GSTD 2000/8 - Goods and services tax: what is an 'enterprise' for the purposes of A New Tax System (Goods and Services Tax) Act 1999 ? Does MT 2000/1 have equal application to the meaning of 'enterprise' for GST purposes?

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Generated on: 4 November 2026, 11:17:49 PM

Goods and Services Tax Determination

Goods and Services Tax: what is an 'enterprise' for the purposes of *A New Tax System (Goods and Services Tax) Act 1999*? Does MT 2000/1[1] have equal application to the meaning of 'enterprise' for GST purposes?

Preamble

This document is a ruling for the purposes of section 37 of the ***Taxation Administration Act 1953****. You can rely on the information presented in this document which provides advice on the operation of the GST system.*

Date of Effect

This Ruling applies on and from 8 July 1999 (the date of Royal Assent to A New Tax System (Goods and Services Tax) Act 1999) and may be relied on immediately.

Definition of Enterprise

1. The term 'enterprise' is a defined term in section 9-20 of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). The definition is substantially the same as that used in *A New Tax System (Australian Business Number) Act 1999* (the ABN Act)[2].

2. An enterprise is defined in terms of an activity or series of activities done in a certain manner or by certain entities. The activities covered include those done in the form of a business or an adventure or concern in the nature of trade, leasing on a regular or continuous basis, activities done by charitable or religious institutions, and activities done by the Commonwealth, a State, a Territory, or local government. Also, there are certain activities that are excluded from the definition. The exclusions include activities done as an employee, as a private recreational pursuit or hobby, or by individuals without a reasonable expectation of profit or gain.

Application of MT 2000/1

3. The meaning of 'enterprise', as defined in the ABN Act, is considered in Miscellaneous Taxation Ruling MT 2000/1. The discussion in the ruling is considered to apply equally to the term 'enterprise' as used in the GST Act and can be relied upon for GST purposes.

4. A brief summary of some of the main principles from MT 2000/1 appears in the following paragraphs.

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[1] Miscellaneous Taxation Ruling MT 2000/1 deals with the meaning of an entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ('ABN'). Released 10 May 2000.

[2] Section 38 (ABN Act). The difference between the two definitions of 'enterprise' is the inclusion of an extra paragraph in the GST definition. The paragraph, inserted by Act No. 92 of 2000, relates to activities done by a complying superannuation fund.

An activity or series of activities[3]

5. Essentially this is any act or series of acts that an entity chooses to do. The acts can range from a single transaction to groups of related transactions or to the entire operations of the entity.

In the form of a business[4]

6. The definition of 'business' in the GST Act is the same as that used for the *Income Tax Assessment Act 1936* (ITAA 1936)[5]. Therefore it is appropriate to refer to the precedent established for ITAA purposes, for example Taxation Ruling TR 97/11.

7. The words 'in the form of' have the effect of extending the meaning of enterprise beyond entities carrying on a business. An enterprise will include entities that carry out activities that, while they are not sufficient to meet the criteria for being regarded as a business, have the appearance or characteristics of business activities. For example, activities that, had they been undertaken for profit, would have satisfied the tests of a business. The effect of this is that many non-profit mutual organisations, clubs and associations will meet the definition of enterprise.

In the form of an adventure or concern in the nature of trade[6]

8. 'An adventure or concern in the nature of trade' includes a commercial activity that does not amount to a business. Isolated transactions with commercial characteristics fall into this category. However, it does not extend to the mere realisation of investment or private assets such as the family home and private cars.

9. The words 'in the form of' also extend the meaning of 'an adventure or concern in the nature of trade' so that it covers activities undertaken in the form of trade that, had they been done for profit, would satisfy the ordinary concept test of a business or an adventure in the nature of trade.

Exclusions to the definition of enterprise[7]

10. There are certain specific exclusions to the definition of enterprise. The exclusions mean that an enterprise does not include activities done:

- by a person:
  - as an employee[8];
  - as a company director;
  - as an office holder; or
  - under a labour hire arrangement or as specified by regulation;
- as a private recreational pursuit or hobby; or
- by an individual (other than a trustee of a charitable fund), or a partnership (all or most of which are individuals), without reasonable expectation of profit or gain.

Commissioner of Taxation
2 August 2000

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[3] Subsection 9-20(1)
[4] Paragraph 9-20(1)(a)
[5] Subsection 6(1) ITAA 1936
[6] Paragraph 9-20(1)(b)
[7] Subsection 9-20(2)
[8] Therefore, if your only activities are done as an employee, you are not entitled to register for an ABN. If you are in this situation and have an ABN, you should apply to have your registration cancelled.

Related Rulings/Determinations:
MT 2000/1; TR 97/11;

Subject references:
- activity or series of activities
- adventure or concern in the nature of trade
- business
- carrying on an enterprise
- employee
- enterprise
- in the form of
- private recreational pursuit or hobby

Legislative references:
- ANTS(GST)A 99 9-20
- ANTS(GST)A 99 9-20(1)
- ANTS(GST)A 99 9-20(1)(a)
- ANTS(GST)A 99 9-20(1)(b)
- ANTS(GST)A 99 9-20(2)
- ANTS(ABN)A 99 38
- ITAA 1936 6(1)
- ITLAA 2000 Sch 11 3B

ATO references:
NO T2000/12607
BO
FOI No: I 1021154
ISSN: 1443-5179