



# **A Guide to the GST and ABN withholding for Art Centres**

*This document is intended to provide guidance only on the application of the GST and ABN withholding law. We encourage Art Centres to seek independent advice if they are uncertain about any of the information contained in this Guide.*

## **Contact**

For further information about this guide, please contact [sam@desart.com.au](mailto:sam@desart.com.au).

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## Overview

Art Centres conduct business in the following two ways:

1. As agents, charging an Artist commission for selling the Artist's work.
2. By buying art from Artists and then selling art to customers.

Each of these arrangements requires a different GST approach.

Art Centres may also need to withhold at 47% from amounts paid to Aboriginal and /or Torres Strait Islander artists unless the artist either lives within a specified region of Australia, has provided a written statement that the art was created as part of a hobby (rather than in the course of a business) or the artist has quoted an Australian Business Number. This withholding obligation, where it applies, is intended to ensure that income tax is not avoided (47% being the top marginal income tax rate) and is separate to GST.

This Guide is based on the ATO document "Guide for art centre managers and coordinators - How tax applies to Indigenous artwork". The ATO document was issued as at May 2012; there have been no relevant changes to the law since then.

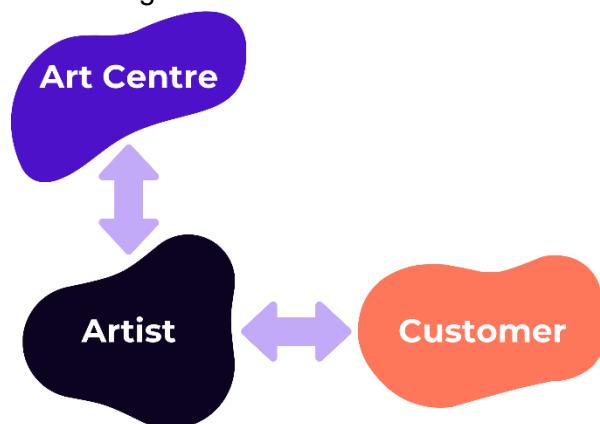
## GST and Selling Artworks

The key issue for an Art Centre when determining how to levy GST is to focus on what the Art Centre is actually selling.

## Agent Arrangement

Commonly, Artists leave finished art with Art Centres to promote and sell. In these cases, the Art Centre acts as agent for the Artist. This means that the Artist retains ownership of the art, and the Art Centre sells the art on the Artist's behalf. Therefore:

- ▶ the Artist is actually selling his or her artwork to the customer via the Art Centre as agent;
- ▶ the Art Centre is supplying an agency service to the Artist by selling on the Artist's behalf; and,
- ▶ the Art Centre is not actually selling anything to the customer other than as agent for the Artist.



From an Art Centre's perspective, the relevant part of the arrangement for GST purposes is the commission charged by the Art Centre to the Artist. For example, if the Art Centre charges 40% commission to the Artist, this would include GST of 10%.

### Examples of the Art Centre as Agent commission rates and GST component.

Total Price of Art	Art Centre Commission Rate as Agent	Commission	GST is calculated by dividing the commission by 11	The GST component	Total Commission minus GST for the Art Centre	Artist receives
\$1,000	40%	\$400	\$400 / 11	\$36.36	\$363.64	\$600
\$1,000	45%	\$450	\$450 / 11	\$40.91	\$409.09	\$550
\$1,000	50%	\$500	\$500 / 11	\$45.45	\$454.55	\$500
\$1,000	52.38%	\$523.80	\$523.80 / 11	\$47.62	\$476.18	\$476.20

The GST amount is recorded in the Art Centre's Business Activity Statement (BAS).

### SAM and the GST for the Agent arrangement

The SAM (Stories Art Money) Database deals with agency arrangements in the following way:

- SAM generates a tax invoice for the Art Centre to give to the customer showing the Artist selling their artwork with \$0 GST. This is because the Artist is not registered for GST.
- SAM generates a tax invoice for the Art Centre to give to the customer showing the Artist selling their artwork with GST inclusive. This is because the Artist is registered for GST.
- SAM generates a tax invoice for the agency commission from the Art Centre to the Artist (for the Art Centre's agency services).

Under an agent arrangement, Art Centres are not prevented from making advances to Artists.

