PS LA 2011/8 - The registration of entities

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Practice Statement Law Administration

PS LA 2011/8

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This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by tax officers unless doing so creates unintended consequences or where it is considered incorrect. Where this occurs tax officers must follow their business line's escalation process.

SUBJECT:	**The registration of entities**
PURPOSE:	**This practice statement sets out the policy and procedures to be followed on a range of issues relating to the registration of entities and should be read in conjunction with Law Administration Practice Statement PS LA 2011/9 The registration of entities on the Australian Business Register**

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BACKGROUND

1. The Australian Taxation Office (ATO) utilises a system of unique identifiers which:
   - enables the accurate identification of entities for tax law purposes
   - records key information about an entity that will be accessed by multiple ATO systems and applications
   - record and manage taxpayer entitlements and obligations under income tax and other related laws
   - create an account for recording transactions with the tax system
   - facilitate the sharing of information with other agencies as permitted by law.
2. To fulfil these functions, Tax File Number (TFN), Goods and Services Tax (GST) & Australian Business Number (ABN) registrations must be maintained to ensure that information is accurate, complete and up to date and that all appropriate entities are registered and that only appropriate entities are registered.
3. There are a number of tax laws which require or allow an entity to register. In most cases, registration is compulsory, while for some it is optional, although there may be significant benefits to registration.

TERMS USED

4. The following terms are used in this practice statement

   ABN (Australian Business Number) – the entity's ABN as shown in the Australian Business Register (ABR).

   Applicant – in relation to an application for the issue of a TFN, means the person specified in the application as the person by whom or on whose behalf the issue of a TFN is sought.

   Approved form – takes the meaning set out in section 388-50 in schedule 1 to the *Taxation Administration Act 1953* (TAA). Generally, a document is in the approved form if it is in the form approved in writing by the Commissioner, contains a declaration signed by the person, contains the information that the form requires and if it is required to be given to the Commissioner, is given in the manner the Commissioner requires. The Commissioner may combine in the same approved form more than one return, notice, statement or other document (for example, the business activity statement). See Law Administration Practice Statement PS LA 2005/19 Approved forms for further information on approved forms.

Commissioner – means the Commissioner of Taxation

Carrying on an enterprise – is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to include doing anything in the course of the commencement or termination of the enterprise.

Creditable acquisition – has the meaning given by section 11-5 of the GST Act. An entity makes a creditable acquisition if:

(a) the entity acquires anything solely or partly for a creditable purpose

(b) the supply of the thing to the entity is a taxable supply

(c) the entity provides, or is liable to provide, consideration for the supply, and

(d) the entity is registered or required to be registered.

Creditable importation – has the meaning given by section 15-15 of the GST Act. An entity makes a creditable importation if:

(a) the entity imports goods solely or partly for a creditable purpose

(b) the importation is a taxable importation, and

(c) the entity is registered or required to be registered.

Creditable purpose – has the meaning given by section 11-15 of the GST Act in relation to creditable acquisitions and section 15-10 of the GST Act in relation to creditable importations.

Enterprise – has the meaning given by section 9-20 of the GST Act. 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.

Entity – has the meaning given by section 184-1 of the GST Act. Further explanation of this term is contained in Miscellaneous Taxation Ruling MT 2006/1.

GST – means goods and services tax that is payable under GST law.

GST branch – has the meaning given by section 54-5 of the GST Act.

GST group – has the meaning given by section 48-5 of the GST Act.

GST turnover – means:

- in relation to meeting a turnover threshold – has the meaning given by subsection 188-10(1) of the GST Act, and
- in relation to not exceeding a turnover threshold – has the meaning given by subsection 188-10(2) of the GST Act.

Incapacitated entity – is an individual who is bankrupt, an entity that is in receivership or liquidation or an entity that has a representative as defined in section 195-1 of the GST Act.

General Law Partnership – means an association of persons (other than a company or limited partnership) carrying on a business as partners. It is the 'relation which subsists between persons carrying on a business in common with a view to a profit'.

