



Second Commissioner of Taxation

Mr Ali Noroozi
Inspector-General of Taxation
GPO Box 551
SYDNEY NSW 2001

Dear Ali

Review into GST Refunds

Thank you for the opportunity to comment on your final draft report for your *Review into GST Refunds*.

As the report recognises, the vast majority of GST refunds are processed and released without being stopped for verification. We appreciate your acknowledgement in the report that the administration of the GST refund process is operating efficiently and of the work that is currently in progress to:

- further improve our risk assessment tools, and
- to streamline our processes and procedures associated with verifying GST refunds.

More specifically, your review has provided the opportunity to look at improvements to:

- the framework of continuous improvement for our risk assessment tools,
- our engagement with taxpayers, and
- how we consider and document our decisions to retain GST refunds.

We agree with 8 of the recommendations in the report, disagree with 5 of the recommendations and there is 1 recommendation which is a matter for government. In general terms, where we have disagreed with recommendations, this is due to practicalities associated with their implementation. Our detailed response to the recommendations is contained in Annexure 1.

We consider it is important to make some observations relating to that part of the report (Chapter 6) that deals with discrete aspects of the GST refund verification process within the precious metals industry. As you are aware, this is just one of the strategies we have employed to address the GST non-compliance that exists within that industry, and we acknowledge that the broader risk issues in this regard are being explored in the IGT's *Review into the ATO's Fraud Control Management*.

The ATO's view is that compliant taxpayers in the precious metals industry have not been impacted by the retention of refunds.

Many of the taxpayers involved in having their refunds retained have either present directors or associated entities previously involved in compliance action that relates to \$282 Million in primary tax assessments issued to date. Further, many of these entities have been liquidated by these directors leaving considerable debt to the Commonwealth.

The remaining taxpayers, while not subject to prior compliance action, have suspect supply chains and a number of missing traders resulting in significant risk to revenue. We note that the IGT has reviewed complaints by taxpayers who have not previously been subject to compliance action, and made no adverse findings in relation to these complaints.

Finally, I would like to acknowledge the efforts of all involved in undertaking this review.

If you require further information on our response, please contact Phillip Jones on [REDACTED].

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Neil Olesen'.

Neil Olesen
Second Commissioner
13 March 2018

IGT Review into GST Refunds – Annexure 1

Potential Recommendation 3.1

The IGT recommends that the ATO:

(a) develop a formal framework of continuous improvement for its risk assessment tools which includes:

- i) periodic reviews with clear milestones;
- ii) ensuring that case officers are consistent and accurate in reporting case related data and other pertinent matters in all relevant cases;
- iii) improving intelligence capture through greater engagement between risk managers and operational teams across different business lines such as Indirect Tax and Smarter Data;
- iv) developing a suite of performance reports for use within the Indirect Tax business line and ATO Executive Committees; and

(b) prioritise the deployment of the On-Line BAS Check tool.

ATO response

(a) Agree

The ATO agrees that a robust, well documented framework to continually review and assess our risk assessment tools is important for continuous improvement.

In relation to subparagraph (i) of this recommendation, the ATO already undertakes regular reviews of its risk assessment models and as acknowledged in the report, there has been continuous improvement in the ATO's ability to detect incorrect refund Business Activity Statements (BAS) while reducing the number of taxpayers impacted.

In relation to subparagraph (ii) of this recommendation, the ATO has recently updated its Case Data Capture (CDC) form in consultation with the Risk Manager and Smarter Data to ensure relevant information from compliance cases is more accurately captured. The CDC form has been structured so that the information submitted by case officers is consistent and accurate, focusing on reasons for the decision and taxpayer behaviours via relevant drop down options.

In relation to subparagraph (iii) of this recommendation, the ATO will look at ways to further improve intelligence gathering and greater engagement between risk managers, Smarter Data and operational staff.

(b) Agree

The Online BAS Check (OBC) has been endorsed by the Strategy and Integration Committee. The project is in Delivery Planning and is due for release in the 2018/19 year.

Potential Recommendation 4.1

The IGT recommends that, in respect of pre-issue GST refund verification, the ATO:

- (a) consolidate and streamline its guidance to its officers with an emphasis on adhering to the statutory requirements;
- (b) ensure that interactions between its officers and taxpayers as well as its officers' consideration of statutory requirements are accurately and consistently documented and that team leaders use such documentation to assess the performance of officers and the taxpayer experience;
- (c) provide a mechanism to automatically alert its officers and team leaders to notify taxpayers of the retention of their refunds within the statutory period; and
- (d) improve its communication with taxpayers by ensuring that they are provided with sufficient reasons for the retention of their refunds and the other information provided to them is accurate and up to date.

ATO response

(a) Agree

The report acknowledged that work was already underway to streamline our processes and procedures. This was progressed during the course of this review and has now been finalised. The ATO is committed to continuous review and improvement of our guidance for staff.

