PS LA 2011/8 - The registration of entities

This cover sheet is provided for information only. It does not form part of *PS LA 2011/8 - The registration of entities*

From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

This Practice statement contains references to provisions of the *A New Tax System (Goods and Services Tax) Regulations 1999*, which have been replaced by the *A New Tax System (Goods and Services Tax) Regulations 2019*. This LAPS continues to apply in relation to the remade Regulations.

A comparison table which provides the replacement provisions in the *A New Tax System (Goods and Services Tax) Regulations 2019* for regulations which are referenced in this LAPS is available.

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Australian Government
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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. ATO personnel, including non-ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel 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, maintaining the client register and security of taxpayer data. It should be read in conjunction with Law Administration Practice Statement PS LA 2011/9 *The registration of entities in the Australian Business Register***

TABLE OF CONTENTS **Paragraph**

BACKGROUND **1**

TERMS USED **4**

STATEMENT **5**

EXPLANATION **9**

TAX FILE NUMBERS **9**

TFN overview 10

Applying for a TFN 14

Minors applying for a TFN 18

Applicant does not require connection with tax system 20
Refusal of TFN application 22
Maintaining TFN records and declarations 24
Inactive TFNs 24
TFN declarations 27
Lodging TFN declarations electronically 28
TFN security 29
Compromised TFN 34
GST REGISTRATION **38**
Applying for GST registration 39
Registering for GST 41
Registration date of effect 48
Backdating GST registration 53
GST only registration 55
Entities subject to special rules for GST registration 58
GST branches 63
GST groups 65
GST joint ventures 68
Refusal of GST registration 69
Cancelling a GST registration 72
Date of effect of cancellation of GST registration 81
Dissolving GST groups or removing group members 87
Cancelling GST branches 90
Registration requirements for representatives of incapacitated entities 96
Other notifications required of representatives 100
MAINTAINING THE CLIENT REGISTERS **102**
Registration of partnerships consisting of one entity or person acting in different legal capacities 103
Reconstituted partnerships 105
Registration requirements where an entity or person restructures 109
Government entities 109
Registrations and sex code 115
Minors – making decisions and signing forms 118
Recording names in ATO systems 123
Public officers 125
APPENDIX – PUBLIC OFFICERS **131**
Exemption from being represented by a public officer 131
Company or trust estate trading for less than three months 134
Application of the public officer provisions to a company not carrying on business in Australia or deriving in Australia income from property 135
Multiple or alternate public officers 138
Non-resident companies 141

BACKGROUND

1. The Australian Taxation Office (ATO) uses unique identifiers to:
   - enable the accurate identification of entities and persons for tax law purposes
   - record key information that will be accessed by multiple ATO systems and applications
   - allow for the recording and management of taxpayer entitlements and obligations under income tax and other related laws
   - create accounts for recording transactions within the tax system
   - facilitate the sharing of information with other agencies as permitted and/or required by law.
2. Under taxation law, some registrations are compulsory in certain circumstances for different kinds of entities or persons. In other circumstances, registration is optional. There may be significant benefits to registration (such as not having tax withheld on interest earned from a financial institution).
3. For the purposes of this practice statement, consistent with relevant taxation law provisions, the term 'person' will be used in relation to a tax file number (TFN) registration. The term 'entity' will be used in relation to an Australian Business Number (ABN) registration and a goods and services tax (GST) registration or in discussing taxpayer obligations generally.

TERMS USED

4. The following terms are used in this practice statement:[1]

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

   ABR (Australian Business Register) – the register established and maintained by the Registrar of the ABR. It may be kept in any form that the Registrar considers appropriate.

   Applicant – in relation to an application for registration, means an entity or person specified in the application as the entity or person to be registered.

   Approved form – takes the meaning set out in section 388-50 of Schedule 1 to the *Taxation Administration Act 1953* (TAA). See Law Administration Practice Statement PS LA 2005/19 *Approved forms* for further information on approved forms.

   Carrying on – in relation to 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.

   Commissioner – means the Commissioner of Taxation.

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

[1] Links to legislative provisions quoted in this practice statement are in the legislative reference table at the end of this practice statement.

(a) it acquires anything solely or partly for a creditable purpose

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

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

(d) it is registered or required to be registered.

Creditable importation – has the meaning given by section 15-5 of the GST Act. An entity makes a creditable importation if:

(a) it imports goods solely or partly for a creditable purpose

(b) the importation is a taxable importation, and

(c) it 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 – in relation to GST registration and ABN registration has the meaning given by section 184-1 of the GST Act. It means any of the following:

(a) an individual

(b) a body corporate

(c) a corporation sole

(d) a body politic

(e) a partnership

(f) any other unincorporated association or body of persons

(g) a trust

(h) a superannuation fund.

Further explanation of this term is contained in MT 2006/1.

General law partnership – means an association of persons (other than a company or limited partnership) carrying on a business as partners. For more information, refer to paragraph 16 of Goods and Services Tax Ruling GSTR 2003/13 *Goods and services tax: general law partnerships*.

Government entity – has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999* (ABN Act) and means:

(a) a Department of State of the Commonwealth

(b) a Department of the Parliament established under the *Parliamentary Service Act 1999*

(c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*

(d) a Department of State of a State or Territory, or

(e) an organisation that:

  (i) is not an entity

  (ii) is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an enterprise or established for a public purpose by an Australian law, and

(iii) can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation,

whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.

GST – has the meaning given by section 195-1 of the GST Act and 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 joint venture – has the meaning given by section 51-5 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 or person that is in receivership or liquidation, or an entity or person that has a representative as defined in section 195-1 of the GST Act and section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

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

Joint venture operator – of a GST joint venture, is the entity nominated to be the joint venture operator under paragraphs 51-5(1)(ea) or 51-70(1)(c) of the GST Act.

Non-profit sub-entity – has the meaning defined in section 195-1 of the GST Act.

Parent entity – is an entity that has a GST branch. For more information, refer to section 54-40 of the GST Act.

Person – in relation to a TFN, is defined by section 202A of the *Income Tax Assessment Act 1936* (ITAA 1936) to include a partnership, a company and a person in the capacity of trustee of a trust estate.

Proof of identity at registration – happens at registration/enrolment and involves the provision of documents as evidence of identity (such as a birth certificate, drivers licence or passport). For further information, refer to Chief Executive Instruction *Identity management CEI*.

Proof of record ownership – the provision of information related to a client record to give the ATO assurance that the person making contact is authorised to access the information they are attempting to access. For further information, refer to *Identity management CEI*.

Registrar – means the Registrar of the ABR. The Commissioner of Taxation is the Registrar of the ABR.

Registration turnover threshold – has the meaning given by sections 23-15 and 63-25 of the GST Act, and regulations 23-15.01 and 23-15.02 of the *A New Tax System (Goods and Services Tax) Regulations*.

Representative – has the meaning given by section 195-1 of the GST Act and means:

- a trustee in bankruptcy
- a liquidator (as defined in subsection 6(1) if the ITAA 1936); or
- a receiver
- a controller within the meaning of section 9 of the *Corporations Act 2001*
- an administrator appointed under Division 2 of Part 5.3A of the *Corporations Act 2001*
- a person appointed or authorised under an Australian law to manage the affairs of an entity because it is unable to pay all its debts as and when they become due and payable, or
- an administrator of a deed of company arrangement executed by the entity.