Input tax credit – means an entitlement arising under section 11-20 or 15-15 of the GST Act.

Joint venture operator – for a GST joint venture, is the entity nominated to be the joint venture operator under paragraph 51-5(e), or approved as a replacement joint venture operator for the joint venture under paragraph 51-70(1)(c) of the GST Act.

Non-profit sub-entity – has the meaning given by Division 63 of the GST Act.

Passport – in relation to a person who does not hold a passport, means another official travel document held by the person.

Person – includes a partnership, a company and a person in the capacity of trustee of a trust estate.

Registration Turnover Threshold – has the meaning given by sections 23-15 and 63-25 of the GST Act.

Tax Law Partnership – means an association of persons (other than a company or limited partnership) 'in receipt of ordinary income or statutory income jointly'. This type of partnership is referred to as a tax law partnership.

Tax period – is the period for which an entity that is registered or required to be registered must lodge a GST return. These periods may be quarterly, monthly, annual or, in limited circumstances, another tax period such as a substituted accounting period.

TFN – in relation to a person, means a number issued to the person by the Commissioner, being a number that is either:

- a number issued to the person under Division 2 of Part VA of the *Income Tax Assessment Act 1936* (ITAA 1936) or a number issued to a person under section 44 or 48 of the *Higher Education Funding Act 1988;* or
- a number notified, before the commencement of section 202A of the ITAA 1936, to the person as the person's income tax file number.

Taxable importation – has the meaning given by sections 13-5 and 114-5 of the GST Act.

Taxable supply – has the meaning given by sections 9-5, 78-50, 84-5 and 105-5 of the GST Act.

STATEMENT

5. Entities are expected to register as and when required by legislation. They are also expected to:
   - provide sufficient information to enable the Commissioner to accurately identify and contact the entity and notify changes to the information
   - keep a record of their TFN and maintain its confidentiality
   - advise the ATO when they are no longer eligible for a registration.
6. The Commissioner of Taxation (including when acting as the Registrar of the ABR) is required to:
   - record and maintain registration details for entities (including establishing and maintaining the ABR) and may require registered entities to provide information to update those details
   - treat TFNs and taxpayer information in accordance with the secrecy principles and the Privacy Commissioner's TFN Guidelines, and
   - notify entities when making certain changes to registration details (for example cancelling a registration)

7. From time to time, the ATO may perform checks to ensure that entities are entitled to be registered and that their registration details are correct.

8. Registration obligations or entitlements are attached to an entity. The term entity is specifically defined for tax law purposes and is wider than the ordinary meaning of 'person', 'company' etc.

9. Where a registration imposes obligations or provides entitlements, the date of effect may be important. Most provisions allow the Commissioner to determine the date of effect for registration and cancellation, although these are generally reviewable decisions.

EXPLANATION

Tax File Numbers

10. The TFN is a unique client identifier issued by the ATO to individuals and organisations.

11. TFNs are used for a variety of purposes including:

- identifying an account
- enabling interactions between the account holder and the ATO
- increasing the effectiveness and efficiency of ATO data matching
- preventing income tax evasion, and
- facilitating the administration of various Australian Government systems such as social security, child support, superannuation and higher education.

12. A person may apply to the Commissioner for the issue of a TFN. The application must be in the approved form. PS LA 2005/19 sets out the ATO position on approved forms.

13. An application for a TFN must also be accompanied by documentary evidence of the applicant's identity. An agent may give a document to the Commissioner on behalf of an applicant. The documentary evidence required is listed in Corporate Management Practice Statement CM PS 2008/2 Proof of identity.

14. Individual applicants who have never had a TFN will generally be required to complete and lodge a paper TFN application form. Non-residents are required to complete a different TFN application form to that of a resident.. The forms can be obtained through the online ordering facility on the ATO website www.ato.gov.au or by contacting the ATO.

15. Applications for a TFN may also be made through:

- Centrelink or the Department of Veterans' Affairs if applying for government benefits or a pension
- a secondary school, if the individual is a student at that school, or
- online application at www.ato.gov.au by non-residents holding migration or working visas on arrival in Australia.

