PS LA 2016/3 - Cancellation of registrations in the Australian Business Register

Cancellation of registrations in the Australian Business Register

This Practice Statement outlines the policy to be applied to the cancellation of 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.

Table of Contents **Paragraph**

What this Practice Statement is about

1. This Practice Statement outlines the Registrar's policy about how and when the registration of entities in the Australian Business Register (ABR) can be cancelled.

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

Who can cancel an entity's registration in the Australian Business Register

3. The Registrar can make decisions about cancelling an entity's registration.

4. An entity's[1] registration can be cancelled:

- on the Registrar's initiative[2]
- following a request by the entity or the entity's authorised contact.[3]

Circumstances in which we may cancel an entity's registration

5. We can cancel an entity's registration if satisfied that the entity is not entitled to have an Australian business number (ABN).[4]

6. An entity is not entitled to an ABN unless:

- it carries on an enterprise[5] in Australia
- in the course of carrying on an enterprise, it makes supplies connected with the indirect tax zone[6], or
- it is a Corporations Act company.[7]

7. Carrying on an enterprise includes activities done in the course of terminating the enterprise. Whether those activities have a connection with the termination is a question of fact and degree and will depend on the circumstances of each particular case.[8]

8. We can also cancel an entity's registration where we are satisfied that the entity, or its associates, are registered under an identity that is not their true identity.[9]

Our policy about Registrar-initiated cancellation

9. The value of the ABR as a whole-of-government database relies on the integrity of the ABR records. We cancel registrations as an administrative action taken to ensure the integrity of the information recorded in the ABR.

10. We can make a decision about an entity's entitlement to be registered in the ABR by using available information. This information can come from a variety of sources and can either be solicited or unsolicited. These sources include:

- information from the entity itself
- information from the Commissioner of Taxation
- information from other government agencies
- requests from third parties
- information from other available sources.

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[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 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*.
[2] Subsection 18(1).
[3] Subsection 18(4).
[4] Paragraphs 18(1)(b) and (c).
[5] The term 'enterprise' is defined in section 41 to have the meaning given by section 9-20 of the GST Act.
[6] The indirect tax zone means the geographical part of Australia in which the goods and services tax, the wine equalisation tax and luxury car tax operate. This excludes all the external territories and certain offshore installations.
[7] Defined in section 41 to mean a body registered as a company under the *Corporations Act 2001*.
[8] Paragraphs 140 to 148 of MT 2006/1 further discusses termination of enterprise.
[9] Paragraph 18(1)(a).

11. In making a decision, we must be reasonably satisfied that a particular fact is more likely than not to be true, based on the evidence and information provided.

12. The information must be persuasive, reliable and sufficient enough to demonstrate that the entity is no longer entitled to be registered in the ABR.

Information from the entity

13. To assist in making a decision, we can request information and evidence from an entity that is relevant to its entitlement to an ABN, or confirming its identity or the identity of any associates whose details are recorded in the ABR.[10]

14. We may also take into account other information about the entity that is readily available and accessible. This may include:

- government agency registrations, for example, business names registered with the Australian Securities and Investment Commission (ASIC)
- the entity's website
- social media pages
- White or Yellow pages
- trade directories and local business directories.

Information from the Commissioner of Taxation

15. We may use information from the Commissioner along with information held in the ABR or other sources to be satisfied about an entity's entitlement to be registered in the ABR.

16. For example, we can use information disclosed from the Commissioner that an entity has not reported income or is not showing any other evidence of conducting an enterprise for a period of time and this satisfies us that the entity is no longer carrying on an enterprise and is not entitled to an ABN.

Information from other government agencies

17. Information from various government agencies can be used by us to assist in making a decision about an entity's entitlement to be registered in the ABR.

18. For example, ASIC will deregister a company where its annual renewal fee has not been paid in full at least 12 months after the due date for payment. We can cancel the registration in the ABR based on notification about deregistration from ASIC.[11]

Requests from third parties

19. We may consider a request to cancel an entity's registration in the ABR from a third party. For example, where the Commissioner has concluded that the entity is not carrying on an enterprise for GST purposes, or where it is not operating under the structure or entity type for which it is registered in the ABR.

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[10] Section 15.

[11] Subsection 601AD(1) of the *Corporations Act 2001* states that a company ceases to exist on deregistration.

Our policy about client-initiated cancellation

20. An entity or their authorised contact can apply at any time to have the entity's registration cancelled in the ABR.

21. An entity should cancel its registration when it is no longer entitled to an ABN.

22. The entity must make the request in the approved form.[12]

23. We generally will accept the date of cancellation that an entity specifies in their application, unless we are satisfied that the date of cancellation should be different.

Refusal to cancel

24. We can refuse to cancel an entity's registration in the ABR, even where the entity has applied in the approved form. For example, the entity may have outstanding tax obligations that they need to finalise prior to the ABN being cancelled.

Changes to an enterprise

25. An entity is not required to cancel their registration if they change the enterprise they are carrying on.

26. Where the entity is carrying on multiple enterprises and one or more of those are ceased, they are not required to cancel their registration providing they continue to carry on at least one enterprise.