Subsection 995-1(1) of the ITAA 1997 adopts this definition.

Resident agent – has the meaning given in section 195-1 of the GST Act and means an agent that is an Australian resident.

Reviewable GST decisions – are defined and listed in section 110-50 of Schedule 1 to the TAA.

Tax law partnership – has the meaning given in the second limb of paragraph (a) of the definition of partnership in subsection 995-1 of the ITAA 1997 and means an association of persons (other than a company or limited partnership) 'in receipt of ordinary income or statutory income jointly'.

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, annually or, in limited circumstances, another tax period such as a substituted accounting period. See section 195-1 of the GST Act

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.

TFN (tax file number) – has the meaning given by section 202A of the ITAA 1936, and 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 ITAA 1936 or a number issued to a person under sections 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 TFN.

TFN declaration – has the meaning given by section 202A of the ITAA 1936. Completion of a TFN declaration will ensure that a pay as you go (PAYG) withholding amount is withheld at the appropriate rate in certain circumstances, including receipt of salary and wages, dividends and interest.

STATEMENT

5. This practice statement sets out the policy and procedures to be followed by tax officers in relation to:
    - tax file numbers

- GST registration
- maintaining the client register.

Some aspects of this practice statement apply to all or many registration types. The introductory paragraphs and paragraphs 103 to 125 of this practice statement also apply to registration of an ABN.

6. The Commissioner of Taxation (including in the role as Registrar of the ABR) is required to:
   - record and maintain registration details (including establishing and maintaining the ABR) using formal and informal information gathering powers to seek information in order to verify and update registration entitlements and details
   - maintain the confidentiality of TFNs and other taxpayer information in accordance with taxation law confidentiality provisions, the *Privacy Act 1988* and the *TFN Guidelines 2011* issued under the Privacy Act
   - notify entities and persons when making certain changes to registration details (for example, cancelling a registration).
7. The TFN registration is attached to a person (as defined). An ABN or GST registration is attached to an entity (as defined).
8. 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. These are generally reviewable decisions.

EXPLANATION

TAX FILE NUMBERS

9. This section deals with TFNs. In particular, it contains a TFN overview and deals with:
   - applying for a TFN
   - refusal to issue a TFN
   - maintaining TFN records and declarations
   - TFN declarations
   - TFN security
   - compromised TFNs.

TFN overview

10. The TFN is a unique identifier issued by the ATO to a person (as defined).
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

- facilitating the administration of various Australian Government laws such as those relating to social security, child support, superannuation and higher education loans.

12. A person can only have one TFN at any time. If a new TFN is issued, any previously issued TFN will cease to have effect.

13. The Commissioner may issue a TFN without an application being made where it is necessary to perform a function under a tax law.[2] For example, the Commissioner may issue a TFN to enable an assessment to be made following a compliance enforcement activity.

Applying for a TFN

14. An application for a TFN must be in the approved form and accompanied by evidence of the applicant's identity.[3] PS LA 2005/19 sets out how the ATO administers approved forms.

15. Generally, persons (as defined) lodging their first application for a TFN may:

- complete an online form and attend a personal interview and present proof of identity at registration at selected Australia Post outlets, or
- complete and lodge a paper TFN application form (including proof of identity at registration documentation).

16. Special arrangements are in place to assist particular individuals register. These are through:

- Centrelink or the Department of Veterans' Affairs if applying for government benefits or a pension
- a secondary school if a student at that school
- online application on arrival in Australia if a permanent migrant or temporary visitor
- a form designed specifically for indigenous Australians, or
- specific processes for prisoners and applicants from detention centres

17. Non-individual applicants may also apply for a TFN:

- online through the ABR website, or
- in the approved paper application form.

Minors applying for a TFN

18. Generally, if a person applying for a TFN is:

- less than 13 years of age – their parent or guardian must sign an approved application form on their behalf
- 16 years of age or older – they must sign their own approved application form
- 13 years of age, but under 16 years of age – either the minor or the parent or guardian can sign the application form.

[2] Subsection 202BA(4) of the ITAA 1936.
[3] Subsection 202B(2) of the ITAA 1936.

19. Where a parent or guardian signs the approved application form, they must provide:

- proof of identity at registration for themselves
- proof of identity at registration for the minor
- documentation that proves their relationship with the minor.

Applicant does not require connection with tax system

20. Entitlement to a TFN is not contingent on the applicant establishing that they need or intend to use a TFN. An application that meets all the process requirements will result in the Commissioner issuing a TFN.

21. If an applicant has no need for a TFN or the application is made in error, the Commissioner may suggest to the applicant that they withdraw their application. This is done because TFNs have a specific tax purpose and it is undesirable to have unnecessary TFNs in the tax system. However, the person is entitled to proceed with their application in these circumstances.

Refusal of TFN application

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

- the application is not received in the approved form, or
- the Commissioner is not satisfied as to the person's true identity.

23. The Commissioner must refuse an application if:

- the person already has a TFN, or
- an interim notice has been issued under section 202BD of the ITAA 1936.[4] (These notices are issued when a TFN applicant provides the name and address of the payer of the applicant, and the Commissioner gives the payer a notice that a TFN application is pending in relation to the applicant. This notice is valid for 28 days. If such a notice exists, there is already a TFN application in process.)

Maintaining TFN records and declarations

Inactive TFNs

24. In some circumstances, it is necessary for a TFN to be deactivated. This may occur where, for example, the Commissioner has been advised that an individual has died, the individual has departed the country permanently or a person has been inadvertently issued with two or more TFNs.

25. In certain circumstances it is necessary to deactivate and replace a TFN, such as where the security of private information associated with the TFN has been compromised (see paragraphs 34 to 37 of this practice statement).

26. Deactivated TFN records are retained for record keeping purposes.

[4] Subsections 202BA(2) and 202BA(3) of the ITAA 1936.

TFN declarations

27. The TFN declaration form is an approved form[5] that is completed in a two-stage process. The payee gives their completed form to their payer, who in turn countersigns the form, retains a copy and sends the original to the office of a Deputy Commissioner.[6] The payer and payee are both required to sign declarations to state that the information in their part of the form is true and correct.[7]

Lodging TFN declarations electronically

28. Payers who lodge their TFN declaration reports to the ATO electronically may also receive a payee's TFN declaration form electronically, including the payee's electronic signature. The Commissioner's requirements for an acceptable electronic signature are set out in the ATO Fact Sheet *Signature requirements for approved electronic tax file number declaration – payee to payer process.*

TFN security

29. A TFN is an important identifier used in administering the tax and superannuation systems, and some government services such as child support and personal assistance programs and should be kept secure and confidential.

30. A person may not request or require another person to quote their TFN except as permitted by section 8WA of the TAA. However, person A may voluntarily disclose their TFN to a person B, who is not authorised to request it. But person B may not record, use or disclose the TFN except as allowed by section 8WB of the TAA. Sections 8WA and 8WB apply to all types of persons, not just to taxation officers or other government officials.