(b) Agree

The ATO provide clear guidance for its staff on the statutory requirements through guidance in *PSLA 20012/6 Exercise of Commissioner's discretion to retain a refund* and in internal Frequently Ask Questions document. The Indirect Tax BAS Engagement (BASE) branch, which undertakes the vast majority of verification activities on GST refunds, is currently reviewing its documentation of the 10 statutory factors in making decisions to retain a refund.

(c) Disagree

Activity statements are processed through the Instalment Processing System (IPS). This system does not allow for automatic alerts to notify officers or Team Leaders whether retention of a refund has been made within the statutory period in s8AAZLGA of the *Taxation Administration Act 1953* (TAA 1953).

The ATO is planning to move the processing of activity statements to the Integrated Core Processing (ICP) system, which may provide opportunities to build alerts. In the meantime the ATO has a number of reporting options that can be used to ensure staff are making appropriate decisions with the statutory requirements.

(d) Agree

We are currently reviewing all correspondence to ensure that communication with taxpayers is clear and easily understood. The 'retention of refund' letter used in BASE will provide reasons why a refund is being held for further verification.

Potential Recommendation 4.2

The IGT recommends that, in undertaking pre-issue GST refund verification, the ATO:

- (a) periodically review its information requests templates with input from stakeholders, including industry experts, to ensure that those requests are appropriately focused on addressing the risks identified; and
- (b) consider allowing taxpayers and tax practitioners to pre-emptively provide information online to assist in the timeliness of the verification process.

ATO response

(a) Agree

We are committed to ensuring information requests are tailored according to the risk identified through our risk assessment tools and client profiling. We will also review our profile questionnaires using industry experts to ensure the questions are appropriately focused.

(b) Disagree

Taxpayers and Tax Agents who lodge electronically already have the option to supply supporting information through the various portals. The ATO believes that the current options are appropriate considering the very small number of refund activity statements stopped for verification activities. Allowing taxpayers to send in information may result in additional compliance costs where their refund is not subject to verification activities.

Potential Recommendation 4.3

The IGT recommends that the ATO:

- (a) make effective use of its automated system to calculate the 60-day period within which taxpayers may lodge an objection and inform them accordingly; and
- (b) provide information to assist taxpayers in lodging such objections effectively.

ATO response

(a) Agree

The ATO currently has automated systems available for staff to calculate when taxpayers' rights to object are triggered taking into account any extensions to the 60 day statutory period associated with information requests. The ATO will reinforce with its operational staff to use the available system in those cases where objection rights are likely to be triggered.

(b) Disagree

The ATO currently provides information to taxpayers to advise them of their objection rights and how to lodge an objection. This information is clearly communicated in written correspondence when the taxpayer's objection rights are triggered. The ATO also provides information on our website, '*How to object to a decision*'.

The ATO considers the information that is currently made available to taxpayers is sufficient to assist them in lodging an objection.

Potential Recommendation 5.1

The IGT recommends that the ATO:

- (a) improve access to and raise awareness of taxpayers, tax practitioners and its own officers about assistance available in serious financial hardship cases including full or partial release of GST refunds;
- (b) ensure that the appropriate consideration of the financial impact on taxpayers, as required by paragraph 8AAZLGA(2)(c) of the TAA 1953, and serious financial hardship claims are carefully documented; and
- (c) develop an automated system for the partial release of GST refunds.

ATO response

(a) Disagree

The ATO is committed to ensure taxpayers, their agents and staff, have access to and are aware of, the assistance that can be provided in situations where a taxpayer is suffering from serious financial hardship.

The ATO currently provides guidance in *PSLA 20012/6 Exercise of Commissioner's discretion to retain a refund* to taxpayers, their representatives and ATO staff in considering the impact of retaining a refund on the taxpayer's financial position. However, the impact on the taxpayer's financial position is one of 10 factors that need to be considered when making a decision to retain a refund.

The ATO website also has information on 'serious financial hardship' which includes what is considered to be serious hardship. Further information on serious financial hardship can also be found in *PS LA 2011/17 Debt relief, waiver and write off*.

(b) Agree

ATO case officers are required to document their decision to retain a refund after consideration of all 10 statutory factors in s8AAZLGA(2)(c) of the TAA 1953. We are currently developing additional training for staff to reinforce that all factors are considered and carefully documented, particularly in relation to the impact of retaining the refund on the client's financial position.

(c) Disagree

Due to system limitations, it is not possible to automate partial release of refunds. The ATO has the ability to partially release refunds via a manual process which is considered adequate considering the very limited situations where a partial release of refund is required.

The ATO can only retain a refund until it would be no longer reasonable to verify the information or has sufficient information to make an assessment.

Potential Recommendation 6.1

The IGT recommends that the Government consider amending section 8AAZLGA of TAA 1953 to allow the Commissioner, in appropriate cases, to effectively investigate and address risks of fraud the seriousness of which has been established by means such as obtaining a Federal Court order.

ATO response

Matter for Government