Some customers who operate their own businesses dislike these agency arrangements because they are under the impression that by not having paid GST to the artist (as would be the case where there was a buy/sell arrangement *and* the artist was registered for GST) they cannot claim the GST that would otherwise have been paid to offset their own GST liabilities. This is because there has been no GST paid to the artist in the first place.

## Buy-Sell Arrangements

An Art Centre can buy an Artist's work at any time, including at the moment just before a sale is made to a customer. This means ownership of the art moves from the Artist

to the Art Centre and then onto the customer.



In this case, a GST-registered Art Centre includes GST in the price of the artwork. When GST is charged on the sale price, the GST amount is shown on the customer's tax invoice.

## Financial Comparison

The following table compares the different GST outcomes based on a \$1,100 sale and uses the example of an Art Centre charging a 40% commission.

	Agent	Buy-Sell
<b>Sale Price</b>	\$1,100*	\$1,100 includes \$100 GST
<b>Artist Share</b>	\$660	\$600
<b>Art Centre Share</b>	\$440	\$400
<b>GST Paid</b>	\$40	\$100

\* No GST on the agency sale because the Artist is not registered for GST.

Generally, agency arrangements result in less GST being paid to the ATO and a higher return to artists.

Refer to the Resale Royalty website for information relating to royalties to be charged and collected by Art Centres on subsequent sales of art work using the Buy-Sell method (<http://www.resaleroyalty.org.au>).

## Non-Art Sales

For all other items that an Art Centre sells (t-shirts, books, domestic freight, packaging, etc), the buy-sell arrangement generally applies. This is because the Art Centre has generally purchased the products or is responsible for the payment of the goods or services. GST is included in the sale price of items and is shown on the tax invoice. SAM will automatically make these calculations.

## International Customers

Exports are GST-free. However, an export is only GST-free if the goods are exported within 60 days after payment or invoicing.

If an Art Centre buys and sells art to overseas customers, no GST is payable if the

above applies. This is only relevant if the art is being exported to an overseas address. Similarly, international tourists can claim back the GST that they pay on art when they leave Australia if the art forms part of their personal baggage and they present a tax invoice to customs.

If an Art Centre acting as a commission agent exports art, then the freight charges, or any other goods and services to which GST would apply, will be GST-free.

When an Art Centre creates a sale and the Shipping address is a country, other than Australia, then GST will be removed from that sale.

## GST and SAM Platform

SAM will manage GST automatically for you. SAM deals with both the agent and buy-sell arrangements, recognises different sale types and generates all the paperwork that you, your customer and Accountant/Auditor need.

While there is nothing you need to do on a day-to-day basis regarding GST, the following information shows where GST appears in SAM.

### Sales - Receipt

Here is a typical sale, using the example of a 40% commission (green rectangle), of two paintings and one book, using the 'agent' method for the two paintings and the 'buy-sell' method for the book.:.

Transaction Details												
Listed	Catalog No	Category	Product	Description	Quant.	Unit \$	GST \$	Sale \$	C. Rate	C. GST \$	C. \$	Disc. Rate
<input checked="" type="checkbox"/>	8-16	Painting		Lots of sand dunes	1	600.00	0.00	600.00	0.400	21.82	240.00	0.00
<input checked="" type="checkbox"/>	7-15	Painting		Lots of waterholes	1	400.00	0.00	400.00	0.400	14.55	160.00	0.00
<input type="checkbox"/>		Books	Red Book	Its all about Red	1	90.00	9.00	99.00	0.000	0.00	0.00	0.00
					Total:		9.00	1099.00				400.00
<input type="button" value="Add Transaction Detail"/>												Total records: 3

- ▶ The orange rectangle shows the sale price.
- ▶ The red rectangle shows the GST for each item. In this sale, there is \$9 of GST on the customer's invoice.
- ▶ The black rectangle shows the amount of GST the Art Centre collects on its services. For example, of the \$240 commission (40% of \$600) earned by the Art Centre, \$21.82 is GST (\$240 divided by 11).

