



Is an IDPS carrying on an enterprise within the meaning given by the GST Act? -

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Financial Services: Questions and Answers

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Is an IDPS carrying on an enterprise within the meaning given by the GST Act?

1. Whether or not an IDPS is an entity within the meaning given by the GST Act is dependent on an assessment of the surrounding facts of each case. However, the following general comments are provided in relation to a typical IDPS.
2. For the purposes of the GST Act, the term enterprise is defined to include (amongst other things) an activity or series of activities done in the form of a business.
3. Miscellaneous Taxation Ruling MT 2000/1, provides the Commissioner's views on the meaning of an entity carrying on an enterprise for ABN purposes (GST Determination 2000/8 provides that MT 2000/1 has equal application in terms of the meaning of 'enterprise' for GST purposes).
4. In terms of an enterprise for ABN & GST purposes, MT 2000/1 explains that:
 - An activity or series of activities is essentially any act or series of acts that an entity chooses to do. The acts can range from a single transaction to groups of related transactions or to entire operations of the entity.
 - The definition of 'business' in the GST Act is the same as that used for the *Income Tax Assessment Act 1936* (ITAA 1936). Consequently it is appropriate to refer to the precedent established for ITAA purposes, that is, Taxation Ruling TR 97/11.
 - With regards to the words 'in the form of', they have the effect of extending the meaning of enterprise beyond entities carrying on a business. Accordingly, an enterprise will include entities that carry out activities that, while they are not sufficient to meet the criteria of being regarded as a business, have the appearance or characteristics of business activities.

- In terms of trusts, a passive investment vehicle like a family discretionary trust (that merely holds shares and term deposits and receives investment income) will not be an enterprise. This is because it lacks the requisite actions to satisfy the enterprise test of activities done in the form of a business. However, a public unit trust will satisfy the enterprise test of activities done in the form of a business, notwithstanding that it may follow a passive investment mandate. The rationale in this case is that the public unit trust is established for commercial reasons and therefore exhibits the necessary business like activities to satisfy the stated enterprise test.

Separately declared trusts

5. As indicated in the response to question 13.3, each trust separately declared under a typical IDPS constitution/deed is likely to be an entity for the purposes of the GST Act. To determine whether each trust is carrying on an enterprise, it is necessary to examine whether the activities of the operator, or appointed custodian (in their capacity as trustee of each trust), are done in the form of a business.

6. In this regard, it is instructive to reflect on how the IDPS constitution/deed characterises the nature of the client's interest in the investments that are held in, or acquired through, the IDPS. Typically, the IDPS constitution/deed will represent that the client has an absolute entitlement to, or an absolute interest in, each investment or portfolio of investments. Alternatively, the declared trust relationship is described in terms of it being a 'bare trust' which implies that the nature of a client's interest is one of absolute entitlement.

7. The GST Act does not define the term 'bare trust'. However, Jacobs Law of Trusts in Australia (5th Edition) refers to a bare trust as follows:

...a 'bare trust' is simply a trust in which the trustee has no active duties to perform. In its classic form, it occurs when a principal vests property in his agent or nominee

8. A bare trust relationship may therefore be described as a trust created by declaration where the trustee possesses only the legal duties necessary to guard property and is then bare of any other active duties.

9. Where it is found that clients' of an IDPS are absolutely entitled to, or have an absolute interest in, an investment, or a portfolio of investments, held in/acquired through an IDPS, the bare trust typically declared over these investments will not be viewed as an entity that is carrying on an enterprise. This is because each trust is necessarily viewed as a passive investment vehicle, where the activities of the operator, or appointed custodian, are limited to the legal duties owed to the client in order to guard their property. In the opinion of the Commissioner, such activities will not meet the test of activities done in the form of a business so as to constitute an enterprise for the purposes of the GST Act.

10. (Whether or not a client's interest in an investment held in, or acquired through, an IDPS amounts to absolute entitlement is not a question dealt with in this Frequently Asked Question. Nothing discussed in this ruling is intended to give any guidance or indication of the Commissioner's views on absolute entitlement.)

Overall trust relationship

11. As discussed in the response to question 13.3, the relationship between an IDPS (in its managed investment scheme guise) and its operator can be viewed (in an overall practical sense) as a trust. Where the facts of a particular case support this conclusion, the Commissioner is likely to recognise this trust as an entity for the purposes of the GST Act.

12. In respect of this overall trust relationship (that practically facilitates the managed investment scheme aspect of an IDPS), the Commissioner considers that the associated activities of the operator typically correlate with the activities performed by a single responsible entity of public unit trust. Where this is found to be the case, the activities performed by the operator will have a distinct commercial flavour that permits a view that they constitute activities carried out in the form of a business.

13. As such, this overall trust relationship, through the activities of its operator, is likely to be an enterprise for the purposes of the GST Act.