PS LA 2011/22 - Commissioner's discretion to retain a refund

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PS LA 2011/22
Commissioner's discretion to retain a refund

This Law Administration Practice Statement provides guidance on how to exercise the Commissioner of Taxation's discretion to retain a refund.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

Taxpayers can rely on this practice 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 practice 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.

1. What this Practice Statement is about

This Practice Statement provides guidance on the Commissioner's discretion to retain a taxpayer's refund where the taxpayer has:

- made a voluntary payment in anticipation of a tax debt[1]
- not provided their financial institution account (FIA) details or their FIA details are non-compliant[2]
- an outstanding business activity statement (BAS), petroleum resource rent tax (PRRT) or Single Touch Payroll (STP) notification[3]
- provided information that may affect the amount of the refund and that requires verification.[4]

You must refund to the taxpayer any running balance account (RBA) surplus or credit that has not been applied against a tax debt[5] unless one of the grounds for discretion to retain the refund applies.

You may exercise only one discretion to retain a taxpayer's refund at a time. The grounds for discretion are discussed in sections 2 to 6 of this Practice Statement, in the order in which they apply.

Where there are no grounds to retain a refund, you must pay the refund within a reasonable time.[6]

Outstanding notifications not covered by this Practice Statement

This Practice Statement does not apply to the exercise of the discretion to retain a taxpayer's RBA surplus or credit where a taxpayer has an outstanding notification, other than under the BAS provisions, the PRRT provisions or STP.

For guidance on exercising the discretion to retain a taxpayer's refund in these cases refer to Law Administration Practice Statement PS LA 2021/2 *The ATO's administrative approach to the extension of the Commissioner's discretion to retain tax refunds*.

2. Voluntary payments

Where an RBA surplus or credit arises because a voluntary payment is made in respect of an anticipated tax debt, you do not have to refund the RBA surplus or credit unless the taxpayer requests a refund.[7]

You are not required to notify the taxpayer that you have retained the refund.

If a taxpayer requests a refund, you must comply with the request unless you decide to retain the refund for another reason.

3. FIA details not provided or non-compliant

If there is an RBA surplus and primary tax debts arising under a BAS or PRRT return have been allocated to the RBA, you may retain the refund if:

- the taxpayer has not provided FIA details, or the FIA details are non-compliant, and
- the Commissioner has not directed the refund to be paid to a third-party bank account or by cheque (see Payment to a third-party bank account and Payment by cheque).[8]

[1] Subsection 8AAZLF(2) of the *Taxation Administration Act 1953* (TAA).
[2] Subsections 8AAZLH(3) and (4) of the TAA.
[3] Sections 8AAZLG and 8AAZLGB of the TAA.
[4] Section 8AAZLGA of the TAA.
[5] Section 8AAZLF of the TAA.
[6] *Commissioner of Taxation v Multiflex Pty Ltd* [2011] FCAFC 142 at [40].
[7] Subsection 8AAZLF(2) of the TAA.
[8] Subsections 8AAZLH(3) and (4) of the TAA.

You may retain the refund until compliant FIA details are provided.

You are not required to notify the taxpayer that you have retained the refund.

Compliant FIA details

A nominated FIA is compliant if:

- it is maintained at a branch or office of a financial institution in Australia[9], and
- it is held by
  - the taxpayer alone or together with another entity
  - the taxpayer's registered tax agent or BAS agent, or
  - a legal practitioner as trustee or executor for the taxpayer.[10]

Under this section there is no discretion to retain an income tax refund.[11]

Payment to a third-party bank account

You may pay a refund to a third-party bank account where there is a low risk of fraud[12] and you are satisfied that:

- the nominated account is maintained at an office or branch of a financial institution in Australia
- a significant legal relationship exists between the taxpayer entitled to the refund and the third party whose FIA the refund will be paid into
- the taxpayer entitled to the refund gives the Commissioner a clear authority to pay the refund to the nominated FIA, 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.

For a significant legal relationship to exist, the third-party account must be held by a:

- parent entity or nominated member entity for a related group of entities (including special purpose entities)
- 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 super funds
- trustee for a number of trusts, or
- representative of an incapacitated entity, for example, a liquidator or receiver.

Payment by cheque

You should only pay a refund by cheque in exceptional circumstances. For example, where the taxpayer holds religious beliefs against holding a bank account.

