PS LA 2011/9 - Registration of entities in the Australian Business Register

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Registration of entities in the Australian Business Register

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

Relying on this Practice Statement

This Practice Statement is an internal instruction to ATO staff, published externally in the interest of open tax administration.

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What this Practice Statement is about

1. This Practice Statement outlines the Registrar's policy on the registration of entities in the Australian Business Register (ABR).

2. 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[2]:

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

3. All legislative references in this Practice Statement are to the *A New Tax System (Australian Business Number) Act 1999* (ABN Act), unless otherwise indicated.

The Registrar of the ABR

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

5. The Registrar has the general power of administration[4] of the ABN Act.

How an entity is registered in the ABR

6. We must register[5] an entity in the ABR where the following conditions are met:

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

7. We register an entity in the ABR by allocating an ABN to the entity and by entering certain details about the entity in the ABR.[7]

[1] The term 'entity' is defined in section 41 to have the meaning given by section 184-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (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 sets out the objects of the ABN Act.
[3] Subsection 28(2).
[4] Subsection 28(3).
[5] Section 10.
[6] Subsection 9(2). Further information on approved forms is set out in Law Administration Practice Statement PS LA 2005/19 *Approved forms*.
[7] Subsection 11(1).

Entitlement to an ABN

Who is entitled to an ABN

8. 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*, but
- cannot be a limited registration entity for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*[10] (GST Act).

Whether unlawful activities can be an enterprise

9. We 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.

Consequences of not registering in the ABR

10. An ABN is not compulsory and we 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]

Our general policy about applications

Who can make an application for registration in the ABR?

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

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

Whether a minor can make an application for registration

13. In the absence of evidence or facts to the contrary, we accept 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 old, their parent or guardian must sign an approved application form on their behalf.

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[8] Section 8 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 (GST), 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.

[11] Subsection 12-190(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA) sets out the requirements for the 'no ABN withholding' provision to apply. If these requirements are satisfied, the provision will require a withholding unless one of the exceptions listed in subsections 12-190(2) to (6) of that Act is satisfied.

[12] Subsection 9(1).

[13] A registered tax agent is someone who is registered with the Tax Practitioners Board to provide tax agent, business activity statement or tax (financial) advice services for a fee or other reward.

Substantial completion of an approved form

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

Information not provided in the application

15. Where an entity does not provide all necessary information, we will:

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

Information provided but not accepted by us

16. The application will be refused where an entity has provided information and documents, but we are still not satisfied that[15]:

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

Our general policy about identity

How an entity establishes its identity

17. We 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.[16]

18. 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.[17] 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.

19. Where an applicant does not provide the TFN of the entity and any of its associates, we 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.

20. Where a TFN is not supplied or details of the applicant cannot be matched against information held in the ATO Client Register, the Registrar will refuse the application (see paragraphs 29 to 32 of this Practice Statement).

Existence of an entity

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

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[14] Section 25C of the *Acts Interpretation Act 1901* sets out that substantial compliance with a form is sufficient, unless it is specified that strict compliance with the form is required.
[15] See paragraphs 29 to 32 of this Practice Statement.
[16] Subsection 10(2).
[17] Subsection 9(3).

22. For example, a company commences to exist when it is registered with the Australian Securities and Investment Commission under the *Corporations Act 2001* and allocated an Australian company number.[18]

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

Date of effect of a registration in the ABR

23. We set the date of effect of registration.[19] It may be a date that is:

- specified by the entity
- determined by us.

24. 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
- a future date (not more than 6 months in the future).

Factors we take into account when setting the date of effect

25. When setting the date from which an entity is registered in the ABR, we 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.[20]

Review rights about the date of effect

26. If an entity does not agree with the date of effect of its registration, it can lodge an objection against that decision.[21]

[18] Section 118 of the *Corporations Act 2001*.
[19] Subsection 11(2).
[20] While 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 even if the entity may have existed prior to that date.
[21] A decision setting the date of effect of an ABN registration is a 'reviewable ABN decision' under table item 1 of subsection 21(2). This means an entity may object under Part IVC of the TAA if they disagree with it, which applies in relation to a reviewable ABN decision as if references in that Part to the 'Commissioner of Taxation' were references to the Registrar.

Written notice of registration

27. We must give the entity a written notice[22] 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.

28. We must send the written notice as soon as is practicable after registering an entity in the ABR.

Our general policy about refusing applications for registration in the ABR

Circumstances where we will refuse an application for registration in the ABR

29. We will refuse an application for registration where:

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

When we refuse an application for registration

30. When we refuse an application for registration, the entity is not:

- issued with an ABN
- registered in the ABR.

