


GSTD 2000/9 - Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 October 2012*

Goods and Services Tax Determination

Goods and services tax: if you let out a residence do you need to get an ABN for PAYG purposes or register for GST?

Preamble

*This document was published prior to 1 July 2010 and was a public ruling for the purposes of former section 37 of the **Taxation Administration Act 1953** and former section 105-60 of Schedule 1 to the **Taxation Administration Act 1953**.*

*From 1 July 2010, this document is taken to be a public ruling under Division 358 of Schedule 1 to the **Taxation Administration Act 1953**.*

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you - provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

[Note: This is a consolidated version of this document. Refer to the Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Date of Effect

This Determination applies [to tax periods commencing] both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Note: The Addendum to this Determination that issued on 22 August 2007, explains our view of the law as it applied from 1 July 2007.

1. You are entitled to get an Australian Business Number (ABN) if you are carrying on an enterprise¹ in Australia, if you make supplies connected with Australia in the course of carrying on an enterprise, or if you are a Corporations Law company whether or not you are carrying on an enterprise.²

¹ For a discussion on the meaning of 'enterprise' for ABN purposes see Miscellaneous Taxation Ruling MT2000/1 and Goods and Services Tax Determination GSTD 2000/8 for the purposes of GST. The definitions of enterprise for ABN and GST are substantially the same.

² Section 8 *A New Tax System (Australian Business Number) Act 1999* (ANTS (ABN) A 1999)

2. You are required to register for the Goods and Services Tax (GST) if you are carrying on an enterprise and your GST turnover meets the registration turnover threshold³. In most cases, you meet the registration turnover threshold if the GST exclusive value of your taxable and GST-free supplies is \$75,000 or above⁴. Input taxed supplies do not count toward the threshold for GST registration purposes⁵. Also, you may register for GST if you are carrying on, or intend to carry on, an enterprise⁶.

3. Therefore your entitlement to get an ABN and register for GST both turn on the meaning of 'carrying on an enterprise'.

Meaning of Enterprise for GST purposes

4. The meaning of enterprise is relevant for supplies of residential premises, commercial residential premises, commercial premises and supplies of property for mixed purposes. If you let out a property the relevant alternative parts of the enterprise definition are:

'an activity, or series of activities, done:

- (a) in the form of a business; or
- (b) in the form of an adventure or concern in the nature of trade; or
- (c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property'.⁷

Paragraphs (a) and (b) of the definition of 'enterprise'

5. Whether the letting of a property can be regarded as an activity or activities in the form of a business or an adventure or concern in the nature of trade will always be a question of fact and degree.⁸

6. Use of the phrase 'in the form of' broadens the concept of business or concern in the nature of trade. It has the effect of including activities that have the appearance or characteristics of a business or an adventure or concern in the nature of trade, even if they are not undertaken for profit. However, it is not wide enough to cover the letting of a property by itself, which is an activity in the nature of investment rather than a business, or an adventure or concern in the nature of trade.⁹ Therefore, paragraphs (a) and (b) do not need to be considered any further.

Paragraph (c) of the definition of 'enterprise'

7. The letting of a property is an activity in the nature of a lease, licence or other grant of an interest in property. If it is done on a regular and continuous basis, the activity will meet the definition of enterprise.

³ Section 23-5 *A New Tax System (Goods and Services Tax) Act 1999* (ANTS(GST)A 1999)

⁴ Division 188 and section 23-15 ANTS(GST)A 1999. The threshold for non-profit entities is \$150,000.

⁵ Section 188-15 for current GST turnover and Section 188-20 for projected GST turnover.

⁶ Section 23-10 ANTS(GST)A 1999

⁷ Paragraphs 9-20(1)(a), 9-20(1)(b) and 9-20(1)(c) ANTS(GST)A 1999, and paragraphs 38(1)(a), 38(1)(b) and 38(1)(c) ANTS(ABN)A 1999

⁸ Taxation Ruling IT 2423

⁹ *Cripps v FC of T* 99 ATC 2428; (1999) 43 ATR 1202

What does ‘regular or continuous’ mean?

8. The meaning of ‘regular or continuous’ is considered in Miscellaneous Taxation Ruling MT 2000/1. The word ‘regular’ is taken to mean ‘repeated at reasonably proximate intervals’, and the word ‘continuous’ to mean ‘there is no significant cessation or interruption to the activity’. Therefore a continuous tenancy, or tenancies repeated at reasonably close intervals, will meet this expression and will be an enterprise under paragraph (c) of the definition.

