

Part D Credits and Refunds

75 RETAINED REFUNDS - ACTIVITY STATEMENTS OR RELATED INFORMATION NOT PROVIDED AND OTHER RESTRICTIONS ON REFUNDS

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: 4 July 2006 (This replaces the 2003 version)

75.1 PURPOSE

- 75.1.1 This chapter outlines the circumstances in which the Commissioner will retain a refund (including a goods and services tax (GST) refund) owed to an entity where they have not given a notification to the Commissioner as required under the business activity statement (BAS) provisions.
- 75.1.2 This chapter also details when the Commissioner will retain a voluntary payment made in respect of 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.
- 75.1.3 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 – financial institution account details ineligible or not provided](#) explains when the Commissioner will retain a 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 GST or wine equalisation tax (WET) paid on certain goods.

75.2 LEGISLATION

Refunding GST, luxury car tax and wine equalisation tax

- 75.2.1 [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](#) of the GST Act). 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.

- 75.2.2 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. Some refunds may be generated, however, 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](#)'.
- 75.2.3 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.
- 75.2.4 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.
- 75.2.5 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.
- 75.2.6 [Division 3](#) of Part IIB to the *Taxation Administration Act 1953* (TAA) requires the Commissioner to apply any credit (including **FTC** and GST refunds) owing to an entity against the tax debts owed by that entity, although 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.
- 75.2.7 [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

- 75.2.8 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.
- 75.2.9 The Commissioner is not required to refund an RBA surplus, or excess non-RBA credit, where the surplus or credit pertains to a payment that 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.

- 75.2.10 The Commissioner may retain a BAS refund, however, if the entity has either not nominated a financial institution account to which 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. (Refer to the policy chapter entitled '[Retained refunds – financial institution account details ineligible or not provided](#)').

Retaining refunds until information or notification given

- 75.2.11 The Commissioner may retain the amount of the refund in cases where section 8AAZLF of the TAA would otherwise require the amount to be refunded, if the entity has not given the Commissioner a notification that the entity is required to give under the 'BAS provisions' (as defined in sub-section 995-1(1) *Income Tax Assessment Act 1997*) and the notification may affect the amount of the refund (subsection 8AAZLG(1) of the TAA).
- 75.2.12 The Commissioner may retain the amount until the entity has given the Commissioner that notification, or the Commissioner makes an assessment of the amount (subsection 8AAZLG(2) of the TAA).

GST incorrectly included in the price of non-taxable supplies

- 75.2.13 Where a net GST credit arises under [section 35-5](#) of the GST Act as a result of an amount of indirect tax being incorrectly included in the price of a non-taxable supply, the refund will be subject to the operation of [section 39](#) of the TAA.
- 75.2.14 [Subsection 39\(3\)](#) of the TAA requires the Commissioner to refund or credit such overpaid amounts to a supplier when both of the following conditions are met:
- the Commissioner is satisfied that the supplier has reimbursed the GST, incorrectly included in the price, to the recipient - [paragraph 39\(3\)\(c\)](#) of the TAA 1953; and
 - the recipient is not registered, nor required to be registered, for GST purposes - [paragraph 39\(3\)\(d\)](#) of the TAA 1953.
- 75.2.15 Where either, or both, of the above conditions are **not** met, [subsection 39\(3\)](#) TAA 1953 provides that the Commissioner is not under an obligation to refund. However, the current Tax Office view is that there is a discretion to refund the overpaid amount in these circumstances where either, or both, of the above conditions are not met. [Law Administrative Practice Statement PS LA 2002/12](#) details the Commissioner's policy in regard to the exercise of this discretion.
- 75.2.16 Under [section 36](#) of the TAA, there is no entitlement to (among other things) a refund under [subsection 39\(1\)](#) of the TAA of an amount of indirect tax relating to an importation unless:
- within four years after the end of that period, or after the making of the importation (as the case requires) the entity notifies the Commissioner of the entitlement; or
 - within that period the Commissioner notifies the entity that they are entitled to the refund.

75.3 INTRODUCTION

- 75.3.1 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.
- 75.3.2 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.
- 75.3.3 However, BAS refunds will usually be retained where an entity has outstanding activity statements. In this circumstance, the refund would usually be retained until all outstanding activity statements are finalised.
- 75.3.4 The Commissioner is not required to refund a payment made in respect of an anticipated tax debt of an entity unless the entity later requests that the Commissioner do so. Voluntary payments may be applied to other tax liabilities owed by an entity.
- 75.3.5 Where a supplier has incorrectly included GST in the price of a non-taxable supply, the Commissioner must refund, or credit the overpaid GST amount to the supplier provided certain conditions are met. These conditions include that the supplier has reimbursed a corresponding amount to the recipient of the supply.
- 75.3.6 A list of relevant terms used can be found at the end of this chapter if further reference is required.

