



# ***PS LA 2004/7 - The Commissioner's discretion in paying running balance account (RBA) surpluses and credits***

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## Practice Statement Law Administration

**PS LA 2004/7**

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**FOI status: may be released**

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*This Practice Statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. It must be followed by Tax Office staff unless doing so creates unintended consequences. Where this occurs officers must follow their Business Line's escalation process.*

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**SUBJECT:**        **The Commissioner's discretion in paying running balance account (RBA) surpluses and credits**

**PURPOSE:**       **Subsection 8AAZLH (3) of the *Taxation Administration Act 1953* (the TAA) gives the Commissioner a discretion as to how he directs a running balance account refund to an entity. This Law Administration Practice Statement provides guidance to staff on the exercise of that discretion.**

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### **STATEMENT**

1.     Where an entity is entitled to a refund of an RBA surplus or excess non-RBA credits, subsection 8AAZLH (3) of the TAA gives the Commissioner a discretion to direct that refunds be 'paid to the entity in a different way'. Prior to the issue of this law administration practice statement, the Commissioner exercised this discretion, in appropriate cases, to direct that refunds be made by cheque where the entity had not nominated a complying institution account.
2.     The Commissioner will now also exercise this discretion to direct that electronic refunds be paid into a nominated third party account when authorised to do so by the entity.
3.     The discretion to make an electronic refund to a nominated third party account may be exercised where the following criteria are satisfied:
  - the overall policy intent of section 8AAZLH is maintained (refer to paragraph 11)
  - there is a significant legal relationship between the entity entitled to the refund and the entity (third party) into whose financial institution account it will be paid,

- the nominated account is maintained at an office or branch of a financial institution in Australia,
  - the entity entitled to the refund gives the Commissioner a clear authority to pay the refund to the nominated financial institution account, and
  - there is a legislative requirement, a standard industry or commercial practice, or a legal reason for the refund to be paid to that third party.
4. The Commissioner will exercise his discretion to direct a refund to third party accounts which satisfy the criteria in paragraph 3, where the account is held by:
- a parent entity or nominated member entity for a related group of entities including special purpose entities,
  - 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,
  - a trustee in the capacity as trustee for a number of trusts, or
  - a representative of an incapacitated entity eg a liquidator or receiver.

## **EXPLANATION**

### **Background**

5. Section 8AAZLH was originally enacted to provide for the mandatory electronic payment of refunds of RBA surpluses or related credits. Refunds were permitted to be paid into any financial institution account nominated by the entity entitled to the refund. The Commissioner was given the power to pay the refund in another way, for example, by cheque.
6. To reduce the risk of fraudulent claims, subsection 8AAZLH (2) was amended to restrict the nominated account to one that is held at a branch or office of a financial institution in Australia. A later amendment inserted subsection 8AAZLH (2A) to further restrict the accounts into which refunds could be paid. Subsection 8AAZLH (5) was also inserted to clarify that the Commonwealth's debt to the entity is extinguished when the Commissioner pays the refund into the nominated account.
7. To comply with subsection 8AAZLH (2A), the entity can only nominate an account:
- held by the entity entitled to the refund; or
  - jointly held by that entity with other entities; or
  - held by the registered tax agent of the entity; or
  - held by a legal practitioner acting as a trustee or executor for the entity.
8. 'Held by the entity' means that the entity:
- is the legal owner of the account
  - has satisfied the financial institution's 'Proof of Identity' requirements with regard to opening the account, and

- is identified in the records associated with the account as having a legal entitlement or control over any monies held in the account.
9. The term entity includes an individual, partnership, company, entity in the capacity as a trustee of a trust, a government agency or a corporation sole.
10. The term 'legal practitioner' means a barrister or solicitor admitted to practice under relevant State or Territory law. It does not extend to a person who has a degree in law but is not qualified to practice. Under subsection 8AAZLH (2A), the legal practitioner must be acting as a trustee or executor for the entity. The subsection does not extend to general representation.
11. The overall policy intent of the legislation is that a surplus or credit should be refunded in such a way as to reduce administration and compliance costs without increasing opportunities for fraud. In order to achieve this, the Commissioner will generally refund monies into accounts held by the taxpayer. However, in cases where the Commissioner is satisfied that there is a low risk of fraud he may, under subsection 8AAZLH (3) of the TAA, pay a surplus or refund to the account of a properly authorised nominee.

