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Public Ruling Duties Act:

SELF ASSESSORS, THE *DUTIES ACT 2001* AND THE *TAXATION ADMINISTRATION ACT* 2001

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. This public ruling explains the rights and obligations under the *Duties Act 2001* (Duties Act) and the *Taxation Administration Act 2001* (Administration Act) of a self assessor who is required to lodge transaction statements with the Commissioner.
2. The Duties Act allows the Commissioner to register a person as a self assessor:
 - (a) under Chapter 12, Part 2 of the Duties Act, on the basis that that person is a party to particular instruments or transactions (a party self assessor)
 - (b) under Chapter 12, Part 3 of the Duties Act, on the basis that that person is an agent for parties to certain dutiable instruments and transactions (an agent self assessor).
3. For this public ruling, 'self assessor' means a party self assessor or an agent self assessor.
4. The notice of registration given by the Commissioner to a self assessor may require the self assessor to lodge with the Commissioner periodic returns incorporating multiple transactions (each, a return) and/or a separate statement for each transaction (each, a transaction statement).¹
5. The lodgement, payment and assessment obligations of a self assessor in relation to a particular instrument or transaction differ depending on whether the self assessor is required to lodge a return or a transaction statement with the Commissioner in respect of that instrument or transaction.

¹ See s.445(2)(b) of the Duties Act for party self assessors, and s.452(2)(b) of the Duties Act for agent self assessors.

6. A reference in this public ruling to an instrument includes a statement in an approved form, which is required by a provision of the Duties Act where a transaction is not effected or evidenced by an instrument; for example, a transfer duty statement required under s.18 of the Duties Act.

Ruling and explanation

Lodgement and payment

7. A self assessor must:
- (a) lodge a transaction statement, and documents required to accompany the statement, as required by the notice of the self assessor's registration, by the following date:
 - (i) for a party self assessor—30 days after the date on which liability for duty on the instrument or transaction arises²
 - (ii) for an agent self assessor—the later of 30 days after the date on which liability for duty on the instrument or transaction arises, or 7 days after the self assessor receives all instruments and other documents relating to the instrument or transaction³
 - (b) pay to the Commissioner any duty, assessed interest⁴ and penalty tax⁵ (collectively, assessed tax) received by the self assessor by the due date, being 14 days after the transaction statement for the instrument or transaction is lodged⁶; or if the amount is received after the due date, then immediately after receiving the amount⁷
 - (c) stamp the instrument or electronic lodgement network (ELN) transaction document⁸ to which the transaction statement relates by endorsing it as required⁹:
 - (i) for a party self assessor—not later than when the assessed tax on the instrument or transaction is paid to the Commissioner¹⁰
 - (ii) for an agent self assessor who receives the assessed tax on the instrument or transaction—not later than when the assessed tax is paid by the self assessor to the Commissioner¹¹

² Section 455A(2) of the Duties Act

³ Section 455A(3) of the Duties Act. See s.471E(1)(a) of the Duties Act for when an agent self assessor 'receives' instruments and documents for the purposes of s.455A(3).

⁴ See s.54(4) of the Administration Act

⁵ See s.58(1) of the Administration Act

⁶ Section 30(1)(b) of the Administration Act

⁷ Section 35(b) of the Administration Act

⁸ See definition of 'ELN transaction document' in s.156D of the Duties Act.

⁹ Section 455A(4) of the Duties Act

¹⁰ Section 455A(1)(b)(i) of the Duties Act

¹¹ Section 455A(1)(b)(ii)(A) of the Duties Act

- (iii) for another agent self assessor—within one day after the self assessor becomes aware that the assessed tax on the instrument has been paid to the Commissioner.¹²
- 8. An agent self assessor is not personally liable for assessed tax payable on an instrument or transaction recorded in a transaction statement, unless the self assessor is a party to the instrument or transaction.
- 9. Failure to comply with the requirements outlined in paragraph 7 is an offence.¹³ As an alternative to an offence, a penalty may be applied.¹⁴ Information about offences and penalties is provided in paragraphs 39–47 of this public ruling.

