PS LA 2011/9 - The registration of entities in the ABR

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PS LA 2011/9
The registration of entities in the ABR

This Law Administration Practice Statement outlines the policy to be applied to the registration of entities in the Australian Business Register.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

1. What is this practice statement about?

This practice statement outlines the Registrar's policy on the registration of entities in the Australian Business Register (ABR).

The Registrar registers an entity[1] in the ABR in order to allocate a single unique identifier, the Australian Business Number (ABN), so that an entity can easily and reliably identify itself in the following circumstances:

- to other businesses
- to all levels of Australian government
- for any Commonwealth purpose.[2]

2. Who is the Registrar of the ABR?

The Commissioner of the Australian Taxation Office (ATO) is the Registrar of the ABR.[3]

The Registrar has the general power of administration[4] of the *A New Tax System (Australian Business Number) Act 1999* (ABN Act).

3. How is an entity registered in the ABR?

The Registrar must register[5] an entity in the ABR where the following conditions are met:

- the entity applies in the approved form[6]
- the Registrar is satisfied that the entity is entitled to an ABN or is likely to be entitled by the date specified in the application
- the Registrar is satisfied that the entity's identity and the identity of any of its associate's has been established
- the entity is not already registered in the ABR.

The Registrar registers an entity in the ABR by allocating an ABN to the entity and by entering certain details about the entity in the ABR.[7]

4. Entitlement to an ABN

Who is entitled to an ABN?

To be entitled to an ABN[8] an entity:

- must be carrying on an enterprise in Australia, or
- in the course of carrying on an enterprise, make supplies connected with the indirect tax zone[9], or
- must be a body registered as a company under the *Corporations Act 2001* (Cth), but
- cannot be a limited entity for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*[10] (GST Act).

Are unlawful activities considered to be an enterprise?

The Registrar cannot refuse or cancel a registration where the entity is conducting an enterprise in contravention of another law. This is because the definition of enterprise does not exclude unlawful activities.

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[1] The term 'entity' is defined in section 41 of the ABN Act to have the meaning given by section 184-1 of the GST Act. For further information about entities refer to Miscellaneous Tax 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*.
[2] Section 3 of the ABN Act sets out the objects of the Act.
[3] Subsection 28(2) of the ABN Act.
[4] Subsection 28(3) of the ABN Act.
[5] Section 10 of the ABN Act.
[6] Subsection 9(2) of the ABN Act. Further information on approved forms is set out in PS LA 2005/19 *Approved forms*.
[7] Subsection 11(1) of the ABN Act.
[8] Section 8 of the ABN Act sets out when an entity is entitled to an ABN. For further information in determining an entity's entitlement to an ABN, refer to MT 2006/1.
[9] The indirect tax zone means the geographical part of Australia in which the goods and services tax, the wine equalisation tax and the luxury car tax operate. This excludes all the external territories and certain offshore installations.
[10] Division 146 of the GST Act.

Is it mandatory to have an ABN?

An ABN is not compulsory and the Registrar cannot compel an entity to register in the ABR. However, there may be consequences of not having an ABN, such as payments to the entity being subject to no ABN withholding tax under the Pay As You Go system.[11]

5. Our general policy about applications

Who can make an application for registration in the ABR?

An entity or their agent can apply for an entity to be registered in the ABR.[12]

An agent can either be a registered tax agent[13] or any other person authorised by the entity to act on its behalf.

Can a minor make an application for registration?

In the absence of evidence or facts to the contrary the Registrar accepts that a minor, aged 14 years or over, has the capacity to make decisions in relation to making an application to be registered in the ABR. Where the person is less than 14 years of age, their parent or guardian must sign an approved application form on their behalf.

Substantial completion of an approved form

The Registrar will accept an application that is substantially complete[14], if satisfied from the information supplied, the entity is entitled to be registered in the ABR.

Information not provided in the application

Where an entity does not provide all necessary information, the Registrar will:

- stop the entity proceeding any further in the online application process, or
- refuse the application, or
- request further information or documents within a designated timeframe.

Information provided but not accepted by the Registrar

Where an entity has provided information and documents, but the Registrar is still not satisfied that:

- the information is true and correct, or
- the identity of the entity and its associates has been established, or
- the entity is entitled to an ABN,

the application will be refused (see section 9 of this practice statement).

6. Our general policy about identity

How does an entity establish its identity?