Meaning of ‘carrying on’

9. ‘Carrying on’ is defined to mean the same for both ABN¹⁰ and GST¹¹. For the purposes of both Acts ‘carrying on’ an enterprise includes doing anything in the course of the commencement or termination of the enterprise. Therefore, the activities you do in commencing or terminating the letting out of a property are activities of an enterprise.

Can you get an ABN and register for GST?

10. If you let a property on a continuous or regular basis then you will be carrying on an enterprise. Therefore, you can get an ABN and register for GST. This applies whether or not you let out residential or commercial premises. However, the questions of whether you need to get an ABN or register for GST are different questions and need to be addressed separately.

Do you need to get an ABN?

11. If you are carrying on an enterprise, you are entitled to an ABN, but there is no compulsion to get one. However, if you do not have an ABN, there may be Pay As You Go (PAYG) withholding implications.

The PAYG withholding requirements

12. An entity (the payer) must withhold an amount from a payment it makes to another entity if the payment is for a supply that the other entity has made in the course or furtherance of its enterprise, unless an exception applies¹². If you let out a rental property, this could mean that the tenant has to withhold an amount from the rent unless an exception applies. The relevant exceptions are:

- (i) the landlord has given the tenant the landlord’s ABN, either on a tax invoice or another document relevant to the supply¹³;
- (ii) where the supply has been made through an agent, the agent has given the tenant the agent’s ABN¹⁴;
- (iii) the payment is made otherwise than in the course or furtherance of an enterprise carried on in Australia by the payer¹⁵;
- (iv) the supply is wholly input taxed¹⁶. This will apply to the letting of many residential premises (see paragraphs 21 to 25).

¹⁰ Section 41 ANTS(ABN)A 1999

¹¹ Section 195-1 ANTS(GST)A 1999

¹² Schedule 1 subsection 12-190(1) *Taxation Administration Act 1953* (TAA 1953)

¹³ Schedule 1 subsection 12-190(2) TAA 1953

¹⁴ Schedule 1 subsection 12-190(2A) TAA 1953

¹⁵ Schedule 1 paragraph 12-190(4)(a) TAA 1953

13. Many property owners let out their property through agents who will be carrying on an enterprise and will be registered for GST. Where the agent quotes the agent's ABN to the tenant on a tax invoice or another document relating to the supply, the exception in (ii) will apply and there will be no need for the property owner to get an ABN for PAYG purposes. This will apply in relation to both residential and commercial premises.

(Please note that the tests in paragraphs 14 to 26 are for PAYG withholding purposes only. The tests for GST appear in paragraphs 27 to 36.)

14. The exception in (iii) will apply where the rental property is to be used by the tenant for private or domestic purposes, as it is the use of the property that determines the character of the payment. In other words, the exception will apply where the tenant uses the property as a residence, for holiday purposes or for the pursuit of a hobby or some other non-business purpose. In these cases you will not need an ABN for PAYG withholding purposes.

15. The PAYG withholding laws do not make allowance for apportionment. If a payment comes within the scope of PAYG, then the whole of the payment is subject to an amount being withheld.

16. In some cases you may let out a residential premises that is used by the tenant for both private and business purposes. An example of this is where part of a house has been converted for use as a doctor's surgery and the tenant both lives in and conducts a medical practice from the house. Where a tenant is using the residential premises partly for private purposes and partly for the furtherance of the tenant's enterprise, it is the main purpose of the payment that will determine whether or not it comes within the scope of PAYG and an amount is to be withheld. The main purpose of the payment is established by the main or primary use the tenant makes of the property.

17. If what you are letting out is a home for the tenant to live in, then the main purpose of the payment will be one of a private or domestic nature. In this case the exception in (iii) will apply because the payment is made otherwise than in the course or furtherance of an enterprise and you will not need an ABN for PAYG withholding purposes.