4. Outstanding BAS or PRRT notification

You may retain a refund if there is an outstanding BAS or PRRT notification that affects or may affect the amount of the refund.[13] An outstanding notification may have become due before the entitlement to the refund arose (prior notification)[14] or after the entitlement to the refund arose (subsequent notification).[15]

You may retain the refund until the taxpayer provides the outstanding notification, or we make or amend an assessment of the amount (whichever happens first).

A taxpayer with an outstanding notification can request release of a refund you have decided to retain. You should release the refund in the following circumstances.

[9] Subsection 8AAZLH(2) of the TAA.
[10] Subsection 8AAZLH(2A) of the TAA.
[11] Subsection 8AAZLH(1) of the TAA.
[12] See Law Administration Practice Statement PS LA 2008/11 *Suspected fraud by a third party or tax practitioner* for indicators of suspected fraud.
[13] Section 8AAZLG of the TAA. Note that notification must be required under the BAS provisions or PRRT provisions (defined in subsection 955-1(1) of the *Income Tax Assessment Act 1997*).
[14] An example is where a taxpayer is claiming a GST refund by providing its BAS for the month of March and at that time, the taxpayer has an outstanding BAS for the previous month of February.
[15] An example is where a taxpayer is claiming a GST refund by providing its BAS for the month of March, however, before the ATO has completed processing the refund, the taxpayer's BAS for the month of April becomes outstanding.

Prior notification outstanding

Where a prior notification is outstanding, you should release a refund if the taxpayer can demonstrate (or you confirm, based on ATO-held information) that:

- retaining the refund will cause serious financial hardship[16] (for an individual) or will compromise the viability of a business (for a business) and the inability to give the outstanding notification by the original due date is directly caused by circumstances beyond the taxpayer's control, or
- the taxpayer is not contributing to the delay in the processing of the notification through failing to provide required additional information and the taxpayer has a good compliance history.

Subsequent notification outstanding

Where a subsequent notification is outstanding, you should release a refund if the taxpayer has:

- no outstanding tax debts and there are no significant compliance risks that would give us reason to retain the refund[17]
- an outstanding tax debt[18] if the retention of the refund will cause serious financial hardship (for an individual) or will compromise the viability of a business (for a business).

5. Outstanding STP notification

You may retain an RBA surplus or credit where:

- a taxpayer is required to report employees' payroll information through STP
- the taxpayer has not notified that information, and
- that information affects or may affect the amount that we refund the taxpayer.

You may only retain a refund if you reasonably believe that information is outstanding[19], taking into account the entity's previous pattern of STP lodgment.[20]

Notifying the taxpayer

If you decide to retain a refund because you reasonably believe payroll information is outstanding for one or more employees, you must inform the taxpayer by the end of the 14th day after the day on which the relevant RBA surplus or credit arises.[21]

How long may a refund be retained?

You may only retain an amount for outstanding employee payroll information until[22]:

- the taxpayer gives you the outstanding employee payroll information
- you become reasonably satisfied that the taxpayer is not required to give the employee payroll information[23]
- you become reasonably satisfied that the taxpayer does not have a pay as you go (PAYG) withholding liability, or
- you otherwise ascertain the taxpayer's total PAYG withholding liability.[24]

6. Verification of information

You may retain an RBA surplus or credit to verify information provided by the taxpayer in a notification that affects or may affect the amount of refund where:

- it would be reasonable to require verification of information[25], or
- the entity has requested we retain the amount for verification.[26]

This discretion to retain refunds under section 8AAZLGA should only be exercised where there is a deemed assessment. This is because:

- The taxpayer becomes immediately entitled to the refund upon the lodgment of a return or other information.

