

Part D Credits and Refunds**73 REFUNDS OF PAY AS YOU GO WITHHOLDING AMOUNTS WITHHELD IN ERROR**

The policy in this chapter is to be followed by Tax Office staff. We have made every effort to ensure it is technically accurate, but in the interests of clarity it has been written in plain English and should not be read or interpreted like legislation. If you feel that something in the chapter is wrong or misleading, please advise the Tax Office.

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73.1 PURPOSE

73.1.1 This chapter outlines the policy relevant to the obligations and rights of a payer, a recipient, and the Commissioner, in circumstances where an amount has been withheld in error from a payment under the pay as you go (PAYG) withholding system. It also provides general information as to how the recipient may obtain a refund of these incorrectly withheld amounts.

73.1.2 A refund may, however, be retained by the Commissioner in circumstances not outlined in this chapter. The following policy chapters outline those circumstances:

- [Offsetting of refunds and credits against taxation and other debts](#) outlines the circumstances where the Commissioner will offset a credit or account surplus to reduce other liabilities before any remaining amount is refunded;
- [Retained refunds – financial institution account details ineligible or not provided](#) explains when the Commissioner will retain a business activity statement (BAS) refund where financial institution account details are ineligible or have not been provided. It also provides some details in relation to when an overseas traveller may be entitled to a refund of goods and services tax (GST), or wine equalisation tax (WET) paid on certain goods, and
- [Retained refunds – activity statements or related information not provided and other restrictions on refunds](#) explains when the Commissioner will retain a refund (including a GST refund) owed to an entity where they have not given a notification to the Commissioner required under the BAS provisions. This chapter also details when the Commissioner will retain a voluntary payment made in respect to an anticipated tax debt and provides some information about the Commissioner's policy in circumstances where a supplier has included GST incorrectly in the price of a non-taxable supply.

73.2 LEGISLATION**Refunding of certain withheld amounts.**

73.2.1 Subdivision 18-B of Schedule 1 to the *Taxation Administration Act 1953* (TAA) contains the rules allowing amounts withheld or paid to the

Commissioner in error under any of the PAYG withholding provisions, to be refunded to recipients.

- 73.2.2 Subsection 18-65(1) requires that the **payer** must refund to the **recipient** an amount, if the payer:
- withheld the amount under Division 12 from a payment made to, or received for, the recipient (whether the amount has been paid to the Commissioner or not);
 - paid the amount to the Commissioner under Division 13 for an alienated personal services payment in relation to which an amount is included in the recipient's assessable income year under section 86-15 of the *Income Tax Assessment Act 1997*; or
 - paid the amount to the Commissioner under Division 14 for a non-cash benefit provided to, or received for, the recipient;
- and**
- the amount was withheld or paid to the Commissioner **in error**;
- and**
- either:
 - (a) the payer becomes aware of the error; or
 - (b) the recipient requests the refund;
- by 21 July in the financial year after the one in which the amount was withheld or paid to the Commissioner;
- and**
- any information requested by the payer under subsection 18-65 (3) has been given; or
 - the time for making the request (7 working days) has passed without such a request being made.
- 73.2.3 Subsection 18-65(2) specifies that the amount to be refunded under subsection (1) is a debt recoverable by the recipient from the payer.
- 73.2.4 Subsections 18-65(3) and (4) allow the payer to request information regarding the recipient's TFN or ABN within seven days of receiving the application for refund, or becoming aware of the error.
- 73.2.5 Subsections 18-65(5) and (6) allow the payer, who refunds an amount to a recipient under sub-section 18-65(1), to recover that amount from the Commissioner, or offset that amount against a future withholding liability under Divisions 13 or 14 or subsection 16-70(1).
- 73.2.6 Subsection 18-70(1) specifies that the recipient may apply in writing to the Commissioner for a refund of an amount if:
- the payer withheld or paid an amount under Divisions 12, 13 or 14;
 - the amount was withheld or paid to the Commissioner in error;
 - the payer did not become aware of the error, or the recipient did not request a refund from the payer by 21 July in the financial year after the year the amount was withheld or paid to the Commissioner; and
 - the amount has been paid to the Commissioner.

- 73.2.7 Sub-section 18-70(2) requires the Commissioner to refund the amount if certain identifying information is supplied (tax file number (TFN), Australian business number (ABN), or the basis on which the recipient was taken to have quoted a TFN – even though the recipient did not have a TFN) and the Commissioner is satisfied that it is fair and reasonable to do so.
- 73.2.8 If a request for refund is not approved by either the payer, or the Commissioner, section 18-30 entitles a person to a credit if the person's ordinary income, or statutory income includes a dividend, interest, or a royalty from which non-resident withholding tax (NWT) has been deducted. The amount of the credit is that amount or part withheld.
- 73.2.9 Section 18-75 specifies that the Commissioner must refund all, or part, of an amount withheld from an eligible termination payment (ETP) if the Commissioner is satisfied that:
- a part or whole of the ETP is taken to have been rolled over; or
 - will be taken to have been rolled over; and
- the amount withheld exceeds the amount that should have been withheld from the ETP.
- 73.2.10 Sub-section 18-75(3) defines the amount refundable as being the excess of the amount withheld over the amount that should have been withheld from the ETP.
- 73.2.11 Sub-section 18-75(4) requires the Commissioner to refund the amount either to the recipient of the ETP or another recipient on his behalf.
- 73.2.12 Section 18-80 requires the Commissioner to refund to an entity, if requested in writing by the entity, all or part of an amount withheld from a withholding payment from an investment body, to that entity, if the Commissioner is satisfied that the entity was entitled to give the investment body a declaration of exemption from quoting a TFN under Division 5 of Part VA of the *Income Tax Assessment Act 1936* but did not do so, and the Commissioner considers it fair and reasonable to do so.
- 73.2.13 An entity may object (under Part IVC of the TAA) if the entity is dissatisfied with the Commissioner's decision in relation to refunding an amount under sections 18-70 or 18-80 of the TAA.

