PS LA 2016/4 - Maintaining the Australian Business Register

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Australian Government
Australian Taxation Office

PS LA 2016/4
Maintaining the Australian Business Register

This Law Administration Practice Statement outlines the policy to be applied to how the Australian Business Register is maintained.

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

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What this practice statement is about

This practice statement outlines the Registrar's policy on how the Australian Business Register (ABR) is maintained.[1]

The Registrar has adopted a broad interpretation of the meaning of 'maintain'. It includes the following activities:

- entering and keeping up to date details about an entity that must be entered in the ABR under specific provisions of the
  - *A New Tax System (Australian Business Number) Act 1999* (ABN Act)
  - *A New Tax System (Australian Business Number) Regulations 1999* (ABN Regulations)
  - *A New Tax System (Goods and Services Tax) Act 1999* (GST Act)
  - *Taxation Administration Act 1953* (TAA)
- collecting and keeping up to date additional details about an entity for the purpose of administering specific provisions of the ABN Act, and
- collecting other details that are publicly available about an entity that are considered necessary to facilitate service delivery functions in a whole-of-government context.

2. What details must the Registrar enter in the ABR about an entity?

There are up to 42 details that the Registrar must enter about an entity in the ABR.[2] These details are listed at Attachment A.

3. How does the Registrar ensure that the details entered in the ABR are correct?

The Registrar keeps details entered in the ABR correct by:

- updating details entered in the ABR when notified by an entity that their details have changed
- requesting information from entities about their entitlement, identity or other details entered in the ABR in relation to the entity
- requesting information from third parties about an entity's entitlement, identity or other details entered in the ABR in relation to the entity, and
- adjusting details in the ABR where the Registrar is satisfied the details in the ABR about an entity are incorrect or for other administrative purposes.

4. What does the Registrar do when notified by an entity of a change to its details?

An entity must notify the Registrar in the approved form[3] of any change to its details recorded in the ABR. It must do so within 28 days of becoming aware of the change.[4]

The Registrar is not obliged to update an entity's details in the ABR. The details will be adjusted where the Registrar considers that it is appropriate to do so. For example, where an entity notifies the Registrar of a change of address details, the Registrar will update the entity's address details in the ABR. However, where an entity requests a backdate to its date of effect of registration, the Registrar will only adjust the date if satisfied that the entity was in fact entitled to an ABN from the earlier date.

[1] Subsection 24(1) of the ABN Act sets out that the Registrar must establish and maintain an Australian Business Register.
[2] Section 25 of the ABN Act and Regulation 5, 6 and 8 of the ABN Regulations.
[3] An approved form may be in paper or virtual form and can be, but is not limited to, a statement, application or other document in a form approved by the Commissioner in writing. Further information on approved forms is set out in PS LA 2005/19 *Approved forms*.
[4] Subsection 14(1) of the ABN Act.

5. Can the Registrar request information from entities about their details in the ABR?

Informal requests for information

The Registrar can request information from an entity about its entitlement, identity or any other details entered in the ABR in relation to the entity. Such requests will usually be made informally by telephone contact.

If an entity refuses to provide information on an informal basis, the Registrar can make a formal request for the information.

Formal requests for information

The Registrar has the power to formally request information from an entity[5] that is relevant to its entitlement to be registered, its identity, the identity of its associates, the identity of its representative[6] or any details entered in the ABR about the entity or its representative.

A formal request for information must be made in writing to the entity. The request may ask the entity to give the information in writing or in any other form that the Registrar considers appropriate. For example, the Registrar may request that the entity give information by telephone. The notice must also give the entity at least 14 days in which to provide the Registrar with the information.[7]

6. Can the Registrar request information about entities from a third party?

Informal requests

The ABN Act does not give the Registrar the formal power to seek information about registered entities from a third party. However, the Registrar can ask for information from a third party on a voluntary basis where the Registrar considers that the information would assist in making a decision in relation to the entity's entitlement to be registered in the ABR or in relation to any other detail about the entity entered in the ABR.

Where information is requested from a third party informally, the Registrar must make it clear that the party is not compelled to provide it.

The Registrar is not required to obtain consent from the entity when requesting information about it from the third party.

Formal requests

Where a third party does not provide the Registrar information that he has requested informally, the Registrar may use the formal powers available to him under the TAA[8] to obtain the information. The Registrar must only use these formal powers where it is considered that the information will assist to carry out the Registrar's functions under the ABN Act. For example, the Registrar may seek information from a third party that relates to the relationship between that party and a registered entity. The Registrar may use this information to determine the entity's entitlement to an ABN.

