

ALERT

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Amendment to tax legislation may affect GST refunds

In *Multiflex Pty Ltd v The Commissioner of Taxation*, the Commissioner refused to honour GST refunds to Multiflex due to a suspicion that Multiflex was making fraudulent GST refund claims.

Multiflex argued that the Commissioner was compelled to pay the refund within a reasonable time. The Commissioner asserted that he was entitled to undertake necessary investigations before honouring the refund and that in doing so he was not in breach of his obligations to Multiflex.

The Federal Court held that the Commissioner's duty was to make the refund and not to undertake investigations before making the refund. As such, the Commissioner had no legislative basis for delaying a refund, even if fraud was suspected. This was upheld by the Full Federal Court and the Commissioner was denied leave for appeal to the High Court of Australia.

Parliament's response

In response to this case, the Commonwealth Government introduced a bill that sought to strike a balance between the taxpayer's right to a prompt refund and the Commissioner's responsibility to investigate fraudulent claims. The bill, which received Royal Assent on 27 June

2012, arms the Commissioner with discretion to retain GST refunds in certain circumstances.

The Commissioner's power to retain refunds

In deciding whether or not to exercise his powers to retain the refund, the Commissioner must consider the following:

- the likelihood that the information provided by the taxpayer seeking the refund is inaccurate;
- the likelihood that this information was affected by fraud, evasion or intentional or reckless disregard of a taxation law;
- the impact that retaining the refund will have on the taxpayer's finances;
- whether the amount is necessary for the protection of the revenue;
- the complexity involved in verifying the information;
- the extent to which the notified information is consistent with information that the entity previously provided;
- any other relevant matter.



ALERT

The Commissioner must notify the taxpayer within 30 days of the refund claim if he intends to retain a refund and may hold it until the earlier of:

- the Commissioner being satisfied that he does not require verification of the information;
- the Commissioner amending the refund amount; or
- the passing of 60 days from the date the taxpayer is notified of the refund being retained.

Businesses beware

If you operate a business and lodge Business Activity Statements then this may affect you, especially if you rely on GST refunds as a means of cash flow.

If the Commissioner notifies you that he will retain the refund, it is important that you meet any request for information promptly, because the 60 day period that he may hold the refund may be extended by the amount of time you take to provide any information.

There is a right to appeal if you believe that the Commissioner has incorrectly decided to retain your refund, and the Commissioner must notify you of these rights within 7 days of issuing you with the notice.

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