### Sales - Invoice

The SAM sales page shows this detail so you have a full set of information about each sale. When producing an invoice for a customer, SAM will deal with GST in either the Agent Arrangement or Buy-Sell Arrangement

### Agent Arrangement:

<b>Helicopter West</b> 481 Parramatta rd ALICE SPRINGS NT, 0872				Ref: 185-1
Catalogue	Category	Description	Qty	Unit Price
53-15	Painting	Helicopter West /20 x 30cm	1	\$200.00
				<b>Sub Total:</b> \$200.00
				<b>Total GST:</b> \$0.00
				<b>Total including GST:</b> \$200.00
				<b>Total Payments:</b> \$0.00
				<b>Balance:</b> \$200.00

### Buy-Sell Arrangement:

<b>Test Art Centre</b> 481 Parramatta rd ALICE SPRINGS NT, 0872				Ref: 186-AC
Catalogue	Category	Description	Qty	Unit Price
56-15	Painting	Reid, Bella/50 x 80cm/Wild Brumbies	1	\$200.00
				<b>Sub Total:</b> \$220.00
				<b>Total GST:</b> \$20.00
				<b>Total including GST:</b> \$220.00
				<b>Total Payments:</b> \$0.00
				<b>Balance:</b> \$220.00

## Consignments

The consignment page on SAM looks and works very similarly to the receipts and invoices pages – the same columns are shown and the same information is entered. While this level of information is not needed for a consignment (all that is printed on the consignment note is the actual price), all of this information is created in SAM because consignments are often turned directly into sales.

## Background on GST

The Goods and Services Tax (GST) is a consumption tax that is levied on most goods and services sold in Australia. The amount of GST can be determined in one of two ways:

- if a price is expressed as including GST, then the amount of GST is 1/11 of the price;

if an amount is expressed as excluding GST, then the GST adds 10% to the final price

Art Centres collect GST and then pay the GST to the Australian Tax Office (ATO). If Art Centres own and sell artwork then Art Centres will include the GST in the price.

Art Centres will also pay GST embedded in the cost of goods and services purchased from businesses that are registered for GST. In these circumstances, Art Centres that are registered for GST will obtain what is called a GST input tax credit (or 'credit' in this guide) which is deducted from any GST that an Art Centre has collected. Therefore, the actual amount of GST paid to the ATO is the difference between the amount of GST that an Art Centre collects from sales and the amount of GST that an Art Centres pays when making purchases.

This calculation will generally be made quarterly (but possibly monthly or annually as required by the ATO) on an Art Centre's Business Activity Statement (BAS).

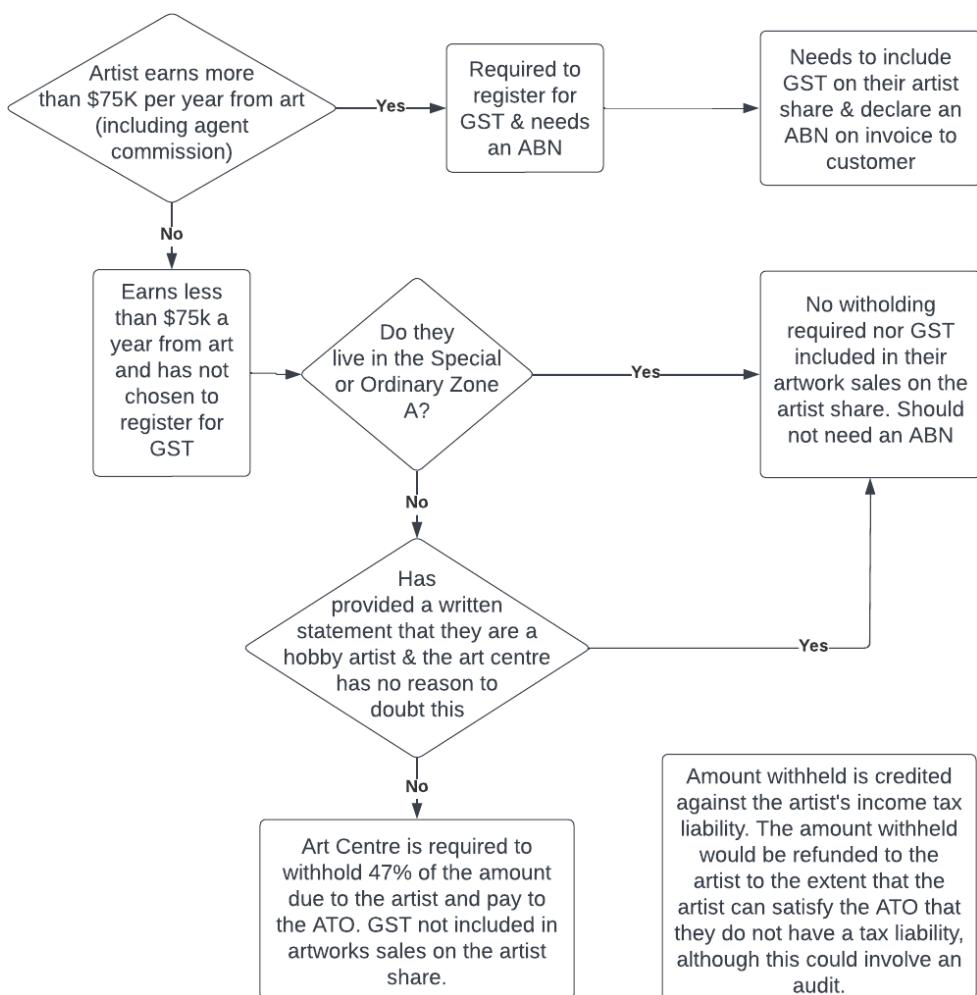
For example, if an Art Centre purchases art supplies with a GST-inclusive price of \$55 (\$5 inclusive of GST), and sells art with a GST-inclusive price of \$110 (\$10 of GST), then the Art Centre will need to pay \$5 (\$10 - \$5) of GST to the ATO.

