MT 2000/1W - The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number (ABN)

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Generated on: 23 October 2026, 07:07:17 AM

Notice of Withdrawal

Miscellaneous Taxation Ruling

The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number (ABN)

Miscellaneous Taxation Ruling MT 2000/1 is withdrawn with effect from today. It is replaced by Miscellaneous Taxation Ruling MT 2006/1.

Reason for Withdrawal

1. The issues covered by MT 2000/1 are now covered in a new Ruling MT 2006/1 which provides assistance in determining the entitlement to an ABN for entities. In doing this, MT 2006/1 considers the meaning of the certain key words and phrases used to define:

   a. an entity; and

   b. an enterprise.

2. Appendix A to this withdrawal notice contains a table which compares the paragraphs of MT 2006/1 with the paragraphs in MT 2005/D1 and MT 2000/1. A brief explanation of the change is provided.

Commissioner of Taxation
13 December 2006

ATO references

NO:	2005/18404
ISSN:	1039-0731
ATOlaw topic:	Goods and Services Tax ~~ General rules and concepts ~~ course or furtherance of enterprise

Appendix A

Set out below is a table comparing the paragraphs of MT 2006/1 and MT 2005/D1 with the paragraphs in MT 2000/1. The paragraphs listed from MT 2000/1 are closest equivalent paragraphs to the paragraphs in MT 2006/1 and MT 2005/D1. However, the wording of the three paragraphs may not be identical.

Table of Comparison

Topic in MT 2006/1	MT 2000/1	MT 2005/D1	MT 2006/1	Changes from MT 2000/1
What this Ruling is about	1, 3-5, 85	1-5	1-6	No substantial changes from MT 2001/1.
Date of effect	6	6	7	
Background - Policy intent - The registration process Definitions - Entity - Enterprise	2, 7 No equivalent	7-15 16-18	8-16 17-20	This section explains the policy behind the ABN as well as providing a brief explanation of the registration process. A new explanation of the registration process has been included. It explains that the terms 'entity' and 'enterprise' are defined in section 41 of the ABN Act[1] to have the meaning of these terms as defined in the GST Act.[2]
Entitlement to an ABN	8, 55	19-23	21-25	Introductory paragraphs.
What is an entity for ABN purposes? - Individual - Body corporate - Corporation sole - Body politic - Partnership	9, 32-44	24-41	26-43	The discussion of the terms 'body corporate', 'corporation sole' and 'body politic' is now divided into separate sections. It also expands upon the information on partnerships to explain that the term is wider than that at general law.

[1] *A New Tax System (Australian Business Number) Act 1999.*
[2] *A New Tax System (Goods and Services Tax) Act 1999.*

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
Any other unincorporated association or body of persons	45-47	42-52	44-54	The explanation of the term 'unincorporated association or body of persons' is expanded to provide some greater detail of the meaning of this term and to include some characteristics of these entities.
Example 1	Example 2	Example 1	Example 1	The type of club has been changed as many junior athletics clubs are incorporated.
Example 2	No equivalent	Example 2	Example 2	A new example which clearly demonstrates an expense sharing arrangement.
Exclusion to any other unincorporated association or body of persons – non-entity joint venture	No equivalent	57-59	59-61	A new explanation of the term 'non-entity joint venture' is included. The explanation includes some of the characteristics of a non-entity joint venture.
Example 3	No equivalent	Example 3	Example 3	
Example 4	No equivalent	Example 4	Example 4	New examples to illustrate the principles.
Trust	No equivalent	65	68	A new description of the term 'trust' is included.
Superannuation fund	48	66-67	69-70	Now shows the linkages between the definition of 'superannuation fund' in the GST Act and the definition of that term in the *Superannuation Industry (Supervision) Act 1993*.

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
Trustee of a trust or superannuation fund	49-51	68-69, 73	71-73, 77-78	This section more clearly explains the interaction between subsection 184-1(1) of the GST Act (the definition of trust) and subsection 184-1(2) (the trustee of the trust).
Example 5	No equivalent	Example 5	Example 5	The example illustrates this interaction.
Example 6	No equivalent	Example 6	Example 6	The example illustrates the principle that there is no change of ABN when there is a change of trustee.
Multiple Roles –	11, and Example 14	76-78	81-83	New explanation describes how a legal person can have a number of different roles or act in different capacities.
- Trustee				
- Agent	No equivalent	79-80	84-85	
- Other roles	No equivalent	81	86	
The ABN Act applies as if an entity exists – Government entities	52-53	82-86	87-91	More detailed information on the operation of non-profit sub-entity entities and Division 63 of the GST Act is included.
- Non-profit sub-entity entities				
Enterprise	No equivalent	87-89	92-94	Introductory paragraphs.
Corporations Act Companies, Government entities, superannuation funds and non-profit sub-entities	48, 52-53	90-91	95-101	Explains these entities' automatic entitlement to an ABN. Also explains the difference between the way the ABN Act and the GST Act determines whether and which superannuation funds carry on an enterprise.
-Superannuation funds and enterprise				

