

ATO RECEIVABLES POLICY

PART D Registration of Entities

Chapter 64 CANCELLING ABN REGISTRATIONS

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: Section 18 of the *A New Tax System (Australian Business Number) Act 1999*

PURPOSE

1. This chapter outlines the requirements of cancelling the Australian business number (ABN) registration.

INTRODUCTION

2. Registration for an ABN is an entitlement and is voluntary, so an entity may cancel its ABN at any time. However, if a registered entity is no longer entitled to an ABN, the Registrar of the ABN (Registrar) may cancel the entity's ABN registration.
3. The Registrar has a duty to maintain the Australian Business Register (ABR) and will actively seek to identify and cancel registrations for any entities that are not entitled to an ABN to improve the integrity of the ABR.

POLICY

ABN cancellation

4. The Registrar may cancel an ABN registration if satisfied that:
 - the client is registered under an identity that is not its true identity
 - at the time of registration, the entity was not entitled to have an ABN
 - the client is no longer entitled to have an ABN, or
 - the client has requested cancellation of its ABN in the approved form.
5. Generally an entity will be entitled to an ABN only if it is carrying on an enterprise in Australia or it is carrying on an enterprise which makes supplies connected with Australia (the enterprise test), but some specific entities are always entitled to an ABN.
6. The Registrar will be satisfied that an entity is not entitled to an ABN registration and will cancel that registration if that entity:

- is not carrying on an enterprise in Australia, or
- in the course or furtherance of carrying on an enterprise, is not making supplies that are connected with Australia.

For example, an entity should request cancellation of their ABN if all its enterprises (or its only enterprise):

- have been sold or ceased
 - are no longer carried on in Australia, or are not making supplies that are connected with Australia
 - take on the characteristic of private recreational pursuits or hobbies, are done as an employee or are done without reasonable expectation of profit.
7. The entity (not the enterprise) is registered for an ABN. Therefore an entity is not required to cancel its ABN if it changes the enterprise it carries on or ceases one or more enterprises, as long as it continues to carry on at least one enterprise.
8. The following entities are entitled to an ABN and are not required to meet the normal tests for carrying on an enterprise:
- Government entities
 - Non-profit entities
 - Superannuation funds
 - Corporations Act companies – unless formally deregistered by the Australian Securities and Investments Commission

Cancellation of these entities will be at the request of the entity or if the Registrar becomes aware that the entity has ceased to exist in that form

Other reasons the Registrar may cancel an ABN

9. There are many other situations in which the Registrar may cancel an ABN. Some examples are detailed below.
10. In addition to not meeting the enterprise test, there are other events which extinguish the right to hold an ABN:
- it is registered under a false identity or another entity's identity
 - the entity ceases to exist, for example:
 - deregistration of Corporations Act companies
 - dissolution of a partnership (Note that a reconstituted partnership can continue to use the ABN of the previous partnership and the registration is not cancelled. For further information, see the section on reconstituted partnerships in Chapter 63 'Applying for registration onto the Australian Business Register')
 - wind up of a superannuation fund
 - change in the nature of the entity such that the former entity ceases, or no longer carries on an enterprise (for example, change from a partnership to a company).
11. Where an individual who is registered as a sole trader dies, their registration will be cancelled. Where an executor or trustee continues the enterprise they may apply for an ABN in that capacity.

12. Where an entity cannot be contacted and has not disclosed income from an enterprise (for example, in an activity statement or an income tax return) for some time, the Registrar may be satisfied that the entity is no longer carrying on an enterprise and cancel its ABN registration.

Consequences of cancelling an ABN registration

13. When the registration is cancelled, the entity ceases to have an ABN. The previously held ABN must not be quoted for any business transactions after the date of effect of the cancellation of the ABN.
14. If an entity suspends business temporarily, their ABN will be cancelled and, upon request, is reactivated when the business recommences. However, if the enterprise is seasonal the ABN remains active.

Date of effect of cancellation

15. The date of effect of cancellation is decided by the Registrar. It may be the date of the notice of cancellation, an earlier date or a future date.
16. Where an entity applies for cancellation, the Registrar will normally accept that date, but may choose an earlier date if he is satisfied that the entity was no longer eligible from the earlier date.
17. Where the Registrar initiates the cancellation, he may cancel from the date of the notice of cancellation, but may choose an earlier date if he is satisfied that the entity was no longer eligible from the earlier date.

Reinstating an ABN Registration

18. The Registrar must reinstate an entity's registration in the ABR if the Registrar is satisfied that the registration should not have been cancelled. The Registrar must provide a written notice of the reinstatement. The reinstatement has effect on and from the day on which the registration was cancelled. Where an entity cancels its registration, but requires a registration again at a later date, the earlier registration may be reactivated with a new date of effect.

Review rights

19. The ABN Act does not provide a right of objection against decisions of the Registrar. However, an entity may apply to the Administrative Appeals Tribunal for review of the following cancellation decisions of the Registrar:
 - refusal to cancel a registration under subsection 18(4) of the *A New Tax System (Australian Business Number) Act 1999* (ABN Act)
 - cancellation of a registration under subsection 18(1) of the ABN Act
 - date of effect of cancellation under subsections 18(2) and 18(5) of the ABN Act.

TERMS USED

ABN – means the entity's Australian business number as shown in the Australian Business Registrar.

Australian Business Register – (ABR) means the register established under section 24 of the ABN Act.

A 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*.

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.

Individual – means a natural person.

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