7. Can the Registrar adjust details about an entity that are recorded in the ABR?

The Registrar can adjust details in the ABR in the following circumstances:

- to correct administrative errors relating to details entered in the ABR
- where satisfied that details entered in the ABR about an entity are incorrect and the Registrar has access to details that he believes to be the correct ones[9]
- to change the ABN of an entity where it is considered appropriate to do so[10]
- to accommodate requests made by the Commissioner of Taxation to allow the effective administration of other taxation laws.

Correcting administrative errors

Where an administrative error has been made in recording an entry about an entity in the ABR, the Registrar may adjust the record to reflect the correct details.

[5] Subsection 15(1) of the ABN Act.
[6] A representative is an individual that the entity has nominated under section 9A of the ABN Act for the purpose of facilitating its electronic dealings with government entities.
[7] Subsection 15(2) of the ABN Act.

[8] Section 353-10 of Schedule 1 to the TAA provides the Commissioner with the power to require an entity to do any of the following: to give any information that the Commissioner requires for the purpose of the administration or operation of a taxation law; to attend and give evidence before the Commissioner (or an authorised person) for the purpose of the administration or operation of a taxation law; to produce any document to the Commissioner that are in the custody or under the control of the entity for the purpose of the administration or operation of a taxation law.
[9] Section 29A of the ABN Act.
[10] Section 17 of the ABN Act.

Adjusting incorrect details in the ABR

The Registrar is able to adjust details about an entity registered in the ABR where reasonably satisfied[11] that those details entered in the ABR are incorrect and the Registrar has access to details believed to be correct and that are fit for purpose.[12]

For example where the Registrar receives correspondence returned unclaimed from an entity it is more likely than not that the address detail in the ABR is no longer correct.

The Registrar may use information from various sources to adjust an entity's details. For example:

- *Other taxation laws*

Information obtained under other taxation laws by the Commissioner of Taxation and disclosed to the Registrar for the purposes of administering the ABN Act may be used by the Registrar to adjust details about an entity in the ABR.

- *Publicly available sources*

The Registrar may adjust details about an entity using information obtained from public sources. For example the Yellow Pages or a business directory available on a local council's website.

- *Other government entities*

The Registrar may adjust details about an entity using information received from other government agencies. This information may be solicited or unsolicited. The Registrar will need to consider if the information is subject to the other agency's secrecy provisions before using the information to update details entered in the ABR.

Changing an entity's ABN

The Registrar has the discretion to change the ABN of an entity registered in the ABR at any time.[13] This can be done at the entity's request or on the Registrar's initiative.

Some of the circumstances where the Registrar can change an ABN include:

- an incorrect Australian Company Number (ACN)[14] or Australian Registered Business Number (ARBN)[15] was used to generate the ABN
- a company has received an ABN without their ACN or ARBN embedded in it[16]
- where the entity's data has been compromised[17]
- the entity has requested a different number based on cultural or religious beliefs
- an error was made in the initial registration, such as the entity was registered as an incorrect entity type.

The Registrar must give the entity written notice of the new ABN stating the date that the new ABN takes effect.[18]

Requests from the Commissioner of Taxation

The Commissioner of Taxation may request the Registrar to make adjustments to details about an entity registered in the ABR to assist in the administration of other taxation laws. For example, the Commissioner of Taxation may request a change to the date of effect of a registration of an entity in the ABR for a number of reasons including:

- as a result of compliance activity
- to allow compliance with tax obligations
- to allow compliance with superannuation obligations.

Registrar has the discretion to accommodate these requests where satisfied it is appropriate to do so.

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[11] The Registrar is reasonably satisfied where a fact is proved on the basis that it is more likely than not that the fact is true.

[12] Fit for purpose means that the details are reasonably fit for the purpose for which they are intended. For example updating an entity's postal address with an address the entity has given to a government agency for a fishing licence may not be fit for purpose.

[13] Subsection 17(1) of the ABN Act.

[14] An Australian Company Number is a unique nine-digit number issued by the Australian Securities and Investment Commission (ASIC) to every company registered under subsection 118(1) of the *Corporations Act 2001* as an identifier.

[15] An Australian Registered Business Number is a nine digit number issued by ASIC under subsections 601CE(j) and 601CB(h) of the *Corporations Act 2001* when a body is registered with them as an Australian registrable body, for example, foreign companies and registrable Australian bodies.