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
Who is carrying on an enterprise? -Groups of entities - Partnership - Agency - Religious Practitioner - Employee	No equivalent	92-109	102-119	This new section explains that enterprise activities may be done by more than one entity. The explanation discusses situations involving consolidated groups, partnerships, agencies, religious practitioners and employees.
Examples 7 and 8	No equivalent	Examples 7 and 8	Examples 7 and 8	New examples 7 and 8 are included to illustrate some of the principles involved.
When is an enterprise being carried on?	15	110-111	120-121	Explains what activities are considered to be activities done in the course of the commencement of an enterprise. If the activities have the character of those ordinarily undertaken to commence an enterprise they will be accepted as falling within the statutory definition. New examples illustrate the principles concerned.
Commencement of an enterprise	No equivalent	112-120	122-131	
Examples 9-12	No equivalent	Examples 9-12	Examples 9-12	
Termination of an enterprise	No equivalent	129-135	140-147	The section also explains that an enterprise terminates when the activities related to that enterprise cease. Ordinarily, that occurs when all assets are disposed of or converted to another purpose or use and all obligations satisfied. New example to illustrate the principles.
Example 13	No equivalent	Example 13	Example 13	

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
What is an enterprise for ABN purposes?	15-16	139-141	149-152	Introductory paragraphs.
Activity, or series of activities Examples 14-16 Example 17	12, 20, 56-58 No equivalent Example 4	142-145, 148-149, 153 Examples 15-17 Example 18	153-156, 159-160, 164 Examples 14-16 Example 17	This section expands upon the discussion. It explains that an entity is ordinarily only entitled to one ABN even though the activities the entity conducts may amount to several separate enterprises.
In the form of a business - Indicators of a business	21-23, 59-62 63	159-165 166-168	170-176 177-179	New explanation of 'in the form of a business'. Concept now explained as a whole term and additional policy information included.
Small scale activities Example 18 Example 19	No equivalent No equivalent No equivalent	169-170 Example 19 Example 20	180-181 Example 18 Example 19	This new section explains that an enterprise may be carried on in a small way.
Activities done on a small scale that do not amount to an enterprise Example 20 Example 21	No equivalent No equivalent No equivalent	175 Example 21 Example 22	186 Example 20 Example 21	Explains that it would be difficult to conclude that activities are an enterprise where they are of a very small size and scale, are carried on in an ad hoc manner, and there is little repetition or regularity The exclusion at paragraph 9-20(2)(a) of the GST Act does not apply as the first requirement of being in the form of a business has not been satisfied.

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
Activities of holding companies and other holding entities Examples 22-24	No equivalent Examples 8 -9, 13	180-188 Examples 23-25	191-201 Examples 22-24	The new section provides guidance on when holding entities are carrying on an enterprise. The section discusses a number of cases. A list of indicators is included to provide guidance in deciding when a holding entity is carrying on an enterprise. Examples 8, 9 and 13 in MT 2000/1 are replaced by new examples.
Activities of head companies of consolidated groups Example 25	No equivalent No equivalent	196-204 Example 26	209-217 Example 25	The new section discusses when the activities of a head company (which includes a corporate unit trust, public trading trust and a corporate limited partnership) can amount to an enterprise. Ordinarily the role in the consolidated group and the substantial stewardship duties of a head company would lead to a conclusion that a head company is carrying on an enterprise in the form of a business. The new example illustrates some circumstances when a head company is considered to be carrying on an enterprise.
Mutual organisations	19, 79-80	207-208	220-221	There are no significant changes.
Non-profit clubs and associations Example 26 Example 27	81-83 Example 15 No equivalent	209-210 Example 27 Example 28	222-223 Example 26 Example 27	Example 26 is essentially Example 15 in MT 2000/1. Example 27 is included to show a situation where a club is not considered to be carrying on an enterprise.

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
A body corporate under strata title legislation	No equivalent	218-219	231-232	A discussion of *Body Corporate, Villa Edgewater Cts 23092 v. FC of T* 2004 ATC 2056 is included. In that case it was decided that a body corporate was carrying on an enterprise as its activities were done in a businesslike manner
In the form of an adventure or concern in the nature of trade	24, 64-67, 74	220-228	233-242	New explanation inserted advising that Australian case law is the starting point for understanding this concept, and that the term is similar to the income tax term 'profit making undertaking or scheme'. Also advised that in a practical sense that the term 'in the form of an adventure or concern in the nature of trade' is not any wider that 'an adventure or concern in the nature of trade'.
Characteristics of trade, including the badges of trade	68	229-232	243-246	The section explains that 'trade' takes its ordinary meaning. It also includes a discussion of the badges of trade (which were developed from UK case law) as they provide practical guidance on what activities amount to trade.
- The subject matter of realisation	72	233-234	247-248	
- The length of period of ownership	72	235-236	249-250	
- The frequency or number of similar transactions	No equivalent	237	251	