31. Failure to maintain the security of their TFN and related personal information can adversely affect a TFN holder, including the TFN being used for fraudulent purposes such as identity theft. The ATO recommends that persons:

- not store their TFN in their purse or wallet or on their mobile phone
- when disposing of documents containing TFN details, shred or destroy them
- install up to date anti-virus software on their personal computer or mobile computing device
- only provide their TFN to persons who are authorised to ask for it (such as the ATO, their tax agent, financial institution or employer)
- ensure that the tax agent they use to complete and/or lodge their tax return is registered, by checking the Tax Practitioners Board website (www.tpb.gov.au).

32. The TFN Guidelines issued under the Privacy Act regulate the collection, storage, use, disclosure, security and disposal of individuals' TFN information. The TFN Guidelines are legally binding and are available on the Office of the Australian Information Commissioner's website (www.oaic.gov.au).

[5] Subsection 202C(2) of the ITAA 1936.
[6] Section 202CD of the ITAA 1936.
[7] Section 388---60 of Schedule 1 to the TAA.

33. Under the TFN Guidelines, individuals cannot be compelled to quote their TFN, but there may be consequences if they choose not to (for example, not being able to access certain Australian Government assistance benefits, or having an assessment delayed). We are required to inform individuals of this when we ask them for their TFN.

Compromised TFN

34. A TFN is compromised if an unauthorised party has obtained the TFN, and may be compromised if an unauthorised party has access to sufficient information to obtain the TFN. A compromised identity may occur if an authorised third party has obtained personal identification details such as a person's name, address and date of birth.

35. A compromised TFN and/or identity may be caused by a range of circumstances including one or more of the following:

- theft
- loss or accidental disclosure
- ATO error (for example, incorrectly matched records may lead to a taxpayer's TFN being included in material provided to an unintended third party).

36. Remedial action may include implementing additional security measures for that taxpayer record, or replacing the TFN.

37. In determining what remedial action, if any, should be undertaken, the ATO will consider facts and circumstances such as:

- The likelihood of fraud. (For example, the known or anticipated intent by the third party to defraud. There would be a higher risk of fraud where records are deliberately stolen from a tax agent's office, compared to the loss of records in a natural disaster where the documents are likely to have been destroyed.)
- Whether the TFN has been associated with, or used by, another person.
- Potential impacts on the ATO, such as revenue risks or reputational risks arising from failure to take timely remedial action or to identify fraudulent activity.
- The cost and inconvenience to the taxpayer of any proposed remedial action.
- The likely effectiveness of the possible remedial action, including considering:
  - If the remedial action will provide long term sustainable resolution to the issue (for example, if a third party is known to have obtained, from a theft or disclosure, sufficient information to pass an ATO proof of record ownership requirements, simply issuing a new TFN may not be appropriate or adequate action).
  - Whether the remedial action for a prior compromise has been previously implemented and not succeeded. In such cases, an alternative approach may be required.
  - Whether it is likely that the compromise will recur, regardless of the solution.

- The taxpayer's preferences – although the decision to take remedial action is taken by the Commissioner, the taxpayer's preferences will be considered. However, there may be situations where a taxpayer would prefer to have their TFN replaced but the Commissioner declines to do so, or some unusual cases where the Commissioner insists on doing so.

  Example: Peter has a large share portfolio. A record of his TFN is stolen from his tax agent's office by thieves targeting identity information. Peter would prefer not to replace his TFN as he would have to inform all the companies in which he holds shares. However, the Commissioner decides that, as the thieves were specifically searching for identity information, the inconvenience to Peter is outweighed by the risk of the TFN being misused.

GST REGISTRATION

38. This section deals with GST registration. In particular, it contains a GST overview and deals with:

- applying for GST registration
- cancelling GST registration
- GST groups
- GST joint ventures, and
- GST branches.

Applying for GST registration

39. Entities that carry on an enterprise and have a GST turnover of $75,000 (or $150,000 for non-profit bodies) or more are required to register for GST.[8] Entities that carry on an enterprise with a turnover of less than $75,000 (or $150,000 for non-profit bodies) may register for GST if they choose.[9] It is the entity that is registered for GST, not the enterprise.

40. 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 for creditable acquisitions and creditable importations.

Registering for GST

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.[10]

[8] But see the exceptions to this rule requiring certain types of entities to register for GST even though they do not meet these criteria, as discussed in the later section entitled 'Entities subject to special rules for GST registration' at paragraphs 58 to 62 of this practice statement.
[9] Sections 23-5 and 23--15 of the GST Act.
[10] Subsection 25-5(1) of the GST Act.

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.[11]

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.[12]

44. 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.[13] If an entity is entitled to be registered but not required to do so, it may apply at any time.

45. Miscellaneous Taxation Ruling MT 2006/1 considers the meaning of the terms 'entity' and 'enterprise' in relation to entitlement to an ABN. 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 *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?*).

46. Carrying on an enterprise includes doing anything in the course of commencement of that enterprise.[14] 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. The Commissioner will require proof of identity at registration to establish the identity of the applicant and its associates (where appropriate) when an entity applies for GST registration. There is no express provision for the Commissioner to seek information necessary to establish the identity of the applicant and its associates. However, the approved form provisions in the TAA empower the Commissioner to determine the information and additional statements or documents that an approved form will require. This can extend to any information which has a reasonable connection with the purpose for which it is sought (such as information to identify an applicant seeking GST registration).

Registration date of effect

48. An entity's registration will take effect from the date the entity specifies in its registration application unless the Commissioner specifies another date.[15]

[11] Subsection 25-5(2) of the GST Act.
[12] Section 23-10 of the GST Act. Also note the special rules which permit government entities and some kinds of non--profit sub--entities to register for GST even if they do not meet the criteria in section 23-10, as discussed in the later section entitled 'Entities subject to special rules for GST registration' at paragraphs 58 to 62 of this practice statement.
[13] Section 25---1 of the GST Act.
[14] See definition of 'carrying on' in section 195---1 of the GST Act.
[15] Section 25---10 of the GST Act.

49. Where an entity registers for GST on the basis that it intends to carry on an enterprise, the date of effect of registration must not be earlier than the date the entity specifies in its application as the date from which it intends to carry on the enterprise.[16]

50. 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.[17]

51. The Registrar of the ABR must also enter the date of effect of the entity's GST registration in the ABR.[18]

52. Where an entity that has an ABN applies for a 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.

Backdating GST registration

53. The Commissioner may backdate an entity's GST registration, subject to the following limitations:

- Where no registration application is made, the date of effect cannot be before the day on which the entity became required to be registered.
- Where the entity applies for registration, the date of effect cannot be before the date the entity specified in the application, unless the Commissioner is satisfied that the entity was required to be registered as of an earlier date.[19]

54. If an entity's GST registration is backdated it will result in the entity being required to pay GST on taxable supplies and taxable importations made from that earlier date. The entity will be entitled to claim input tax credits on creditable acquisitions or importations from the earlier date, provided the appropriate documentation is held.[20] However, for tax periods that commence on or after 1 July 2012, the Commissioner cannot backdate the date of effect to a date that is more than four years before the date on which the Commissioner decides the date of effect of the entity's registration.[21]

GST only registration

55. An entity qualifies for an ABN by carrying on an enterprise *in Australia,* whereas an applicant for GST registration need only carry on an enterprise.[22] Non-resident entities that are carrying on an enterprise, although not in Australia, may apply for GST registration but are not entitled to an ABN because they are not carrying on an enterprise in Australia.

