


TR 2002/9A - Addendum - Income tax: withholding from payments where recipient does not quote ABN

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Addendum

Taxation Ruling

Income tax: withholding from payments where recipient does not quote ABN

This Addendum amends Taxation Ruling TR 2002/9 to reflect the following:

- the repeal of the definition of 'carried on in Australia' from section 995-1 of the *Income Tax Assessment Act 1997* and the insertion of a definition of 'Australia' in subsection 12-190(7) of Schedule 1 to the *Taxation Administration Act 1953* by the *Taxation Laws Amendment Act (No. 4) 2003*. The Commissioner will release a subsequent product to provide advice on the meaning of 'carried on in Australia';
- changes to the private rulings system made by *Taxation Laws Amendment (Improvements to Self Assessment) Act (No. 2) 2005*. These amendments expand the matters and circumstances on which the Commissioner may make rulings and now includes the administration or collection of income taxes from 1 January 2006;
- changes made by *Tax Laws Amendment (2006 Measures No. 3) Act 2006* which amended the definition of 'enterprise' in section 9-20(2) of *A New Tax System (Goods and Services Tax) Act 1999*;
- change to the withholding rate for failure to provide an ABN effective from 1 July 2006; and
- the release of 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*.

Taxation Ruling TR 2002/9 is amended as follows:

1. Paragraph 6

- (a) At the end of the first sentence insert a footnote with the following text:

The withholding rate for failure to provide an ABN is specified in regulation 38(2) of the *Taxation Administration Regulations 1976*.

- (b) Omit the last sentence.

2. Paragraph 40

Omit the last two dot points; substitute:

- by a religious institution;
- by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole, established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
- by a trustee of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN.

3. Paragraph 41

Omit the paragraph; substitute:

41. The Commissioner has released 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. That Ruling provides guidance, among other matters, as to the meaning of an enterprise. Goods and Services Tax Determination GSTD 2006/6 also states that the principles in MT 2006/1 apply equally to the terms 'entity' and 'enterprise' for GST purposes.

4. Paragraph 44

Omit the second dot point; substitute:

- by an individual (other than a trustee of a charitable fund or fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or a fund that would be covered by that item if it had an ABN), or a *partnership (all or most of the members of which are individuals), without a reasonable expectation of a profit or gain; or

5. Paragraph 45

Omit the last sentence.

6. Paragraphs 46 and 47

Omit the paragraphs; substitute:

46. Prior to 1 July 2003, the term 'carried on in Australia' for the purposes of no ABN withholding was defined in section 995-1 of the ITAA 1997 as having the meaning given by subsection 9-25(6) of the GST Act. Under that definition the phrase was linked to the definition of 'permanent establishment', which is a place where a person carries on a business. Arguably, this meant that section 12-190 only applied to business-to-business transactions.

47. *Taxation Laws Amendment Act (No. 4) 2003* repealed the definition of 'carried on in Australia' from section 995-1 of the ITAA 1997 applicable to payments made after 30 June 2003. The expression 'carried on in Australia' for the purpose of section 12-190 now has its ordinary meaning and the operation of the no ABN withholding event is not limited to business-to-business transactions.

7. Paragraph 48

Omit 'paragraphs 118 – 120'; substitute 'paragraphs 113-115 of this Ruling'.

8. Paragraphs 49 and 50

Omit the paragraphs; substitute:

49. Subsection 12-190(7) provides that in working out whether an enterprise is 'carried on in Australia' for the purpose of section 12-190, external Territories are ignored. However, in this definition Australia does include installations within the meaning of the *Customs Act 1901* that are deemed by section 5C of the *Customs Act 1901* to be part of Australia. An example of an installation of this nature would be a gas or oil rig.

9. Paragraph 72

Omit the paragraph; substitute:

72. Where the supplier does not provide their ABN or a statement that they are not carrying on an enterprise, the payer should withhold 46.5% of the payment unless one of the exceptions in subsections 12-190(4) to (6) of Schedule 1 to the TAA 1953 applies. The amount authorised to be debited to the credit card should only be 53.5% of the total price. It is not the responsibility of the credit card issuer to obtain an ABN from the supplier before transmitting the funds.¹⁰

10. Paragraph 126

Omit the paragraph; substitute:

126. Where a supplier who is required to quote their ABN does not do so, the payer will be required to withhold an amount from the payment. If a payer is not already registered as a withholder, they will need to register with the Australian Taxation Office (ATO) as a withholder (section 16-140 of Schedule 1 to the TAA 1953).¹⁹

11. Paragraph 132

Omit the last sentence; substitute:

For example, where a supply was made on 1 April 2007 for \$110 inclusive of GST, and the supplier had failed to quote their ABN to the payer before payment, the payer would withhold \$51 and provide the supplier with a payment summary that showed they had withheld this amount.

12. Paragraphs 135 and 136

Omit the paragraphs, including the heading.

13. Paragraph 138

Omit:

Private rulings and enforcement procedures 135

¹⁰ Refer to footnote at paragraph 6 of this Ruling for more information in regard to the withholding rate.

¹⁹ Refer to footnote at paragraph 6 of this Ruling for more information in regard to the withholding rate.

14. Related Rulings/Determinations:

Omit:

MT 2000/1; PS 2001/4

substitute:

MT 2006/1; GSTD 2006/6

15. Legislative references

Omit:

- TAA 1953 Part IVAA Sch 1

Insert:

- TAA 1953 12-190(7) Sch 1

- ITAA 1997 30-15

- TAR 1976 38(2)

- Taxation Laws Amendment Act (No. 4) 2003

This Addendum applies as follows:

- Paragraphs 6, 72, 126 and 132 and footnotes 10 and 19 apply on and from 1 July 2006.
- Paragraphs 40 and 44 apply on and from 1 July 2005.
- Paragraph 41 applies from 13 December 2006, being the date of release of MT 2006/1.
- Paragraphs 45 to 50 apply on and from 1 July 2003.
- The omission of paragraphs 135 and 136 applies on and from 1 January 2006.

Commissioner of Taxation18 July 2007

ATO references

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