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[16] An individual taxpayer is in serious financial hardship when they cannot afford the basic necessities of life. See Law Administration Practice Statement PS LA 2011/17 *Debt relief, waiver and non-pursuit*.
[17] See Law Administration Practice Statement PS LA 2011/6 *Risk management in the enforcement of lodgment obligations and debt collection activities* for the evaluation of risks.
[18] There may be an outstanding tax debt where a decision has been made not to offset the refund against a tax debt.
[19] Paragraph 8AAZLGB(1)(a) of the TAA.
[20] For example, where a substantial employer has been reporting payments made to its employees on the day that it makes its regular fortnightly payments, it would be reasonable for you to expect that amounts would continue to be reported on a fortnightly basis, in the absence of any information to the contrary.
[21] Subsection 8AAZLGB(2) of the TAA.
[22] Subsection 8AAZLGB(3) of the TAA.
[23] For example, where an individual has ceased to be an employee of the taxpayer.
[24] For example, if you ascertain the taxpayer's total PAYG withholding liability from lodged BAS or by issuing PAYG withholding estimates.
[25] Paragraph 8AAZLGA(1)(a) of the TAA.
[26] Paragraph 8AAZLGA(1)(b) of the TAA.

- The Commissioner does not have the opportunity to consider the information in the notification before a deemed assessment is made.
- The Commissioner must rely on section 8AAZLGA to retain refunds while they verify information.

It will not be appropriate for us to retain refunds that arise under Commissioner-made assessments. This is because:

- Upon lodgment of a return or other information provided by the taxpayer, no RBA surplus or credits arise before the Commissioner makes an assessment.
- The Commissioner is expected to consider the veracity of information in the notification when making the assessment.
- The Commissioner does not need to retain the refund as they are able to verify information before making the assessment.

However, you should still consider the factors listed below in deciding whether to verify information prior to making an assessment and how long that verification should take (see How to exercise the discretion).

Table 1: Deemed assessments and Commissioner-made assessments

Assessments	Notifications for which the Commissioner is deemed to have made an assessment	Notifications the Commissioner uses to make an assessment
Income tax	• income tax returns for full self-assessment taxpayers (principally companies and super funds) for income tax purposes	• income tax returns for other than full self-assessment taxpayers (principally individuals) for income tax purposes • any income tax amendment requests
Indirect tax	• indirect tax returns for full self-assessment taxpayers	• amendment requests made other than in the form of a revised BAS under the indirect tax self-actuating system • amendment requests under the indirect tax self-assessment system
Mineral resources rent tax (MRRT)	• MRRT returns under the MRRT self-assessment system	• any MRRT amendment requests
PRRT	• PRRT annual returns under the PRRT self-assessment system	• any PRRT amendment requests

You may only verify information before issuing an assessment until it is no longer reasonable to require verification of the information.

You should reconsider whether it is possible to make an assessment based on the information available from time to time.

Verifying information may include:

- searching internal and external databases or other information held by us
- making enquiries of the taxpayer or third parties (such as requests for information and documentation).

Notifying the taxpayer

If you decide to retain an RBA surplus or credit for verification, you must inform the taxpayer by:

- the end of the 14th day after the day on which the surplus arises, for an RBA surplus, or
- the end of the 30th day after the taxpayer provides the notification, for a credit.[27]

The time period for informing the taxpayer does not start if the refund is being retained because the taxpayer has:

- not provided FIA details or the FIA details are non-compliant[28]
- an outstanding BAS or PRRT notification[29], or
- an outstanding notification under taxation laws other than the BAS or PRRT provisions.[30]

[27] Subsection 8AAZLGA(3) of the TAA.
[28] Subsection 8AAZLH(4) of the TAA.
[29] Subsection 8AAZLG(1) of the TAA.
[30] Subsection 8AAZLG(1) of the TAA.

Once the taxpayer has provided this information, you have 14 days from the date of compliance to inform the taxpayer that the refund has been retained for verification.

Failure to inform the taxpayer will mean you cannot rely on section 8AAZLGA of the TAA to retain the amount for verification.[31]

You may inform the taxpayer in a number of ways including by phone, email, post, text message or a combination of these.

How to exercise the discretion

You must consider each of the following 10 factors when deciding whether to exercise the discretion for an RBA surplus or credit[32]:

- the likely accuracy of the notified information
- the likelihood that the notified information was affected by
  - fraud or evasion
  - intentional disregard of a taxation law
  - recklessness as to the operation of a taxation law
- the impact of retaining the amount on the taxpayer's financial position
- whether retaining the amount is necessary for the protection of the revenue[33]
- any complexity that would be involved in verifying the notified information
- the time for which we have already retained the amount
- what we have already done to verify the notified information
- whether we have enough evidence to verify the information in the notification[34]
- the extent to which the notified information is consistent with information that the taxpayer previously provided
- any other relevant matter.

