PS LA 2011/9 - The registration of entities on the Australian Business Register

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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 on the Australian Business Register**
PURPOSE:	**This practice statement sets out the policy and procedures to be followed on a range of issues relating to the registration of entities on the Australian Business Register and should be read in conjunction with Law Administration Practice Statement PS LA 2011/8 The registration of entities, which sets out a range of registration issues that apply across a range of registration types**

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BACKGROUND

1. The Australian Business Number (ABN) was introduced as part of the 1999 tax reform measures and commenced operation on 1 July 2000 to make it easier for businesses to conduct their dealings with the Australian Government using a single, unique business identifier. Legislative provisions regarding the ABN are contained in the *A New Tax System (Australian Business Number) Act 1999* (ABN Act).

2. The Australian Business Register (ABR) is the central collection, storage and verification system for basic business identity information for all entities with an ABN. In registering an entity in the ABR, the Registrar will allocate an ABN to the entity and record the applicant's details in the ABR. ABN details are only released to third parties as provided for by legislation.

TERMS USED

3. 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 (Australian Business Register) – means the register established under section 24 of the ABN Act.

Corporations Act company – a body registered as a company under the *Corporations Act 2001*.

Carrying on an enterprise – includes doing anything in the course of the commencement or termination of the enterprise.

Entity – has the meaning given by section 184-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (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*.

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.

Government entity – is defined in section 41 of the ABN Act and means:

(a) a Department of State of the Commonwealth, or

(b) a Department of the Parliament, or

(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:

- is not an entity, and
- 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

- 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.

Individual – a natural person.

Non-profit sub-entity – is defined in section 41 of the ABN Act as a branch of an entity where:

- the entity has chosen to apply Division 63 of the GST Act, and that choice still has effect
- the branch maintains an independent system of accounting; and
- the branch maintains an independent system of accounting; and
- the branch can be separately identified by reference to:
  - the nature of the activities carried on through the branch, or
  - the location of the branch, and
- the branch is referred to in the entity's records to the effect that it is to be treated as a separate entity for the purposes of the GST Act.

Person – includes a company.

Registrar – means the Registrar of the ABR. The Commissioner of Taxation is the Registrar (subsection 28(2) of the ABN Act).

Superannuation fund – has the meaning given by section 10 of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

STATEMENT

4. Registration for an ABN is voluntary. The Registrar cannot compel an entity to register. An ABN is never given without an application from the entity to be registered in the ABR. The Australian Taxation Office (ATO) has maintained an approach to make the application and obtaining of an ABN as open and inclusive as possible. As a result, the Registrar has sought to foster a broad based approach to allow registrations to proceed smoothly.

5. There may however, be consequences of not having an ABN, including being subject to PAYG withholding tax.

6. Where an entity registers for both an ABN and Goods and Services Tax (GST), the ABN will be the registration number for GST. Registration for an ABN is not compulsory even where an entity is required to register for GST. Further, it is not necessary to have a GST registration to have an ABN.

7. However, this broad based approach to allowing registrations does not extend to registering an entity that does not meet the eligibility requirements (for example, an entity that is otherwise not eligible to hold an ABN such as an individual not carrying on an enterprise cannot obtain an ABN for the purpose of acquiring a discounted motor vehicle as a result of a dealership offering discounts to ABN holders). Further, contractors who apply for an ABN and are deemed to be an employee will not be issued with an ABN.

8. The ABN Act provides that an entity is entitled to have an ABN if they are carrying on an enterprise in Australia; or in the course or furtherance of carrying on an enterprise, they make supplies that are connected with Australia. This includes entities that are residents and non-residents of Australia. However, some entities are entitled to an ABN even though they are not carrying on an enterprise. These entities are discussed at paragraphs 12 to 16 of this practice statement.

9. A supply will be connected with Australia where:

- goods are delivered, or made available, in Australia to the recipient of the supply
- goods are removed from Australia
- goods are imported, installed or assembled in Australia
- the supply is of real property, the real property or land to which it relates is in Australia
- if it is anything other than goods or real property, the thing must be:
  - done in Australia
  - the supplier makes the supply through an enterprise that they carry on in Australia, or
  - all of the following apply:
    - the thing was not done in Australia
    - is not a supply made through an enterprise carried on in Australia
    - the thing is a right or option to acquire another thing, and
    - the supply of the other thing would be connected with Australia, or
- it is a telecommunication supply that the recipient of the supply will effectively use or enjoy in Australia.

10. It is the entity not the enterprise that is entitled to register for an ABN. Therefore, an entity carrying on more than one enterprise is entitled to only one ABN.

11. For a full explanation of the terms ‘entity’ and ‘enterprise’ refer to MT 2006/1.

Corporations Act companies

12. All Corporations Act companies are entitled to an ABN whether or not they are carrying on an enterprise. The ABN allocated to companies will include the Australian Company Number of the company.