The Registrar may request an entity to provide specific information or documents to establish the identity of the entity or its associates whose details are requested in the approved application form.[15]

The application form requests but does not compel the applicant to provide the tax file number (TFN) of the entity and the TFN of any of its associates.[16] This information is used to verify the identity of the entity and any of its associates. This occurs by matching the TFN and other personal details supplied in the application form against information held in the ATO Client Register.

Where an applicant does not provide the TFN of the entity and any of its associates, the Registrar will request other details such as the name, date of birth and residential address of the associates. This information will be used to locate a TFN in the ATO Client Register.

Where a TFN is not supplied and/or details of the applicant cannot be matched against information held in the ATO Client Register, the Registrar will refuse the application (see section 9 of this practice statement).

Existence of an entity

An entity is not entitled to have an ABN for a period prior to coming into existence.

For example, a company commences to exist when it is registered with the Australian Securities and Investment Commission under the *Corporations*

[11] Paragraph 12-190(1)(a) of Schedule 1 to the *Tax Administration Act 1953* (TAA) sets out the requirements for no ABN withholding provision to apply. If these requirements are satisfied then the provision will require a withholding unless one of the exceptions listed in the provision is satisfied.
[12] Subsection 9(1) of the ABN Act.
[13] A registered tax agent is someone who is registered with the Tax Practitioners Board to provide tax agent, BAS or tax (financial) advice services for a fee or other reward.
[14] Section 25C of the *Acts Interpretation Act 1901* sets out that substantial compliance of a form is sufficient, unless it is specified, that strict compliance of the form is required.
[15] Subsection 10(2) of the ABN Act.
[16] Subsection 9(3) of the ABN Act.

Act 2001 and allocated an Australian Company Number.[17]

7. Our general policy about the date of effect of a registration in the ABR

What is the date of effect of a registration in the ABR?

The Registrar sets the date of effect of registration.[18] It may be:

- a date that is specified by the entity
- a date that is determined by the Registrar.

Depending upon the circumstances of the entity the date of effect may be:

- the date on the application
- a date that pre-dates the application
- be a future date (not more than six months in the future).

What are the factors that the Registrar takes into account when setting the date of effect?

When setting the date from which an entity is registered in the ABR, the Registrar must consider the following factors:

- the date the entity came into existence
- whether the entity is entitled to an ABN
- the reasons why an entity may be requesting a date of effect that is prior to the date of its application for registration in the ABR
- where an entity is requesting a future date for the date of effect of its registration, whether the entity would likely to be entitled to an ABN by that date
- the date the ABN Act came into force.[19]

Review rights about the date of effect

If an entity does not agree with the date of effect of its registration, it can lodge an objection against that decision.[20]

8. Does the Registrar give a written notice of the registration?

The Registrar must give the entity a written notice[21] that contains:

- the fact the entity has been registered
- the ABN of the entity
- the date of effect of the registration
- any other details entered in the ABR in relation to the entity.

The Registrar will send the written notice as soon as is practicable after registering an entity in the ABR.

9. Our general policy about refusing applications for registration in the ABR

In what circumstances will the Registrar refuse an application for registration in the ABR?

The Registrar will refuse an application for registration where:

- the application is not in the approved form
- the Registrar is not satisfied that the entity is entitled to an ABN or likely to be entitled by the date specified in the application
- the Registrar is not satisfied as to the identity of the entity or its associates
- the entity is already registered in the ABR.

What happens when the Registrar refuses an application for registration?

When the Registrar refuses an application for registration, the entity:

- is not issued with an ABN
- is not registered in the ABR.

The Registrar must give the entity written notice as soon as practicable after the Registrar has refused the application. It must contain the reason for the refusal and the entity's review and objection rights.[22]

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[17] Section 118 of the *Corporations Act 2001*.
[18] Subsection 11(2) of the ABN Act.
[19] Whilst the ABN Act was enacted from 8 July 1999, the ABR system will not allow a date of effect prior to 1 July 2000. Therefore, a date of effect of a registration in the ABR cannot predate this date notwithstanding the entity may have existed prior to that date.

[20] An entity may object, in the manner set out in Part IVC of the TAA, against a decision it is dissatisfied with that is a reviewable ABN decision.
Part IVC of the TAA applies in relation to a reviewable ABN decision as if references in that Part to the Commissioner of Taxation were references to the Registrar.
[21] A written notice includes correspondence provided electronically.
[22] Subsection 13(1) of the ABN Act.