16. Non-individual applicants can apply for a TFN either on the appropriate TFN application form or in conjunction with an application for an Australian Business Number (ABN). An application can be made:

- online via www.abr.gov.au or through the Business Entry Point (BEP) at www.abr.business.gov.au
- through a tax agent via the electronic lodgment service (ELS), or
- by completing a paper application and lodging it with the ATO.

Applying for a TFN

Legal disability

17. In certain circumstances the appointed representative may apply for a TFN on behalf of the applicant, for example where a person is acting under a power of attorney or where the applicant is under a legal disability.

Persons under 16 years of age

18. If the person applying for the TFN is less than 13 years of age, their parent or guardian must sign the application form on the applicant's behalf. If the applicant is 16 years of age or older they must sign their own application form. If the applicant is between 13 and 15 years of age, either the applicant or the parent can sign the application form.

Partnerships between persons represented by the same person in different capacities

19. Where a person acts in the capacity as a trustee of a trust or in the capacity as the trustee of more than one trust then that person is a different person in each of those capacities. They are also a separate person in their own capacity as an individual.

20. As a result, an application may be accepted from a partnership for issue of a TFN or ABN where the Registrar is satisfied that:

    - two or more persons being an individual or company in their own right and that individual or company as trustee of one or more trusts, or
    - two or more persons being an individual or company as trustee of two or more trusts

    are together proprietors of the relevant business or assets that are being used to carry on a business or to derive income jointly.

Reconstituted partnerships

21. Where there are changes to the membership of a general law partnership (the partnership) and the partnership continues to trade without interruption and the remaining partners agree that the business or firm may be carried on by the continuing partners (with or without new partners) a technical rather than a general dissolution has occurred. This is known as a reconstituted partnership.

22. A reconstituted partnership, provided certain conditions are met, need not register for a new TFN, GST registration or ABN and can continue to use the same TFN, GST registration or ABN as the previous partnership. The partnership will only be required to complete one income tax return for the income year in which the reconstitution took place. Note that the reconstituted partnership treatment only applies to general law partnerships and does not apply to tax law partnerships.

23. The following conditions must be satisfied if a reconstituted partnership wishes to continue to use its existing TFN, GST registration or ABN:

    - There must be at least one continuing partner who is a member of the partnership prior to and following the reconstitution.

- There must be an express or implied continuity clause agreed to by the continuing, incoming and outgoing partners. This includes a clause in the partnership agreement, a statement signed by the partners or an oral agreement by the partners.
- The following must be satisfied:
    - substantially all of the partnership assets remain with the continuing partnership
    - the nature of the enterprise remains substantially unchanged
    - the client or customer base remains substantially unchanged
    - the business name or name of the firm remains unchanged

  'Substantially' means largely or considerably. This is taken to mean more than 50%, though each case will need to be decided on its own facts.
- When lodging the partnership tax return, the following details must be supplied:
    - The date of the dissolution
    - The date of the reconstitution
    - The names of the new, continuing and retiring partners
    - The TFN or address and date of birth of all new partners, and
    - Details of the changes if the persons authorised to act on behalf of the partnership have changed.

24. If all of the conditions set out in paragraph 23 of this practice statement are not met, the reconstitution will result in the formation of a new partnership. This new partnership will be required to register for a new TFN, GST registration and ABN. Both partnerships (the old and the new) will need to lodge a partnership tax return. One tax return will be lodged for the old partnership from the beginning of the income year to the date of dissolution and another will be lodged for the new partnership from the date of its formation to the end of the income year.

Authority to issue a TFN without application

25. The Commissioner may issue a TFN without an application being made where necessary to perform a function under a tax law, for example in relation to some compliance enforcement activities.

26. Holders of these TFNs may not be able to use them for quoting to financial institutions or completing a TFN declaration until the requirements of the approved form for applying for a TFN (including the requirement to provide Proof of Identity documents) are met.

27. The Commissioner may issue a new TFN where he believes that the confidentiality of the previous TFN has been compromised, for example, where a person's identity may have been stolen.