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
- Supplementary work on or in connection with the property realised	No equivalent	238	252	
- The circumstances that were responsible for the realisation	No equivalent	239	253	
- Motive	72	240-243	254-257	
- Trade v. investment assets	25, 69-71	244-247	258-261	
Isolated transactions and sales of real property	No equivalent	248-255	262-269	Provides a list of factors and a series of examples that provide assistance in determining whether such activities are a business or an adventure or concern in the nature of trade.
- Land bought with the intention of resale	No equivalent	256	270	
- Examples of subdivisions of land that are enterprises Examples 28-31	No equivalent	Examples 29-32	Examples 28-31	
- Examples of subdivisions of land that are not enterprises Examples 32- 35	Example 11	Examples 33-36	Examples 32-35	

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
On a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property	84, 87-88	289-291	303-305	Provides a more detailed explanation of why the phrase 'in the form of' on a practical level does not broaden the meaning of 'lease, licence or other grant of an interest property'.
– Regular or continuous basis	28, 86	292-293	306-307	
Example 36	Example 16	Example 37	Example 36	New discussion is included to explain when a gratuitous lease, licence or other grant of an interest in property made by an individual or a partnership where all or most of the partners are individuals will amount to an enterprise. In these circumstances the lease would need to have a commercial basis underlying it.
Examples 37-40	No equivalent	Examples 38-41	Examples 37-40	
The Commonwealth, a State or Territory, or a body corporate, or corporation sole, established for a public purpose	29, 89-92	309-314	323-328	There are no significant changes from the information contained in MT 2000/1.
What activities are excluded from being an enterprise?	17	315-317	329-331	Introductory paragraphs.
Activities done as an employee and activities done as a withholding payment earner	No equivalent	318	332	This section expands upon the explanation contained in MT 2000/1. A number of cases are discussed in determining whether activities are done in supplying services as the holder of an office that is accepted 'in the course of' or 'in connection with' an enterprise. For the activities to be 'in the course of' a person's enterprise the
– Activities done as an employee	No equivalent	319	333	
– Meaning of employee	93	320-325	334-339	
– Activities done as a withholding payment earner	18	326-327	340-341	
– Exception to the exclusion	94	328-330	342-344	

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
– 'In the course of' or 'in connection with'	No equivalent	331-340	345-354	activities need to be performed as part of or incidental to the enterprise activities. For activities to be 'in connection with' a person's enterprise there has to be an association or relationship with the activities of that enterprise.
Example 41	Example 18	Example 42	Example 41	
Examples 42-43	No equivalent	Examples 43-44	Examples 42-43	
Private recreational pursuit or hobby	97-99	351-352	365-366	A couple of new examples have been included. Example 45 provides an illustration of when activities associated with a horseracing syndicate amount to a hobby. Example 46 illustrates when a hobby may become a business.
- Indicators of private recreational pursuit or hobby	95-96, 100-101	353-355	367-369	
Example 44	Example 19	Example 45	Example 44	
Example 45	No equivalent	Example 46	Example 45	
A hobby can become a business and therefore an enterprise	102	360	374	
Example 46	No equivalent	Example 47	Example 46	
Individuals or partnerships without a reasonable expectation of profit or gain	103	364-366	378-380	A new section is included on partnerships and a reasonable expectation of profit or gain. The test of whether there is a reasonable expectation of profit or gain is an objective one looking at the partnership as a whole and taking into account all relevant matters. This means that despite a subjective view or expectation by partners of a profit, the activities of the
– Meaning of individual and partnership	104	367	381	
- Reasonable expectation of profit or gain	30-31, 105-107	368-371	382-386	
– Partnership and reasonable expectation	No equivalent	372-373	387-388	
Examples 47-48	No equivalent	Examples 48-49	Examples 47-48	

Table of Comparison				
Topic in MT 2006/1	**MT 2000/1**	**MT 2005/D1**	**MT 2006/1**	**Changes from MT 2000/1**
- Examples concerning partnerships Example 49 Example 50	 Example 20 No equivalent	 Example 50 Example 51	 Example 49 Example 50	partnership may not, as a result of this exclusion, be an enterprise.
Members of local governing bodies	108-110	391-393	406-408	There are no significant changes from the information contained in MT 2000/1.
Appendix 1 Decision Tree 1	No equivalent	Decision Tree 1	Decision Tree 1	Decision Tree 1 is used when an entity wishes to test if it is carrying on an activity in the form of a business or in the form of an adventure or concern in the nature of trade and to determine if it is entitled to an ABN.
Decision Tree 2	No equivalent	Decision Tree 2	Decision Tree 2	Decision Tree 2 is used by an entity which has leased or granted a licence or other grant of property and wishes to determine if it is entitled to an ABN.