

How tax applies to Indigenous artwork

Explains how 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



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If you follow our information in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

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If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at www.ato.gov.au or contact us.

This publication was current at **May 2012**.

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PUBLISHED BY

Australian Taxation Office
Canberra
May 2012

JS 23990

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ABOUT THIS GUIDE

This guide explains how 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.

! TERMS WE USE

When we say **GST credit**, we mean the GST term **input tax credit**.

INDIGENOUS ARTWORK SOLD AT ART CENTRES

We have identified two ways Indigenous artworks are sold at art centres.

- 1 The buy and sell arrangement – you the art centre operator buy the artwork from the artist and then sell the artwork to a buyer.
- 2 Acting as an agent arrangement – you the art centre operator acts as an agent for the artist and sells the artwork on behalf of the artist.

Depending on how your art centre is set up, artwork can be sold using only one arrangement or both arrangements.

THE BUY AND SELL ARRANGEMENT

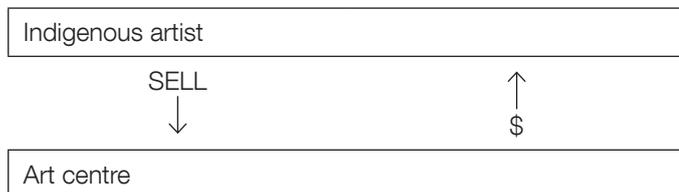
There are two ways the buy and sell arrangement arises.

You can buy artwork either:

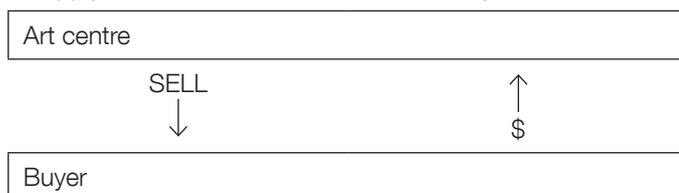
- immediately on delivery from an artist
- from an artist later, at the time of sale to an art centre buyer.

In a buy and sell arrangement, there are two supplies.

- 1 A supply between an artist and an art centre.



- 2 A supply between the art centre and the buyer.



The GST implications are the same for both supply situations.

Does an artist charge GST?

If an artist is not registered for GST, they will not include GST in the price when selling an artwork to you the art centre operator.

If an artist is registered for GST, they will include GST in the price when selling an artwork to you the art centre operator.

Do you charge GST when you sell an artwork?

If you are registered for GST, you must include GST on the full sale price of an artwork.

When are you required to withhold amounts from an artist?

! EXPLANATIONS

Special or Ordinary Zone A includes most of the Northern Territory (including Darwin and Alice Springs), northern Western Australia and far west and far north Queensland.

Artistic works includes graphic works, painting, sculpture, collage, craftsmanship and some performance art. For example, an artistic work would include handcrafting a traditional spear.

According to the PAYG withholding system, you must withhold 46.5% of the payment for an artwork if all of the following apply:

- an artist does not quote an ABN
- that artist is in business.

! You must send the amount withheld to us.

When are you not required to withhold amounts from an artist?

You are not required to withhold amounts in the following two circumstances:

1 Artist works or lives in Special or Ordinary Zone A

We have varied to nil the amount to be withheld from a payment to an Indigenous artist for **artistic works** if an Indigenous artist works or lives in **Special or Ordinary Zone A** and does not quote an ABN.

The variation applies to payments made from 1 July 2004.

In summary, where an art centre makes a payment to an Indigenous artist for artistic works, the art centre is not required to withhold amounts where that artist works or lives in Special or Ordinary Zone A.

⚠ Although this variation will reduce the amount to be withheld to nil in some circumstances where artists are in business, if their turnover exceeds \$75,000 the artist will be required to register for GST.

2 Statement by a supplier

Often it is difficult to work out if an artist is in business or just creating artworks as a hobby or recreational activity. However, where an artist does not live in **Special or Ordinary Zone A**, an art centre may seek a **Statement by a supplier** from the artist. This indicates that an artist is creating artwork as a hobby or recreational activity and is not in business.

Art centres do not need to seek a new statement for each supply. We recommend that the details be confirmed with the artist every 6–12 months.

Buy and sell arrangement process

Is the artist in business?

Check to see if an exception applies.



Does the artist work or live in Special or Ordinary Zone A?

YES

NO



Do not withhold

If you are unsure whether the artist is carrying on a business or a hobby you may ask the artist for a *Statement by a supplier* indicating the supply is in connection with a hobby or recreational activity.

Statement by a supplier provided?