## **Does Your Art Centre Need to be Registered For GST?**

Any business with an annual turnover of \$75,000 or more (\$150,000 or more for non-profit organisations) must be registered for GST. A business with a turnover of less than \$75,000/\$150,000 can be registered for GST if the business owner wants to be registered.

The above discussion assumes that all Art Centres are registered for GST.

## Do I need to register for GST, an ABN or withhold Tax?



## Summary of key points

- GST and income tax are separate taxes.
- However, the ABN, or Australian Business Number, is a unique business identifier that is relevant for both GST and income tax.
- An ABN is needed to register for GST and tax invoices must include the issuer's ABN. Therefore, an ABN is required when a taxpayer has turnover of \$75,000 or more (the GST registration threshold).
- Anyone that is carrying on a business can get an ABN but they are not required to if they are not required to register for GST. Unlike the GST turnover threshold, there is no dollar cut-off for determining when a business is being carried on for ABN withholding/income tax purposes; this is a qualitative assessment as to whether something is a hobby or a business.

## Does an Artist Need to be Registered For GST?

### Tax Information

Does the artist have an ABN? [?](#)

<input checked="" type="radio"/> Yes	<input type="radio"/> No
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ABN (Australian Business Number)

59 056 947 372

 This is a valid number

Entity name: DESART INC

ABN status: Active from 01/11/1999

Goods & Services Tax (GST): 01/07/2000

Is the artist registered for GST or required to be registered for GST? [?](#)

<input checked="" type="radio"/> Yes	<input type="radio"/> No
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 **GST applied**

SAM will apply GST to this artist's artworks, and there may be a requirement to remit this tax. For more information about GST and withholding tax, refer to [A Guide to the GST and ABN withholding for Art Centres.](#) 

Any artist with an annual turnover of \$75,000 or more must be registered for GST. An artist with a turnover of less than \$75,000 can be registered for GST if the business owner wants to be registered.

Very few remote Aboriginal and Torres Strait Islander artists are required to be registered for GST because they do not meet the turnover test. Artists not registered for GST must not include GST in their pricing, nor can they claim credits for GST paid.

For the purposes of calculating an artist's annual turnover where their art is sold by an Arts Centre through an agency arrangement, the gross sales price of all art sold is included (ie: not reduced by the Arts Centre commission).

If an Art Centre does sell art from an Aboriginal and Torres Strait Islander artist that is either registered for GST or required to be registered for GST under a Buy-Sell arrangement, the Art Centre should ask the artist for a tax invoice when the Art Centre buys the art from the artist and claim a credit for the GST on the sale price.

If an Art Centre does sell art from an Aboriginal and Torres Strait Islander artist that is either registered for GST or required to be registered for GST under an agency arrangement, the Art Centre would have an obligation to give the buyer a tax invoice showing the amount of GST payable to the artist on request. This would allow the

buyer to claim a credit for that GST.

