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Senator the Hon Arthur Sinodinos AO
Assistant Treasurer
Parliament House
CANBERRA ACT 2600


Dear Senator ~~Sinodinos~~

PROPOSED LEGISLATION TO STOP OTHERWISE OWED GST REFUNDS

I write regarding the proposed legislation in Division 142 "Excess GST" which purports to implement the supposed principle that "excess GST is not to be refunded if this would give an entity a windfall gain." This so-called principle seems predicated on the unexamined proposition that the only windfalls which are moral are those in favour of the Revenue.

I have no objection to the Commissioner of Taxation retaining excess GST mistakenly paid to or demanded by him, if he has effectively already refunded by giving input tax credits to a GST-registered entity.

I do have profound objections to the idea that the Commissioner can otherwise keep moneys to which he is not legally entitled by way of tax.

What the Division is really doing is allowing the Commissioner to steal money which was never due as tax. That raises questions of government ethics and principle, legal policy and constitutional law and practice.

It is a curious conception of commercial morality or Constitutional law and convention that the officers of the Crown should be authorized by Parliament to retain moneys not due to them.

It seems to be unwise to degrade the honour of the Crown by letting its Revenue officers retain money illegally collected, on the spurious idea that they should get windfalls ahead of anyone else. If there is any dispute between the payer who receives the refund and the non-GST registered client whom he may or may not have invoiced for the wrongly-paid GST, that is a matter for them to sort out.

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Honest people repay money taken or paid to them by mistake and to which they are not entitled. They do not refuse to repay on the grounds that someone else besides the immediate creditor ought to get the money. The ordinary law would laugh at such a defence. The Commissioner should behave like any ordinary honest person. Setting a bad example for taxpayers is not something which the Commissioner should do and Parliament should not be seen to permit him to do so.

From the earliest times, in our system of government, taxpayers are properly seen as contributors to the Revenue by their consent, given on their behalf by their elected representatives. Taxes are levied according to law, rather than by discretion or by any means available. Tax collection is not a lawless "free for all" to be conducted as if it were some extortion racket.

The legislation should therefore be amended to delete any discretion for the Commissioner to refuse to repay GST refunds where the claimant has made the supply to a non-GST registered entity which has not claimed or been eligible for an input tax credit. If he has collected more tax than was due he should repay it, unless he has already effectively refunded it by giving an input tax credit to the purchaser.

Yours sincerely



Terence Dwyer

cc Chairman, Senate Scrutiny of Bills Committee
Chairman, Senate Economics Legislation Committee