

GPO Box 2934, Adelaide SA 5001



Australian Government
Australian Taxation Office

Ms Sarrita King
Right to Know

Reply to: GPO Box 2934

Adelaide SA 5001

Our reference: 1-7HQISN1
Contact officer: Angela Dimopoulos
Phone: 08 8208 1911
Fax: 08 8208 1094

24 November 2015

Dear Ms King

Decision regarding Freedom of Information (FOI) request

I refer to your application requesting documents under the *Freedom of Information Act 1982* (FOI Act).

I am an officer authorised under section 23 of the FOI Act to make decisions regarding access to documents.

My decision in relation to the requested documents is set out in the attached *Statement of Reasons*.

Your rights of review

If you are unhappy with the decision, you can either request an internal review or request an independent review by the Australian Information Commissioner. You can also apply to the Australian Information Commissioner after an internal review has been conducted.

A request for an internal review needs to:

- be in writing
- be sent to us within 30 days of being notified of my decision, and be sent, quoting reference number FOI 1-7HQISN1 via:
 - Email at foi@ato.gov.au or
 - Mail to:
Australian Taxation Office
GPO Box 2934
Adelaide SA 5001

The internal review will be done by an officer who did not make the initial decision.

A request for an independent review by the Australian Information Commissioner needs to:

- be sent within 60 days of being notified of my decision
- include a copy of this notice
- include an address where notices can be sent (e.g. your email address), and
- be sent to:

- Email at enquiries@oaic.gov.au or
- Mail to:
 - OAIC
 - GPO Box 5218
 - Sydney NSW 2001

For further details regarding the Information Commissioner visit www.oaic.gov.au

You may also apply to the Information Commissioner if you have not been informed of the outcome of an internal review within 30 days.

Complaints

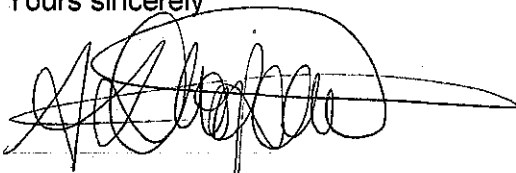
Any complaint about the processing of your FOI request can be directed to the Commonwealth Ombudsman. The complaint should set out the grounds on which you consider the action should be investigated. Complaints can be made in writing, by phone, in person or by using an online form available from their website.

- ☒ 1300 362 072
- ☒ ombudsman@ombudsman.gov.au
- ☒ Mail to:
 - Commonwealth Ombudsman
 - GPO Box 442
 - Canberra ACT 2601
- ☒ www.ombudsman.gov.au/pages/making-a-complaint/

For more information

If you have any questions, please phone **13 28 69** between 9.00am and 5.00pm (CST), Monday to Friday, and ask for Angela Dimopoulos on extension **81911**.

Yours sincerely



Angela Dimopoulos
Lawyer
General Counsel
Australian Taxation Office
P 08 8208 1911

Statement of Reasons

Applicant Details

- Ms Sarrita King

Request

- For a copy of the publication 'How tax applies to Indigenous artwork – NAT 12066-09.2004'

Documentary Evidence Considered

In reaching my decision, I relied on the following material:

- Contents of the documents requested;
- The scope of your request;
- Discussions with and comments from the relevant Business and Services Lines within the ATO;
- The relevant provisions of the FOI Act; and
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

My Decision

In addition to the document released on 20 November 2015, I have identified another relevant document, within the scope of your request. As such, I have decided to release this document in full.

Please note that the publication 'How tax applies to Indigenous artwork' relates to the 2012 financial year.

As such, **the publication is no longer current and therefore should not be relied upon** when determining whether pay as you go (PAYG) withholding, the goods and services tax (GST) and the Australian business number (ABN) apply to Indigenous artworks sold at art centres.

I draw your attention to PS LA 2008/3, in particular paragraphs 205-217 which provide guidance to taxpayers when relying on advice provided by the ATO.

Provision of advice and guidance by the ATO

217. Taxpayers should not rely on publications that are out of date. If they do, they may not be protected against any interest charges. This is because generally reliance on an earlier document at a given point in time where a later publication that correctly reflects the law is available would not be reasonable and in good faith.

As such, if you would like the Commissioner to provide binding advice about the applicability of the law to your individual circumstances, you should apply for a private ruling or an oral ruling.