

21 February 2012

Your ref:
Our ref: JS/JS/2107499

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Dear Sir/Madam

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

We tender our brief submission in the above matter below:

Submission:

The proposed legislative amendment to the Taxation Administrative Act 1953, permits the Commissioner to withhold GST refunds in circumstances where a BAS is lodged and it is reasonable for the Commissioner to verify the information asserted in the BAS.

The Commissioner will then have 60 days to:

- (1) Refund the amount claimed;
- (2) Make an assessment; or
- (3) Extend the verification process indefinitely subject to essentially vague criteria

Unjustified Imposition

Any withholding is an unreasonable intrusion on the working capital requirements of the vast majority of Australian GST taxpayers who are honest.

If any withholding is required, 60 days is far too long for a legitimate tax payer. Clearly, however fraudsters and criminals must be curtailed to avoid fiscal drag.

We submit that after an agreeable and transparent brief vetting process has been conducted, only then should any additional withholding power be conferred on the Commissioner. An alternative is briefly canvassed below.

If conferred, then under protest the time limit should be 30 days rather than 60, as the commissioner has up to 30 days after the lodgement of the BAS to notify the taxpayer that GST will be withheld. Hence, the time until a legitimate taxpayer could receive its refund under the proposed amendments could be up to 90 days from lodgement, which would be contrary to the fundamental underlying policy of the GST regime, (leaving aside further verification extensions under the six (6) factors).

That is, a tax on consumption by consumers, not a cash flow impediment for legitimate "business to business transactions" Many wholesale and retail business (especially those with high volumes who employ many people) operate on a low profit margin.

Any delay beyond a few weeks in receiving GST refunds would see many businesses fold, and staff retrenched.

The last straw for many, otherwise viable businesses in our "two speed" post GFC economy.

Severe Unemployment Consequences

The current government proposal would be a poor solution, punishing thousands of legitimate businesses and making retrenched staff the ultimate unwitting victims of GST fraud perpetrated by a few dishonest, albeit inventive and industrious criminals.

Clearly the latter must be stopped to prevent Federal GST revenue haemorrhage.

Too Low a Bar

However, the criteria of what the Commissioner thinks is a reasonable period of verification is far too low a bar to exercising a GST withholding power (GST WP) or any extension thereof.

A Fair and Reasonable Alternative.

The GST WP should only be capable of being exercised in limited prescribed circumstances.

For instance, the commissioner's delegate exercising the GST WP should have to:

- (4) first seek clarification from the taxpayer of what the ATO considered irregular and give the taxpayer 10 business days to clarify the same.
- (5) if no response or a demonstrably inadequate response is received in that time and the GST amount in question is significant (e.g. exceeding say \$10k), the ATO should then be required to put its concerns (including cogent documents) to a Federal Magistrate (with notice and a right of reply to the taxpayer) to obtain permission to withhold refunds whilst the Commissioner promptly conducts the further enquires into the disclosed irregularities.
- (6) that would present a more balanced position for the taxpayer and the Commonwealth on this vital issue.

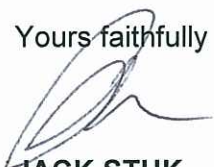
Other Defects with the Proposed TAA Amendments

- (7) There is no express obligation for the ATO to have reasonable grounds to suspect fraud, evasion or inadvertent error.
- (8) If the Commissioner, decided to extend the withholding beyond 60 days (with 30 days notice making it 90 days), the taxpayer need not be notified by the ATO until 14 days after that first withholding period.
- (9) The interest compensation under the Taxation (Interest and Overpayments and Early Payments) Act 1983 is set at currently 4.25 % p.a well under current

business overdraft charged to most businesses (circa 8%p.a or the implied cost of equity funds deployed in an enterprise. So even if the GST return is vindicated after months or even years of delay, the taxpayer is directly out of pocket without reference to any additional professional costs incurred to accountants/tax agents in the process or regard to the emotional stress the same would ordinarily produce for honest business proprietors, equity and other stake holders.

If you have any questions or require further information please do not hesitate to contact Jack Stuk on +61 3 9605 0815 or jstuk@millsOakley.com.au.

Yours faithfully



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