TFN security

28. A TFN is an important form of identification in Australia and should be kept secure and confidential. It should only be provided to people who are authorised to receive it (for example, a tax agent, a bank officer or employer in connection with their duties).

29. A person may not request or require another person to quote their TFN except as provided in section 8WA of the TAA. There is no legislative prohibition against a person voluntarily disclosing their TFN to a person who is not authorised to request it, however that other person may not record, use or disclose the TFN except as allowed by section 8WB of the TAA.

30. Failure to maintain a TFN securely could result in a TFN holder's identity being used for fraudulent purposes, resulting in inconvenience, unauthorised access of bank accounts and and/or requests for collection of monies outstanding.

    The ATO recommends that TFN holders should:

    - not store their TFN in their purse or wallet or on their mobile phone
    - shred or destroy documents containing TFN details before disposing of them.
    - install up to date anti-virus software on their personal computer or laptop
    - only provide their TFN to people who are authorised to ask for it (such as a tax agent, a bank officer or employer), and
    - ensure that if they utilise the services of a tax agent to complete and/or lodge their tax return, that the tax agent is registered by checking on the Tax Practitioners Board website at www.tpd.gov.au.

31. In accordance with the *Privacy Act 1988*, the Privacy Commissioner has issued guidelines to protect the privacy of individuals by restricting the use of TFN information. The *Tax File Number Guidelines 1992* (the Guidelines) are available on the Office of the Australian Information Commissioner's website at www.oaic.gov.au.

32. Under the Guidelines, a person cannot be compelled to quote their TFN, but may be denied access to Government services, or have tax withheld from income at higher rates, if they do not quote their TFN in certain circumstances.

Inactive TFNs

33. In some circumstances, it is necessary for a TFN to be withdrawn or replaced.

34. TFNs are not cancelled but are locked down and made inactive.

35. This may be done in cases where the Commissioner has been advised that a natural person is deceased or has departed the country or where another entity type has ceased to exist. It also may be done when the security of a TFN has been breached and is deemed to be compromised or where a person has been inadvertently issued with two or more TFNs.

Refusal

36. The Commissioner may refuse an application for a TFN if:

    - the application is not received in the approved form
    - the Commissioner is not satisfied as to the applicants true identity
    - the applicant already has a TFN, or
    - an interim notice has been issued under section 202BD of the ITAA 1936.

37. The Commissioner has an obligation to maintain the integrity of the TFN regime and may refuse to issue a TFN in appropriate circumstances. For example, where the Commissioner receives an application for a TFN but is satisfied that the applicant does not and will not have interactions with the Australian taxation system. The Commissioner will check with the applicant to ensure they understand that they have no need for registration.

Applying for GST registration

38. Entities carrying on an enterprise with a GST turnover of $75,000 (or $150,000 for non-profit bodies) or more are required to register. Entities carrying on an enterprise with a turnover of less than $75,000 (or $150,000 for non-profit bodies) may register if they choose.

39. If an entity is registered or required to be registered they must pay GST on any taxable supplies and taxable importations that they make. They are also entitled to input tax credits which arise on creditable acquisitions and creditable importations. Activities carried out as an employee, or in pursuit of a hobby are not considered to be an enterprise and are not eligible for GST registration.

General principle

40. If an entity is required to be registered, it must apply in the approved form to the Commissioner within 21 days after becoming required to be registered. If an entity is entitled to be registered but not required to do so, it may apply at any time.

41. The Commissioner must register an entity for GST if:

- an application for registration has been made in the approved form, and
- the Commissioner is satisfied that the entity is carrying on an enterprise, or intends to carry on an enterprise from the date specified in the application.

42. The Commissioner must also register an entity if the Commissioner is satisfied that the entity is required to be registered, even if the entity has not applied for registration.

43. An entity may choose to register for GST if:

- the entity is carrying on an enterprise and its GST turnover is below the registration turnover threshold, or
- the entity intends to carry on an enterprise from a particular date.