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[16] Paragraph 25---10(1)(c) of the GST Act.
[17] Subsection 25---5(3) of the GST Act.
[18] Subsection 25---10(2) of the GST Act and subsection 8(1) of the ABN Act.
[19] Section 25-10 of the GST Act.
[20] See PS LA 2004/11 *The Commissioner's discretions to treat a particular document as a tax invoice or an adjustment note* for further information.
[21] Subsection 25-10(1A) of the GST Act.
[22] Compare section 23-5 of the GST Act and subsection 8(1) of the ABN Act. However, paragraph 8(1)(b) of the ABN Act also permits an entity to have an ABN if it carries on an enterprise other than in Australia, and in the course or furtherance of that enterprise, makes supplies that are connected with Australia.

56. There are a number of situations where entities are registered for GST without having an ABN. The most common examples of this are:

- Non-residents entitled to input tax credits. If an entity is not carrying on an enterprise in Australia or making supplies connected with Australia, it will not be entitled to an ABN.

  Example: Ray Source is a livestock breeder in the US. He buys three brood mares in Australia, and pays GST on purchase. He exports the horses to his ranch in Kentucky and seeks registration for GST to claim GST input tax credits. As he is carrying on an enterprise, he can register for GST. As Ray is not carrying on an enterprise in Australia, and not making supplies connected with Australia in the course of an enterprise he carries on elsewhere, he is not entitled to an ABN.

- GST audit cases where the entity is not registered for GST but is required to be. The entity can be registered for GST whether or not it applies, but cannot be registered in the ABR unless it applies.

57. Where an entity is entitled to GST registration but not to an ABN, it will be provided with a GST registration number for use when meeting its GST obligations.

Entities subject to special rules for GST registration

58. 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.[23] However, a government entity may apply for registration even if it does not meet the usual criteria for registration. That is, it may register even if it is not an entity and is not carrying on or intending to carry on an enterprise.[24]

59. 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 of the GST Act are met, even if the non-profit sub-entity is not carrying on, or not intending to carry on, an enterprise.[25]

60. If an entity supplies taxi travel as part or all of its enterprise, it must register for GST irrespective of its GST turnover.[26] Taxi travel is travel that involves transporting passengers, by taxi or limousine, for fares.[27]

61. The representative of an incapacitated entity must register for GST in that capacity, if the incapacitated entity is registered or required to be registered.[28]

62. A resident agent of a non-resident is required to be registered if the non-resident is registered or required to be registered.[29]

GST branches

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

    (a) the parent entity is registered for GST and applies in the approved form for registration of the branch

[23] Section 149-10 of the GST Act.
[24] Section 149-5 of the GST Act.
[25] Section 63-20 of the GST Act.
[26] Section 144-5 of the GST Act.
[27] Section 195-1 of the GST Act.
[28] Section 58-20 of the GST Act.
[29] Subsection 57-20(1) of the GST Act.

(b) the branch is separately identifiable either by the nature of its activities, or by its location

(c) the branch maintains an independent accounting system, and

(d) the parent entity carries on, or intends to carry on, an enterprise through the branch, from a particular date specified in the application.[30]

64. A branch cannot be registered as a GST branch if the parent entity is a member of a GST group.[31]

GST groups

65. Two or more entities may form a GST group if:

(a) each of the entities satisfies the membership requirements of the group

(b) each of the entities agrees in writing to forming the group

(c) one of the entities notifies the Commissioner, in the approved form, of the formation of the group

(d) the notifying entity is nominated in that notice to be the representative member of the group, and

(e) that entity is an Australian resident.[32]

66. If a group's representative member nominates to the Commissioner a date for forming, changing, or dissolving the group, but does so after the day by which they were required to give to the Commissioner a GST return for the period within which the nominated date falls, they must apply for approval of the backdated date of effect.[33]

67. If a GST group is formed, or entities leave or join an existing GST group part way through a tax period, the entities will be responsible for their own GST obligations for the relevant period during which they are not in the GST group.[34]

GST joint ventures

68. Two or more entities may become participants in a GST joint venture if:

(a) 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*

(b) the joint venture is not a partnership

(c) each of those entities satisfy the participation requirements of a GST joint venture (see section 51-10 of the GST Act)

(d) each of the entities agree in writing to the formation of the joint venture as a GST joint venture

(e) one of the entities, or another entity, is nominated in that agreement to be the joint venture operator of the joint venture

[30] Section 54---5 of the GST Act.
[31] Subsection 54---5(3) of the GST Act.
[32] Section 48---5 of the GST Act.
[33] Subsections 48---5(4) and 48--70(4) and section 48---71 of the GST Act.
[34] Section 48---60 of the GST Act.

(f) the nominated joint venture operator notifies the Commissioner, in the approved form, of the formation of the joint venture as a GST joint venture, and

(g) the nominated joint venture operator is not a party to the joint venture agreement, that entity must be registered for GST and account for GST on the same basis as the participants in the joint venture.[35]

Refusal of GST registration

69. The Commissioner may refuse an entity's application for GST registration if he is not satisfied that the entity is carrying on an enterprise, or intends to do so from a particular date specified in the application. However, special rules apply to some entities such as non-profit sub-entities and government entities, which may register regardless of whether they meet these criteria (see paragraphs 58 to 62 of this practice statement).

70. The Commissioner may also refuse an application if it is not in the approved form, including the provision of proof of identity at registration information required by the approved form. For a non-individual applicant, proof of identity at registration may include the TFN or proof of the identity at registration of some individuals who are associates of the entity (for example, the directors of a company).

71. The Commissioner must notify an entity in writing of a decision to refuse to register the entity.[36] A decision to refuse to register an entity is a reviewable GST decision.[37]

Cancelling a GST registration

72. An entity must request cancellation of their GST registration within 21 days of ceasing to carry on an enterprise or if it did not commence carrying on an enterprise.[38] An entity ceases carrying on an enterprise when it concludes doing everything in the course of terminating its enterprise.

73. Failure to cancel a registration may result in a penalty of 20 penalty units.[39]

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

75. An entity that is required to be registered for GST cannot cancel its GST registration. (For a more detailed explanation of the terms 'entity' and 'enterprise' refer to MT 2006/1 which applies in both the GST and ABN context.)

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

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[35] Section 51-5 of the GST Act.
[36] Subsection 25-5(3) of the GST Act.
[37] Section 110-50 of Schedule 1 to the TAA.
[38] Section 25-50 of the GST Act.
[39] Section 288-40 of Schedule 1 to the TAA. (Section 4AA of the *Crimes Act 1914* sets out the current value of a penalty unit).

77. If an enterprise which has been carried on by one entity continues, but is undertaken by a new entity. This includes entities with associated individuals in common, such as a partnership whose partners then become directors of a company which proceeds to carry on the enterprise. The old entity must cancel its registration unless it is carrying on another enterprise. The new entity may apply for a new registration. This is because it is the entity that is registered for GST, not the enterprise.