No factor is more important than another and you must consider how each factor applies to the individual circumstances of each case. You must make your decision based on the information available at the time.

In some cases, a lack of information will mean that a particular factor will not impact your decision.

If a taxpayer asks you to retain a refund, the taxpayer's request is a relevant (and ordinarily strong) factor in making the decision to retain the refund. However, you do not have to agree to a taxpayer request to retain the amount.

You must keep all records relating to decisions made to retain an amount for verification and you must document the reasons for your decision (referring to the 10 factors). More information on each of these factors is in Appendix 1 to this Practice Statement.

How long may we retain the refund?

You may only retain an RBA surplus or credit refund for verification until:

- it is no longer reasonable to require verification of the information
- if you have failed to inform the taxpayer, the day after the end of the time by which you were required to inform the taxpayer that the amount will be retained
- there is a change to the amount of the refund as a result of the Commissioner making or amending the assessment.[35]

You should reconsider the decision to retain a refund from time to time. You must reconsider the decision to retain an amount:

- each time new information becomes available
- if the taxpayer withdraws a request to verify information
- if circumstances change in a way that is relevant to your consideration of any of the 10 factors.

7. Taxpayer rights

A taxpayer cannot object to a decision by us to retain an amount because the taxpayer has:

- not provided FIA details or the FIA details are non-compliant
- an outstanding BAS or PRRT notification.

A taxpayer may object to a decision by us to retain an amount:

[31] Paragraph 8AAZLGA(5)(b) of the TAA.
[32] Paragraphs 8AAZLGA(2)(a) to (j) of the TAA.
[33] This includes the likelihood that we could recover any of the amount if the notified information was found to be incorrect after the amount had been refunded.
[34] This includes information obtained from making further requests for information.
[35] Subsection 8AAZLGA(5) of the TAA.

- because the taxpayer has outstanding STP information or
- to verify information.

Objection period

The objection period starts 60 days (plus any applicable extensions) after the day on which you are required to inform the taxpayer you are retaining the refund.[36]

If you are retaining the refund because the taxpayer has outstanding STP information, the objection period ends on the day on which the Commissioner ceases to be entitled to retain the amount.[37]

If you are retaining the refund to verify information, the objection period ends when there is a change to the amount of the refund as a result of the Commissioner making or amending the assessment.[38] If you make or amend an assessment that changes the entitlement to the amount of the refund, the taxpayer may object to the assessment or amended assessment.[39]

Extensions

If you are retaining a refund for verification of information the 60-day period is extended when you request information from the taxpayer.[40] The extension of time covers the period of time between when you request and when you receive information. For an extension to apply, the request for information must be made during the 60-day period. The extension does not apply where you make requests to third parties as part of your verification activities.

Notifying the taxpayer

You must inform the taxpayer, in writing, of their right to object within 7 days of the objection period starting.[41]

Date issued: 14 April 2011

Date of effect: 14 April 2011

Business line: Frontline Operations

[36] Subparagraphs 14ZW(1)(aad)(i) 14ZW(1)(aae)(i) of the TAA.
[37] Subparagraph 14ZW(1)(aae)(ii) of the TAA.
[38] Subparagraph 14ZW(1)(aad)(ii) of the TAA.
[39] Part IVC of the TAA.
[40] Subsection 14ZW(4) of the TAA.
[41] Subsections 8AAZLGA(7) and 8AAZLGB(5) of the TAA.

Appendix 1

The 10 statutory factors for verification of information: further explanation and examples

As far as the information is available, you must consider 10 factors when deciding whether or not it is reasonable to retain an amount for verification.[42]

The examples in this Practice Statement illustrate how different factors may impact on a decision to retain. The examples are indicative rather than conclusive or exhaustive.

In some circumstances, particularly where there is little information available to you, one factor might be sufficient to support a decision to retain the amount, but you must still consider each factor.

Likely accuracy of notified information

When assessing the 'likely accuracy' of notified information, indicators that may affect this include:

- variance from previous net amount patterns
- comparisons to industry benchmarks
- the size of the refund claimed relative to the taxpayer's turnover.

These indicators increase the risk the notified information is inaccurate, but may also reflect an extraordinary transaction undertaken during the period.