[16] Section 1344 of the *Corporations Act 2001* provides that where the ACN of a company or the ARBN of a registered body is required or permitted to be used under a Commonwealth law administered by ASIC, the ABN of the company or body may be used instead if the last nine digits of the ABN are the same and in the same order as the last nine digits of the ACN or ARBN.

[17] An entity's data is compromised where the security or privacy of a client's ABN or ABR details have been breached by an unauthorised third party. This is usually caused through theft, fraud, accidental disclosure or error, that is identity theft.

[18] Paragraph 17(1)(b) of the ABN Act.

8. Can the Registrar delete details about an entity from an ABR record?

The Registrar cannot delete ABR records as there are restrictions in place limiting his ability to delete Commonwealth records under the *Archives Act 1983*.

The Registrar may suppress details from the ABR where those details are unable to be deleted but are not appropriate to continue to be viewed publicly or shared with other government agencies.[19]

9. Can the Registrar collect other details about an entity?

The Registrar may collect other details about an entity where:

- the details are for the purpose of administering a specific provision of the ABN Act, or
- the details are publicly available and are considered necessary to facilitate service delivery functions for whole-of-government purposes.

Collecting details for the purpose of administering the ABN Act

The Registrar can collect other details which are considered necessary for the purpose of administering a specific provision of the ABN Act. These details will be protected by the secrecy provisions in the ABN Act as they will have been obtained under or in relation to the ABN Act. The Registrar will be responsible for keeping these details up to date as the ABN Act only places an obligation on entities to inform him of any changes to the details listed at Attachment A.

Where there is any uncertainty regarding the Registrar's ability to collect a particular detail, regard should be given to the objects of the ABN Act in order to determine whether the purpose of collecting the detail falls within the purposes of the ABN Act more broadly.

The objects do not give the Registrar any powers but set out how the ABN Act is intended to operate to achieve its purpose. The objects enable businesses to meet their reporting and registration obligations at a whole-of-government level, by reliably identifying themselves with a unique number for taxation law purposes, thereby reducing administrative burdens faced by businesses having to provide the same information through multiple channels.

Collecting details for whole-of-government purposes

The Registrar can also collect other details that are publicly available about an entity and enter them in the ABR where they are considered necessary to facilitate service delivery functions for whole-of-government purposes.

Because these details are not being collected for the purpose of administering a specific provision of the ABN Act, they are not protected information within the meaning of that Act.

The Registrar will be responsible for keeping these details up to date as the ABN Act only places an obligation on entities to inform the Registrar of any changes to the details listed at Attachment A.

10. More information

For more information, see:

- PS LA 2011/9 *The registration of entities in the ABR*
- PS LA 2016/3 *The cancellation of registration 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.*

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[19] The power to not disclose publicly is given to the Registrar under subsection 26(4) of the ABN Act. Details on the ABR that are not disclosed publicly, are also not disclosed to eligible government agencies.

Attachment A: Australian Business Register information

The Registrar must enter the following details in the ABR in relation to a registered entity:

DETAIL	LEGISLATIVE REFERENCE
1. The entity's name	Paragraph 25(1)(a) of the ABN Act
2. The entity's ABN	Paragraph 25(1)(b) of the ABN Act
3. The date of effect of the registration of the entity in the ABR	Paragraph 25(1)(c) of the ABN Act
4. An address for service of notices under the ABN Act	Paragraph 25(2)(a) of the ABN Act
5. Details of the entity's associates that were requested in the approved form for registration in the ABR	Paragraph 25(2)(b) of the ABN Act
6. Any business name registered to the entity on the Business Names Register that is established and maintained under section 22 of the *Business Names Registration Act 2011*	Subregulation 5(a) of the ABN Regulations
7. The entity's principal place of business	Subregulation 5(b) of the ABN Regulations
8. The kind of entity that is being registered	Subregulation 5(c) of the ABN Regulations
9. The Australian New Zealand Standard Industrial Classification code for the business being conducted by the entity	Subregulation 5(d) of the ABN Regulations
10. The entity's email address	Subregulation 6(e) of the ABN Regulations
11. The date of effect of any change to the entity's ABN	Subregulation 6(f) of the ABN Regulations
12. The date of effect of the cancellation of the entity's registration in the ABR	Subregulation 6(g) of the ABN Regulations

If an entity has nominated a representative to facilitate the entity's electronic dealing with government, the Registrar must also enter the following details:

DETAIL	LEGISLATIVE REFERENCE
13. The representative's name	Paragraph 25(3)(a) of the ABN Act
14. The representative's email address	Paragraph 25(3)(b) of the ABN Act
15. The date of effect of the representative's registration in the ABR	Paragraph 25(3)(c) of the ABN Act

If the entity is a company or body registered under the *Corporations Act 2001*, the Registrar must also enter the following details:

DETAIL	LEGISLATIVE REFERENCE
16. The entity's Australian Company Number	Subregulation 6(a) of the ABN Regulations
17. The entity's Australian Registered Body Number	Subregulation 6(b) of the ABN Regulations
18. The name of the entity's public officer	Subregulation 6(c) of the ABN Regulations

If the entity is a trust, the Registrar must also enter the following details:

DETAIL	LEGISLATIVE REFERENCE
19. The name of the entity's trustee or trustees	Subregulation 6(d) of the ABN Regulations

If the entity is an RSE (registrable superannuation entity) licensee, the Registrar must also enter the following details in the ABR:

DETAIL	LEGISLATIVE REFERENCE
20. The class of licence held by the licensee	Subparagraph 26(3)(ja)(i) of the ABN Act
21. The address of the licensee recorded by the Australian Prudential Regulation Authority for the purposes of the *Superannuation Industry (Supervision) Act 1993* (SIS Act)	Subparagraph 26(3)(ja)(ii) of the ABN Act
22. The licensee's postal address	Subparagraph 26(3)(ja)(iii) of the ABN Act
23. The licensees' telephone number	Subparagraph 26(3)(ja)(iv) of the ABN Act

If the entity is a registrable superannuation entity (RSE) within the meaning of the SIS Act, the Registrar must also enter the following details:

DETAIL	LEGISLATIVE REFERENCE
24. The address for the entity recorded by the Australian Prudential Regulation Authority for the purposes of the SIS Act	Subparagraph 26(3)(jb)(i) of the ABN Act
25. The entity's postal address	Subparagraph 26(3)(jb)(ii) of the ABN Act
26. The entity's telephone number	Subparagraph 26(3)(jb)(iii) of the ABN Act
27. The entity's contact person	Subparagraph 26(3)(jb)(iv) of the ABN Act
28. The RSE licensee of the entity	Subparagraph 26(3)(jb)(v) of the ABN Act

The Registrar must also enter the following details in relation to a registered entity where applicable:

DETAIL	LEGISLATIVE REFERENCE
29. The date of effect of any GST registration of the entity	Section 25-10 of the GST Act
30. The date of effect of any GST cancellation of the entity	Section 25-60 of the GST Act

DETAIL	LEGISLATIVE REFERENCE
31. If the entity is endorsed as a deductible gift recipient, a statement that it is so endorsed for a specified period	Section 30-229 of the *Income Tax Assessment Act 1997*
32. If the entity is endorsed as a charity under subsection 176-1 of the GST Act, a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(a) in Schedule 1 to the *Taxation Administration Act 1953* (TAA)
33. If the entity is endorsed as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986* (FBTA Act), a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(ba) in Schedule 1 to the TAA
34. If the entity is endorsed for the operation of an approved worker entitlement fund under subsection 58PB(3A) of the FBTA Act, a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(bb) in Schedule 1 to the TAA
35. If the entity is endorsed as a public benevolent institution under subsection 123C(1) of the FBTA Act, a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(c) in Schedule 1 to the TAA
36. If the entity is endorsed as a health promotion charity under subsection 123D(1) of the FBTA Act, a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(e) in Schedule 1 to the TAA
37. If the entity is endorsed as a registered charity under subsection 123E of the FBTA Act, a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(f) in Schedule 1 to the TAA
38. If the entity is endorsed as being exempt from income tax under section 50-105 of the ITAA 1997, a statement that the entity is so endorsed for a specified period	Paragraph 426-65(1)(g) in Schedule 1 to the TAA
39. If the entity is a public ancillary fund, a statement that it is a public ancillary fund	Subsection 426-104(1) in Schedule 1 to the TAA
40. If the entity is a private ancillary fund, a statement that it is a private ancillary fund	Subsection 426-115(1) in Schedule to the TAA
41. If the entity is registered as an employer of working holiday makers, a statement to that effect and the day on which the registration takes effect	Subsection 16-147(5) in Schedule 1 to the TAA
42. If an entity's registration as a working holiday maker is cancelled, a statement to that effect and the day on which the cancellation takes effect	Subsection 16-148(7) in Schedule 1 to the TAA