Assessment

- 10. When a transaction statement is lodged, an assessment is taken to have been made by the Commissioner for the taxpayer (as stated in the statement), for the amount that (based on the information stated in the statement), is the taxpayer's liability for tax.¹⁵
- 11. The transaction statement is taken to be an assessment notice for each assessment given to the taxpayer on the date of lodgement of the statement.¹⁶ Consequently, the rights of objection and appeal in Part 6 of the Administration Act apply.¹⁷
- 12. Payments received by the Commissioner are applied against costs, unpaid tax interest (UTI), penalty tax and duty in the order set out in the Administration Act.¹⁸
- 13. Subject to paragraph 14, on written application from the self assessor, the Commissioner may make an assessment¹⁹ despite the fact that a taxpayer's liability for tax is required or permitted to be made by self assessment under a revenue law.²⁰ The Commissioner will consider applications on a case-by-case basis.
- 14. Commissioner assessment will not be contemplated unless there is material uncertainty in the law or the application of the law to the particular facts. This condition will not be satisfied if any of the following criteria apply:
 - (a) private ruling is available under Public Ruling DA000.1—*Private rulings on unexecuted instruments or proposed transactions*
 - (b) the Commissioner has published relevant material on point

¹² Section 455A(1)(b)(ii)(B) of the Duties Act

¹³ Section 455A(1) of the Duties Act; s.35 of the Administration Act

¹⁴ Section 488 of the Duties Act

¹⁵ Sections 14A(a), (b) and (c) of the Administration Act

¹⁶ Sections 14A(d) and (e) of the Administration Act

¹⁷ For more information regarding a taxpayer's objection and appeal rights, refer to Public Ruling TAA000.1.

¹⁸ Section 42 of the Administration Act

¹⁹ Note that applications for Commissioner assessment will not be entertained unless a liability for duty has arisen. See Public Ruling DA000.1—*Private rulings on unexecuted instruments or proposed transactions* for the circumstances in which the Commissioner will provide a private ruling on unexecuted instruments or proposed transactions.

²⁰ Section 11(2) of the Administration Act

- (c) the self assessor has not taken all reasonable steps to resolve the material uncertainty themselves, before seeking Commissioner assessment, including obtaining advice from third parties with relevant expertise.
15. The self assessor's application must specify:
- (a) the material uncertainty in the law or application of the law to the particular facts, supported by any relevant evidence, statutory provisions or case law
 - (b) the steps the self assessor has taken to seek to resolve the relevant uncertainty prior to seeking Commissioner assessment, including but not limited to:
 - (i) consideration of the availability of private ruling
 - (ii) any Commissioner-published material considered, and the reasons why it was not considered to resolve the relevant uncertainty
 - (iii) research undertaken.
16. The self assessor's application must also include all instruments and other documents in relation to the transaction for which Commissioner assessment is sought, to which a relevant lodgement requirement would apply if Chapter 12A²¹ of the Duties Act did not apply.
17. A decision by the Commissioner to not make an assessment is a non-reviewable decision.²²

Stamping requirements—instruments and ELN transaction documents

18. An instrument or ELN transaction document is properly stamped if it is stamped in accordance with s.455A(1)(b) of the Duties Act.²³
19. The self assessor must stamp the instrument or ELN transaction document to which a transaction statement relates by endorsing it as follows²⁴:
- (a) for an instrument or ELN transaction document for which duty is imposed:
 - (i) a reference to the Act's short title (i.e. *Duties Act 2001*)
 - (ii) the self assessor's client number
 - (iii) the transaction number²⁵ for the instrument or ELN transaction document
 - (iv) the amount of any assessed tax (broken into components of duty, assessed interest and penalty tax) paid on the instrument or ELN transaction document
 - (v) the date the endorsement is made

²¹ Chapter 12A – Provisions for parties to self assessable instruments or transactions

²² Section 11(3) of the Administration Act

²³ Section 491(1) and (1A) of the Duties Act. For when a self assessor is taken to have stamped an ELN transaction document, see s.455A(7) of the Duties Act.

²⁴ Section 455A(4) of the Duties Act

²⁵ See definition of 'transaction number' in Schedule 6 of the Duties Act.

