

## Inspector-General to review the ATO's GST refund discretion

As part of its 2017 work program, the office of the Inspector-General of Taxation (IGT) has announced that it is going to examine the ATO's administration of an existing provision that allows it to hold on to GST refunds if it believes additional verification is required.

The ability for the ATO to retain a GST refund if it believes further verification is necessary does however come with certain conditions. It must of course notify the entity involved, but must also have regard to certain factors, such as the impact on the taxpayer's financial position or the likelihood there is fraud or evasion, intentional disregard or recklessness with regard to tax law.

Timeframes written into the law as it stands provides that the ATO can only retain a refund until the time it would no longer seem to be reasonable to ask for verification of information. It also cannot hold on to a refund (beyond the notification period) if it fails to actually notify the taxpayer that this is a possibility, nor if the relevant tax assessment has been amended (an amendment ends the retention period allowed).

In announcing its work program for this year, the IGT says that complaints data as well as submissions made for the 2017 program had indicated that the ATO's administration of the relevant provision in the tax act (section 8AAZLGA) may, in some instances, "result in inappropriate and unfair delays in GST refunds being issued".

The IGT says its review will examine the ATO's approaches in using this provision, the impact it has in taxpayers, and the need for any administrative or policy improvements.

As well as examining the withholding of GST refunds, it has also flagged that it will review the pay-as-you-go instalments system. This has been initiated in the face of complaints that the system is generating confusion and misunderstanding for certain taxpayers who are required to make payments.

In doing so, the IGT will also examine concerns raised by tax practitioners on issues affecting their industry. "The IGT will consult extensively with the tax profession, the ATO and the TPB to identify opportunities to improve the tax system as a whole."



**Source:** Breaking tax and super news - Tax & Super Australia. (2017). Inspector-General to review the ATO's GST refund discretion. [online] Available at: <http://taxandsupernewsroom.com.au/index.php/2017/01/31/inspector-general-review-atos-gst-refund-discretion/> [Accessed 3 Feb. 2017].

## Tax and the sharing economy

The concept of a "sharing economy" has been around for long enough now to have had a very real impact on how our financial transactions are conducted. As far as the treatment of the taxation element of these transactions, the ATO has found it necessary to provide guidance. It views the sharing economy as a system that "connects buyers (users) and sellers (providers) through a facilitator who usually operates an app or a website".

Some popular sharing economy services in Australia as those that include:

- Renting out a room or a whole house or unit for a short-time basis
- Providing taxi travel services ("ride-sourcing") for a fare
- Providing personal services, such as creative or professional services like graphic design, creating websites, or odd jobs like deliveries and furniture assembly
- Renting out a car parking space.

The ATO says taxpayers who are involved with the sharing economy may need to consider:

- If they are carrying on an enterprise
  - If they need an ABN
  - If they need to register for GST and lodge activity statements
- If the price of the goods or services provided includes GST
- If and when they need to provide tax invoices for sales
- If they need to declare this income in an income tax return
- What GST credits and income tax deductions can be claimed for expenses related to earning income



The ATO says the GST registration threshold does not apply to ride-sourcing services. It also considers that providing such a service would mean the taxpayer is running a small business as a sole trader, so they'll need to declare all the income and claim the expenses related to providing the services.

If a taxpayer is selling goods or performing a service as a spare-time activity or pastime, then the ATO states that it will view these activities as partaking in a hobby that does not have tax or reporting obligations.

There are, however, different tax obligations that can arise, depending on what goods or services a taxpayer is providing (the links below will take you to an ATO page for more guidance). Common sharing economy services include: renting out a room or all of your house or unit or providing goods or services.

**Source:** Breaking tax and super news - Tax & Super Australia. (2017). Tax and the sharing economy. [online] Available at: <http://taxandsupernewsroom.com.au/index.php/2017/02/01/tax-sharing-economy/> [Accessed 3 Feb. 2017].



## ***Tax Aspects of Buying - Selling Business Knowledge***

Where a business is owned by an entity other than an individual or partnership, you will usually have a choice between buying or selling the assets of the business or, alternatively, buying or selling the interests in the entity that owns the business. However, in either way you could apply small business CGT concessions to give you the most favourable tax results.

### **BUY AND SELL THE INTERESTS IN THE BUSINESS ENTITY**

Stamp duty	Some states have already abolished duty imposed on transfer of marketable securities. However, you are advised to check the stamp duty rules that apply in the relevant state and territory in Australia.
Capital gains tax	Both shares in a company and interests in a trust would be CGT assets and the disposal of those assets would give rise to a CGT Event (usually CGT Event A1).
Some special considerations	Disposal of shares held by a non-resident will typically only result in a CGT liability for the non-resident if the shares are seen as taxable Australian property at the time of the CGT event.
Tax losses	Continuity of ownership test (COT) failed, but may satisfy Same Business Test (SBT), which is more subjective compared to COT.
Legal fees	Legal fees incurred in relation to share dealings or dealings involving interests in trusts would be treated as an outgoing of a capital nature, thus preventing them from being deductible against ordinary income.
Goods and services tax (GST)	Supplies of interests in a company or trust would generally be seen as financial supplies that are input taxed under the GST Act. This means that the seller will not need to account for any GST on the consideration paid for those interests.
Other considerations	As a buyer, there are several commercial risks associated with acquiring interests in the entity rather than the assets of the business because of unknown or contingent liabilities such as unpaid Workers compensation claims, unpaid Superannuation guarantee charges and public liability claims.

From a pure commercial point of view, this option poses fewer risks for the buyer, but there are more complex tax issues to be considered by both buyers and sellers.

### **BUY AND SELL ASSETS OF THE BUSINESS**

Trading Stock	A disposal of trading stock as part of the sale of a business will be treated as a disposal outside the normal course of business, and s 70-90 requires the seller to include the market value of the trading stock in their assessable income.
Accounts receivable	When buying a business that includes accounts receivable, it is advisable to have some sort of recourse agreement in relation to bad debts. The reason for this is that in all but a very small number of cases, bad debts cannot be deducted by the purchaser and should revert to the seller.
Work in progress	Work in progress of a business is separate and distinct from the goodwill of the business. This is true whether the work in progress has been completed to a stage at which a recoverable debt has arisen in relation to it, or whether it is incomplete and there is no legal right to charge the client. Therefore, where an amount is paid for the value of work in progress, that payment will generally be included in the seller's assessable income as ordinary income rather than as a capital gain.
Depreciating assets	The disposal of a depreciating asset is treated as a balancing adjustment event under Subdivision 40-D of the ITAA97. Balancing adjustment events require the holder of the depreciating asset to which the event relates to make a balancing adjustment: in some cases, this can result in assessable income for the seller.
Goodwill	Goodwill has been described as: "The benefit and advantage of good name, reputation, and connection of a business. It is the attractive force which brings in custom..." - Pre-CGT goodwill - Business names and logos: Where a business disposes of its name, trade mark or logo, amounts attributed to these items would simply be lumped together as 'goodwill'.
Restrictive covenants	In some cases, it may be prudent to enter into a restrictive covenant with the seller to stop them from competing with the newly-acquired business. Payments made in consequence of a restrictive covenant are generally treated as being an outgoing of capital or of a capital nature, and so are not deductible.
Goods and services tax (GST)	Supplies of business assets by a GST-registered entity would ordinarily be taxable supplies under s 9-5 of the GST Act, and would therefore attract GST.