

## Are you entitled to a GST refund?

*If your customers prepay you for your services and are not entitled to a refund if they ultimately don't take up the service, then a new court case opens the way for a potential GST benefit.*

A large number of businesses, particularly those in the services sector, receive prepayments from customers for future services - in some cases these are deposits and in others, part or full payment for the anticipated service. Often the contract terms provide that there is no refund of the prepayment if, ultimately, the customer does not take up the service.

If the customer does not ultimately take up the service, what is the GST position on the prepayment?

Historically, much of the thinking was that despite the fact that the service was not ultimately supplied, the prepayment would still be in respect of a taxable supply and the vendor would account to the ATO for 1/11<sup>th</sup> of the sale price. Certainly this is the ATO view.

A recent case involving Qantas however has raised doubts over this treatment. The case related to non-cancellable pre-paid airfares where the customer did not turn up for the flight. In this case, they were not entitled to a refund of the fare so effectively Qantas received the consideration but never made a supply to the customer. Qantas applied for a refund of the GST from the ATO on the basis that no taxable supply had been made. The ATO disagreed with the position and the matter ended up in court.

In September this year, the Full Federal Court found in favour of Qantas. The court ruled that the supply for which the customer made the payment was for air carriage – the seat on the plane to be taken to their destination. Where this did not occur, there was no taxable supply, and hence no GST liability.

Applying these principles to other situations you need to look closely at the arrangements you have entered into with your customers and also the agreements or contracts covering the pre-payments they make to you. Where these agreements are that the service for which the prepayment is made is non-cancellable and there is no right of refund, and if subsequently the customer does not take up the service and the prepayment is forfeited, you may have a similar situation to Qantas. If there has been no taxable supply then perhaps no GST is payable.

There are a lot of scenarios and supplies to which this could apply. Before you get too excited it is worth noting that the Commissioner has applied for leave to appeal the decision to the High Court. So, there might be more to come on this.

In the meantime, and if you accept prepayments from customers, it might be worth having a look at your own facts and see how it lines up with the Qantas decision. You should take professional advice on this – the devil will be in the detail. We can review your position with you. Keep in mind too that there is a time limit on seeking GST refunds. You have 4 years from the relevant tax period. After that, even if you are entitled to a refund, you are out of time.

It makes sense to see whether you might have an entitlement, and then based on the advice you receive, give notice to the Commissioner of an intention to seek a GST refund. It is unlikely that the ATO will act on any requests until the legal position is finally resolved. Once they are on notice though, your position is protected.

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### Quote of the month

“Commitment is an act, not a word.” *Jean-Paul Sartre*

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### ***‘As seen on TV’***

**TV Appearance** - Property Tax Specialists’ Shukri Barbara was recently interviewed on Business show ‘Your Money Your Call’ by host Chris Gray of Empire on Sky News on Friday 3<sup>rd</sup> June 2011. To see the interview [click here](#)

<http://www.youtube.com/playlist?list=PL38076F7578DB0014&hl=en&gl=US>

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### ***Avoid delays - Lodge early – Tax Refunds Sooner***

Most property investors are negatively geared. This means that where they have not requested a variation of their PAYG deduction from their employer, they get refunds on lodging their tax returns at the end of the financial year.

ATO is now processing lodgement of returns very fast, particularly where there is a refund and the refund is being deposited electronically into the taxpayer’s bank account. Some refund assessments are issuing within 7 working days.

**Tax Tip** - To get refunds lodge your tax return soon. *Property Tax Specialists* can help facilitate the process and minimise time and cost with their checklists and templates. Contact Shukri on [Shukri@propertytaxspecialists.com.au](mailto:Shukri@propertytaxspecialists.com.au)

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***Where are You Now? Where would you like to be? Call if you want to chat ...*** ***We look forward to being of Service***

Please do not hesitate to contact us if you would like to review & discuss your current property & tax situation, your asset protection strategy, structuring your next investment property, planning to legally minimise your tax position or just to prepare your next tax return.

We look forward to being of service. We also look forward to your referrals.

To improve our service we welcome all constructive comments on this newsletter and other materials.

For help contact **Shukri Barbara** at Property Tax Specialists at [Shukri@propertytaxspecialists.com.au](mailto:Shukri@propertytaxspecialists.com.au)

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## Checklists and Templates

To make the compilation & reporting task for 2011 tax returns easier, clients of **Property Tax Specialists** received checklists and templates to facilitate the process ... **saving them time and money** ... the 'write' way is **having clear documentation**. ATO way means time/money wastage with audit investigation.

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## Disclaimer

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

Acknowledgement - parts of this newsletter have been taken from KnowledgeShop Pty Ltd client newsletters. Barbara & co – Property Tax Specialists is a member of the Knowledge Shop and Hayes Knight Network

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Kind Regards  
Shukri Barbara

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