### **Commissioner's direction under subsection 8AAZLH (3)**

12. A refund may be paid into the financial institution account of:
- a parent entity or nominated member entity for a related group of entities including special purpose entities
  - 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
  - a trustee for a number of trusts, or
  - a representative of an incapacitated entity eg a liquidator or receiver.
13. Such refunds will only be paid where
- the overall policy intent of section 8AAZLH is maintained,
  - there is a significant legal relationship between the entity entitled to the refund and the entity (third party) into whose financial institution account it will be paid,
  - the nominated account is maintained at an office or branch of a financial institution in Australia,
  - there is clear authority from the entity entitled to the refund to pay to the nominated financial institution account, and
  - there is a legislative requirement, or a standard industry or commercial practice, or a legal reason for the refund to be paid to that third party.
14. Subsection 8AAZLH (5) of the TAA states that the Commissioner will satisfy his obligation to pay the refund when he pays the moneys to the credit of an account nominated by the entity. If the entity wishes to revoke their authority for the

Commissioner to pay to a third party account, they must advise the Commissioner.

## **Examples:**

### ***Group Accounts***

1. Where the requirements set out in paragraph 13 are satisfied, a refund payable to a member of a group of entities will be paid into a financial institution account held in the name of another member of that group. The other member (third party) may be a parent, subsidiary or other related entity. In these cases it is common commercial practice for a parent entity or a nominated member entity to hold one account which is used by all of the group members.

### ***Managed funds accounts***

2. Where the requirements set out in paragraph 13 are satisfied, a refund payable to a strata title company, or the trustee of a property trust, investment fund or superannuation fund will be paid into a third party account. The third party account would be one held in the name of the manager, custodian, administrator or agent charged with the responsibility of managing the financial affairs of that strata title company, property trust, investment fund or superannuation fund.
3. In the financial, property, investment and superannuation funds management industries, it is standard industry practice to appoint a manager who is required to hold a single account in respect of all of the funds which they manage. Under corporations and managed investments legislation there may also be a legal requirement to appoint a custodian to the property.

### ***Trustee's accounts***

4. Where the requirements in paragraph 13 are satisfied, a refund payable to a trustee, who is the trustee of two or more different trusts, will be paid to an account in the trustee's name (as distinct from an account in the name of the trustee as trustee for a particular trust).
5. Legally only the trustee can open an account. There is no requirement in trust law that the trust relationship be identified or disclosed when the trustee deals with trust property.

### ***Representatives of incapacitated entity accounts***

6. Where the requirements in paragraph 13 are satisfied, a refund payable to a representative of an incapacitated entity such as a liquidator or receiver will be paid to an account in the representative's name and capacity. For the purposes of this practice statement 'representatives of incapacitated entities' takes the same meaning as in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* – the GST Act.

<i>subject references</i>	Running Balance Account, RBA, refunds, surpluses and credits third party accounts
<i>legislative references</i>	<i>Taxation Administration Act 1953</i> Section 8AAZLH <i>Taxation Administration Act 1953</i> subsection 8AAZLH(2) <i>Taxation Administration Act 1953</i> subsection 8AAZLH(2A) <i>Taxation Administration Act 1953</i> subsection 8AAZLH(3) <i>Taxation Administration Act 1953</i> subsection 8AAZLH(5) <i>A New Tax System (Goods and Services Tax) Act 1999</i> section 195-1
<i>related public rulings</i>	
<i>related practice statements</i>	
<i>case references</i>	
<i>file references</i>	

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