

## TAX TIP — SO YOU THINK YOUR BOOKKEEPING ACTIVITIES ARE JUST A HOBBY?

There is a myth in the bookkeeping industry that a bookkeeper that works one day a week is not really in business, their work is often perceived as being a 'hobby'. I have heard bookkeepers say, "my work is fun and I am not really in business". Although, your work may be fun and limited to one day a week, it does not automatically mean it is a hobby. This misconception can lead to problems for some bookkeepers.

It is often the case that bookkeepers who assume their work as a 'hobby' do not obtain an ABN. In addition any payments that are paid to a bookkeeper in relation to supplies that they have made to another business, may be subject to pay as you go withholding if they are not quoting their ABN on the invoice".

It is important to note that there are severe penalties under the GST Act and the Income Tax Assessment Act for getting your tax position wrong.

Bookkeepers who are running a business in a business like manner should have an ABN; they should be lodging a BAS (subject to meeting the requirements) and should be lodging an income tax return.

A bookkeeper does not need to earn all their income from bookkeeping activities. A bookkeeper may also be employed in some other occupation or profession. What is important is that the bookkeeping activities are considered to be the 'carrying on' of a business, and this activity is considered separately from any other employment, or business carried on by the bookkeeper. The fact that another business is carried on does not necessarily mean that the bookkeeping activities are also a business.

On 13 December 2006, the ATO released a 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 (replacing MT 2000/1)*. The MT provides assistance to entities in determining their entitlement to an ABN. In doing so it considers the meanings of an entity and enterprise. It refers to a long-standing income tax ruling that assists in determining whether you are actually in business or performing hobby activities.

Below are some hints & tips to assist you in determining whether you are in the business of bookkeeping or performing bookkeeping, as a hobby:

- Entities (such as an individual, company, and so on) are generally entitled to an ABN provided they meet the following criteria:
  - “(a) You are **carrying on an enterprise** in Australia; or
  - (b) In the course or furtherance of carrying on an enterprise, you make supplies that are **connected with Australia....”**.
- It is important to note that a person or a company can have a number of different roles or act in different capacities. In each of these roles or capacities, the person is taken to be a separate entity. A person may be entitled to an ABN under any of these circumstances.



- **When is an enterprise/business being carried on?**

The term 'carrying on' is defined both in the ABN Act (section 41) and the GST Act (section 195-1).

An enterprise is defined to mean:

*"...An activity, or a 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, license or other grant of an interest in property; or....."*

- **There are some activities that are excluded from being an enterprise. These are as follows:**

*"(a) By a person as an employee or in connection with earning withholding payments covered by subsection 9- 20(4) of the GST Act (unless done in supplying services as the holder of an office that the person has accepted in the course of, or in connection with, an activity, or series of activities, of a kind mentioned in subsection 9- 20(1))*

*(b) As a private recreational pursuit or hobby;*

*(c) By an individual (other than a trustee of a charitable fund or of a fund covered by item 2 of the table in section 30-15 of the ITAA 1997 or of a fund that would be covered by that item if it had an ABN), or a partnership (all or most of the members of which are individuals), without a reasonable expectation of profit or gain; or*

*(d) As a member of a local governing body established by or under a State Law or Territory law (except a local governing body to which subsection 12-45(1)(e) of Schedule 1 to the Taxation Administration Act 1953 (TAA) applies).*

For example, activities performed by a person as an employee are excluded unless that person also has their own enterprise as a sole trader, partnership or company etc.

- A hobby performed in ones spare time, or pursued for pleasure or recreation will not constitute an enterprise. Whether an activity is a private recreational pursuit or hobby is a question of fact. There are a number of indicators outlined in TR 97/11 that are relevant to determining whether the activities amount to a private recreational pursuit or hobby.

Note: A hobby can however become a business and meet the definition of an enterprise.

### **Example – a hobby becomes a business**

*Tom is a teacher who decides to take up bookkeeping as a hobby. He attends some business courses at an evening college and also decides that he really enjoys bookkeeping and will probably go to TAFE to study more.*

*He begins performing bookkeeping for family and friends without charge. He proves to be very popular and he receives requests for other types of work from a wider range of friends.*

*Tom then starts to actively seek referrals for other commissions more widely and begins to develop a regular clientele. He also begins to charge commercial rates for his work. He now realises that he can turn his hobby into a profitable business. Tom is now turning his hobby into a business and would be entitled to an ABN. He may also need to register for GST and lodge an income tax return.*



- For an entity to be entitled to an ABN, it is necessary to identify one activity or a series of activities that amount to an enterprise. If an entity carries on a number of activities, only one of those activities need constitute an enterprise in order to be entitled to an ABN.

#### **Example - conducting a hobby**

*Maria provides bookkeeping services only to her family and friends. She does not charge any of them a fee. She is content to help her family and friends out.*

*Maria's bookkeeping services would be considered a hobby. As such, Maria cannot claim any expenses related to her hobby in her tax return. She does not need to get an ABN and she would not need to register for GST.*

#### **Example - an activity that is an enterprise/business and not a hobby**

*Larissa works from home and advertises her bookkeeping services. She performs these services 2-3 days a week and receives a fee for her services. Larissa markets herself wherever possible to develop her clientele. She is hoping to make it a full-time business.*

*Larissa is entitled to an ABN in respect of the bookkeeping services as the activities amount to an enterprise. She will need to lodge an income tax return and may need to register for GST.*

Taxation Ruling 97/11 provides a summary of the main indicators of carrying on a business. The last three items shown are factors that support the main indicators.

<b>Indicators which suggest a business is being carried on:</b>	<b>Indicators which suggest a business is not being carried on:</b>
A significant commercial activity	Not a significant commercial activity
Purpose and intention of the taxpayer in engaging in the activity	No purpose or intention of the taxpayer to carry on a business activity
An intention to make a profit from the activity	No intention to make a profit from the activity
The activity is or will be profitable	The activity is inherently unprofitable
Repetition and regularity of activity	Little repetition or regularity of activity
Activity is carried on in a similar manner to that of the ordinary trade	Activity carried on in an ad hoc manner
Activity organised and carried on in a businesslike manner and systematically - records are kept	Activity not organised or carried on in the same manner as the normal ordinary business activity - records are not kept
Size and scale of the activity	Small size and scale
Not a hobby, recreation or sporting activity	A hobby, recreation or sporting activity
A business plan exists	There is no business plan.
Commercial sales of product	Sale of products to relatives and friends
Taxpayer has knowledge or skill	Taxpayer lacks knowledge or skill

Source: ATO TR 97/11 *Income Tax: Am I carrying on a business of primary production?*



It is important to note that there is no single test to determine whether a business is being carried on. The indicators must be considered in combination and as a whole.

The ATO general view is that subject to all the circumstances of a case, where an overall profit motive appears absent and the activity does not look like it will ever produce a profit, it is unlikely that the activity will amount to a business.

The ATO has extremely useful documents on its web-site that will assist bookkeepers in determining whether they are actually running a business. The links have been provided below:

<http://www.ato.gov.au/businesses/content.asp?doc=/content/66952.htm&page=2&H2>

<http://www.ato.gov.au/youth/content.asp?doc=/content/66884.htm>

Determining whether an entity is entitled to an ABN and in business is relatively easy. If you are in any doubt, we recommend you contact the ATO, your tax agent or accountant and seek further guidance.

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