# *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)*

This cover sheet is provided for information only. It does not form part of *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)*

This document has changed over time. This is a consolidated version of the ruling which was published on *13 December 2006*

# 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Miscellaneous Taxation Ruling MT 2000/1 is withdrawn with effect from today.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
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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<br>- Policy intent<br>- The registration process<br>Definitions<br>- Entity<br>- Enterprise | 2, 7<br><br><br><br>No equivalent | 7-15<br><br><br><br>16-18 | 8-16<br><br><br><br>17-20 | This section explains the policy behind the ABN as well as providing a brief explanation of the registration process.<br>A new explanation of the registration process has been included.<br>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?<br>- Individual<br>- Body corporate<br>- Corporation sole<br>- Body politic<br>- 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 –<br>- Trustee | 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. |
| - Agent | No equivalent | 79-80 | 84-85 | |
| - Other roles | No equivalent | 81 | 86 | |
| The ABN Act applies as if an entity exists – Government entities<br>- Non-profit sub-entity 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. |
| Enterprise | No equivalent | 87-89 | 92-94 | Introductory paragraphs. |
| Corporations Act Companies, Government entities, superannuation funds and non-profit sub-entities<br>-Superannuation funds and enterprise | 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. |

| 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?<br>-Groups of entities<br>- Partnership<br>- Agency<br>- Religious Practitioner<br>- 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.<br>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<br><br>Examples 14-16<br><br>Example 17 | 12, 20, 56-58<br><br>No equivalent<br><br>Example 4 | 142-145, 148-149, 153<br><br>Examples 15-17<br><br>Example 18 | 153-156, 159-160, 164<br><br>Examples 14-16<br><br>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<br><br>- Indicators of a business | 21-23, 59-62<br><br>63 | 159-165<br><br>166-168 | 170-176<br><br>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<br><br>Example 18<br><br>Example 19 | No equivalent<br><br>No equivalent<br><br>No equivalent | 169-170<br><br>Example 19<br><br>Example 20 | 180-181<br><br>Example 18<br><br>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<br><br>Example 20<br><br>Example 21 | No equivalent<br><br>No equivalent<br><br>No equivalent | 175<br><br>Example 21<br><br>Example 22 | 186<br><br>Example 20<br><br>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<br><br>Examples 22-24 | No equivalent<br><br>Examples 8 -9, 13 | 180-188<br><br>Examples 23-25 | 191-201<br><br>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<br><br>Example 25 | No equivalent<br><br>No equivalent | 196-204<br><br>Example 26 | 209-217<br><br>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<br><br>Example 26<br><br>Example 27 | 81-83<br><br>Example 15<br><br>No equivalent | 209-210<br><br>Example 27<br><br>Example 28 | 222-223<br><br>Example 26<br><br>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 | | | | |
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| **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'.<br>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<br>Examples 28-31 | No equivalent | Examples 29-32 | Examples 28-31 | |
| - Examples of subdivisions of land that are not enterprises<br>Examples 32- 35 | Example 11 | Examples 33-36 | Examples 32-35 | |

| Table of Comparison | | | | |
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| **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 | | | | |
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| **Topic in MT 2006/1** | **MT 2000/1** | **MT 2005/D1** | **MT 2006/1** | **Changes from MT 2000/1** |
| - Examples concerning partnerships<br><br>Example 49<br><br>Example 50 | <br><br>Example 20<br><br>No equivalent | <br><br>Example 50<br><br>Example 51 | <br><br>Example 49<br><br>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<br><br>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. |