Example 1 – ABN and PAYG withholding treatment

18. *Simon has a large house for rent. Two rooms of the house have previously been used as a veterinary surgery and have characteristics that suit this purpose. Brian, who is a veterinary surgeon, rents the house from Simon so that he can conduct his business from the surgery part and live in the remainder. Even though Brian will use part of the building as his surgery, the building is still essentially a house in which he will live. Therefore, the rental payments are essentially private or domestic in nature and the withholding exception in (iii) will apply. Simon will not have to give Brian an ABN to avoid having an amount withheld from the rental payments. Paragraph (iv) of the exceptions does not apply in this case, as the supply is not wholly input taxed. (For the GST treatment see paragraph 35).*

19. However, if you are letting out a commercial property with residential quarters attached and the tenant uses the property in the course or furtherance of the tenant's enterprise, then the exception in (iii) will not apply. In this case, you will need to give the tenant an ABN to avoid having amounts withheld from the rental payments.

¹⁶ Schedule 1 paragraph 12-190(4)(d) TAA 1953

Example 2 – ABN and PAYG withholding treatment

20. *Hanna has a commercial building for lease. The building is fitted out as a shop with a small residence at the rear. Matthew has a mower sales and repair business and is looking for new premises from which he can conduct the business. He rents the building from Hanna for this purpose. He also decides that he will utilise the residence part of the building and live in this with his family. Because the building is properly described as a shop with residence attached and Matthew's main purpose in renting the building is to use the shop in his enterprise, the rent he pays will have a business character and the exception in (iii) will not apply. Unless Hanna or her agent gives Matthew an ABN, Matthew will have to withhold amounts from the rental payments. (For the GST treatment see paragraph 36).*

21. The exception in (iv) applies where the whole of the supply is input taxed. In relation to a rental property, this requires that the supply must be a supply of residential premises and all of the premises must be used predominantly for residential accommodation¹⁷.

Example 3 – ABN and PAYG withholding treatment

22. *Amy is a freelance writer who works from home. She rents the house from Belinda. Amy has set up one room as a home office in which she does her writing. Although Amy uses this room for business purposes, it is not sufficiently separate from the rest of the house to distinguish its use. Its use will still be regarded as predominantly for residential accommodation. Therefore the whole of the supply will be input taxed and the exception in (iv) will apply. Belinda will not have to give Amy an ABN to avoid having amounts withheld from the rental payments. (For the GST treatment see paragraph 29).*

Example 4 – ABN and PAYG withholding treatment

23. *Steve is an electrician who has his own business. He rents the house, in which he and his family live, from Lesley. Steve uses the garage attached to the house as storage for the materials and equipment he uses in his business. Although Steve uses the garage for business purposes it is not sufficiently separate from the rest of the house to distinguish its use. Its use will still be regarded as predominantly for residential accommodation. Therefore the whole of the supply will be input taxed and the exception in (iv) will apply. Lesley will not have to give Steve an ABN to avoid having amounts withheld from the rental payments. (For the GST treatment see paragraph 29).*

24. The exception in (iv) will also apply where residential premises are let to an entity and the entity uses the premises to supply residential accommodation to its own employees. This is because the supply will be wholly input taxed.

Example 5 – ABN and PAYG withholding treatment

25. *Rick and Christine have a luxury home unit for rent in Surfers Paradise. Buscorp Ltd rents the unit from Rick and Christine to provide residential accommodation for its newly appointed chief executive officer who has come from Melbourne to take up the position. As the unit will be used only for residential purposes, the whole of the supply will be input taxed. Therefore, Rick and Christine will not have to give Buscorp Ltd an ABN to avoid having amounts withheld from the rental payments. (For the GST treatment see paragraph 29).*

¹⁷ Section 40-35 ANTS(GST)A 1999. See also GSTR 2000/20, at paragraphs 18 to 23, for a discussion on 'residential premises' and 'residential accommodation'.

26. Where the rental property is a commercial property, you will need to quote an ABN to the tenant to avoid having an amount withheld from the rental payments unless one of the other exceptions applies. The exception in (iv) does not apply to commercial property.

Do you need to register for GST?

27. If your GST turnover meets the registration turnover threshold, you are required to register for GST.¹⁸

Residential Accommodation

28. Where you let out residential premises for residential accommodation, the supply is input taxed and the rent is not included in your GST turnover for threshold purposes. If you do not make other supplies that are taxable or GST-free, you will not have to register for GST.

29. In Example 3 (home office), at paragraph 22, Belinda does not have to register for GST if she does not make any other supplies that are taxable or GST-free. The same situation would apply to Lesley in Example 4 (garage), at paragraph 23, and Rick and Christine in Example 5 (home unit), at paragraph 25, if they did not make any other taxable or GST-free supplies.