As noted below, the ATO has exercised a special discretion to provide that withholding is not required from payments to Aboriginal and Torres Strait Islander artists resident in "Special or Ordinary Zone A" (which includes most of the Northern Territory (including Darwin and Alice Springs), northern Western Australia and far west and far north Queensland) who do not quote an Australian Business Number. This exercise of discretion does not mean that Aboriginal and Torres Strait Islander artists with annual turnover of \$75,000 or more resident in "Special or Ordinary Zone A" are not required to register for GST.

Art Centres should seek professional advice if they have reason to believe that an artist that they are dealing with has annual turnover of \$75,000 or more.

## **Does Your Art Centre have an Australian Business Number withholding obligation in respect of amounts paid to artists?**

The general rule is that anyone carrying on a business in Australia should obtain an Australian business number ("ABN"). When the business receives payment from a customer, the business must tell the customer on its invoice or other written document what its ABN is. If this is not done and the customer is making the payment in the course of a business that the customer themselves is carrying on, the customer must withhold 47% (being the top individual marginal tax rate) of the payment due to the business and pay that amount to the Australian Taxation Office. The business will get a credit against its income tax liability for the amount withheld. The purpose of the ABN withholding rules is to ensure that businesses cannot avoid income tax by not declaring their income. This means that a business will normally need an ABN even if they are not required to be registered for GST.

However, there are exceptions relevant to Aboriginal and Torres Strait Islander artists. ABN withholding is not required in respect of payments to Aboriginal and Torres Strait Islander artists for artistic works where the artist lives in specified parts of Australia. The specified parts of Australia are together referred to as "Special or Ordinary Zone A" and include most of the Northern Territory (including Darwin and Alice Springs), northern Western Australia and far west and far north Queensland. You can check if a particular place is in Special or Ordinary Zone A on the [ATO website here](#).

For Aboriginal and Torres Strait Islander artists that do not live in Special or Ordinary Zone A, ABN withholding is also not required if the artist provides a written statement that the art was created and sold as part of a hobby or private recreational activity and not as part of a business as long as there is no reason to think that the written statement is untrue.

Therefore, for Art Centres that are acquiring art from Aboriginal and Torres Strait Islander artists under a Buy-Sell arrangement, the Art Centre should check that the artist is either resident in Special or Ordinary Zone A or has provided a written statement that the art was created as part of a hobby. If neither of these conditions are satisfied, the Art Centre would be required to withhold 47% of the amount due to the artist and pay the amount withheld to the Australian Taxation Office.

Where Art Centres are selling the art of Aboriginal and Torres Strait Islander artists to business customers under an agency arrangement, and the artist has an ABN, the Art Centre should include that ABN in the invoice provided to the business customer, or otherwise provide that ABN to the business customer in writing. Where the artist does not have an ABN, the Art Centre should, if necessary, be prepared to demonstrate to the business customer that the artist is either resident in Special or Ordinary Zone A or has provided a written statement that the art was created as part of a hobby, because otherwise the business customer would be required to withhold 47% of the amount due to the artist and pay the amount withheld to the Australian Taxation Office.

## GST treatment of artists earning more than \$75,000 per annum

In the table below are two examples of the GST treatment of the sale of an artwork where the artist is earning more than \$75,000, one where the artist contracts directly with the customer through an Art Centre agent and the second where the artist sells direct to the customer through both an Art Centre agent and a Gallery agent.

	Artist sells direct to customer with only Art Centre as Agent			Artist sells direct to customer with Art Centre & Gallery as Agents		
	Ex GST	GST	Total	Ex GST	GST	Total
<b>Sale Price</b>  <b>The ex-GST amount is gross income for the artist</b>	\$1,000	\$100	\$1,100	\$1,000	\$100	\$1,100
<b>Minus Art Centre Commission (requires tax invoice for artist's BAS)</b>	\$300	\$30	\$330	\$300	\$30	\$330
<b>Minus Gallery Commission (requires tax invoice for artist's BAS)</b>				\$300	\$30	\$330
<b>Artist receives in hand</b>	\$700	\$70	\$770	\$400	\$40	\$440
<b>GST required to be paid to the ATO by the artist</b>		<b>\$70</b>			<b>\$40</b>	
Artists' Tax Return - Need to have invoices for total sale and invoices for the commission amounts (deductions).		Artist to complete a BAS disclosing the GST collected less input tax credits  GST must be submitted whether the artist qualifies for an exception to the ABN withholding rules or not.				