in section 41 of the ABN Act to mean a body registered as a company under the *Corporations Act 2001*.

Carrying on an enterprise – includes doing anything in the course of the commencement or termination of the enterprise.

Entity – has the meaning given by section 184-1 of the *A New Tax System (Goods and Services Tax) Act 1999*. Further explanation of this term is contained in Miscellaneous Taxation Ruling MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number.

Enterprise – has the meaning given by section 9-20 of the *A New Tax System (Goods and Services Tax) Act 1999*. Further explanation of this term is contained in MT 2006/1.

General law partnership - The first part of the definition of a partnership in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) refers to an association of persons (other than a company or limited partnership) carrying on a business as partners. This is consistent with the general law definition of partnership, which is the 'relation which subsists between persons carrying on a business in common with a view to a profit'. This type of partnership is known as a general law partnership.

GST – means goods and services tax.

Government entity – means:

- (a) A Department of State of the Commonwealth
- (b) A Department of the Parliament
- (c) An Executive Agency, or Statutory Agency, within the meaning of the Public Service Act 1999
- (d) A Department of State of a State or Territory
- (e) An organisation that:
 - is not an entity and
 - is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an enterprise or established for a public purpose by an Australian law, and
 - can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation
 - whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.

Individual – means a natural person.

Non-profit sub-entity – means:

- a branch of an entity that has chosen to apply Division 63 of the *A New Tax System (Goods and Services Tax) Act 1999*, and that choice still has effect
- the branch maintains an independent system of accounting
- the branch can be separately identified by reference to:
 - the nature of the activities carried on through the branch, or
 - the location of the branch, and
- the branch is referred to in the entity's records to the effect that it is to be treated as a separate entity for the purposes of the GST law.

Person – includes a company.

Registrar – as set out in section 28 of the ABN Act is the Commissioner of Taxation.

Tax law partnership - The second part of the definition of a partnership in section 995-1 of the ITAA 1997 includes as a partnership an association of persons (other than a company or limited partnership) 'in receipt of ordinary income or statutory income jointly'. This type of partnership is referred to as a tax law partnership.