Commercial Property (including commercial residential premises)

30. If you let property for purposes other than residential accommodation, you are making a taxable supply if the requirements of a taxable supply¹⁹ are met. Therefore, the rent you receive from the supply will be included in determining your GST turnover for the registration turnover threshold. If the GST exclusive values of the rent plus any other taxable or GST-free supplies you make meets the registration turnover threshold, you are required to register for GST.

31. If your GST turnover does not meet the threshold, you are not required to register. However, if you are not registered or required to be registered for GST, the supply of the property will not be taxable and your tenant will not be able to claim input tax credits in respect of the rents.

Mixed property (for example, residential premises with shop attached)

32. The letting of residential premises is input taxed only to the extent that it is to be used predominantly for residential accommodation. Therefore, supplies of mixed property may be partly taxable, depending on the registration status of the landlord. Where the landlord is registered, or required to be registered for GST, the letting of mixed property will be taxable to the extent that the premises are not to be used predominantly for residential accommodation²⁰.

33. A portion of the rent received for a supply of a mixed property will be included in determining your GST turnover for the registration turnover threshold. The amount you take into account is the portion of the rent that relates to the part of the property that is to be used predominantly for purposes other than residential accommodation.

34. If your GST turnover meets the threshold, you will be required to register and the supply of mixed property will be partly taxable. If your GST turnover is below the registration turnover threshold, you are not required to register and the supply of mixed property will not be taxable.

¹⁸ Section 23-5 ANTS(GST)A 1999

¹⁹ Section 9-5 ANTS(GST)A 1999

²⁰ Paragraph 40-35(2)(a) ANTS(GST)A 1999

35. In Example 1 (surgery), at paragraph 18, the portion of the rent that relates to the part of the house used as a surgery will count towards Simon's GST turnover for GST registration purposes. If the GST exclusive value of this portion of the annual rent is below \$75,000 and Simon makes no other taxable or GST-free supplies, Simon will not have to register for GST. However, if Simon does not register for GST, the supply will not be taxable and Brian will not be able to claim input tax credits in respect of the portion of the rent that relates to the surgery.

36. The same applies to Hanna and Matthew in Example 2 (shop), at paragraph 20. The portion of the rent relating to the shop counts towards Hanna's registration threshold. If the GST exclusive value of this is below \$75,000 annually and Hanna makes no other taxable or GST-free supplies, she is not required to register. If she does not register then the supply will not be taxable and there will be no input tax credits available to Matthew in respect of the rent on the shop.

Commissioner of Taxation

6 September 2000

Related Rulings/Determinations:

TR 2006/10; MT 2000/1; GSTR 2000/20;
GSTD 2000/8; IT 2423

Subject references:

- GST turnover
- Australian Business Number
- commercial property
- enterprise
- GST registration
- let/letting
- Pay As You Go
- PAYG
- PAYG withholding
- registration turnover threshold
- regular or continuous
- rent
- rental property
- residential accommodation
- tenancy
- turnover threshold

Legislative references:

- ANTS(ABN)A 99 8
- ANTS(ABN)A 99 38(1)(a)
- ANTS(ABN)A 99 38(1)(b)

- ANTS(ABN)A 99 38(1)(c)
- ANTS(ABN)A 99 41
- ANTS(GST)A 99 9-5
- ANTS(GST)A 99 9-20(1)(a)
- ANTS(GST)A 99 9-20(1)(b)
- ANTS(GST)A 99 9-20(1)(c)
- ANTS(GST)A 99 23-5
- ANTS(GST)A 99 23-10
- ANTS(GST)A 99 23-15
- ANTS(GST)A 99 40-35
- ANTS(GST)A 99 40-35(2)(a)
- ANTS(GST)A 99 Div 188
- ANTS(GST)A 99 188-15
- ANTS(GST)A 99 188-20
- ANTS(GST)A 99 195-1
- TAA 53 Sch 1 12-190(1)
- TAA 53 Sch 1 12-190(2)
- TAA 53 Sch 1 12-190(2A)
- TAA 53 Sch 1 12-190(4)(a)
- TAA 53 Sch 1 12-190(4)(d)
- TAA 53 Sch 1 Div 358

Case references:

- Cripps v. FC of T 99 ATC 2428; (1999) 43 ATR 1202

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