Example 1 – accuracy of information

A taxpayer is registered as a commercial fisherman. They report on their BAS large claims for fuel tax credits and input tax credits on the capital acquisition of a vessel, which are significantly higher than industry benchmarks. As there is no other ATO-held information to support the taxpayer's claims, we decide it is reasonable to retain the refund for verification as there are doubts about the accuracy of the notified information.

We request a copy of purchase documents for the vessel, the vessel's certificate of survey, the taxpayer's catch records and the taxpayer's fuel tax receipts. The taxpayer hasn't yet provided any of the requested information. This would support a decision to continue to retain the refund.

Example 2 – accuracy of information

A company, operating a small business from a home office, lodges a tax return reporting a number of deductions. This results in a refund of all the PAYG instalments for the year. During a phone conversation, the taxpayer's tax agent indicates the taxpayer's return included deductions for expenses of its principal shareholder, such as the acquisition of a motor vehicle, utility bills, insurance payments and capital expenditure on home renovations. This would support a decision to retain the refund to verify information that the deductions are valid.

Likelihood that the notified information was affected by fraud or evasion, intentional disregard of a taxation law or recklessness as to the operation of a taxation law

A taxpayer commits fraud where they make false statements knowingly or without belief in their truth and commits evasion commits a blameworthy act or omission.[43]

A taxpayer intentionally disregards a taxation law if they have consciously decided to disregard clear obligations under a taxation law.[44] For example, this would include claiming an input tax credit based on a tax invoice the taxpayer knows has been falsified.

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[42] The 10 factors are listed in paragraphs 8AAZLGA(2)(a) to (j) of the TAA.
[43] For further information on fraud or evasion, see Law Administration Practice Statement PS LA 2008/6 *Fraud or evasion*.
[44] Miscellaneous Taxation Ruling MT 2008/1 *Penalty relating to statements*: *meaning of reasonable care*, *recklessness and intentional disregard*.

A taxpayer will have been reckless as to the operation of a taxation law if the taxpayer's conduct shows disregard of, or indifference to, consequences or risks that are reasonably foreseeable to result from the taxpayer's actions.[45] For example, this would include providing information in a tax return or in a BAS where the taxpayer knows there is a real risk that the information may be incorrect, or is indifferent to whether the information is incorrect.

In assessing the likelihood that there has been fraud or evasion, intentional disregard or recklessness, the compliance history of the taxpayer may be relevant. A good compliance history is an indicator that this factor is less likely to be relevant. On the other hand, where there has been a history of non-compliance with taxation laws, this could indicate that there is a higher likelihood of intentional disregard or recklessness (if not fraud or evasion).

Example 3 – suspected fraud or evasion

A sole trader operating a road freight business claims an extremely large fuel tax credit on their BAS. A check of vehicle registrations reveals the taxpayer has not registered a heavy vehicle in the last 10 years. This would support a decision to retain the refund for verification.

Example 4 – suspected fraud or evasion

We are investigating a tax agent and identify that they have previously lodged information on behalf of clients who were involved in fraud or evasion. The agent lodges a tax return on behalf of a new client which contains information that is outside industry norms and would lead to a large refund of the company's PAYG instalments. This information would support a decision to retain the refund for verification.

Impact of retaining the amount on a taxpayer's financial position

When assessing the impact of retaining the amount on a taxpayer's financial position, relevant information may include evidence of financial hardship suffered by an individual or evidence that the retention would compromise the viability of the taxpayer's business. Relevant evidence includes material provided by the taxpayer and relevant information that is otherwise available to you.

You should evaluate the taxpayer's financial position having regard to their capacity to meet their basic living expenses[46], or the immediate cash flow, solvency and borrowing needs of the taxpayer's business. The size of the refund may also be a relevant consideration in the context of particular taxpayer circumstances. However, the mere fact that a taxpayer will not receive a refund is not a determinative factor and it may still be reasonable to retain an amount for verification.

Example 5 – impact of retaining a refund

A company's tax return is identified for review. The company is expecting a large refund. It states the refund is required to fund a reconstruction of its business following a recent natural disaster. Bank statements and other documents show the viability of the business will be compromised if the refund is retained. This would be a factor against retaining the refund.

Whether retaining the amount is necessary for the protection of the revenue

In determining whether retaining an amount is necessary for the protection of the revenue, the likelihood of whether the amount can be later recovered from the taxpayer should be considered. A range of things may affect the likelihood of later recovery from a taxpayer, including solvency issues, hardship, suspected fraud, compliance history, and available assets. Information we hold which raises revenue protection concerns is often relevant to one or more of the other factors to be considered.