Entities carrying on superannuation activities

13. A superannuation fund (complying and non-complying) is taken to be an entity carrying on an enterprise and may apply for an ABN in the approved form. ‘Superannuation fund’ has the meaning given by section 10 of the SIS Act. Other superannuation entities as defined by the SIS Act, such as a regulated superannuation fund or a pooled superannuation fund, must be an entity carrying on an enterprise in order to be entitled to an ABN.

Religious practitioners

14. Where a religious practitioner undertakes activities in pursuit of a vocation as a religious practitioner, is a member of a religious institution and does not undertake the activities as an employee or agent of the religious institution or another entity, the ABN Act applies as if the religious institution, and not the religious practitioner, undertook the activities. The religious practitioner is not entitled to an ABN in respect of these activities. The activities are undertaken in the course of an enterprise of the religious institution and not an enterprise of the religious practitioner.

Government entities and non-profit sub-entities

15. Government entities and non-profit sub-entities are taken to be entities and carrying on an enterprise in their own right. Therefore, a government entity or non-profit sub-entity is entitled to an ABN even if it does not meet the ordinary meaning of entity or is not carrying on an enterprise.

Registrable Superannuation Entity (RSE) licensees

16. An RSE licensee, or an applicant for an RSE licence, being a group of individual trustees, are treated as if the group were an entity carrying on an enterprise. Therefore they are entitled to an ABN even if it does not meet the ordinary meaning of carrying on an enterprise. An RSE licensee has the meaning given by section 10 of the SIS Act.

Commencement of an enterprise

17. To be entitled to an ABN most entities must carry on an enterprise. The definition of 'carrying on' includes activities done in the course of commencement or termination of the 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. In this situation, the entity is not able to obtain an ABN.

18. Activities that are undertaken to establish an entity are not commencement activities. An example is the drawing up of a trust deed where this activity is undertaken prior to setting up the trust activity or enterprise.

19. An entity is not entitled to an ABN prior to coming into existence. This could be the date of incorporation if the entity is a company. For a partnership, it is the date the partnership commences. For a trust, it is the date when the obligations under the trust first apply to trust property and the trustee begins to conduct an enterprise subject to those obligations, which is generally no earlier than the date the trust is settled. For further information see MT 2006/1.

Refusal to register

20. An application for an ABN can be refused under certain circumstances, for example if:

    - the application is not in a form approved by the Commissioner
    - the applicant is already registered in the ABR

- the applicant is not carrying on an enterprise in Australia or making supplies connected with Australia as part of carrying on an enterprise, and is not excluded from this requirement
- the Registrar is not satisfied that the identity of the applicant has been established
- the application contains insufficient information, or
- the applicant has requested in writing that their application be treated as refused because a decision to register was not made within 28 days.

21. Refusal of an application means that the applicant will not be registered in the ABR and an ABN will not be issued.

22. Should an entity be refused registration, the Registrar is required to give the entity written notice:
    - that the application has been refused, and
    - the reasons for the refusal.

23. If the Registrar refuses an application for registration, the applicant can object against this decision in accordance with Part IVC of the *Taxation Administration Act 1953*.

Information displayed and publicly accessible on the ABR

24. Once registered some of an entity's information will be displayed on the ABR, including (where applicable):
    - ABN
    - ABN status
    - Legal name
    - entity type (such as company, sole trader, trust)
    - trading name
    - State or Territory
    - postcode
    - GST registration (status and date of effect of registration or cancellation)
    - deductible gift recipient status and date/s of effect
    - tax concession charity status and date/s of effect
    - Australian Company Number or Australian Registered Body Number (if any)
    - the date of an ABN change – if the Registrar has changed the entity's ABN
    - the date of effect of ABN registration, and
    - the date of cancellation of registration in the ABR.

25. For RSEs the following information will be displayed on the ABR:
    - the address for the entity recorded by the Australian Prudential Regulation Authority
    - the entity's postal address

- the entity's telephone number
- the entity's contact person, and
- the RSE licensee of the entity.

26. For RSE licensees the following information will be displayed on the ABR:
    - the class of licence held by the licensee
    - the address for the licensee recorded by the Australian Prudential Regulation Authority
    - the licensee's postal address, and
    - the licensee's telephone number.
27. This register is publicly available at www.abr.gov.au. The Registrar may give a person a copy or a certified copy of the information above relating to an entity on the ABR after payment of a fee.
28. Additional information (such as address and contact details) that an entity provides will not be available on the public register.
29. An entity may request a certified copy of its own register details. The extract will contain all of the information set out above plus additional information including full address for service of notices, correspondence and email addresses.

Disclosure of information to third parties

30. Under certain circumstances the Registrar may disclose information (in addition to that information mentioned in paragraph 27 of this practice statement) provided by an entity to other Australian, State, Territory and local government agencies where authorised to do so by law. These include law enforcement and revenue agencies such as the Australian Federal Police and the Australian Customs Service, benefit payment agencies such as Centrelink and other agencies such as the Australian Bureau of Statistics.
31. Any disclosures are made in the context of the *Privacy Act 1988* and are governed by a Memorandum of Understanding between the Registrar and the head of the receiving agency or receiving agency whichever is the case.