Example: Catherine and Peter are carrying on an enterprise as partners, and the partnership is registered for GST. They change their business structure by incorporating and becoming directors of a Corporations Act company that is carrying on the same enterprise as previously carried on by the partnership. As it is the entity which is registered for GST, not the enterprise, the company will need to apply for GST, and the partnership, if it is not carrying on another enterprise, must cancel its registration.

Similarly, if Catherine and Peter sell the enterprise to a partnership between Lisa and Anthony, Lisa and Anthony will need to register for GST, and Catherine and Peter, if they are not carrying on any other enterprise, will need to cancel their GST registration.

78. If an entity applies in the approved form to cancel its GST registration and the Commissioner is satisfied that the entity is not required to be registered:

- if the entity has been registered for at least 12 months, the Commissioner must cancel the registration,[40] and
- if the entity has been registered for less than 12 months, the Commissioner may cancel the registration.[41]

79. 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 entity is not carrying on any enterprise, and
- believes on reasonable grounds that the entity is not likely to carry on any enterprise for at least 12 months.[42]

80. The Commissioner must notify an entity of any decision made in relation to cancelling the entity's GST registration. If the Commissioner decides to cancel the registration, the notice must specify the date of effect of the cancellation.[43] Cancelling an entity's registration or refusing to cancel an entity's registration is a reviewable GST decision.

Date of effect of cancellation of GST registration

81. The Commissioner must decide the date on which the cancellation of a GST registration takes effect. 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.[44]

82. The Commissioner will not cancel the registration with effect from a date on which the entity was required to be registered, and will not usually do so from any date when the entity was operating as if it were registered for GST.

[40] Section 25-55 of the GST Act.
[41] Section 25-57 of the GST Act.
[42] Subsection 25-55(2) of the GST Act.
[43] Subsections 25-55(3) and 25-57(3) of the GST Act.
[44] Subsection 25-60(1) of the GST Act.

83. When an entity that was required to be registered applies to cancel its registration, the Commissioner will ordinarily accept the cancellation date the entity chooses, provided that the entity:

- was not required to be registered after that date
- was entitled to be registered before that date
- has been registered for 12 months, and
- has at that date ceased operating on a GST-registered basis.

84. When an entity that is registered but was not required to be registered (a voluntary registration) applies to cancel its registration:

- If the Commissioner is satisfied that the entity has never operated on a GST-registered basis, the Commissioner may accept the application to cancel the GST registration from a retrospective date chosen by the entity.
- If the entity has operated on a GST-registered basis but has ceased doing so before the application to cancel registration is made, the Commissioner may accept the entity's application to cancel its GST registration from the start of the tax period which commences on or after the date it stopped operating on a GST-registered basis.
- If the entity is still operating on a GST-registered basis at the time of the application to cancel registration, the date of cancellation will generally not be retrospective. The Commissioner will negotiate a prospective date if the application does not state one.

85. The date of effect of cancellation effect is a reviewable GST decision.[45]

86. The Commissioner will be satisfied that an entity has stopped operating (or never operated) on a GST-registered basis from a certain date if, from that date or an 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
- has made a declaration to the ATO that satisfies all of the above points.

Dissolving GST groups or removing group members

87. The representative member may notify the Commissioner in the approved form that GST group is dissolved or that one or more of the entities is removed from the group. If a group's representative member ceases to be the representative member, the new representative member must notify the Commissioner within 21 days of becoming a representative member. The GST group will be dissolved unless a new representative member is nominated with a date of effect from the day after the previous representative ceased to be the representative member.[46]

[45] See section 110-50 of Schedule 1 to the TAA.
[46] Section 48-70 of the GST Act.

88. A GST group member that becomes incapacitated may be removed from the group by the representative member or representative of the incapacitated member. If the representative member becomes an incapacitated entity and it does not cease to be a group member, it ceases to be the group representative member unless all other group members are incapacitated entities.[47]

89. Under section 27-39 of the GST Act, an incapacitated entity's tax period ceases at the end of the day before incapacitation which generally means that the incapacitated member has a tax period different to those applying to the other members and therefore breaches one of the membership requirements. However, the representative member may elect that the tax periods of the other GST group members will end at the same time as that of the incapacitated member thereby allowing the incapacitated member to remain in the group.[48] The election must be made in the approved form within 21 days after the member becomes an incapacitated entity.[49]

Cancelling GST branches

90. The Commissioner must cancel the registration of a GST branch 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 at the time of the application.[50]

91. A parent entity must apply for cancellation of registration of its GST branch if it is not carrying on an enterprise through the branch.[51] It must lodge the application within 21 days of ceasing to carry on an enterprise through the branch.[52]

92. The Commissioner must also cancel the registration of a GST branch, even without an application being made, 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.[53]

93. The date of effect of cancellation of the registration of a GST branch may be any date occurring before, on or after the day on which the Commissioner makes the decision.[54]

94. Cancellation of a parent entity's registration will automatically cancel the GST registration of its branch or branches, with the same date of effect.[55]

95. Refusing to cancel a branch's GST registration, cancelling a branch registration without an application and deciding the date of effect of cancellation of a GST branch, are all reviewable GST decisions. [56]

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[47] Section 48-70 of the GST Act.
[48] Section 48-75 of the GST Act.
[49] Section 48-73 of the GST Act.
[50] Section 54-75 of the GST Act.
[51] Subsection 54-70(1) of the GST Act.
[52] Subsection 54-70(2) of the GST Act.
[53] Subsection 54-75(2) of the GST Act.
[54] Section 54-80 of the GST Act.
[55] Section 54-90 of the GST Act.
[56] Section 110-50 of Schedule 1 to the TAA.

Registration requirements for representatives of incapacitated entities

96. A representative of an incapacitated entity is required to be registered for GST in their capacity as a representative, if the incapacitated entity is registered or required to be registered.[57] If more than one representative is appointed over the assets of the incapacitated entity, each representative will be required to register, unless the representatives are appointed jointly, in which case there is a single registration for the joint appointment. If the incapacitated entity is registered or required to be registered, the tax periods applying to the representative in that capacity are the same tax periods that apply to the incapacitated entity.[58]

97. The Commissioner must cancel the registration of a representative of an incapacitated entity if the Commissioner is satisfied that the representative is not required to be registered in that capacity. The Commissioner must notify the representative of the cancellation.[59]

98. When a representative ceases to be a representative of the incapacitated entity, they must notify the Commissioner in the approved form within 21 days.[60]

99. The Commissioner (in his capacity as Registrar of the ABR) will allow the representative of an incapacitated entity to use the incapacitated entity's existing ABN for transactions conducted in its capacity as the representative of the incapacitated entity. The ATO will set up a new running balance account under the incapacitated entity's ABN for each representative to cover post appointment liabilities and entitlements. However, a trustee in bankruptcy will need to apply for a separate ABN in respect of each appointment as trustee under the *Bankruptcy Act 1966*.