44. Although there are no specific provisions requiring the Commissioner to establish the identity of the applicant under the GST Act, the Commissioner has an implied power to seek information necessary to establish the identity of the entity. The GST registration application is an approved form for the purposes of section 388-50 of schedule 1 to the TAA. This means that the applicant must provide the information and/or documents the approved form requires.

45. MT 2006/1 considers the meaning of the terms ‘entity’ and ‘enterprise’. The principles in MT 2006/1 apply equally to the terms ‘entity’ and ‘enterprise’ in the GST Act (see Goods and Services Tax Determination GSTD 2006/6).

46. Carrying on an enterprise includes doing anything in the course of commencement of that enterprise. Activities undertaken in the commencement of an enterprise may include feasibility studies involving genuine business activities where, from the scale and nature of these activities it is clear that there has been serious contemplation of developing an enterprise. However, the mere intention by an entity to commence an enterprise is not commencement activity.

47. An entity's registration will generally take effect from the date the entity specifies in its registration application, unless the Commissioner specifies another date.

48. Where an entity registers for GST only because it intends to carry on an enterprise, the date of effect must not be earlier than the date from which it intends to commence the enterprise.

49. The Commissioner must notify the entity in writing of:

- the date of effect of the registration
- the registration number, and
- the tax periods that apply to the entity.

50. The Australian Business Registrar must also enter the date of effect of the entity's GST registration in the Australian Business Register (ABR).

51. Where an entity that has an ABN applies for GST registration, or an entity applies for ABN and GST registration at the same time, the GST registration number will be the same as the ABN, even though they are separate registrations.

Entities subject to special rules for GST registration

52. A government entity may apply to be registered for GST even if it is not an entity as defined and even if it is not carrying on an enterprise.

53. A government entity is not required to be registered even if it is carrying on an enterprise and its GST turnover meets the registration turnover threshold.

54. Some kinds of non-profit entities may choose to have some (or all) of their separately identifiable branches treated as separate entities for GST purposes. A non-profit sub-entity may be registered for GST if the criteria set out in section 63-5 GSTAct are met, even if it is not carrying on, or not intending to carry on, an enterprise.

55. If an entity supplies taxi travel as part or all of its enterprise, it must register for GST irrespective of its GST turnover. Taxi travel is travel that involves transporting passengers, by taxi or limousine, for fares.

56. The representative of an incapacitated entity (an individual who is bankrupt or an entity that is in receivership or liquidation or otherwise has a representative as defined in section 195-1) must register for GST in that capacity, if the incapacitated entity is registered or required to be registered.

57. A resident agent of a non resident is required to be registered if the non-resident is registered or required to be registered.

GST branches

58. The Commissioner must register a branch of a parent entity as a GST branch if:

- the parent entity is registered for GST and applies in the approved form for registration of the branch
- the branch is separately identifiable either by the nature of its activities, or by its location
- the branch maintains an independent accounting system, and
- the parent entity carries on, or intends to carry on, an enterprise through the branch.

A branch can not be registered as a GST branch if the parent entity is a member of a GST group.

GST groups

59. The Commissioner must approve a GST group if the following conditions are met:

- the group is made up of two or more entities
- the entities apply jointly for approval as a GST group in the approved form
- each of the entities satisfies the membership requirements for a GST group, and
- the application nominates one of the entities which must be an Australian resident, to be the representative member of the group.

60. The Commissioner must decide the date of effect of a GST group and may approve backdating the date of effect of the GST group.

61. An entity may only join an existing group at the beginning of the group's tax period. If the proposed member was not registered for GST at the beginning of the group's tax period, it cannot be approved as a member of the group for that period. If the proposed member is not part of the group it is responsible for its own GST obligations for the relevant period.

GST joint ventures

62. The Commissioner must approve two or more entities as the participants in a GST joint venture where the following conditions are met:

- the joint venture is for the exploration or exploitation of mineral deposits, or for a purpose specified in the A New Tax System (Goods and Services Tax) Regulations 1999
- the joint venture is not a partnership,
- the entities satisfy the participation requirements (see section 51-10 of the GST Act)
- the entities apply jointly in the approved form for approval of the joint venture, and
- the application nominates one of those entities or another entity to be the joint venture operator. If another entity that is not a party to the joint venture agreement is nominated as the joint venture operator, that entity must be registered for GST and account for GST on the same basis as the participants of the joint venture.

