



## Transfer of Registration on transfer of business Fact sheet

### Clothing and Household Textile Building Innovative Capability Scheme (BIC Scheme)

#### Who approves transfers?

Registration of an entity is not transferable except with the approval of the Secretary of the Department of Industry, Innovation, Science, Research and Tertiary Education. As conditions may apply to some transfers, please contact AusIndustry as soon as possible if you are considering that a transfer of registration may be necessary.

#### When may a transfer be requested?

A transfer of registration may be requested when the business of a registered entity (transferor) is transferred to another entity (transferee). For example, this could occur before or on the sale of the business when either the entire business is sold, or when the part of the entity's business that undertakes eligible clothing and household textile activities, is sold (in this case the whole of the eligible activities must be transferred). Alternatively a transfer of registration may be required as a result of an internal restructure with a different entity undertaking the eligible activities.

Note: A transfer of registration is not required where the change is to the ownership of the registered entity, as the registered entity continues to undertake the eligible clothing and household textile activity.

In all instances, upon the transfer of business, it is a commercial decision for the parties to decide

whether a transfer of registration should be sought.

#### Why request a transfer of registration?

If a transfer of registration is approved, the effect is to enable the transferee to submit a claim for expenditure not already claimed by the transferor. The transferee could also become entitled to a grant in relation to claims lodged by the transferor that has been assessed, but not yet paid for, in a particular program year.

#### What if a transfer of registration is not requested?

In some circumstances, such as when an entity has received an advance payment prior to requesting a transfer of registration, the timing of the request for transfer of registration is critical to avoid the possibility of a scheme debt.

If a transfer of registration is not requested before the grants for that program year have been determined, any advance amount paid to the entity transferring the business would have to be repaid as a scheme debt. Any claimed amounts not yet paid relating to the business being sold could not be claimed by the purchasing entity. The purchasing entity, if not already registered, would need to seek registration for the next available program year.

As this and other conditions may affect your grant, please contact AusIndustry as soon as possible if a sale of business or business restructure is being considered.

## What are the requirements for a transfer?

A transfer of registration may be sought only if:

- the business to be transferred includes the whole of the eligible clothing and household textile activity or activities carried on by the transferor (for example, if the registered entity undertook clothing and bed linen manufacture, the transfer of business would have to involve both the clothing and bed linen activities)
- the transferee continues to carry on, or proposes to carry on, these activities
- the transferee proposes to incur eligible expenditure in a subsequent program year
- any industrial property rights for a product development activity for which the transferor entity has incurred eligible expenditure have been transferred
- the amount of grant which the transferee would be entitled in respect of eligible expenditure incurred by the transferor before the transfer, would not be more than the amount of the grant to which the transferor would have been entitled if the business had not been transferred
- the primary purpose of the transfer of business was not to obtain an entitlement to a grant under the scheme.

## What is the effect on the transferor?

After a transfer of registration has been approved, the transferor ceases to have any right or entitlement under the scheme in respect of eligible expenditure incurred in a particular program year.

For example, if the transferor has made a claim for eligible expenditure incurred in the program year to which the transferred registration applies, the transferee is deemed to be the claimant entity.

Essentially, the transferor's eligible clothing and household textile activity and expenditure are taken to be the transferee's. Anything done by the

transferor before the transfer of registration is regarded as having been done by the transferee.

If an activity undertaken and/or expenditure incurred by the transferor or transferee were previously ineligible under the scheme it cannot, because of the transfer, become eligible for the program year for which the transfer of registration applies.

## What if the transferor has received an advance of grant?

If a transferor has received an advance of a grant but not submitted a claim at the time of the transfer of registration, a condition of the transfer would be that the amount of the transferee's claim is reduced by the amount of the advance.

If a transfer of business has already occurred, the application for a transfer of registration must be made and approved before the grant for a particular program year is determined or a scheme debt will arise.

Any claim submitted by the transferee that relied (in part or in full) on expenditure by the transferor, would therefore be *net* of the advance paid to the transferor.

## What happens if the transferor has a BIC scheme debt?

If the transferor has a scheme debt, the Commonwealth may recover the debt from the transferor. Depending on the particulars of the case, an unpaid scheme debt at the time of the application for transfer may lead to a rejection of a transfer request.

## How do the Textile, Clothing and Footwear Post-2005 Strategic Investment Program Scheme disposal provisions apply?

An entity that fails to fulfil the conditions regarding the disposal of Textile, Clothing and Footwear Post-2005 Strategic Investment Program Scheme (TCF Post-2005 (SIP) Scheme) plant or equipment may be required to repay the grant

related to the disposed item. This includes any entity that sells its TCF business, if it involves the disposal of TCF plant or equipment, where no transfer of registration occurs. For information regarding disposal provisions please contact AusIndustry.

Where a transfer of registration is approved, the sale of the plant and equipment funded under TCF Post-2005 (SIP) Scheme to the transferee as part of the transfer of business will not be taken to trigger the disposals provision of the TCF Post-2005 (SIP) Scheme.

## How will total eligible revenue be calculated on the Transfer of Registration?

The transferee's total eligible revenue for the income year in which the registration is transferred, is the sum of the transferor's total eligible revenue and the transferee's total eligible revenue (if any) for that income year.

For entities in an eligible start-up situation, the transferee's total eligible start-up investment amount is the sum of the transferor's and transferee's eligible start-up investment amounts for that income year.

## How to apply for a transfer of registration on a transfer of business

To apply for a transfer of registration, the transferee must complete an *Application for Transfer of Registration on Transfer of Business* and submit it to AusIndustry.

The transfer form is usually signed by both the transferee and the transferor. Note: A transfer of registration may also be requested in a range of other circumstances, e.g. a change in partnership.

On transfers other than a transfer of business, please contact AusIndustry.

## What information must be provided?

At the time of applying for the transfer of registration the following must be provided:

- statement of why the transfer is necessary (i.e. restructure or sale of business)
- a description of how the transferor's eligible clothing and household textile activities will be incorporated into the transferee's business
- a statement of what is being transferred, for example IP, assets, customer lists, existing orders, employees etc.
- details of the relationship (if any) between the transferee and the transferor
- a statement of strategic business intent of the transferee entity, incorporating the transferred business
- the date, or proposed date, of effect of the transfer of the business
- document(s) supporting the date or proposed date of transfer and statements outlined above.

All information requirements are detailed in the *Application for Transfer of Registration on Transfer of Business*.

## Making a claim following a transfer of registration

Where a transfer has been approved, AusIndustry may request the transferee to separately provide details of claimed expenditure for both the transferor and transferee. These requirements should be discussed with AusIndustry.

Note: Any consideration paid by the transferee for the transfer of the business, or for any right under the scheme, is not considered eligible expenditure.