31. We must give the entity written notice as soon as practicable after we have refused the application. It must contain the reason for the refusal and the entity's review and objection rights.[23]

Review rights about refusals

32. If an entity does not agree with the refusal decision, it can lodge an objection against that decision.[24]

If we do not make a decision about an application within 28 days

33. Where we have not made a decision about an entity's application for registration within 28 days of the application being made, the entity may give us written notice that it

[22] A written notice includes correspondence provided electronically.
[23] Subsection 13(1).
[24] 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, including a decision to refuse to register the entity or its representative as described in table item 2 in subsection 21(2).

wishes to treat the application as if it has been refused.[25] The application is taken to have been refused by us on the day that the applicant gives notice to us.[26]

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

35. If we request 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 us.[27]

Whether an entity with a cancelled ABN can reapply to be registered in the ABR

36. Where we cancel 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.

37. 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.

38. Once we are satisfied the entity can be registered in the ABR, the previously allocated ABN will be activated with a new date of effect. We will give the entity a written notice of its registration in the ABR (see paragraphs 27 to 28 of this Practice Statement).

Address for service of notices

39. An entity must give us an address for service of notices.[28] The address must be one of the following:

- physical address
- postal address
- electronic address.

40. We may give a written notice to a registered entity at the address for service of notices held in the ABR.[29] 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.

41. 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).[30]

[25] Subsection 13(2).
[26] Subsection 13(3).
[27] Subsection 13(4).
[28] Paragraph 25(2)(a).
[29] Section 12.
[30] Section 29 of the *Acts Interpretation Act 1901.*

Communicating electronically

42. We are able to communicate electronically with an entity where the entity consents[31] to information being given to them electronically and the entity can subsequently retrieve the notice.[32]

An entity can only have one ABN

43. Once an entity is registered in the ABR and allocated an ABN, it will use that same ABN for each enterprise[33] it carries on. It is the entity, not the individual enterprises, that is entitled to have an ABN.

Interaction between ABN and GST registration

44. 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.

45. 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.

More information

46. For more information, refer to:

- Law Administration Practice Statement PS LA 2016/3 *The cancellation of registrations in the Australian Business Register*
- Law Administration Practice Statement PS LA 2016/4 *Maintaining the Australian Business Register*
- Law Administration Practice Statement PS LA 2016/5 *The disclosure of information and documents collected by the Registrar of the Australian Business Register*
- 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*
- Proving your identity.

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[31] When dealing electronically, we must comply with the requirements of the *Electronic Transactions Act 1999*. Paragraph 9(1)(d) of that 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 us 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 us electronically, consent may be inferred.

[32] Paragraph 9(1)(a) of the *Electronic Transactions Act 1999* 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.

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

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Amendment history

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All	Updated to align with amended Practice Statement style and formatting requirements.
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Paragraph 6, Footnote 18, 19 and references	Update to reflect amendment to Section 9 *A New Tax System (Goods and Services Tax) Act 1999*. Inserted LAPS references.

11 May 2016

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Part	Comment
Contact officer	Updated.

20 May 2014

Part	Comment
Various	General restructure of content. Additional information including: service of notices by email; address for service of notices; acceptance/refusal of application; power to change ABN; descriptors for entity names; entity update to Registrar; de-registered companies; suppression of ABR information; disclosure of ABR information; visa holders; provision of TFNs; approved form declarations; future dated registrations; registration date of effect; establishment and maintenance of ABR; information sourced from third parties; updating ABR with tax information; secrecy provisions.

References

Related rulings and determinations:

MT 2006/1

Legislative references:

- ANTS(ABN)A 1999 3
- ANTS(ABN)A 1999 8
- ANTS(ABN)A 1999 9(1)
- ANTS(ABN)A 1999 9(2)
- ANTS(ABN)A 1999 9(3)
- ANTS(ABN)A 1999 10
- ANTS(ABN)A 1999 10(2)
- ANTS(ABN)A 1999 11(1)
- ANTS(ABN)A 1999 11(2)
- ANTS(ABN)A 1999 12
- ANTS(ABN)A 1999 13(1)
- ANTS(ABN)A 1999 13(2)
- ANTS(ABN)A 1999 13(3)
- ANTS(ABN)A 1999 13(4)
- ANTS(ABN)A 1999 21(2)
- ANTS(ABN)A 1999 25(2)(a)
- ANTS(ABN)A 1999 28(2)
- ANTS(ABN)A 1999 28(3)
- ANTS(ABN)A 1999 41
- ANTS(GST)A 1999 9-20
- ANTS(GST)A 1999 Div 146
- ANTS(GST)A 1999 184-1
- TAA 1953 Pt IVC
- TAA 1953 Sch 1 12-190(1)
- TAA 1953 Sch 1 12-190(2)
- TAA 1953 Sch 1 12-190(3)
- TAA 1953 Sch 1 12-190(4)
- TAA 1953 Sch 1 12-190(5)
- TAA 1953 Sch 1 12-190(6)
- Acts Interpretation Act 1901 25C
- Acts Interpretation Act 1901 29(1)
- Corporations Act 2001 118
- Electronic Transactions Act 1999 9(1)(a)
- Electronic Transactions Act 1999 9(1)(d)

Related practice statements:

PS LA 2005/19; PS LA 2016/3; PS LA 2016/4; PS LA 2016/5

ATO references

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