Other notifications required of representatives

100. A liquidator must give written notice to the Commissioner of their appointment within 14 days after becoming liquidator.[61]

101. A receiver must give written notice to the Commissioner within 14 days after taking possession of the assets of the entity in receivership.[62]

MAINTAINING THE CLIENT REGISTERS

102. This section deals with maintaining the client registers. In particular, it deals with:

- registration of partnerships consisting of one entity or person acting in different legal capacities
- registration requirements where an entity or person restructures
- change of sex code
- registration for minors (making decisions and signing forms)
- recording names on the client registers
- public officers.

[57] Section 58-20 of the GST Act.
[58] Section 58-35 of the GST Act.
[59] Section 58-25 of the GST Act.
[60] Section 58-30 of the GST Act.
[61] Subsection 260-45(2) of Schedule 1 to the TAA.
[62] Subsection 260-75(2) of Schedule 1 to the TAA.

Registration of partnerships consisting of one entity or person acting in different legal capacities

103. An entity (as defined) or person (as defined) can act in a number of different capacities. For example, in addition to his or her individual capacity, an individual may be a trustee of one or more trusts. In each of those capacities, the individual is taken to be a different entity or person. This also applies where the trustee is a company.

104. The Commissioner (including when acting as Registrar) may accept an application for registration from a partnership (for a TFN, ABR, GST or other role registration) if satisfied that the entities involved are together proprietors of the relevant business or assets that are being used to carry on a business or to derive income jointly. The partnership can be either a general law or tax law partnership and must be comprised of:

- two or more entities or 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 entities or persons being an individual or company as trustee of two or more trusts.

Example: Margaret as an individual and Margaret as trustee for the Scanlan Family Trust are partners in an enterprise. There is only one natural person (Margaret) involved, but she is there in two personas (individual and trustee). The Commissioner will register the partnership.

Reconstituted partnerships

105. Where a partner exits a general law partnership (the partnership), the assets and liabilities of that partnership are taken over by the continuing partners (and any new partners) and the partnership business is continued without any apparent break, a technical rather than a general dissolution has occurred. This is known as a reconstituted partnership.

106. A reconstituted partnership, providing the conditions in the following paragraph are met, can continue to use the same TFN, GST registration or ABN as the pre-reconstitution partnership. The partnership will only be required to complete one income tax return for the income year in which the reconstitution took place. The reconstituted partnership treatment only applies to general law partnerships, not to tax law partnerships.

107. All of the following conditions must be satisfied if a reconstituted partnership wishes to continue to use its existing TFN, GST registration or ABN:

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

(b) 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.

(c) The following must be satisfied:

(i) substantially all of the partnership assets remain with the continuing partnership

(ii) the nature of the enterprise remains substantially unchanged

(iii) the client or customer base remains substantially unchanged

(iv) 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.

(d) When lodging the partnership tax return, the following details must be supplied:

(i) the date of the dissolution

(ii) the date of the reconstitution

(iii) the names of the new, continuing and retiring partners

(iv) the TFN or address and date of birth of all new partners

(v) details of the changes if the contacts authorised to act on behalf of the partnership have changed.

108. If all of the conditions set out in the above paragraph of this practice statement are not met, the original partnership will be dissolved and a new partnership created. In this case:

- The new partnership will be required to register for a new TFN, GST registration and ABN.
- The former partnership will be required to cancel their GST registration and ABN if they are not carrying on any other enterprise.
- The new partnership will be required to lodge an income tax return for the period from the date of its formation to the end of the income year.
- The former partnership will be required to lodge an income tax return from the beginning of the income year to the date of dissolution.

Registration requirements where an entity or person restructures

Government entities

109. Government entities at the Commonwealth, State, Territory and local level may undergo a variety of structural changes that include but are not limited to:

- the merging of two bodies
- a change in the type of entity (for example, a change from a body corporate government-related entity to a government entity)
- the whole or part of an entity being absorbed by another entity.

110. Such restructures are commonly referred to as 'machinery of government changes'.

111. Machinery of government changes give rise to questions as to whether the entity or entities emerging from a restructure need to apply for new registrations and/or roles, such as TFN, ABN, GST, PAYG withholding, fringe benefits tax (FBT) and fuel tax credits, or may instead continue the registrations and roles of the pre-change entity.

112. Where it is evident that an entity emerging from a machinery of government change is to be treated at law, as a continuation of the pre-change entity, the TFN, ABN and other roles of the pre-change entity continue unaltered with only a change to the entity name. Relevant evidence is found in the primary or delegated legislation, including orders and determinations through which the restructure is effected. These will be in the form of specific transition, transfer and savings provisions which provide that the new entity is to be treated as if it were the former entity such that the new entity has all the rights, entitlements, liabilities and obligations of the former entity.

113. Where there is no such evidence, an entity emerging from a machinery of government change must apply for new registrations.

114. Where it is evident that a government entity continues, *in fact,* after the machinery of government change, there is no new and former entity for which there is a need to establish continuity. Such cases do not need to be treated in accordance with this policy and the entity may continue to use their existing registrations. An example of the continuation of an entity *in fact* is where a State Governor gives notice in the State Government Gazette that an existing Department has been re-named and had some functions added or taken away – sometimes referred to as having its 'designation altered' – under the relevant State Public Sector Management Act (or equivalent). In this example, no new primary or delegated legislation has been passed. Rather, powers under the existing statute have been used to restructure a Department without abolishing it.

Registrations and sex code

115. When registering an individual, the ATO will record the individual's sex/gender as described in the primary proof of identity documents. In cases where an individual seeks to change the record of their sex/gender from male to female or female to male, they are required to provide:

- a statement from a registered medical practitioner or a registered psychologist, or
- a valid Australian Government travel document, such as a valid passport, or
- an amended State or Territory birth certificate, or
- a State or Territory gender recognition certificate or recognised details certificate showing a State or Territory Registrar of Birth Deaths and Marriages,

specifying their preferred sex/gender.

116. Sex reassignment surgery and/or hormone therapy are not pre-requisites for the recognition of a change of sex/gender in ATO records.

117. Recognition of sex/gender X (indeterminate/intersex/unspecified) is not yet available. However, the individual may still apply to change their name and update their title to one that is not sex/gender-specific or to remove the title from their ATO records.

Minors – making decisions and signing forms

118. At general law, an individual does not achieve full legal capacity while they are a minor (under 18 years of age). Legal capacity is a legal concept which describes the ability of an individual to act under the law. See also paragraphs 18 and 19 of this practice statement.

119. Taxation laws do not specify at what age a minor will have capacity in relation to tax affairs. Case law in the criminal and family law contexts[63] has established that the optimal approach to determining the capacity of a minor is to judge each case on its own merits depending on the nature of a particular decision to be made and the minor's ability to understand the consequences of their decision. However, it also suggests that generally children under 10 years of age will not be capable of making informed decisions while children 14 years or over generally will be capable. There is no specific guidance on the capacity of children aged between 10 and 14.

120. It would be difficult for the ATO to attempt to discover the actual capacity of minors on an individual basis. In the context of this practice statement, it is accepted that a minor aged 14 years or over, in the absence of evidence or facts indicating otherwise, has the capacity to make decisions in relation to matters dealt with in this practice statement, such as registrations.

