

Part D Credits and Refunds**74 RETAINED REFUNDS - FINANCIAL INSTITUTION ACCOUNT DETAILS NOT PROVIDED**

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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74.1 PURPOSE

74.1.1 This chapter outlines the circumstances when the Tax Office will retain certain refunds (including goods and services tax (GST) refunds), where the entity has either not nominated a financial institution account to which a refund is to be paid (for example, a bank or building society account), or the nominated account does not meet the requirements of the law.

74.1.2 It also details the circumstances wherein these refunds will be paid to an entity in a manner other than into a financial institution account.

74.1.3 The chapter also provides some details in relation to when an overseas traveller may be entitled to a refund of GST or wine equalisation tax (WET) paid on certain goods and the manner in which such refunds can be requested.

74.1.4 A refund may also 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;
- [Refunds of pay as you go withholding amounts withheld in error](#) explains 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, 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 business activity statement (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.

74.2 LEGISLATION

Refunding GST, luxury car tax and wine equalisation tax

- 74.2.1 [Section 35-5](#) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act), requires the Commissioner to pay to an entity a refund equal to the net amount (if less than zero) disclosed on a GST return. The entitlement to be paid an amount under [section 35-5](#) may arise when the entity gives the Commissioner a GST return - [section 35-10](#). The approved form of a GST return is the BAS. It should be noted that the GST net amount may also include other indirect tax amounts, namely Luxury Car Tax (LCT) and WET.
- 74.2.2 Most refunds that arise under [section 35-5](#) occur in situations where an entity's entitlement to input tax credits in a particular tax period exceeds its GST liability in that period. However, some refunds may be generated by an entity revising an earlier BAS—for example, when the entity forms the view that they should not have paid an amount of indirect tax on some supplies because they are GST-free. The subsequent revision may result in a net GST credit for the tax period. In this circumstance, a GST refund may also be generated by an entity offsetting the amount in a subsequent BAS in accordance with the guidelines set out in the GST Facts Sheet, '[Correcting GST Mistakes](#)'.
- 74.2.3 In respect of GST Branches, the legal right to receive GST refunds remains with the entity and is not with the branch - [section 54-65](#) of the GST Act defines GST branches.
- 74.2.4 The joint venture operator of a GST joint venture is entitled to the receipt of any GST refund - [section 51-60](#) of the GST Act.
- 74.2.5 The representative member of a registered GST group is liable to pay the GST debts of the group ([section 48-40](#) of the GST Act) and is entitled to the input tax credits on acquisitions, or importations, by the group ([section 48-45 of the GST Act](#)). Under [section 48-60](#), only the representative member is required to lodge a GST return on behalf of the group. In these circumstances, any refund arising from a GST return would be payable to the representative member.
- 74.2.6 [Division 3](#) of Part IIB to the *Taxation Administration Act 1953* (TAA) requires the Commissioner to apply any credit (including GST refunds) owing to an entity against the tax debts owed by that entity. However, the Commissioner has some discretion in limited circumstances to refund rather than offset an amount (refer to the policy chapter entitled '[Offsetting of refunds and credits against taxation and other debts](#)'). Any credit amounts not applied under Division 3 must be refunded under Division 3A of Part IIB to the TAA.
- 74.2.7 [Division 3A](#) of Part IIB to the TAA sets out the rules governing how the Commissioner must pay a refund to an entity.

Refunding running balance account (RBA) surpluses and voluntary payments

- 74.2.8 Section 8AAZLF of the TAA, requires the Commissioner to refund to an entity any RBA surplus (including an excess non-RBA credit) not allocated or applied to other taxation debts under Division 3 of Part IIB of the TAA.

- 74.2.9 The Commissioner is not required to refund an RBA surplus or excess non-RBA credit where the surplus or credit pertains to a payment is made in respect of an anticipated tax debt, unless the entity requests the Commissioner to refund the amount – subsection 8AAZLF(2) of the TAA. On receiving the request, the Commissioner must refund the amount not applied or allocated under [Division 3](#) of Part IIB of the TAA.
- 74.2.10 The Commissioner may retain a refund, however, if the entity has not given the Commissioner a notification, that affects the amount of the refund, that the entity is required to give under the 'BAS provisions' (as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997). (Refer to the policy chapter entitled '[Retained refunds – activity statements or related information not provided and other restrictions on refunds](#)').

