

ATO RECEIVABLES POLICY

PART E Credits and Refunds

Chapter 74

RETAINED REFUNDS – FINANCIAL 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..

Date of effect: 24 July 2008 (This version replaces the 2006 version.)

Key legislation: [Division 3A](#) of Part IIB to the *Taxation Administration Act 1953*

PURPOSE

1. This chapter outlines the circumstances where the Tax Office will retain certain refunds (including goods and services tax (GST) refunds) including those that result from the processing of a taxpayers business activity statement (BAS).
2. It also details the circumstances where these refunds will be paid to a taxpayer in a manner other than into an Australian financial institution account.

INTRODUCTION

3. Certain taxpayers are required to notify their BAS obligations to the Commissioner in the 'approved form', generally through the lodgment of their BAS.
4. The types of BAS obligations generally reported on a BAS include:
 - goods and service tax
 - wine equalization tax (WET)
 - luxury car tax (LCT)
 - fuel tax credits (FTC)
 - pay as you go (PAYG) instalments
 - PAYG withholding, and
 - fringe benefits tax (FBT) instalments.
5. These amounts are processed by the Commissioner on a running balance account (RBA) basis, as outlined in Part IIB of the *Taxation Administration Act 1953* (TAA).
6. As part of this RBA system taxpayers are required to give the Commissioner an Australian financial institution account (FID):
 - (i) they hold
 - (ii) they hold with another taxpayer
 - (iii) is held by their registered tax agent, or

- (iv) is held by a legal practitioner as trustee or executor of the taxpayer's estate,
- into which the Commissioner can pay refunds of 'RBA balances' in favour of that taxpayer (referred to as 'BAS refunds').
7. If after the processing of these amounts there is an RBA balance in favour of the relevant taxpayer the Commissioner will generally be required to refund this balance to that taxpayer provided there are no other taxation liabilities to which this balance can be applied (for further information refer to Chapter 72 'Offsetting of refunds and credits against taxation and other debts').
 8. This refund will generally be paid into the taxpayers nominated FID as outlined above.
 9. However, if the Commissioner may retain such RBA balances that would otherwise be refunded if:
 - (i) the relevant taxpayer has not provided a FID as required, and/or
 - (ii) the relevant taxpayer has an outstanding BAS for an earlier period.
 10. Until this information is received the Commissioner will retain this refundable amount (for further information refer to Chapter 75 'Retained refunds – Activity statements or other related documents not provided & other restrictions on refunds').
 11. In some case where a taxpayer has not provided a complying FID (and has no outstanding BAS lodgments) they may request the Commissioner to refund their RBA balance by cheque or to a FID held by another third party.

POLICY

12. The Commissioner may retain a BAS refund until a taxpayer has nominated a financial institution account maintained in Australia and held by:
 - the taxpayer, or the taxpayer and some other taxpayer (for example a joint account)
 - the taxpayer's registered tax agent, or
 - a legal practitioner acting in the capacity of trustee or executor of the taxpayerinto which the refund will be paid.
13. Alternatively, taxpayers 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.

Payment by cheque

14. 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 taxpayer holds religious beliefs that preclude the operation of a bank account
 - (ii) the taxpayer is the Public Trustee of a State or
 - (iii) the taxpayer 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 taxpayer of a foreign government; or
- the taxpayer is a person with diplomatic status.

15. In **these** circumstances, the refund will be paid to the taxpayer by cheque.

Payment to a third party bank account

16. A taxpayer may nominate a third party, other than their registered tax agent or legal practitioner acting in the capacity of trustee or executor of the taxpayer.

17. In cases where the Commissioner is satisfied that there is low risk of fraud the Commissioner may agree to pay a BAS refund into a third party financial institution account where the account is held by:

- (i) a parent taxpayer or nominated member taxpayer 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 taxpayer—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 taxpayer entitled to the refund and the taxpayer (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 taxpayer 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.

18. See Law Administration Practice Statement PS LA 2004/ 07 for further details.

TERMS USED

BAS – stands for the business activity statement.

FID – means financial institution details.

RBA balance – means is either a deficit or surplus on a taxpayers running balance account based on:

- (i) primary tax debts that have been allocated to the RBA; and
- (ii) payments made in respect of current or anticipated primary tax debts of the taxpayer, and credits to which the taxpayer is entitled to under a taxation law, and that have been allocated to the RBA.

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

Taxpayer – 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.

Chapter 74 - Archived version

Version 4 – July 2006 (will link to chapter 74 pdf)
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