- (vi) the signature of the individual completing the endorsement where applicable²⁶
 - (vii) other matters stated in the self assessor's notice of registration
- (b) for any other instrument—in the way stated in the self assessor's notice of registration.
20. A self assessor must not endorse an instrument unless:
- (a) for an agent self assessor—the assessed tax has either been received by the self assessor or paid to the Commissioner
 - (b) for a party self assessor:
 - (i) who is a financial institution, where the instrument is a mortgage under which the self assessor is the mortgagee—the assessed tax has been received by the self assessor
 - (ii) in any other case—the assessed tax has been paid to the Commissioner.²⁷
21. The stamping of an instrument by a self assessor in circumstances other than those outlined in paragraph 20 is an offence.²⁸ As an alternative to an offence, a penalty may be applied.²⁹ Information about offences and penalties is provided in paragraphs 39–47 of this public ruling.
22. A self assessor must not endorse an ELN transaction document for an ELN transfer³⁰ or ELN lodgement³¹ on the basis that s.22(2) of the Duties Act applies to the ELN transfer or ELN lodgement unless the duty amount for the agreement for the transfer of dutiable property has been:
- (a) for a party self assessor—paid to the Commissioner
 - (b) for an agent self assessor—received by the self assessor or paid to the Commissioner.³²
23. A self assessor must not endorse an ELN transaction document for an ELN transfer on the basis that s.22(2A) of the Duties Act applies to the ELN transfer unless a payment commitment³³ has been made for the relevant transfer agreement.³⁴
24. The stamping of an instrument by a self assessor in circumstances other than those outlined in paragraphs 22 and 23 is an offence; however, a self assessor does not commit an offence where the self assessor endorses an ELN transaction document for an ELN transfer or ELN lodgement and either:

²⁶ Subparagraph (vi) does not apply to an ELN transaction document—see s.455A(5) of the Duties Act.

²⁷ Section 480 of the Duties Act

²⁸ Section 480 of the Duties Act

²⁹ Section 488 of the Duties Act

³⁰ See definition of 'ELN transfer' in s.156D of the Duties Act.

³¹ See definition of 'ELN lodgement' in s.156D of the Duties Act.

³² Section 480A(1) of the Duties Act

³³ Section 156N of the Duties Act

³⁴ Section 480A(2) of the Duties Act

- (a) for an ELN transfer—the ELN transfer becomes an incomplete ELN transfer as defined in Chapter 2, Part 15 of the Duties Act³⁵ or
 - (b) for an ELN lodgement—the ELN lodgement becomes an incomplete ELN lodgement as defined in Chapter 2, Part 15 of the Duties Act.
25. As an alternative to an offence, a penalty may be applied.³⁶ Information about offences and penalties is provided in paragraphs 39–47 of this public ruling.
26. When a person (the endorser) who is a self assessor, or an officer or employee of a self assessor, endorses an instrument or ELN transaction document³⁷:
- (a) the endorser must not incorrectly state the self assessor’s client number or transaction number on the instrument or ELN transaction document
 - (b) the endorser must not incorrectly state the amount of duty, assessed interest or penalty tax paid on the instrument or ELN transaction document
 - (c) the endorsement must not contain other information that the endorser knows, or should reasonably know, is false or misleading in a material particular
 - (d) the endorser must not obscure all or part of the endorsement or otherwise make all or part of the endorsement illegible.
27. Failure to comply with the requirements set out in paragraph 26 is an offence.³⁸ As an alternative to an offence, a penalty may be applied.³⁹ Information about offences and penalties is provided in paragraphs 39–47 of this public ruling.
28. The endorser does not commit an offence under paragraph 26(b) in relation to an endorsement made on an ELN transaction document for an ELN transfer only because the endorsement was made on the basis that s.22(2A) of the Duties Act applied to the ELN transfer and when the endorsement was made, the commitment amount⁴⁰ for the payment commitment had not been paid to the Commissioner.⁴¹

UTI

Imposition

29. UTI is simple interest which accrues at the prescribed rate⁴² on any amount of duty which is paid late or underpaid, including due to late lodgement of information necessary to assess liability.⁴³

³⁵ Section 480A(3) of the Duties Act

³⁶ Section 488 of the Duties Act

³⁷ Section 481A of the Duties Act

³⁸ Section 481A of the Duties Act

³⁹ Section 488 of the Duties Act

⁴⁰ Section 156N(1)(b) of the Duties Act

⁴¹ Section 481A(3) of the Duties Act

⁴² Section 8(1) of the Taxation Administration Regulation 2012. The current rate is available from Queensland Treasury (www.treasury.qld.gov.au/osr).

⁴³ See s.54 of the Administration Act.

30. The person or persons liable for the unpaid duty amount will also be liable for any UTI that will accrue on that amount.
31. UTI that has accrued when a transaction statement is lodged must be included in the statement (and will therefore be assessed interest).⁴⁴

Remission

32. The Commissioner may remit all or part of UTI.⁴⁵
33. A self assessor may remit all or part of UTI only if expressly authorised to do so by the notice of registration as a self assessor.