Seasonal enterprises

27. If the enterprise is seasonal, the ABN remains active in the ABR. This is because a seasonal enterprise continues to carry on an enterprise even where they are not physically trading.

Effective date of a cancellation in the Australian Business Register

28. The date of effect of cancellation may be:

- the date written notice of cancellation is given[13]
- a specified date in the future[14]
- a date before written notice of cancellation is given[15] – for example, this could be the date of registration where we are satisfied that
  - the entity was never entitled to an ABN
  - the date the entity ceased carrying on an enterprise
  - the date the entity ceased to exist, for example, the date a company is deregistered by ASIC
  - the date that the Registrar made a decision about the entity's entitlement

[12] Paragraph 18(4)(a).
[13] Paragraph 18(3)(a).
[14] Paragraph 18(3)(b).
[15] Paragraph 18(3)(c).

– the date the cancellation is actioned in the ABR.

Written notice of cancellation

29. We must send a written notice of a decision to cancel or refuse to cancel a registration in the ABR. The notice must state:

- the date of effect of cancellation[16]
- the reasons for the cancellation where the cancellation is on the Registrar's initiative[17]
- the reasons for refusing to cancel the registration on application[18], and
- the entity's review rights.

30. We will send the notice as soon as it is practicable after an entity's registration in the ABR is cancelled.

Consequences of cancelling registration in the Australian Business Register

31. When an entity's registration is cancelled in the ABR, regardless of the reason, the entity ceases to have an active ABN.

32. The previously active ABN must not be quoted by the entity after the date of effect of the cancellation of the registration.

33. Where an entity or its associate misuses an ABN by holding themselves out and identifying themselves by using a cancelled ABN[19] they commit an offence under the *A New Tax System (Australian Business Number) Act 1999*, which carries a penalty of 2 years imprisonment.[20]

When an entity's registration can be reinstated

Reinstating an entity's registration

34. We can reinstate an entity's registration where satisfied that the registration should not have been cancelled.[21] These circumstances include:

- where an internal administrative error has occurred
- the entity has made an error in requesting cancellation of its registration
- where ASIC has reinstated a company's registration.

Date of effect of reinstatement

35. The reinstatement has the date of effect on and from the day the registration was cancelled, not the date of the reinstatement. The registration will appear on the ABR as if it was never cancelled once it is reinstated.[22]

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[16] Paragraph 18(2)(b) and subsection 18(5).
[17] Paragraph 18(2)(a).
[18] Subsection 18(4).
[19] Subsections 23(1) and (2).
[20] Subsection 23(3).
[21] Subsection 19(1).
[22] Subsection 19(3).

Written notice of reinstatement

36. We must provide the entity with a written notice of the reinstatement as soon as practicable after an entity is reinstated in the ABR.[23]

Review rights

37. An entity can lodge an objection[24] against the following decisions:

- cancelling its registration in the ABR[25]
- refusing to cancel its registration in the ABR[26]
- setting the date of cancellation of their registration.[27]

More information

38. For more information, see:

- Cancel your ABN
- Law Administration Practice Statement PS LA 2011/9 *Registration of entities in the Australian Business Register*
- 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*
- Proving your identity.

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[23] Subsection 19(2).
[24] 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 applies in relation to a reviewable ABN decision as if references in that Part to the Commissioner of Taxation were references to the Registrar.
[25] Table item 3 of subsection 21(2) is a reviewable ABN decision made under subsection 18(1).
[26] Table item 5 of subsection 21(2) is a reviewable ABN decision made under subsection 18(4).
[27] Table item 6 of subsection 21(2) is a reviewable ABN decision made under subsections 18(2) or (5).

Ammendment history

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Part	Comment
Throughout	Minor content updates made to references and footnotes and for clarity. Hyperlinks updated.
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References

Related rulings and determinations:
MT 2006/1

Legislative references:
- ANTS(ABN)A 1999 15
- ANTS(ABN)A 1999 18(1)
- ANTS(ABN)A 1999 18(1)(a)
- ANTS(ABN)A 1999 18(1)(b)
- ANTS(ABN)A 1999 18(1)(c)
- ANTS(ABN)A 1999 18(2)
- ANTS(ABN)A 1999 18(2)(a)
- ANTS(ABN)A 1999 18(2)(b)
- ANTS(ABN)A 1999 18(3)(a)
- ANTS(ABN)A 1999 18(3)(b)
- ANTS(ABN)A 1999 18(3)(c)
- ANTS(ABN)A 1999 18(4)
- ANTS(ABN)A 1999 18(4)(a)
- ANTS(ABN)A 1999 18(5)
- ANTS(ABN)A 1999 19(1)
- ANTS(ABN)A 1999 19(2)
- ANTS(ABN)A 1999 19(3)
- ANTS(ABN)A 1999 21(2)
- ANTS(ABN)A 1999 23(1)
- ANTS(ABN)A 1999 23(2)
- ANTS(ABN)A 1999 23(3)
- ANTS(ABN)A 1999 41
- ANTS(GST)A 1999 9-20
- ANTS(GST)A 1999 184-1
- Corporations Act 2001 601AD(1)
- TAA 1953 Pt IVC

Related practice statements:
PS LA 2011/9

Other references:
Cancel your ABN
Proving your identity

ATO references

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