

20 February 2012

The General Manager
Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600



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

Dear Sir or Madam,

This submission addresses the proposed amendment of the *Taxation Administration Act 1953* (TAA 1953), which will provide the Commissioner of Taxation (Commissioner) with discretion to delay refunding an amount to a taxpayer pending integrity checks of their claim.

Background

Waverley Council (Council) is registered for GST and submits its business activity statements, monthly, as required by law. Council claims a refund of input tax credit in most of its business activity statements, because a large proportion of its income is exempt from tax, GST-free, or input taxed.

Periodically, the Commissioner selects one of Council's business activity statements and conducts integrity checks. In doing so, the Commissioner requests a significant amount of information from Council. Council responds to these requests promptly. The Commissioner delays refunding the input tax credit, until he or she is satisfied with Council's response.

The Commissioner has been satisfied with Council's compliance, since the introduction of business activity statements in 2000 and has always made a full refund, after a delay.

The delay in refunding Council's entitlement imposes an unnecessary burden upon its cash flow. The Commissioner pays penalty interest, from the time the refund would normally fall due, until he or she pays it. In the meantime, however, Council's

cash flow is depleted, to the extent of the refund. The refunds are used for the funding of its normal activities.

Recommendation

1. That, in deciding whether it would be reasonable to retain an amount, the Commissioner must consider a number of factors, including those itemised in the proposed subsection 8AAZLGA(8) of TAA 1953. That is, the subsection be amended to refer to subsection (1), rather than subsection (5) of section 8AAZLGA(8) of TAA 1953.
2. Alternatively, that Australian government entities be exempt from the proposed amendment.

Remarks

In our opinion, where the Commissioner undertakes integrity checks as a matter of routine, the proposed discretion (and previous administrative practice) is unduly exacting upon taxpayers, where the following circumstances apply: -

- the information provided by the taxpayer is likely to be accurate;
- the information is unlikely to be affected by fraud or evasion, intentional disregard of a taxation law or recklessness as to the operation of a taxation law;
- retaining the amount is unnecessary for protection of the revenue, including whether the Commissioner would be unable to recover a refunded amount if the information was subsequently found to be incorrect;
- the impact of retaining the amount may affect the taxpayer's cash flow, adversely.

The Commissioner should consider these factors at the outset, rather than sixty days afterwards.

We also consider that the discretion imposes inefficiencies and unnecessary costs upon both the Australian Taxation Office and the taxpayer, in the foregoing circumstances. The Australian Taxation Office needs to take additional action to withhold the refund; to ensure that it is paid, when the Commissioner is satisfied that the taxpayer is compliant; and to calculate and pay penalty interest, as applicable. The taxpayer needs to make alternative cash flow arrangements, in respect of the delayed refund. In doing so, the taxpayer may incur financial costs.

Generally, Australian government entities are compliant, and, for such entities, there is an extremely low risk to revenue, even if the Commissioner finds information to be incorrect, during its integrity checks. Consequently, we consider it unnecessary to delay their refunds.

If you would like more information, please telephone me on 02 9369 8025. You can also contact me by facsimile (02 9387 4752) and by e-mail (dons@waverley.nsw.gov.au).

Yours faithfully,



Donald Setchell FIPA

Taxation Manager