[45] MT 2008/1.
[46] In line with the consideration of serious financial hardship in PS LA 2011/17.

The size of the refund may also be relevant, but evaluation of this indicator must be made taking into account a taxpayer's circumstances. However, there is no threshold amount which would prevent or require the retention of a refund.

Example 6 – potential difficulty in recovering amounts

A taxpayer company, whose sole director has been associated with companies that were put into liquidation after accumulating large tax debts, lodges a BAS reporting a refund amount of $2 million. The size of the refund is not consistent with previous BAS returns nor with the amount of sales reported. The director's past associations are an indicator that there may be difficulty in recovering the amount if it is refunded and later found to be incorrect. This would support a decision to retain the refund for verification.

Example 7 – potential difficulty in recovering amounts

A taxpayer's BAS is identified for review. The taxpayer is a non-resident on a business owner (provisional) visa who owns and operates a small café. Since becoming registered for GST one year ago, the business has reported very few sales compared to large claims for input tax credits, resulting in a consistent refund position. Potential difficulty in recovering the amounts if the taxpayer left the country would support a decision to retain the refund for verification.

Any complexity that would be involved in verifying notified information

Complex arrangements, such as those involving multiple supply chains and multiple entities, generally require more time and resources to verify than more straightforward or linear arrangements.

Example 8 – continuing to retain a refund in complex circumstances

A taxpayer suspected of entering into non-arm's length transactions with related entities, lodges a BAS. After consideration of the 10 factors, the refund is retained for verification. The verification process requires a detailed examination of each of the related entities and the transactions entered into between them. During the verification process, we identify a series of complex transactions between associated entities that are not fully documented. As a result, we cannot readily determine and establish the facts. This would support a decision to continue retaining the refund for verification.

Example 9 – complex circumstances and relationships

A taxpayer registers for GST as a wine producer and lodges a BAS reporting a large wine equalisation tax credit claim, including a wine producer rebate. During the verification process, a number of issues are identified.

ATO systems checks do not show any previous experience by the taxpayer in the winemaking industry. A phone call with the taxpayer reveals that the wine the taxpayer produces is made for them by a well-established winery under the terms of a verbal agreement. Under that verbal agreement, the taxpayer's wine is produced from grapes that are sourced from the same vineyard that supplies the established winery. We also discover that the taxpayer has a number of other business and personal relationships with the established winery and entities and individuals associated with it.

We believe the established winery may be using the taxpayer to improperly access a wine producer rebate greater than the $500,000 annual threshold.

The complex nature of the relationship and the transactions between the 2 parties would support a decision to retain the refund for verification.

The time for which the Commissioner has already retained the amount

The time for which we have already retained the amount may be relevant when considering the impact on the taxpayer's financial position and the complexity of the investigation. Undue delay in an investigation may in some cases be a factor against continuing to retain the refund.

Example 10 – time we've already retained a refund

In April 2020, we decide to retain a refund and request further information about amounts reported in a taxpayer's BAS. The taxpayer promptly provides the information. In July 2020, ATO systems identify the case has not progressed in a timely manner. As no additional information has been requested during this time, this would support a decision not to continue retaining the refund.

What the Commissioner has already done to verify the notified information

You should consider what actions we have already taken to verify the information. We will take prompt, reasonable and appropriate action when seeking to resolve any uncertainty there might be about the correctness of an amount to be refunded.

Reasonable action may involve requesting information from the taxpayer, third parties, or both, or accessing ATO-held information, as well as publicly available information.

Consideration of this factor will usually be conducted in conjunction with the length of time for which a refund has already been retained.

Example 11 – additional information not promptly provided

For several months we have been seeking further information from a taxpayer, in order to verify the taxpayer's claim to input tax credits. External database searches show several inconsistencies in the taxpayer's claim, but without further information from the taxpayer or from third parties, insufficient information is held to make an assessment. This would support a decision to continue retaining the refund for verification.

Whether the Commissioner has enough information to make an assessment relating to the amount

A disagreement about how the law applies to the facts is not a reason to retain a refund. Where there is a disagreement about the application of the law, an assessment should be made on the ATO view of the law. The taxpayer may exercise objection and review rights once an assessment is made.

