

ACOFS - The Australian Council of Film Societies

Film Society Handbook

Chapter 8: TAXATION AND FILM SOCIETIES

[Oct 2009]

The Commonwealth Government introduced a Goods and Services Tax (GST) on 1 July 2000, together with a number of other changes to the tax system. It is important for all film societies to be aware of the tax law and the effect it may have on them.

The information supplied herein is correct to our knowledge at the time of writing but we encourage film societies to make their own enquiries from the Australian Taxation Office (ATO) or professional taxation advisers before acting on this information. The ATO can supply booklets and has several pages of useful information on their website www.ato.gov.au or at the Australian Business Register www.abr.gov.au where you go to check on, or apply for, an Australian Business Number. Select "Apply for an ABN" and then select "Policy and Legislation".

AUSTRALIAN BUSINESS NUMBER (ABN)

One of the cornerstones of the tax system is the Australian Business Number (ABN). It is an important part of the Pay-As-You-Go (PAYG) system for businesses.

You will need an ABN if:

- You have annual turnover of \$75,000 or more (\$150,000 for charities and non-profit organisations); or
- You have employees from whom tax instalments are withheld under the PAYG system; or
- **You are a non-profit organisation with tax-exempt status;** or
- You provide services to businesses.

It is likely that most film societies will want tax exemption (this is recommended) in which case they will need to apply for an ABN.

An Application for ABN registration for companies, partnerships, trusts and other organisations is available from the ATO and possibly from banks and newsagents, or you can register online at www.abr.gov.au. You can also check the status and ABN of any business at this web address.

The form that is used to apply for an ABN is also used to register to pay the goods and services tax (GST). It is recommended that you register for an ABN but state that you do not want to register for GST, which is permitted if your turnover is under \$150,000 as a non-profit organisation.

If your film society provides services to businesses or hopes to receive grants it is important to get an ABN. Otherwise, businesses making payments to you of more than \$75, for whatever reason, will be required to withhold tax under the Pay As You Go (PAYG) system (currently at the rate of 48.5 per cent, equivalent to the highest tax rate plus the Medicare levy). "Services to businesses" include grants from government organisations such as the NSW Film and Television Office or Film Victoria, grants from local councils, and sponsorships from philanthropic local businesses.

PAYG WITHHOLDING

PAYG withholding also applies to payments by film societies to suppliers. Film societies need to be aware that in a business-to-business transaction the purchaser is obliged to withhold tax if the supplier does not provide their ABN. To withhold, it is necessary to be registered with the ATO as a withholder. If there is no

ABN forthcoming then a film society that is not merely "a hobbyist conducting an activity without reasonable expectation of a profit" is required by law to withhold. There are penalties for failing to withhold.

INCOME-TAX EXEMPT STATUS

Income tax exempt organisations must register for an ABN before they can request to be endorsed as an income tax exempt charity. "Charity" and "charitable" have a technical legal meaning which is different from the popular meaning.

Organisations can be registered charitable if they are of benefit to the community, or a section of it, through: the relief of poverty or sickness or the needs of the aged, the advancement of education, the advancement of religion, or other purposes beneficial to the community, including promoting art and culture through means such as music and drama. Film societies qualify under the last clause.

At question 26 of the *Application for ABN registration for companies, partnerships, trusts and other organisations*, if your film society is income tax exempt or entitled to be endorsed as an income tax exempt charity, it should also elect to be a non-profit organisation at this question.

At question 27 of the *Application for ABN registration for companies, partnerships, trusts and other organisations*, place an "X" in the box for seeking endorsement or registration as a "Tax concession charity or income tax exempt fund". Putting a cross in the box will not confer income tax exempt status, but you will be sent an *Application for endorsement as a tax concession charity or income tax exempt fund* (NAT 10651) which will be mailed to the postal address supplied at question 9.

Section 50-45 of the *Income Tax Assessment Act 1997* provides that the income of a non-profit society, association or club that is established for musical purposes, or for the encouragement of music, art or literature, is exempt from income tax. It is under this section of the Act that organisations such as film societies and the Sydney Film Festival claim their exemption from income tax. An organisation that is exempt from income tax by virtue of this section of the 1997 Act is defined as a "charitable institution" or "charity."

If you determine that your film society is such a "charitable institution," it is important that you apply for an ABN, as it is required in order to apply for endorsement as an "income tax exempt charity". Charities are not exempt from paying income tax unless they have been endorsed.

DEDUCTIBLE GIFT RECIPIENT

The requirements for qualifying as a deductible gift recipient are quite onerous and it would be difficult for a film society to qualify. An appropriate response to question 27 of the *Application for ABN registration for companies, partnerships, trusts and other organisations* would be to not put a cross in the box provided for organisations to seek endorsement as a deductible gift recipient.

GOODS AND SERVICES TAX (GST)

Most film societies will not be required to charge GST on their sales. Remember that when you register for an ABN, as long as your annual turnover is less than \$150,000 (the limit for non-profit organisations) you will not have to register for the GST.

If you are registered for the GST, you are required to pay 1/11th of sales (including memberships) to the ATO as GST. You will be able to claim back the GST on the purchases you make (such as film rentals and venue hire).

If you are not registered for the GST then you do not have to pay GST to the ATO but you are unable to claim back the GST paid on purchases. The net outcome will just about balance however.

In general you are better off if you do not register for the GST because there will be less paperwork and no reporting requirements. If you do not register for the GST then you will not charge a GST component on the membership fee or admission tickets.

Most film societies are expected to be under the \$150,000 turnover threshold, and hence will not be required to register for GST.

Film societies that are required to register would be well advised to consult a professional tax advisor for advice on how best to arrange their accounting procedures to comply with the GST reporting requirements.

OTHER ISSUES

To be eligible for a grant or payment from a funding body a film society may be required to register for an ABN. It is unlikely they will need to register for the GST.

MORE INFORMATION

Further information is available from the Australian Taxation Office.

Go to www.ato.gov.au or www.abr.gov.au for more information online or find the contact details of someone you can contact for further advice.

Your own accountant or tax advisor (if you have one) should be able to provide information and advice about compliance with the requirement for obtaining an ABN, registering as a tax concession charity, or registering for GST, or as a PAYG withholder if you are required to do so. Some film societies have an honorary auditor who may be willing to give advice.