121. A manager in a client contact area also has the discretion to decide whether a particular minor aged under 14 has capacity (that is, the capacity to understand the decision and its consequences). In these cases, a determination of the child's capacity would need to be made by the manager. An example of this is the manager interviewing the minor to assess the minor's understanding of the decision. The manager can decide, taking into account the minor's understanding and the complexity of the decision to be made by the minor, that the minor is capable of making the decision and understanding the decision.

122. Exceptions applying to different ages should be made where it can be assessed that the particular type of decision is appropriate for a child of that age. An example of an exception is the policy on the age for signing a TFN application, which is referred to at paragraph 18 of this practice statement. The TFN application process for minors has operated successfully for a number of years and is widely accepted within the community and enables the Secondary Schools TFN Programme.

Recording names in ATO systems

123. The ATO will enter the legal name (also known as entity name) of an entity or person in its systems. However, an entity or person can record more than one name in ATO systems (for example, a client's legal name and preferred name), provided there is no intention to use it for fraudulent purposes.

124. The ATO maintains records containing the full legal name of an individual. This may include the surname, first name and middle name/s. Unless there is a specific legal requirement to use the taxpayer's full legal name (such as serving a particular form of notice), it is acceptable to use a shortened version of the full name, such as first and last name only or first name, middle initial/sand surname. The ATO may take into account the taxpayer's wishes and can accommodate them where it is appropriate, taking into account system limitations such as a limited character field.

[63] *Gillick v. West Norfolk and Wisbech Area Health Authority* [1986] AC 112; *Dept of Health and Community Services (NT) v. JWB and SMB* (Marion's case) (1992) 175 CLR 218.

Public officers

125. The public officer is a position that exists for taxation and indirect taxation purposes. A public officer is not appointed until notice has been given to the Commissioner in writing. The public officer appointed under section 252 of the ITAA 1936 is also the public officer of the company for the purposes of an indirect tax law.[64]

126. A company that carries on business in Australia, or derives income from property in Australia, is required to be represented for taxation purposes by a public officer.[65] The company must appoint a public officer, in writing, within three months of commencing to carry on business or derive income in Australia.[66]

127. The public officer has the authority to do all things in relation to taxation matters on behalf of a company.

128. A taxation officer, in performing their duties as a taxation officer may disclose information about a company to its public officer for the purposes of administering taxation laws. However, a taxation officer cannot automatically disclose information about the company to the public officer for purposes which do not assist in the administration of taxation laws. In these circumstances, the public officer must be nominated in the approved form under paragraph 355-25(2)(g) of Schedule 1 to the TAA so that they will then be a 'covered entity' in relation to the company for the purposes of the confidentiality provisions.

129. A trust estate that carries on business in Australia or derives any income from property from sources in Australia, and does not have an Australian resident trustee, is also required to appoint a resident public officer.[67]

130. Further information on public officers is contained in the Appendix to this practice statement.

[64] See section 444-10 of Schedule 1 to the TAA and the definition of 'indirect tax law' in section 995-1 of the ITAA 1997.
[65] Subsection 252(1) of the ITAA 1936.
[66] Paragraphs 252(1)(a) and 252(1)(c) of the ITAA 1936.
[67] Section 252A of the ITAA 1936.

APPENDIX – PUBLIC OFFICERS

Exemption from being represented by a public officer

131. The Commissioner may exempt a company[68] or trust estate[69] from the requirement to appoint a public officer for some of the time or all of the time.

132. While there is scope to exempt a company or trust estate from the requirement to appoint a public officer, the intent of the public officer provisions is to ensure that every company or trust estate carrying on business in Australia, or deriving in Australia income from property, appoints a public officer. Even if the Commissioner's discretion in this regard is not subject to any particular conditions, the context, purpose and policy of the provisions and the matters which may properly be taken into account in exercising the discretion demonstrate that the requirement to appoint a public officer should be waived in limited situations only. For example, the Commissioner may consider granting an exemption where there is another representative or associate of the company or trust estate who is in effect performing the role of public officer.

133. The Commissioner is unlikely to grant an exemption on the basis that the company cannot find a suitable individual to fill the position, or that it is too onerous or expensive to do so.

Company or trust estate trading for less than three months

134. A company or trust which would otherwise be required to appoint a public officer, but which ceases to trade within three months from commencing, is not required to appoint a public officer.

Example: Sporty Pty Ltd sells souvenirs at the Table Tennis World Championships, and trades for three weeks. At the end of the three weeks, the company stops trading. As it has not traded for a period of three months, it is not required to appoint a public officer.

Application of the public officer provisions to a company not carrying on business in Australia or deriving in Australia income from property

135. There is no requirement to appoint a public officer if a company does not carry on business in Australia or does not derive in Australia income from property.

136. Under section 444-10 of Schedule 1 to the TAA, a company's public officer for the purposes of the ITAA 1936 is also the public officer of the company for the purposes of an indirect tax law. An indirect tax law does not include the ABN Act, meaning that a public officer is not appointed for ABN purposes. However, the public officer's name is recorded in the ABR.[70]

137. Where a company is required to be registered for indirect taxes but is not required to appoint a public officer under the ITAA 1936, they are not required to appoint a public officer for indirect tax purposes. However, any notice or process that is to be given or served on the company for the purposes of an indirect tax law may be given to or served on an individual who is acting or appears to be acting in the business of the company.[71]

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[68] Subsection 252(1) of the ITAA 1936.
[69] Subsection 252A(3) of the ITAA 1936.
[70] Regulation 6 of the *A New Tax System (Australian Business Number) Regulations 1999*.
[71] Subsection 444---10(5) of Schedule 1 to the TAA.

Example: Moo Inc is an American company that bought three stud bulls in Australia and exported them to the USA. They are carrying on an enterprise so are entitled to register for GST, but are not carrying on business in Australia and are not deriving in Australia income from property, so are not required to appoint a public officer under subsection 252(1) of ITAA 1936. As such, they do not have a public officer for indirect tax purposes.

Multiple or alternate public officers

138. The intent of the public officer provisions is to appoint a single person answerable for everything that is required to be done by the company for tax related purposes. For this reason, the Commissioner will not accept the nomination of more than one public officer at any one time.

139. If more than one public officer were appointed by a company or by a trustee, issues might arise about the responsibilities and liabilities of the respective public officers of various sections.

140. If a company's public officer is unavailable for a particular time to perform the role, a company or trust may appoint an alternate public officer who is responsible for carrying out all the things required to be done. Having an alternate public officer does not amount to more than one public officer at any one time.

Example 1: Robin, the public officer of Lorry Ltd, goes on leave for six months. It is appropriate to appoint Terry as an alternate public officer for that period. Terry's appointment for this period overrides Robin's appointment.

Example 2: Lorry Ltd wishes to appoint Robin as the public officer of the West division of Lorry Ltd and to appoint Terry as the public officer of the East division of Lorry Ltd. This is not appropriate as Lorry Ltd may only have one public officer at a time.

Non-resident companies

141. For the purposes of the public officer provisions, non-resident companies fall into one of the following categories:

(a) Non-resident companies that are carrying on business in Australia, or deriving income in Australia from property, for more than three months.