Example 12 – an amended assessment can be made

A company lodges a tax return claiming substantial deductions leading to a refund of its PAYG instalments. We retain the refund and asks for information to substantiate the claims made. We make an amended assessment based on the information provided by the company which indicates it is not entitled to the deductions.

The company disagrees with our decision regarding deductibility and lodges an objection. As the disagreement is not about the facts, we release the reduced refund.

The extent to which the notified information is consistent with information that the taxpayer previously provided

Patterns in behaviour, such as the size of the refund compared to previous refund amounts, are relevant to consider. However, an unusual variation in the pattern might be explained by an extraordinary transaction. This is also relevant when considering the likely accuracy of the information.

Example 13 – inconsistency with previous lodgments

A small business taxpayer with a GST turnover of $500,000 has been registered for GST for 5 years as a corner store operator. During this time, the taxpayer consistently reports a net amount payable. However, the taxpayer lodges a BAS claiming input tax credits of $1 million, which results in a significant refund. The taxpayer's lodgment history would support a decision to retain the refund for verification.

Any other relevant matter

Any other relevant matters must be considered when deciding whether to retain a refund for verification. For example, it would be relevant to take into account a taxpayer's request that we retain the amount for verification.

Amendment history

5 December 2024

Part	Comment
Throughout	Updates made to merge this Practice Statement with Law Administration Practice Statement PS LA 2012/6 *Exercise of Commissioner's discretion to retain a refund* (PSLA 2012/6 has now been withdrawn). Format and language modernised and simplified throughout.
Section 5	New content added for retaining refunds for outstanding Single Touch Payroll obligations, as enacted in *the Budget Savings (Omnibus) Act 2016*.
Throughout	Updated in line with current ATO style and accessibility requirements.

9 February 2023

Part	Comment
Paragraph 29	Updated reference to paragraph 25 instead of paragraph 19.

14 May 2021

Part	Comment
Statement	Updated to include a reference to PS LA 2021/2 for further information regarding the retention of refunds in relation to provisions of a taxation law other than the BAS provisions or any of the petroleum resource rent tax provisions.

6 May 2020

Part	Comment
Various	Updated CEI title name.

4 November 2014

Part	Comment
Various	Updated to meet ATO Style guide requirements; revised headings and placement of text; additional information added to clarify topic discussion.
Footnote 1	New information on Commissioner’s treatment of voluntary payments.

References

Legislative references	
	TAA 1953 8AAZLF TAA 1953 8AAZLF(2) TAA 1953 8AAZLG TAA 1953 8AAZLG(1) TAA 1953 8AAZLGA TAA 1953 8AAZLGA(1)(a) TAA 1953 8AAZLGA(1)(b) TAA 1953 8AAZLGA(2)(a) TAA 1953 8AAZLGA(2)(b) TAA 1953 8AAZLGA(2)(c)

	TAA 1953 8AAZLGA(2)(d) TAA 1953 8AAZLGA(2)(e) TAA 1953 8AAZLGA(2)(f) TAA 1953 8AAZLGA(2)(g) TAA 1953 8AAZLGA(2)(h) TAA 1953 8AAZLGA(2)(i) TAA 1953 8AAZLGA(2)(j) TAA 1953 8AAZLGA(3) TAA 1953 8AAZLGA(5) TAA 1953 8AAZLGA(5)(b) TAA 1953 8AAZLGA(7) TAA 1953 8AAZLGB TAA 1953 8AAZLGB(1)(a) TAA 1953 8AAZLGB(1)(b) TAA 1953 8AAZLGB(2) TAA 1953 8AAZLGB(3) TAA 1953 8AAZLGB(5) TAA 1953 8AAZLH TAA 1953 8AAZLH(1) TAA 1953 8AAZLH(2) TAA 1953 8AAZLH(2A) TAA 1953 8AAZLH(3) TAA 1953 8AAZLH(4) TAA 1953 Pt IVC TAA 1953 14ZW(1)(aad)(i) TAA 1953 14ZW(1)(aad)(ii) TAA 1953 14ZW(1)(aae)(i) TAA 1953 14ZW(1)(aad)(ii) TAA 1953 14ZW(4) ITAA 1997 995-1(1)
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