YES

NO



Do not withhold

If you believe the artist is in business, ask them to quote an ABN.

ABN quoted?

YES

NO



Do not withhold

Withhold 46.5%

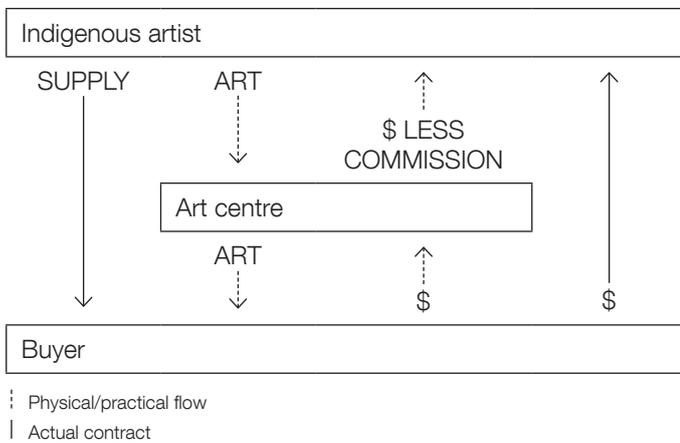
Send withheld amount to us

THE ACTING AS AN AGENT ARRANGEMENT

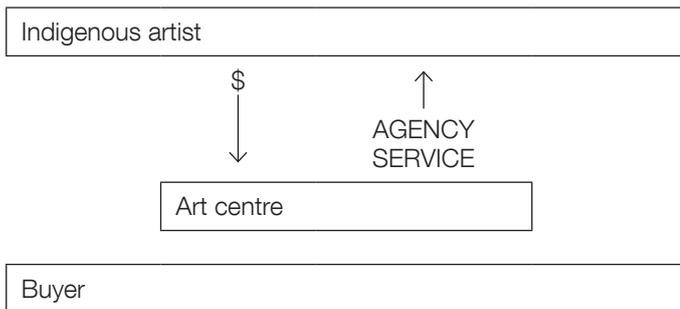
When you act as an agent for an artist, you essentially take the role of the artist.

There are two separate supplies made, one from the artist to the buyer for the sale of the artwork, and the second from the art centre to the artist for agency services.

1 The transactions between the artist, the buyer and you for the sale of artwork.



2 The transaction between you and the artist for agency services.



! In practice, the commission will generally be deducted from the sale proceeds due to the artist.

Does the artist (you acting as an agent) charge GST on the sale price of the artwork?

If an artist is not required to be registered for GST, the artist will not include GST in the sale price of the artwork.

If the artist is registered, the artist will include GST in the sale price.

Do you charge GST on your commission?

If you are registered for GST, you include GST in the commission fee. The artist can claim a GST credit if they are registered for GST.

If you are providing a service to the artist, you agree to sell the artwork and pay the proceeds to the artist in return for a fee (usually deducted from the sale proceeds).

! For more information about agency relationships, refer to *GSTR 2000/37 Goods and services tax: agency relationships and the application of the law*.

When is a buyer required to withhold amounts from an artist?

According to the PAYG withholding system, the buyer must withhold 46.5% of the payment for the artwork if the following apply:

- an artist fails to quote an ABN
- an artist is in business and the buyer purchases their artwork in the course of their business (for example, a purchase made by a commercial gallery).

! The buyer must send the withheld amount to us.

When is a buyer not required to withhold amounts from an artist?

A buyer is not required to withhold in the three circumstances below:

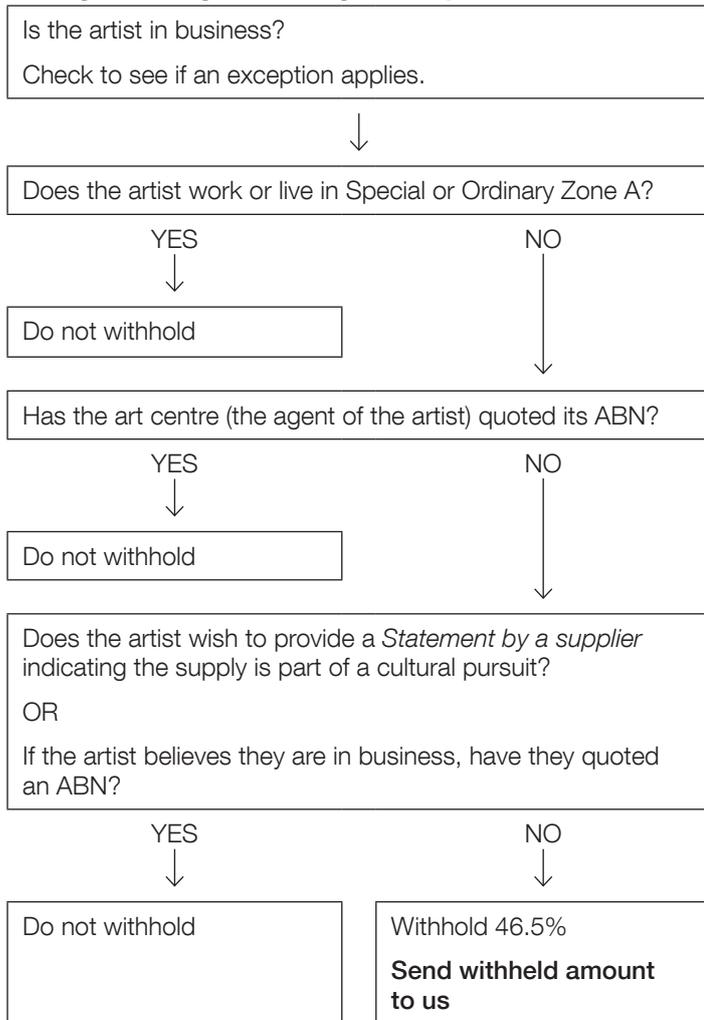
1 Agent may quote its ABN instead of the artist's ABN

There is a specific exception in the law enabling the agent of a supplier to quote their ABN instead of the ABN of the supplier. If an art centre has quoted its ABN on an invoice or some other document relating to the supply there is no need for the buyer to withhold.

2 Artist resides in Special or Ordinary Zone A

3 Statement by a supplier

Acting as an agent arrangement process



STATEMENT BY A SUPPLIER

A 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, or proposes to make, to the payer in the course or furtherance of an enterprise carried on in Australia.

! The primary exception is that the supplier has quoted an ABN on an invoice or some other document relating to the supply.

Where payers are unsure if the supplier is carrying on an enterprise they may want to make a further inquiry with the supplier. The payer may ask the supplier to provide a *Statement by a supplier* (NAT 3346).

The supplier can either use the form *Statement by a supplier* (NAT 3346) or they can create their own form.

If a supplier chooses to create their own 'Statement by a supplier' it should contain the following:

- the supplier's name and address
- why it was not necessary to withhold (for example, the supply is part of a hobby or private recreational pursuit)
- the supplier's signature.

GST CREDITS

If an artist is required to be registered for GST and has issued a tax invoice, you can claim a GST credit.

If an artist is registered for GST, they can claim a GST credit where you include GST in the commission fee and issues a tax invoice to the artist.

You claim your GST credits when you lodge your activity statement.

! There is a four-year time limit in claiming GST credits.

➤ For more information, refer to:
■ *Time limits on GST refunds* (NAT 11645).

KEEPING RECORDS

You should keep records relating to when an artwork was purchased from an artist. This should include the following:

- the date of purchase
- the name and address of the artist
- the purchase price.



You can also include this information in your cash payment book.

SUMMARY

- If the artist is not registered for GST, do not include the GST on the sale price of the work.
- If the artist is registered for GST, include the GST on the sale price of the work. You issue a tax invoice showing the artist's ABN on behalf of the artist to the buyer. The artist will need to send any GST collected to us.
- If you are registered for GST, you include GST in the commission fee and issue a tax invoice to the artist. You send the collected GST to us. Where the artist is registered for GST they can claim a GST credit.
- A buyer, who is making a purchase in the course of their own business, is not required to withhold where either:
 - you have quoted your ABN on an invoice or some other document relating to the supply
 - the artist works or lives in special or ordinary zone A and does not quote an ABN
 - the artist has provided a *Statement by a supplier* (you can also include this information in your cash payment book).

MORE INFORMATION

For more information, refer to:

- *Statement by a supplier* (NAT 3346)
- *PAYG withholding* (NAT 8075)
- *GST for small business* (NAT 3014)
- *ABN registration for individuals (sole traders)* (NAT 2938)
- *ABN registration for companies, partnerships, trusts and other organisations* (NAT 2939)

If you want to obtain a copy of our publications or for more information, you can:

- visit our website at www.ato.gov.au
- phone General business on **13 28 66** for most small business tax issues, including GST rulings, ABN and PAYG withholding
- phone Individuals on **13 28 61** for individual income tax and general personal enquiries
- write to us at
Australian Taxation Office
PO Box 3524
ALBURY NSW 2640

If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on www.relayservice.com.au and ask for the ATO number you need.