Backdating GST registrations

63. The Commissioner has the power to backdate an entity's GST registration.

- Where no registration application is made:

  the date of effect can be backdated to the date the entity was required to be registered.

- Where a registration application is made:

  the date of effect can be backdated to the date the entity was required to be registered or an earlier date (if the entity was eligible) as specified in the application.

64. If an entity's GST registration is backdated it will result in the entity being required to pay GST on taxable supplies made from that earlier date. However, it will also mean that the entity will be entitled to claim input tax credits on creditable acquisitions or importations from the earlier date, provided the correct documentation is held.

GST refusal to register

65. The Commissioner may refuse an entity's application for GST registration if he is satisfied that the entity is not carrying on an enterprise, or does not intend to carry on an enterprise from a particular date specified in the application. However, it should be noted that special rules may apply such as in relation to non-profit sub-entities and government entities.

66. The Commissioner may also refuse to register an applicant if the application is not in the approved form or if the Commissioner is not satisfied as to the identity of the applicant because they have not proven their identity. For a non-individual applicant proof of identity may include proof of the identity of some individuals who are associates of the entity.

67. The Commissioner must notify the entity in writing of the decision to refuse to register the entity. The decision to refuse to register an entity is a reviewable GST decision under Subdivision 110-F in schedule 1 to the TAA.

Cancelling GST registration

68. If a registered entity is no longer entitled to hold a GST registration, it must apply to have its registration cancelled.

69. If a registered entity is no longer required to hold a GST registration, but is entitled to that registration (for example, its GST turnover has dropped below the registration threshold), it may apply to have its registration cancelled.

70. An entity that is required to be registered for GST cannot cancel its GST registration.

71. Cancellation of GST registration will also result in cancellation of fuel tax credit, luxury car tax and wine equalisation tax registrations.

72. Generally, if a registered entity ceases to carry on an enterprise or disposes of the enterprise, it must apply for cancellation of its registration. An entity stops carrying on an enterprise when it concludes doing everything in the course of terminating its enterprise.

73. An entity must request cancellation of their GST registration within 21 days of ceasing to carry on an enterprise.

74. For a full definition of entity and enterprise refer to MT 2006/1 – the meanings apply to GST and the ABN.

75. An entity with a GST turnover below the registration turnover threshold of $75,000 (or $150,000 for non-profit bodies) that is not otherwise required to be registered may also apply to have its GST registration cancelled.

76. Entity types which are entitled to a GST registration without carrying on an enterprise may not be required to cancel their GST registration unless the entity ceases to exist, or the Commissioner is satisfied it never existed.

77. The entity is registered, not the enterprise, so if an entity carrying on an enterprise is changed (for example, changes from a partnership to a company), it must cancel its former registration and the new entity may apply for a new registration.

78. The Commissioner must cancel a GST registration if the entity has applied in the approved form and the following are satisfied:

- the entity has been registered for at least 12 months, and
- the Commissioner is satisfied that the entity is not required to be registered.

79. If an entity has applied for cancellation of a GST registration, the Commissioner may cancel a GST registration if the applicant has been registered for less than 12 months if he is satisfied that the entity is not required to be registered, either because the enterprise has ceased or the turnover is below the threshold.

80. The Commissioner must also cancel the entity's GST registration, even if the entity has not applied for cancellation, if the Commissioner:

- is satisfied that the business is not carrying on an enterprise
- is satisfied that a superannuation fund has been wound up or is no longer complying and is not otherwise carrying on an enterprise, or
- believes on reasonable grounds that the entity is not likely to carry on an enterprise for at least 12 months.

81. The Commissioner must notify the client of any decision made in relation to cancelling the GST registration. If the Commissioner decides to cancel the registration, the notice must specify the date of effect of the cancellation. If the registration has been cancelled the entity may still have a tax liability to adjust for input tax credits received on importations and acquisitions it still had immediately prior to the cancellation.

