

# Submission re Exposure Draft - Commissioner's Ability to Retain Refunds Pending Verification Checks

---

The following are our observations in relation to this Exposure Draft ("ED"). The points made are in no particular order -

- 1 We are deeply troubled that only one week has been provided for consultation in relation to such critical legislation. The focus of the legislation is to protect the Revenue. However, such a short time does not protect the taxpayer.
- 2 To suggest that the taxpayer is protected from any undue delay by the entitlement to receive interest, does not properly recognise that the interest paid to taxpayers is materially less than the interest being paid by taxpayers or, in the alternative, the opportunity costs in relation thereto.
- 3 These provisions are being contemplated for introduction at a time when the Australian economy (resources aside) is in a very delicate position. It is imperative that this is recognised in this process and that there is a proper balance between protecting the Revenue on the one hand and not prejudicing the liquidity and working capital position of taxpayers on the other.
- 4 Notwithstanding the above comments, we acknowledge the Commissioner's right to ensure 'refund integrity'.
- 5 What are the statistics regarding the former administrative practice of reviewing refunds distinguishing between those that were reviewed and then refunded on the one hand versus those that were reviewed and not refunded on the other? This is the balance that must be understood and incorporated into the development of these provisions.

In the context of the above and on reviewing the ED, we make the following observations -

- 1 The circumstances that the Commissioner must have regard for before deciding to seek verification and thus delay the refund are not set out in the ED.
- 2 60 days is an unreasonable period to retain the refund whilst undertaking the verification process having regard for the earlier comments regarding the costs to taxpayers on the one hand and balancing the Revenue on the other.
- 3 If the refund is to be further retained (that is beyond the 60 day or lesser period) this should only be in exceptional circumstances. The criteria must be more balanced having regard for the position of taxpayers versus that of the Revenue.
- 4 The proposed taxpayers right of appeal is largely illusory given the time and cost involved in pursuing that appeal. [The example given in the Explanatory Memorandum supporting the ED is in relation to a shoe shop proprietor seeking a refund of \$15,000. It is highly unlikely that it is cost justified for that shoe shop proprietor to go to the cost of objecting. This example (Example 1.2) highlights the illusory of this benefit for SMEs particularly.]
- 5 Overall, under the legislation, the Commissioner can retain a refund for at least approximately 75 days as a minimum and then seek to extend it still further. This is not a fair balance between Revenue integrity on the one hand and taxpayer right on the other.

## **Submission re Exposure Draft - Commissioner's Ability to Retain Refunds Pending Verification Checks**

---

- 6 In our opinion, the proposed legislation does not strike an appropriate balance between a taxpayer's rights and the Commissioner's responsibilities.

### **Overall**

In his release of the ED, Senator Arbib indicated "fraud associated with refunds is a compliance risk with the potential to undermine community confidence in the integrity of the tax system,". We would submit that financial distress caused by provisions that are in inappropriate balance are more likely to undermine community confidence in the integrity of the tax system than fraud.