



Decision impact statement

Deputy Commissioner of Taxation v MWB Accountants Pty Ltd [2019] VCC 1516

❗ Relying on this Decision impact statement

This publication provides our view on the implications of the court or tribunal decision discussed, including on related public advice or guidance.

Taxpayers can rely on this Decision impact statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Decision impact statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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Venue: County Court of Victoria
Venue reference No: CI-17-04907
Judgment date: 20 September 2019

Summary of decision

1. This Decision impact statement outlines the ATO's final response to the decision of the County Court of Victoria in *Deputy Commissioner of Taxation v MWB Accountants Pty Ltd* [2019] VCC 1516 (*MWB Accountants*). This decision concerns whether section 8AAZN of the *Taxation Administration Act 1953* can be used to recover amounts from a tax agent that the Commissioner of Taxation has paid to the agent because the agent lodged activity statements for a taxpayer without the taxpayer's knowledge, claiming credits to which the taxpayer was not entitled. This resulted in refunds being paid into the bank account of the tax agent (which had been nominated by the taxpayer for receipt of payments on account of the taxpayer from the ATO).

2. All legislative references in this Decision impact statement are to the *Taxation Administration Act 1953*, unless otherwise indicated.

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3. All judgment references in this Decision impact statement are to the judgment of *MWB Accountants*.

Overview of facts

4. Broadly speaking, section 8AAZN allows the Commissioner to recover an amount that the Commissioner has paid to a person by mistake, being an amount which the person is not entitled to.

5. In this case, the Commissioner sought to recover from MWB Accountants Pty Ltd (MWB) a running balance account (RBA) deficit debt comprised of administrative overpayment liabilities and general interest charge. The administrative overpayment liabilities were raised by the Commissioner to recover payments made to MWB in the following circumstances.

- The director of MWB acted as tax agent for BIT Pty Ltd (BIT).
- While draft business activity statements (BAS) were sent to BIT, MWB lodged different BAS and amended BAS without BIT's knowledge, claiming credits that BIT was not entitled to.
- Those BAS resulted in BIT having RBA surpluses which were refunded by the ATO and paid into MWB's bank account (the account nominated by BIT for receipt of payments from the ATO).
- BIT later discovered what MWB had done and disclosed these matters to the ATO, together with corrections required to its BAS to properly report its tax liability. On the basis of these disclosures, the ATO cancelled the BAS that had been lodged by MWB without BIT's knowledge.
- The ATO sought to recover the refunds paid to MWB as an administrative overpayment giving rise to a recoverable debt under section 8AAZN.

Issues decided

6. Judge Marks delivered her reasons for judgment on 20 September 2019. Her Honour decided that section 8AAZN could not be used to recover the refunds paid to MWB because MWB was not the 'recipient' of an administrative overpayment. Rather, that recipient was BIT, in its capacity as the taxpayer on whose behalf MWB had authority to act.

7. Her Honour held that:

- For the purposes of section 8AAZN, the 'recipient' of an overpayment could only be someone who was overpaid and not someone who was paid something they were never entitled to be paid (at [51–52] and [120]).
- BIT, and not MWB, was the 'recipient' of the administrative overpayment because BIT 'was the taxpayer the Commissioner intended to pay as a result of its entitlement under a taxation law' (at [66]).

8. In coming to the decision, her Honour concluded that it was unnecessary for the Court to determine whether the BAS had been lodged by MWB without BIT's authority, or whether MWB or BIT had received the benefit of the refunds.

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ATO view of this decision

9. The Commissioner subsequently appealed this decision to the Victorian Court of Appeal. However, the appeal was withdrawn prior to the case being decided. This was because her Honour's ultimate conclusion that the Commissioner's right of recovery was against BIT rather than MWB, was, on the facts, correct.

10. Where it is established that an entity has received money in its capacity as the taxpayer's authorised representative, including as tax agent, for a taxpayer, it is that taxpayer who is the party who is taken to have received the money. This is because the entity is receiving the money on behalf of the taxpayer.

11. Whether an entity has received money in capacity as the taxpayer's authorised representative requires consideration of all the relevant facts and circumstances including the scope of the authority of the entity to act on behalf the taxpayer (actual and ostensible).

12. The decision of the Full Federal Court in *Commissioner of Taxation v Auctus Resources Pty Ltd* [2021] FCAFC 39 makes clear that section 8AAZN applies to 'all payments to which a taxpayer is not entitled'. This includes payment made to the wrong person. The [Decision impact statement](#) for that decision provides further information.

Implications for affected advice or guidance

13. We have reviewed the impact of this decision on related advice and guidance. Law Administration Practice Statement PS LA 2008/11 *Suspected fraud by a third party or tax practitioner* was withdrawn on 12 December 2024 as it is no longer current.

Commissioner of Taxation

20 August 2025

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References

Legislative references:

- TAA 1953 8AAZN

Cases relied on:

- Commissioner of Taxation v Auctus Resources Pty Ltd [2021] FCAFC 39; 284 FCR 294; 388 ALR 553; 2021 ATC 20-782; 112 ATR 859

Other references:

- Decision Impact Statement for Commissioner of Taxation v Auctus Resources Pty Ltd [2021] FCAFC 39
- PS LA 2008/11 (withdrawn)

ATO references

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