Suppression of details on the ABR

32. The Registrar will consider requests for non-disclosure/suppression of ABN details in extreme circumstances (for example, where a person feels that their details appearing on the public register may cause them or their family harm. This may happen where domestic abuse and violence orders are in place.)

ABN cancellation

33. The Registrar may cancel an ABN registration if satisfied that:
    - the client is registered under an identity that is not its true identity
    - at the time of registration, the entity was not entitled to have an ABN
    - the client is no longer entitled to have an ABN, or
    - the client has requested cancellation of its ABN in the approved form.

34. The Registrar will be satisfied that an entity is not entitled to an ABN registration and will cancel that registration if that entity:

- is not carrying on an enterprise in Australia (where enterprise is a requirement for registration), or
- in the course or furtherance of carrying on of an enterprise, is not making supplies that are connected with Australia.

35. There are many other situations in which the Registrar may cancel an entity's ABN including:

- it ceases to exist such as through the dissolution of a partnership (Note that a reconstituted partnership can continue to use the ABN of the previous partnership and the registration is not cancelled. (For further information, see the section on reconstituted partnerships in Law Administration Practice Statement 2011/8 The registration of entities)
- change in the nature of the entity such that the former entity ceases, or no longer carries on an enterprise (for example, change from a partnership to a company – we would register the company and cancel the registration of the partnership if it had no other enterprises).

36. Where an individual who is registered as a sole trader dies, their registration will be cancelled. Where an executor or trustee continues the enterprise they may apply for an ABN in that capacity.

37. Where an entity that is ordinarily subject to the enterprise test cannot be contacted and has not disclosed income from an enterprise for some time (for example, in an activity statement or an income tax return), the Registrar may be satisfied that the entity is no longer carrying on an enterprise and cancel its ABN registration. The Registrar will, where possible, provide notice of this by advising the entity in advance that its registration will be cancelled.

38. Where an entity no longer requires an ABN or is no longer entitled to an ABN it may apply for its ABN to be cancelled.

39. For example, an entity should request cancellation of their ABN if all its enterprises (or its only enterprise):

- have been sold or ceased
- are no longer carried on in Australia, or are not making supplies that are connected with Australia, or
- take on the characteristic of private recreational pursuits or hobbies that are done as an employee or without reasonable expectation of profit.

40. An entity is not required to cancel its ABN if it changes the enterprise it carries on or ceases one or more enterprises, as long as it continues to carry on at least one enterprise.

Objection rights

41. An entity can object against the following decisions in relation to the cancellation of the ABN in accordance with Part IVC of the *Taxation Administration Act 1953:*

- refusal to cancel an ABN registration
- cancellation of an ABN registration, and
- date of effect of the cancellation of the ABN.

Consequences of cancelling an ABN registration

42. When the registration is cancelled, the entity ceases to have an ABN. The previously held ABN must not be quoted for any business transactions after the date of effect of the cancellation of the ABN.

43. If an entity suspends business temporarily, its ABN will be cancelled and, upon request, is reactivated when the business recommences. However, if the enterprise is seasonal the ABN remains active.

Date of effect of cancellation

44. The date of effect of cancellation is decided by the Registrar. It may be the date of the notice of cancellation, an earlier date or a future date.

45. Where an entity applies for cancellation, the Registrar will normally accept that date, but may choose an earlier date if he is satisfied that the entity was no longer eligible from the earlier date.

46. Where the Registrar initiates the cancellation, he may cancel from the date of the notice of cancellation, but may choose an earlier date if he is satisfied that the entity was no longer eligible from the earlier date.

Reinstating an ABN registration

47. The Registrar must reinstate an entity's registration in the ABR if the Registrar is satisfied that the registration should not have been cancelled. The Registrar must provide a written notice of the reinstatement. The reinstatement has effect on and from the day on which the registration was cancelled.

Reactivating an ABN registration

48. Where an entity cancels its registration, but requires a registration again at a later date, the earlier registration may be reactivated with a new date of effect.

Subject references	ABN Australian Business Number Entity Goods and Services Tax Government entities Non profit entities Registration Security
Legislative references	TAA 1953 Pt IVC ANTS(ABN)A 1999 ANTS(ABN)A 1999 28(2) ANTS(ABN)A 1999 41 ANTS(GST)A 1999 9-20 ANTS(GST)A 1999 Div 63 ANTS(GST)A 1999 184-1 Corporations Act 2001 9 Privacy Act 1988 Public Service Act 1999 SISA 1993 10
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
Related practice statements	PS LA 2011/8 The registration of entities
Case references	
Other references	
File references	
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Other Business Lines consulted	