Cancelling GST groups or group members

82. The Commissioner must revoke the approval of a GST group if the nominated representative member applies in the approved form for the GST group to be revoked. If the Commissioner is satisfied that none of its members, or only one of its members, satisfy the membership requirements of the group, the approval for a GST group will be revoked by the Commissioner.

83. A member of a GST group that becomes incapacitated will generally be forced to exit the GST group. Such an entity would normally have a concluding tax period under section 27-40 of the GST Act and, as this tax period would differ from those applying to other members, the entity would no longer satisfy the membership requirements of the group. The entity may, however be entitled to rejoin the group at the start of its next (or some other) tax period.

Cancelling GST branches

84. The Commissioner must cancel the registration of a GST branch of an entity if:

- the parent entity has applied for cancellation of registration in the approved form, and
- the branch had been registered for at least 12 months.

85. The parent entity must apply for cancellation of registration of a GST branch if the entity is not carrying on an enterprise through the branch.

86. The Commissioner must also cancel the registration of a GST branch if satisfied that the parent entity:

- is not carrying on an enterprise through the branch, and
- will not carry on an enterprise through the branch in the following twelve months.

87. If both these conditions apply to a GST branch, the Commissioner may cancel the registration, even without a request being lodged.

88. Cancellation of a parent entity's registration will automatically cancel the GST branch registration.

Cancellation date of effect

89. The Commissioner must decide the date on which the cancellation of a registration takes effect. In accordance with subsection 25-60(1) of the GST Act, the date of effect of cancellation may be any day occurring before, on or after the day on which the Commissioner makes the decision to cancel the registration. That is, it may be any day on or after 1 July 2000.

90. The Commissioner will not cancel a registration from any date when the entity was required to be registered or when the entity was operating on a GST-registered basis.

91. Where an entity that was required to be registered applies to cancel its registration, the Commissioner will ordinarily accept the date the entity chooses to cancel from, even if this is an earlier date providing they were not required to be registered after that date, and they have been registered for 12 months.

92. If an entity is registered but is not required to be registered (a voluntary registration), and it has operated on a GST-registered basis, the date of cancellation will not be retrospective. The Commissioner will negotiate a prospective date if the application does not state one.

93. If an entity is voluntarily registered but the Commissioner is satisfied that it has never operated on a GST-registered basis, the Commissioner may accept the application to cancel the GST registration from an earlier date.

94. If an entity is voluntarily registered and has stopped operating on a GST-registered basis from a certain date, the Commissioner may accept its application to cancel its GST registration from the start of the tax period on or after the date it stopped operating on a GST-registered basis.

95. The Commissioner will be satisfied that an entity stopped operating (or never operated) on a GST-registered basis from a certain date if, from that date or earlier date the entity:

- did not hold themselves out to other businesses as being registered for GST
- did not issue any tax invoices or adjustment notes
- did not claim any input tax credits, special transitional credits or indirect transitional credits, and
- the entity has made a declaration to the ATO that satisfies all of the above points.

Refusal to cancel

96. If the Commissioner decides not to cancel the GST registration or chooses a different date for cancellation than the date requested, the applicant can object to those decisions under Part IVC of the TAA.

Amendment history

Date of amendment	Part	Comment
8 July 2011	Paragraph 24	Words ‘are not met’ added to first sentence.

References

Legislative references	ITAA 1936 202BD TAA 1953 8WA TAA 1953 8WB TAA 1953 Pt IVC TAA 1953 Sch 1 Subdiv 110-F TAA 1953 Sch 1 388-50 GST Act 1999 25-60(1) GST Act 1999 27-40 GST Act 1999 51-10 Privacy Act 1988 17
Related public rulings	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 GSTD 2006/6 Goods and services tax: does MT 2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*?
Related practice statements	PS LA 2005/19 Approved forms
Other references	Tax File Number Guidelines 1992
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Section	Operational Policy, Assurance and Law