

## ATO RECEIVABLES POLICY

### PART E Credits and Refunds

## Chapter 75

# RETAINED REFUNDS – ACTIVITY STATEMENTS OR OTHER RELATED DOCUMENTS NOT PROVIDED & 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:** 24 July 2008 (This version replaces the 2006 version.)

**Key legislation:** Division 3 part IIB of the *Tax Administration Act 1953*

### PURPOSE

1. This chapter outlines the circumstances in which the Commissioner will retain a refund (including refunds of fuel tax credit (FTC) and goods and services tax (GST)) owed to an entity where they have not given a notification to the Commissioner as required under the business activity statement (BAS) provisions.
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.
3. A refund may also be retained by the Commissioner in circumstances not outlined in this chapter. The following policy chapters outline those circumstances:
  - Chapter 72 '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;
  - Chapter 73 '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

- Chapter 74 'Retained refunds – financial account details 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.

## INTRODUCTION

4. Generally, business taxpayers are required to notify their BAS obligations to the Commissioner in the 'approved form'. BAS amounts include:
  - goods and services tax
  - wine equalisation tax
  - luxury car tax (LCT)
  - fuel tax credits (FTC)
  - pay as you go (PAYG) instalments
  - PAYG withholding
  - fringe benefits tax (FBT) instalments.
5. 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 FTC and GST refunds) where it places their running balance account (RBA) in surplus. 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.

### Refunding GST, luxury car tax, wine equalisation tax and fuel tax credits

6. [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) as disclosed on a GST return. The entitlement to be paid an amount under [section 35-5](#) arises 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 LCT and WET.
7. Most refunds that arise under [section 35-5](#) of the GST Act 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 attributing the adjustment in a BAS for a subsequent tax period in accordance with the guidelines set out in the GST Fact Sheet, '[Correcting GST Mistakes](#)'.
8. Similarly, section 61-5 of the *Fuel Tax Act 2006* requires the Commissioner to pay to an entity a refund equal to the net fuel amount (if less than zero) as disclosed on a fuel tax return. The entitlement to be paid an amount under

section 61-5 arises when the entity gives the Commissioner a fuel tax return – subsection 61-5(2). Generally, the approved form of a fuel tax return for business taxpayers is the BAS.

9. A refund entitlement arises under section 61-5 of the Fuel Tax Act when the fuel tax credits and decreasing fuel tax adjustments exceeds the fuel tax and fuel tax increasing adjustments that are attributable to the same tax period or fuel tax return period. Entities may attribute certain adjustments, like correcting GST mistakes, in a BAS for a subsequent tax period in accordance with the guidelines set out in the Fact Sheet, '[Correcting fuel tax mistakes](#)'.
10. Certain eligible entities may also claim their fuel tax credit early, without having to wait until they lodge a BAS. This arrangement is transitional in nature and only applies to fuel acquired, manufactured or imported between 1 July 2006 and 30 June 2008 (inclusive). Eligible entities that wish to participate in the arrangement are required to have registered for it by 31 December 2006.
11. The GST Act provides special rules that tailor the operation of the GST to the way particular entities are organized. If a special rule applies to the way an entity's business is organised, under Division 70 of the Fuel Tax Act, generally the same rule will apply to them for fuel tax credits.
12. Accordingly, in respect of GST branches, the legal right to receive GST and fuel tax refunds remains with the entity and is not with the branch - [section 54-65](#) of the GST Act defines GST branches, also refer to section 70-30 of the Fuel Tax Act.
13. 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 and section 70-5 of the Fuel Tax Act.
14. 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 and section 70-5 of the Fuel Tax Act](#)). Under [section 48-60 of the GST Act and section 70-5 of the Fuel Tax Act](#), only the representative member is required to lodge a GST return and fuel tax return (for example, the BAS) on behalf of the group. In these circumstances, any refund arising from a BAS would be payable to the representative member.
15. [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. However, the Commissioner has some discretion in limited circumstances to refund rather than offset an amount (refer to Chapter 72 '[Offsetting of refunds and credits against taxation and other debts](#)'). [Division 3A](#) of Part IIB to the TAA sets out the rules governing how the Commissioner must pay a refund to an entity such that any credit amounts not applied under Division 3 must be refunded.

### **Refunding running balance account (RBA) surpluses and voluntary payments**

16. 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.
17. 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.

18. The Commissioner may retain a BAS refund, however, if 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. (Refer to Chapter 74 'Retained refunds – financial account details not provided').

#### **Retaining refunds until information or notification given**

19. 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 subsection 995-1(1) of the *Income Tax Assessment Act 1997*) and the notification may affect the amount of the refund (subsection 8AAZLG(1) of the TAA)).
20. 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**

21. Where GST is incorrectly included in the price of a supply, any refund will be subject to the operation of section 105-65 of Schedule 1 to the TAA.
22. The application of section 105-65 is discussed in Law Administration Practice Statement PS LA 2002/12. Generally, no refund will be paid to a supplier unless the supplier has first reimbursed the recipient of the supply.

### **POLICY**

23. The Commissioner will generally retain an entity's refund, including income tax refunds, if the entity has outstanding activity statements.
24. It is recognised, however, that there will be circumstances which warrant the release of a refund, regardless that an activity statement is outstanding, or has not been processed by the Tax Office.
25. 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').

#### **Release of refund where prior activity statements are not lodged**

26. 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.

27. 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.
28. 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 Chapter 55 'Deferral of the due date for lodgment or suspension of lodgment enforcement action'.)

#### **Release of refund where subsequent activity statements are not lodged**

29. 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.
30. 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 Chapter 72 'Offsetting of refunds and credits against taxation and other debts'.)

#### **Voluntary payments**

31. 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.
32. 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**

33. Where GST is incorrectly included in the price of a non-taxable supply, section 105-65 of Schedule 1 to the TAA does not oblige the Tax Office to refund, or credit the overpaid amount to the supplier.
34. However, as outlined in PS LA 2002/12, the Commissioner will pay the refund to the supplier where the Commissioner is satisfied that the supplier has reimbursed an amount corresponding to the overpaid amount to the recipient.
35. PS LA 2002/12 also details a policy where a supplier that has remitted the GST and a recipient which has claimed the input tax credit can choose not to amend their activity statements. However, should the supplier seek a refund of the GST paid, we will apply section 105-65 of Schedule 1 to the TAA as detailed in PS LA 2002/12.

### **Delayed refund interest**

36. 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. For further information please refer to Chapter 84 'Delayed refund interest'.

### **TERMS USED**

BAS – stands for the business activity statement.

BAS amounts – means any debts or credits that arise directly under the BAS provisions.

BAS provisions – means:

- (i) Part VII of the *Fringe Benefits Taxation Assessment Act 1986*
- (ii) the indirect tax law (within the meaning of subsection 995-1(1) of the *Income Tax Assessment Act 1997*)
- (iii) Parts 2-5 and 2-10 of Schedule 1 to the TAA (which are about the PAYG system).

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.

Indirect tax law – means any of the following:

- the GST law
- the wine tax law
- the luxury car tax law, or
- the fuel tax law

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

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.

**Chapter 75 - Archived version**

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