



Australian Government
Inspector-General of Taxation

GST Refunds

Terms of reference

5 April 2017

BACKGROUND

The Goods and Services Tax (GST) was introduced in 2000 and is the largest source of taxation revenue after income tax.¹ The GST is economically borne by the final consumer but is collected and paid by businesses. Registered business taxpayers may claim input tax credits for the GST they have paid on any goods and services that they acquire. Such businesses are entitled to a GST refund where their input tax credits exceed the total GST charged by the business within a reporting period.

The Australian Taxation Office (ATO) is responsible for the administration of the GST including paying GST refunds², the eligibility for which may be assessed before they are paid. Given the large number of refund claims, the ATO uses a risk-based approach to identify potentially incorrect or fraudulent claims. Such claims may be held back for checking by ATO officers and are only paid after their legitimacy or accuracy has been verified.

Historically, the ATO retained GST refunds, under its general powers of administration³, until verification checks were completed. However, in the 2011 *Multiflex*⁴ case, the Full Federal Court ruled that GST refunds could not be retained any longer than the time needed to process the GST return. As a result, verification had to be conducted within a restricted period of time if it was to be done before refunds were issued. Following that decision, legislation⁵ was enacted to allow the ATO to retain GST refunds for a longer period of time provided there were reasonable grounds to do so and the relevant taxpayer was notified within certain timeframes. Such taxpayers were also granted a right of review.

Stakeholders have indicated to the Inspector-General of Taxation (IGT) that, generally, the administration of the GST refund process works well. However, concerns have been raised with the GST refund verification process through the IGT's complaints handling service and in submissions to his current work program. These concerns include:

- a lack of clarity on the scope and nature of verification activities, including information requests;
- inadequate engagement with taxpayers and their representatives;
- inaccurate risk identification processes and inappropriate administration of the retention provisions including unexpected offsetting of GST refunds against future liabilities; and
- the adverse financial and emotional impact on taxpayers, particularly where the ATO does not fully appreciate their commercial arrangements as well as cash flow, working capital and profit margin implications.

This IGT review will consider the GST refund verification process, in particular the above concerns, in order to identify improvement opportunities which minimise adverse impact on taxpayers whilst ensuring that the ATO has sufficient time to adequately address risks to government revenue.

¹ The GST amounted to 16.76 per cent (\$57.536 billion) of total net collections in 2015–16: Commissioner of Taxation, *Annual Report 2015–16* (2016) p 39; see also, Australian Bureau of Statistics, *5506.0 Taxation Revenue, Australia* (2016).

² The ATO issued over 500,000 GST refunds in 2015–16, totalling \$54.169 billion: above n 1.

³ Section 356-5 of Schedule 1 to the *Taxation Administration Act 1953*.

⁴ *Commissioner of Taxation v Multiflex Pty Ltd* [2011] FCAFC 142.

⁵ Section 8AAZLGA of the *Taxation Administration Act 1953*.

TERMS OF REFERENCE

The IGT review into GST Refunds will focus on the GST refund verification process and in particular:

1. *its accuracy in detecting incorrect or fraudulent claims;*
2. *engagement with affected taxpayers and their representatives throughout the process including timely notification of the retention, the reasons for it and rights of review as well as the appropriateness of any information requests and effectiveness of resolution mechanisms;*
3. *its interaction with other ATO compliance processes triggered due to other risks being identified or because the taxpayer is involved in certain industries;*
4. *the time required to conduct verification activities and opportunities to expedite the process through, for example, pro-actively providing information to the ATO; and*
5. *the impact on taxpayers and their representatives when considered against resulting adjustments, as well as the ATO's endeavours to minimise these impacts.*

SUBMISSIONS

The IGT invites you to make submission to this review. Please outline your experiences in dealing with the ATO together with any opportunities for improvement.

The terms of reference outlined above are designed to assist in structuring your submission. To further assist you in this regard we have included a list of questions below that may be helpful in formulating your submission.

Your experience in dealing with the ATO

1. With respect to the retention of your GST refund:
 - a. when and how were you first informed that your refund would be retained;
 - b. how did the ATO engage with you or your representative throughout this process;
 - c. were you provided with reasons for the retention of your refund and any proposed adjustments;
 - d. how you were made aware of your rights of review in relation to the retention, as well as any adjustments;
 - e. what actions did you take or information did you provide to assist the ATO in its verification; and
 - f. overall, how long did the ATO take to issue your refund?
2. Did the retention of your GST refund have an impact on you and/or your business? Please explain your answer.

3. Was interest paid for any time your GST refund was retained? If so, did you consider this amount reasonable? If not, what do you consider reasonable time-value for the money retained?
4. If you are a tax practitioner, has the retention of GST refunds had an impact on you or your practice in assisting your clients? Please explain your answer.

Opportunities for improvement

5. Having regard to the possible risk to government revenue, how could the ATO best prevent GST refunds being issued for incorrect or fraudulent claims while minimising the impact on compliant taxpayers and their representatives?
6. Based on your experience, do you believe there are opportunities for the ATO to improve its approach to GST refund verification? Please explain your views.

CLOSING DATE

The closing date for submissions is 17 May 2017. Submissions can be made by:

Post to: Inspector-General of Taxation
 GPO Box 551
 SYDNEY NSW 2001

Email to: gstrefunds@igt.gov.au

CONFIDENTIALITY

Submissions provided to the IGT are maintained in strict confidence (unless you specify otherwise). This means that the identity of the taxpayer, the identity of the adviser and any information contained in such submissions will not be made available to any other person, including the ATO. Section 37 of the *Inspector-General of Taxation Act 2003* safeguards the confidentiality and secrecy of such information provided to the IGT – for example, the IGT cannot disclose the information as a result of a Freedom of Information (FOI) request, or as a result of a court order generally. Furthermore, if such information is the subject of client legal privilege (also referred to as legal professional privilege), disclosing that information to the IGT will **not** result in a waiver of that privilege.