The intent of the public officer provisions is that every company carrying on business in Australia, or deriving in Australia income from property, is required to appoint a public officer and this requirement applies whether the company is a resident or non-resident.

All non-resident companies that are carrying on business or deriving income in Australia on an ongoing basis will be required to appoint a public officer.

(b) Non-resident companies that are not carrying on business in Australia or deriving in Australia income from property, for a period of greater than three months.

In this situation, there is no requirement to appoint a public officer. For example, a management company trading in Australia for less than three months while representing a non-resident entertainer or sportsperson, is not required to appoint a public officer.

(c) Non-resident companies that are not carrying on business in Australia, or deriving in Australia income from property, but still need to interact with the Australian tax system (for example, GST only registrants).

> Where a company is required to be registered for indirect taxes but is not required to appoint a public officer under the ITAA 1936, it is not required to appoint a public officer. However, any notice or process that is to be given or served on the company for the purposes of an indirect tax law may be given to or served on an individual who is acting or appears to be acting in the business of the company.[72]

Notification of the appointment of a public officer at registration

142. If a company applies for registration before it has been carrying on business in Australia or deriving in Australia income from property for three months, it is not required to appoint a public officer in order to complete registration. However, before expiration of the three month period, the company must nominate the appointment of the public officer in writing.

143. Although the Commissioner is obliged to allow all companies or trust estates the flexibility to not appoint a public officer on registering during their first three months of operation, for administrative convenience, it is desirable for companies or trust estates to appoint a public officer at the time of registration. The Commissioner will continue to encourage appointments of public officers at that time.

[72] Subsection 444-10(5) of Schedule 1 to the TAA.

Amendment history

Date of amendment	Part	Comment
6 May 2020	Various	Updated CEI titles.
8 October 2014	Paragraphs 115-117	Policy revised to implement the Attorney General's Department recommendations regarding the process for changing a person's sex/gender code.
21 May 2014	Various Various	General re-structure of content Additional information including – compromised TFNs; restructure of government entity; change of sex code; minors making decisions/signing forms; recording names on the client register; public officers.
8 July 2011	Paragraph 24	Words 'are not met' added to first sentence.

ATOLaw topics	Goods and Services Tax ~~ General rules and concepts ~~ registration
Legislative references	ANTS(ABN)A 1999 19-8(1) ANTS(ABN)A 1999 8(1) ANTS(ABN)A 1999 8(1)(b) ANTS(ABN)A 1999 41 ANTS(GST)A 1999 9-5 ANTS(GST)A 1999 9-20 ANTS(GST)A 1999 11-5 ANTS(GST)A 1999 11-15 ANTS(GST)A 1999 11-20 ANTS(GST)A 1999 13-5 ANTS(GST)A 1999 15-5 ANTS(GST)A 1999 15-10 ANTS(GST)A 1999 15-15 ANTS(GST)A 1999 23-5 ANTS(GST)A 1999 23-10 ANTS(GST)A 1999 23-15 ANTS(GST)A 1999 25-1 ANTS(GST)A 1999 25-5(1) ANTS(GST)A 1999 25-5(2) ANTS(GST)A 1999 25-5(3) ANTS(GST)A 1999 25-10 ANTS(GST)A 1999 25-10(1)(c) ANTS(GST)A 1999 25-10(1A) ANTS(GST)A 1999 25-10(2) ANTS(GST)A 1999 25-50 ANTS(GST)A 1999 25-55 ANTS(GST)A 1999 25-55(2) ANTS(GST)A 1999 25-55(3) ANTS(GST)A 1999 25-57 ANTS(GST)A 1999 25-57(3) ANTS(GST)A 1999 25-60(1) ANTS(GST)A 1999 27-39 ANTS(GST)A 1999 48-5 ANTS(GST)A 1999 48-5(4) ANTS(GST)A 1999 48-60 ANTS(GST)A 1999 48-70 ANTS(GST)A 1999 48-70(4) ANTS(GST)A 1999 48-71 ANTS(GST)A 1999 48-73 ANTS(GST)A 1999 48-75 ANTS(GST)A 1999 51-5 ANTS(GST)A 1999 51-5(1)(ea) ANTS(GST)A 1999 51-10 ANTS(GST)A 1999 51-70(1)(c) ANTS(GST)A 1999 54-5 ANTS(GST)A 1999 54-5(3) ANTS(GST)A 1999 54-40 ANTS(GST)A 1999 54-70(1) ANTS(GST)A 1999 54-70(2) ANTS(GST)A 1999 54-75

	ANTS(GST)A 1999 54-75(2) ANTS(GST)A 1999 54-80 ANTS(GST)A 1999 54-90 ANTS(GST)A 1999 57-20(1) ANTS(GST)A 1999 58-20 ANTS(GST)A 1999 58-25 ANTS(GST)A 1999 58-30 ANTS(GST)A 1999 58-35 ANTS(GST)A 1999 63-5 ANTS(GST)A 1999 63-20 ANTS(GST)A 1999 63-25 ANTS(GST)A 1999 78-50 ANTS(GST)A 1999 84-5 ANTS(GST)A 1999 105-5 ANTS(GST)A 1999 114-5 ANTS(GST)A 1999 144-5 ANTS(GST)A 1999 149-5 ANTS(GST)A 1999 149-10 ANTS(GST)A 1999 184-1 ANTS(GST)A 1999 188-10(1) ANTS(GST)A 1999 188-10(2) ANTS(GST)A 1999 195-1 ANTS(GST)R 1999 ANTS(GST)R 1999 6 ANTS(GST)R 1999 23-15.01 ANTS(GST)R 1999 23-15.02 Bankruptcy Act 1966 Corporations Act 2001 9 Corporations Act 2001 Pt 5.3A Div 2 Crimes Act 1914 4AA Higher Education Funding Act 1988 44 Higher Education Funding Act 1988 48 ITAA 1936 6(1) ITAA 1936 Pt VA Div 2 ITAA 1936 202A ITAA 1936 202B(2) ITAA 1936 202BA(2) ITAA 1936 202BA(3) ITAA 1936 202BA(4) ITAA 1936 202BD ITAA 1936 202C(2) ITAA 1936 202CD ITAA 1936 252 ITAA 1936 252(1) ITAA 1936 252(1)(a) ITAA 1936 252(1)(c) ITAA 1936 252A ITAA 1936 252A(3) ITAA 1997 995-1 Privacy Act 1988 TAA 1953 Sch 1 8WA TAA 1953 Sch 1 8WB TAA 1953 Sch 1 110-50

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Related public rulings	MT 2006/1 GSTD 2006/6 GSTR 2003/13
Related practice statements	PS LA 2004/11 PS LA 2005/19 PS LA 2011/9
Case references	Gillick v. West Norfolk [1986] AC 112 Dept of Health and Community Services (NT) v. JWB and SMB (Marion's case) (1992) 175 CLR 218
Other references	Tax File Number Guidelines 2011 (issued under the Privacy Act 1988) Fact sheet: Signature requirements for approved electronic tax file number declaration – payee to payer process Identity Management CEI (internal link only)
File references	1-4BTR9C5; 1-5XM5L60
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Contact email	OperationalPolicyAssuranceandLawWorkManagement@ato.gov.au
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