Financial institution accounts

- 74.2.11 [Section 8AAZLH](#) of the TAA applies to refunds of RBA surpluses or excess non-RBA credits that relate to an RBA, if primary tax debts arising under the BAS provisions (amounts that are notified in an activity statement) have been allocated to that RBA. This would include all refunds of BAS amounts.
- 74.2.12 [Subsections 8AAZLH\(2\)](#) and [\(2A\)](#), provide that these refunds must be paid into a financial institution account nominated by the entity in the approved form and the account must be maintained at a branch or office of the financial institution located in Australia, and held by:
- (i) the entity, or a joint account of the entity;
 - (ii) the entity's registered tax agent, or
 - (iii) a legal practitioner acting in the capacity of trustee or executor of the entity.
- 74.2.13 Under subsection 8AAZLH(3) the Commissioner may exercise a limited discretion to pay a refund in a different way, including payment by cheque.
- 74.2.14 If the entity has not nominated a financial institution account and the Commissioner has not directed that the refunds be paid in a different way, subsection 8AAZLH(4) provides that the Commissioner is not obliged to refund the amount until the entity nominates an approved account.

Tourist refund scheme

- 74.2.15 [Division 168](#) of the GST Act outlines the circumstances where tourists, who take certain goods overseas as accompanying baggage, may be entitled to a refund of the GST that was payable on the supply of those goods.
- 74.2.16 [Division 25](#) of the *A New Tax System (Wine Equalisation Tax) Act 1999* (WET Act) outlines the circumstances where tourists, who take wine overseas as accompanying baggage, may be entitled to a refund of the wine tax that was included in the price of the wine.
- 74.2.17 Under the Tourist Refund Scheme, payments of refunds of GST and wine tax are governed by the GST and Wine Equalisation Tax regulations.

74.3 INTRODUCTION

74.3.1 Entities are required to notify their BAS obligations to the Commissioner in the 'approved form'. BAS amounts include:

- GST;
- WET;
- LCT;
- PAYG instalments;
- PAYG withholding;
- Fringe Benefits Tax (FBT) instalments, and
- Deferred company instalments.

74.3.2 The BAS or Instalment Activity Statement is the approved form in which to notify these amounts. A lodged activity statement may give rise to an entitlement to a refund of BAS amounts (including GST refunds). Where there are no tax debts owing by the entity to apply the BAS refund against, the Commissioner is generally required to refund these amounts in accordance with Division 3A of Part IIB to the TAA.

74.3.3 Except where the Commissioner has authorised that the BAS refund be paid in another way, the law permits the Commissioner to retain the refund unless the entity has nominated an account, held at a branch or office of a financial institution in Australia, and that account is held by:

- the entity, or a joint account of the entity;
- the entity's registered tax agent; or
- a legal practitioner acting in the capacity of trustee or executor of the entity.

74.3.4 A list of relevant terms used can be found at the end of this chapter if further reference is required.

74.4 POLICY

Financial institution accounts

74.4.1 Section 8AAZLH of the TAA authorises the Commissioner to retain a BAS refund until an entity has nominated a financial institution account maintained in Australia and held by:

- the entity, or the entity and some other entity (for example a joint account);
- the entity's registered tax agent; or
- a legal practitioner acting in the capacity of trustee or executor of the entity.

74.4.2 The advantages of direct crediting to accounts include:

- no cheque clearance times;
- ready access to funds;
- earlier refunds; and

- potential additional benefits to both the Commissioner and to entities.

74.4.3 The Australian Business Number (ABN) application form also stipulates in relation to refunds that ‘Refunds will only be paid directly into a recognised financial institution account located in Australia. The account details provided must be held by you (solely or jointly), OR your registered tax agent, OR a legal practitioner acting as your trustee or executor’. Alternatively, entities can, when providing financial institution details (FID), request the Commissioner to exercise his discretion to pay a BAS refund in a different way, or into a third party financial institution account.

74.4.4 Generally the Commissioner will only direct that a refund be paid to a **business** in a different way in exceptional circumstances, for example where:

- (i) a person holds religious beliefs that preclude the operation of a bank account;
- (ii) the entity is the Public Trustee of a State; or
- (iii) the entity is not a resident of Australia and doesn’t have a place of business or residence in Australia; and :
 - it is a department, agency or wholly owned entity of a foreign government; or
 - the entity is a person with diplomatic status.