Review rights about refusals

If an entity does not agree with the refusal decision, it can lodge an objection against that decision.[23]

10. What happens if the Registrar does not make a decision about an application within 28 days?

Where the Registrar has not made a decision about an entity's application for registration within 28 days of the application being made, the entity may give the Registrar written notice that it wishes to treat the application as if it has been refused. The application is taken to have been refused by the Registrar on the day that the applicant gives notice to the Registrar.[24]

This then allows the entity to object to the refusal decision.

If the Registrar requests further information or documents, the 28 day period does not include the period commencing on the day of the request and concluding on the day that the entity gives the information or documents to the Registrar.[25]

11. Can an entity with a cancelled ABN reapply to be registered in the ABR

Where the Registrar cancels an entity's registration in the ABR, the entity ceases to have an active ABN. The record remains in the ABR and displays the date of effect of the ABN cancellation.

In the future the entity may wish to reapply for their ABN. To do so, it needs to:

- make sure that it is the same legal entity and not a restructured entity
- lodge a new application to be registered in the ABR
- establish their identity and that of their associates
- establish their entitlement to an ABN.

Once the Registrar is satisfied the entity can be registered in the ABR the previously allocated ABN will be activated with a new date of effect. The Registrar will give the entity a written notice of its registration in the ABR (see section 8 of this practice statement).

[23] An entity may object, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, against a decision it is dissatisfied with that is a reviewable ABN decision. Part IVC of the *Taxation Administration Act 1953* applies in relation to a reviewable ABN decision as if references in that Part to the Commissioner of Taxation were references to the Registrar.

[24] Subsection 13(2) of the ABN Act.

[25] Subsection 13(4) of the ABN Act.

12. What is the address for service of notices?

An entity must give the Registrar an address for service of notices.[26] The address must be one of the following:

- physical address
- postal address
- electronic address.

The Registrar may give a written notice to a registered entity at the address for service of notices held in the ABR.[27] This may be done by:

- delivering it to the person personally
- leaving it at the address for service
- sending it to the address for service via pre-paid post
- sending it to the electronic address.

A notice that has been posted will be deemed to have been served on the entity at the time that it would be delivered in the ordinary course of the post (unless proven otherwise).

Communicating electronically

The Registrar is able to communicate electronically with an entity where the entity consents[28] to information being given to them electronically and the entity and the Registrar can subsequently retrieve the notice.[29]

[26] Paragraph 25(2)(a) of the ABN Act.

[27] Section 12 of the ABN Act.

[28] When dealing electronically the Registrar must comply with the requirements of the *Electronic Transactions Act 1999* (ET Act). Paragraph 9(1)(a) of the ET Act provides that a person to whom information is required to be given under a law of the Commonwealth must consent to the information being given by way of electronic communication. Consent can be express or inferred. Express consent is where the entity has given consent to the Registrar to allow information to be sent to it by way of electronic communications. For example completing the approved form to indicate that their email address is an address for service of notice and correspondence. Inferred consent can come about through an existing relationship. For example where the entity already interacts with the Registrar electronically, consent may be inferred.

[29] Paragraph 9(1)(a) of the ET Act provides that where information is given by means of electronic communication, it is reasonable to expect that the information is readily accessible so as to be useable for subsequent reference.

13. Can an entity have more than one ABN?

An entity cannot have more than one ABN. It is the entity not the enterprise[30] that is entitled to have an ABN. For example, where an entity is carrying on more than one enterprise it is entitled to only one ABN. This ABN is the same regardless of a change in enterprise.

14. What is the interaction between ABN and GST registration?

Where an entity applies for registration in the ABR and also applies to be registered for goods and services tax (GST), the ABN that is issued is also the GST registration number.

An entity does not have to have an ABN to obtain a GST registration. Where an entity only has a GST registration, the Registrar must record the date of effect of the GST registration and the date of effect of the GST cancellation in the ABR.

15. More information

For more information, refer to:

- PS LA 2016/3 *The cancellation of registrations in the ABR*
- PS LA 2016/4 *Maintaining the ABR*
- PS LA 2016/5 *The disclosure of information held in the ABR*
- 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*
- Proof of identity

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[30] The term 'enterprise' is defined in section 41 of the ABN Act to have the meaning given by section 9-20 of the GST Act. For further information about enterprise refer to MT 2006/1.