73.3 INTRODUCTION

- 73.3.1 The PAYG withholding system requires an entity (the payer) to withhold an amount from certain payments to another entity (the recipient), and to pay the amount withheld to the Commissioner. This system also applies to non-cash benefits and to certain payments of personal services income.
- 73.3.2 In this circumstance, the recipient will receive a credit equal to the amount withheld against their assessed income tax in the relevant year.
- 73.3.3 Whilst complying with their obligations under the PAYG withholding system, a payer may withhold an amount in error. When this occurs, the recipient may request a refund of the amount withheld in error from the payer or, in certain circumstances, from the Commissioner.

- 73.3.4 Specifically, section 18-65 of the TAA allows for an amount that has been withheld in error, under Division 12, or paid to the Commissioner under Division 13, or Division 14, to be refunded by the payer to the recipient.
- 73.3.5 Subsection 18-70(1) of the TAA enables a recipient to apply to the Commissioner for a direct refund of an amount withheld in error where the recipient did not apply to the payer for a refund by 21 July in the relevant year, or the payer did not become aware of the error by that date. The amount withheld must already have been paid to the Commissioner by the payer.
- 73.3.6 The Commissioner is required to refund the amount if the application contains specified information and the Commissioner is satisfied that it would be fair and reasonable to do so.
- 73.3.7 Subdivision 18-B of the TAA also provides special rules governing refunds of withheld amounts relating to eligible termination payments and refunds by the Commissioner of amounts withheld from withholding payments in respect of investment.
- 73.3.8 A list of relevant terms used can be found at the end of this chapter for further reference if required.

73.4 POLICY

Refunding of certain withheld amounts

- 73.4.1 If an amount is incorrectly withheld by a payer, the recipient **may** obtain a refund from the payer, or the Commissioner.
- 73.4.2 The Commissioner considers the following examples illustrate where an amount has been withheld incorrectly:
- an investor quotes his or her TFN to an investment body and that body fails to record the TFN, and later withholds from a payment of investment income under [section 12-140](#) TAA, because a TFN has not been quoted;
 - an employer misreads the 'tax tables' when an amount is withheld from a payment of salary/wages paid to an employee and consequently withholds an amount at a much higher rate than is normally required. This is considered to be an error in these circumstances and the employee would be entitled to seek a refund under these provisions;
 - an investor is entitled to give an investment body a declaration under [Division 5](#) of Part VA of the *Income Tax Assessment Act* 1936 in relation to an investment but fails to do so. [Note: [Division 5](#) of Part VA of that Act provides, in certain cases, that even though an entity has not quoted its tax file number it is taken to have done so]. Because a declaration has not been given to the investment body by the investor, and the investor has not otherwise quoted its TFN to the body, the body withholds an amount from income it pays to the investor. In this case the amount has been withheld due to an oversight on the part of the investor and the investor will be entitled to seek a refund of the amount withheld;
 - an amount is withheld from a payment that is exempt income in the hands of the recipient (for example overseas, local government, or

statutory authority employees' superannuation funds that are exempt from Australian non-resident withholding tax);

- an amount is withheld from a payment to:
 - (a) an entity that is not entitled to an ABN (the supply is made in the supplier's private capacity or in relation to a hobby);
 - (b) a non-resident who is not carrying on an enterprise in Australia; or
 - (c) a supplier (individual or partnership) that is not an enterprise because it has no reasonable expectation of profit or gain.
- an amount is withheld from a recipient in one of the exception categories:
 - (a) the total payment for the supply is \$50 or less (exclusive of any GST);
 - (b) the supplier is under 18 years of age and the payments for supplies do not exceed \$120 per week;
 - (c) the supply is wholly input taxed under GST.
- the wrong exchange rate is used in calculating an interest, unfranked dividend or royalty payment to a non-resident; or
- the wrong withholding rate is used in calculating the amount withheld from a payment of an interest, unfranked dividend or royalty to a non-resident.