(Non-residents may open bank accounts in Australia and will generally satisfy proof of identity requirements if they present their passport to a bank within six weeks of arrival. This applies to non-residents opening accounts in their own name, or as signatories to a company bank account. Further identification, such as proof of incorporation, will be required if a company account is opened.)

74.4.5 In **these** circumstances, where the Commissioner directs a refund to be paid in a different way, the refund will be paid to the entity by cheque.

74.4.6 In cases where the Commissioner is satisfied that there is low risk of fraud, he may also direct a BAS refund to be paid in different way when authorised by the entity to pay the refund into a third party financial institution account. A BAS refund may be paid into a third party financial institution account in these circumstances where the account is held by:

- (i) a parent entity or nominated member entity for a related group of entities, including special purpose entities;
- (ii) a manager, custodian, administrator, or agent charged with the responsibility of managing some financial aspects of a large number of separate entities such as, strata titles, property trusts, managed investment funds or superannuation funds;
- (iii) a trustee for a number of trusts; or
- (iv) a representative of an incapacitated entity—for example, a liquidator or receiver;

and where:

- (v) the overall policy intent of section 8AAZLH of the TAA is maintained;
- (vi) there is a significant legal relationship between the entity entitled to the refund and the entity (third party) into whose financial account it will be paid;
- (vii) the nominated account is maintained at an office or branch of a financial institution in Australia;
- (viii) there is clear authority from the entity entitled to the refund to pay to the nominated account; and
- (ix) there is either a legislative requirement, standard industry commercial practice, or legal reason for the refund to be paid to that third party.

See [Law Administration Practice Statement PS LA 2004/ 07](#) for further details.

- 74.4.7 Where the Commissioner directs a refund be paid in a different way in **these** circumstances, the refund will be paid to the entity's nominated third party bank account.
- 74.4.8 Where the Commissioner has not directed that the refund be paid in a different way, the Commissioner will retain the amount until the entity has provided details of a financial institution account in accordance with the law.
- 74.4.9 Delayed refund interest (DRI) may be payable where a BAS amount has been allocated to an RBA placing that account into surplus and the Commissioner does not refund the RBA surplus within 14 days after the day the surplus arises. The Commissioner, however, will not pay DRI where an entity has not nominated an account at a financial institution into which the refund should be paid, (except where the Commissioner has authorised that the refund payment be made in a different way). For more information see the chapter entitled, '[Delayed Refund Interest](#)'.
- 74.4.10 Under the Tourist Refund Scheme, overseas travellers may be entitled to a refund of all, or some of the GST included in the price of certain goods, or the wine tax paid in relation to the purchase of wine at the point of departure. Refunds can be claimed at the tourist refund scheme (TRS) verification facility at airports and sea terminals and will require the production of the tax invoice. The regulations provide for various payment options including cash, cheque or by crediting a credit card or bank account. For further details see [Taxation Ruling WETR 2004/1](#).

74.5 TERMS USED

- 74.5.1 'BAS' stands for the business activity statement.
- 74.5.2 'BAS amounts' means any debts or credits that arise directly under the BAS provisions.
- 74.5.3 'BAS provisions' means:
- (i) Part VII of the *Fringe Benefits Taxation Assessment Act 1986* (FBTAA)
 - (ii) the indirect tax law (within the meaning of Part VI of the TAA)
 - (iii) Parts 2-5 and 2-10 in Schedule 1 to the TAA (which are about the PAYG system)

- (iv) the following:
 - section 221AZK of the *Income Tax Assessment Act 1936* (ITAA 1936) in cases in which section 221AZKC ITAA 1936 applies (that section allows deferral of tax instalment payments), and
 - section 221AZKD ITAA 1936 (which requires notification of deferred tax instalment payments), and
- (v) sales tax law as defined in section 5 of the *Sales Tax Assessment Act 1992*.

74.5.4 “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.

74.5.5 “FID” means Financial Institution Details.

74.5.6 “Indirect tax” means GST, wine tax and luxury car tax.

74.5.7 “Running balance account (RBA)” is an account established under section 8AAZC of the TAA.

74.5.8 “RBA surplus” means a balance on an RBA in favour of the entity, where the primary tax debts allocated to the RBA are less than the payments and credits allocated to that RBA.

74.5.9 “Tourist Refund Scheme” means the scheme outlined in Division 168 of the GST Act and Division 25 of the *A New Tax System (Wine Equalisation Tax) Act 1999*.