75.4 POLICY

- 75.4.1 The Commissioner will generally retain an entity's refund, including income tax refunds, if the entity has outstanding activity statements.
- 75.4.2 It is recognised, however, that there will be circumstances which warrant the release of a refund, irrespective that an activity statement is outstanding, or has not been processed by the Tax Office.
- 75.4.3 The Commissioner's policy in relation to retaining refunds where there is an outstanding activity statement is essentially separated into two broad categories. The first category relates to the circumstances where the outstanding activity statement is due for lodgment before the refund is processed by the Tax Office ('prior activity statements'). The second category relates to circumstances where an activity statement is due for lodgment after the refund has been processed, but the activity statement became outstanding before the refund is paid to the entity ('subsequent activity statements').

Prior activity statements

75.4.4 The Commissioner may release a refund, irrespective that a prior activity statement is outstanding, or has not been processed, if the entity can demonstrate (or information held in the Tax Office confirms):

- in the case of an individual, that the retaining of the refund will cause serious financial hardship—that is the individual will not be able to afford the basic necessities of life;

or

- in the case of a business, the viability of the business will be compromised if the refund is retained;

and, in either case:

- the inability to lodge the outstanding activity statement by the original due date is directly caused by circumstances beyond their control; or
- the entity is not *contributing to the delay in processing of the activity statement* through failing to provide required additional information;

and

- the entity has a good compliance history—for example, no debts or other outstanding tax obligations.

75.4.5 In this context, an entity will not have *contributed to the delay in processing the activity statement* if circumstances outside their control have caused the delay in providing the required additional information.

75.4.6 Where the delay in lodging an activity statement is due to circumstances outside the entity's control, consideration may be given to deferring the due date for lodgment. (For further information, refer to the policy chapter entitled 'Deferral of the due date for lodgment and suspension of lodgment action.')

Subsequent activity statements

75.4.7 On request from the entity, the Commissioner will release a refund where the only outstanding activity statement is a **subsequent** activity statement and there is no known tax debt owing by the entity or other adverse circumstances giving reason to retain the refund.

75.4.8 The Commissioner will also release a refund in these circumstances where there is a debt owing by the entity, provided the Commissioner has legal authority to exercise a discretion not to offset the refund and:

- in the case of an individual, the retention of the refund will cause serious financial hardship, meaning they will not be able to afford the basic necessities of life; **or**
- in the case of a business, the viability of the business will be compromised if the refund is retained.

(For further information, refer to the policy chapter entitled, '[Offsetting of refunds and credits against taxation and other debts](#)'.)

Voluntary payments

75.4.9 The Commissioner is not required to refund a payment made in respect of an anticipated tax debt of an entity unless the entity later requests that

the Commissioner do so. Voluntary payments may be applied to other tax liabilities owed by an entity.

- 75.4.10 Generally, where an entity makes a payment that exceeds the tax liabilities recorded on their account, the Commissioner will treat the remaining credit as a voluntary payment. This credit will remain on the account until it is offset against any other tax liabilities that arise for the entity, or will be refunded on the entity's request.

GST incorrectly included in the price of non-taxable supplies

- 75.4.11 Where GST is incorrectly included in the price of a non-taxable supply, the law requires the Commissioner to refund, or credit the overpaid amount to the supplier when both of the following conditions are met:
- the Commissioner is satisfied that the supplier has reimbursed the GST incorrectly included in the price to the recipient, and
 - the recipient is not registered, or required to be registered for GST purposes.

- 75.4.12 The current Tax Office view is that there is a discretion to refund a credit in these circumstances where either, or both, of the above conditions are not met. [Law Administration Practice Statement PS LA 2004/ 07](#) details the Commissioner's policy in regard to the exercise of this discretion.

Delayed refund interest

- 75.4.13 Where a BAS refund is not paid within 14 days from the lodgment of a correct activity statement, an entity may be entitled to receive delayed refund interest (DRI). For further information please refer to the policy chapter entitled, '[Delayed Refund Interest](#)'.

75.5 TERMS USED

- 75.5.1 '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.
- 75.5.2 'Running Balance Account' (RBA) is an account established under section 8AAZC of the TAA.
- 75.5.3 '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.
- 75.5.4 'BAS' means business activity statement.