73.4.3 The Commissioner considers the following examples illustrate where an amount has been withheld correctly:

- where the payer withholds amounts correctly according to the circumstances at the time when the payment was made;
- a payer withholds 48.5% from a payment for a supply because the supplier had not quoted their ABN on an invoice, or some other document relating to the supply. When the supplier realises that this money has been withheld they then notify the payer of their ABN. This will not be an amount that has been 'withheld incorrectly' as the payer is required to withhold this amount at the time of the payment, and, at that time, the supplier had not notified their ABN; or
- an employee fails to complete a TFN declaration and the employer withholds an amount from the payments of salary/wages at the higher rate than that which applies to employees who do not have a TFN. This amount has been withheld correctly, as the employer is required to withhold at the top marginal rate, plus the Medicare levy, where an employee has not provided a TFN.

The Commissioner considers that the law supports the view that a recipient should initially seek a refund from the payer.

73.4.4 The payer can offset the amount refunded against future PAYG withholding liabilities to the Commissioner, provided the payer has already forwarded the 'incorrectly' withheld amount to the Commissioner. A payer that decides not to offset an amount incorrectly paid to the

Commissioner against future withholding liabilities in this circumstance is entitled to recover the refunded amount from the Commissioner.

- 73.4.5 Where an amount has been withheld due to an error involving the quotation of a recipient's TFN or ABN, the payer may request the required information to enable the correction of their records before refunding an amount. If the recipient does not provide its TFN or ABN to the payer, the payer is not required to refund the amount.
- 73.4.6 The payer must refund the amount withheld in error to the recipient if the payer becomes aware of an error at any time up to 21 July in the financial year following the one in which the amount was withheld.
- 73.4.7 If the recipient has not applied for a refund, or the payer does not otherwise become aware by that date, the payer is no longer required to refund under section 18-65 of the TAA. In such a case, the recipient will be entitled to claim a credit on assessment for the amount withheld in error (as is the case for amounts correctly withheld) or, if that is not appropriate, for example, because the recipient is not required to lodge a return, the recipient can apply to the Commissioner for a refund of the amount.
- 73.4.8 In the event that the payer is unable to refund the amount withheld in error prior to 21 July in the financial year following the one in which the amount was withheld because of liquidation or bankruptcy, the recipient can seek a refund from the Commissioner.
- 73.4.9 Upon the recipient's written application, the Commissioner must refund the amount withheld in error if:
- the amount withheld or paid in error has been paid to the Commissioner by the payer; and
 - the application specifies, either
 - (a) the recipient's TFN;
 - (b) the basis on which the recipient is taken to have quoted a TFN to the payer before the amount was withheld (where the recipient did not have a TFN); or
 - (c) the recipient's ABN (where the payment or non-cash benefit from which the withholding was made was in respect to certain Part VA investments); and
 - the Commissioner considers it 'fair and reasonable' to refund the amount.
- 73.4.10 In considering whether it would be 'fair and reasonable' to refund the amount, the Commissioner may have regard to matters such as whether:
- it is unlikely that the recipient will become entitled to a credit for the amount withheld in error, before the end of the financial year after the one in which the amount was withheld. For example, the recipient has been granted an exemption from lodging an income tax return, or is unable to lodge the return before the end of the financial year due to, for instance, delay in receiving information from overseas; or
 - the recipient will suffer hardship if the Commissioner does not refund the amount. In this context, hardship is where a recipient depends on using the full amount of the payment from which an

amount has been withheld in error, in order to meet their immediate basic living expenses.

- 73.4.11 The Commissioner will consider that it is 'fair and reasonable' to refund the amount if, on the basis of the recipient's application, and other relevant information:
- it is clear that the amount was withheld or paid in error; and
 - either:
 - (a) the recipient has made a reasonable attempt to obtain repayment of the amount from the payer; or
 - (b) the Commissioner considers that it would be unreasonable to expect the recipient to attempt to obtain repayment of the amount from the payer; and
 - the recipient has not been, and will not be repaid, by the payer, or through other means, the amount withheld or paid in error.
- 73.4.12 The Commissioner would consider that it would be 'unreasonable to expect the recipient to attempt to obtain repayment of the amount from the payer' if:
- the payer and recipient are not related directly, or indirectly, through other entities, and:
 - (a) the payer is in bankruptcy or liquidation;
 - (b) the business relationship between the payer and recipient has declined to the extent that co-operation is unlikely; or
 - (c) the payer has refused in writing (copy to be supplied) to refund the amount.
- 73.4.13 An entity may object (under Part IVC of the TAA) if the entity is dissatisfied with the Commissioner's decision in relation to refunding an amount withheld or paid in error.

Taxation implications for Interest Withholding Tax (IWT) on grossed up amounts

- 73.4.14 Taxation Ruling TR 2002/4 considers the implications of the decision of the Full Federal Court in *FCT v. Century Yuasa Batteries* 98 ATC 4380 on excess amounts of IWT which have been withheld in accordance with Taxation Ruling IT 2683 (withdrawn). Paragraphs 48 to 61 outline the circumstances where the excess amounts of IWT which have been withheld in accordance with IT 2683 prior to 1 July 2000 and remitted to the Tax Office will be refunded.

73.5 TERMS USED

- 73.5.1 'Entity' means any of the following:
- a company;
 - a partnership;
 - a person in a particular capacity of trustee;
 - a body politic;

- a corporation sole; or
- any other person.

73.5.2 'IWT' means Interest Withholding Tax.