Penalty tax

Imposition

34. Penalty tax is imposed upon the making of a default assessment or a reassessment in certain circumstances.⁴⁶
35. A self assessor can make a reassessment only if expressly authorised to do so by the notice of registration as a self assessor, and the self assessor is satisfied the duty imposed under a self assessment is not correct.⁴⁷
36. Any penalty tax payable in relation to an instrument or transaction recorded in a transaction statement must be included in the statement.

Remission

37. The Commissioner may remit all or part of penalty tax.⁴⁸
38. A self assessor may remit all or part of penalty tax only if expressly authorised to do so by the notice of registration as a self assessor.

Offences relevant to self assessors

39. Failure by a self assessor to comply with any of the requirements in the following provisions is an offence:
 - (a) s.455A(1) of the Duties Act, outlined in paragraph 7(a) and (c) of this public ruling
 - (b) s.35(b) of the Administration Act, outlined in paragraph 7(b) of this public ruling
 - (c) s.480 of the Duties Act, outlined in paragraph 20 of this public ruling
 - (d) s.480A of the Duties Act, outlined in paragraphs 22 and 23 of this public ruling

⁴⁴ Section 54(4) of the Administration Act

⁴⁵ Section 60(1) of the Administration Act

⁴⁶ Section 58 of the Administration Act

⁴⁷ Section 456 of the Duties Act and s.24 of the Administration Act

⁴⁸ Section 60(1) of the Administration Act

- (e) s.481A of the Duties Act, outlined in paragraph 26 of this public ruling.
- 40. Other offences which may have application to self assessors include ss.122 and 123 of the Administration Act dealing with false or misleading documents or information.
- 41. Where a false statement is made in a transaction statement lodged by an agent self assessor, prosecution action will be considered where:
 - (a) the false statement is that of the self assessor or
 - (b) where the false statement was that of the party to the transaction, the self assessor relied on the statement but knew, or should reasonably have known, that it was false.

Examples of Commissioner's sanctions in relation to the making of false statements

Example 1

A self assessor, Mr Z, acts for a purchaser, Mr X, in the purchase of a residence. The purchaser falsely advises the self assessor that he intends to use the residence as his principal residence. The self assessor lodges a transaction statement claiming the home concession for his client. The self assessor does not know that the purchaser actually intends to rent the residence.

Sanction: No prosecution on the self assessor as the false statement is the party's, and the self assessor had no knowledge, or reason to believe, that the statement was false. Action will be taken against the client.

Example 2

A self assessor's spouse, Mrs Z, purchases a residence for investment purposes. The self assessor prepares and lodges a transaction statement claiming the home concession for his spouse.

Sanction: Prosecution of the self assessor, as the self assessor is a party to the false statement.

Example 3

A self assessor acting for a client, who is purchasing an investment property, receives funds for the payment of duty on the purchase. The client does not know that the self assessor lodges a transaction statement claiming a home concession, and the self assessor fraudulently retains the client's funds (i.e. the difference between the normal transfer duty payable and the transfer duty home concession).

Sanction: Prosecution of the self assessor, as the self assessor is directly responsible for the false statement.

Self assessor penalties

- 42. As an alternative to prosecution of the offences referred to in paragraph 39,⁴⁹ the Commissioner may, by notice, impose a penalty (the penalty amount) upon the self assessor in the following circumstances⁵⁰:
 - (a) a self assessor does not lodge a transaction statement in contravention of s.455A(1)(a) of the Duties Act

⁴⁹ Section 489 of the Duties Act

⁵⁰ Section 488 of the Duties Act

- (b) a self assessor contravenes s.455A(1)(b) of the Duties Act in relation to the stamping of an instrument or ELN transaction document
 - (c) a self assessor contravenes s.35(b) of the Administration Act
 - (d) a self assessor contravenes s.480 of the Duties Act in relation to the endorsement of an instrument
 - (e) a self assessor contravenes s.480A of the Duties Act in relation to the endorsement of an ELN transaction document
 - (f) a self assessor contravenes s.481A of the Duties Act in relation to the endorsement of an instrument or ELN transaction document
 - (g) a self assessor lodges a transaction statement containing false or misleading information in contravention of ss.122 or 123 of the Administration Act.
43. The penalty amount imposed will be the greater of:
- (a) not more than 75% of the amount of duty payable under the transaction statement or instrument
 - (b) \$100.00.⁵¹
44. In most cases, where the Commissioner becomes aware of a failure by a self assessor to comply with their obligations (including the late lodgement of transaction statements), the Commissioner will first offer the self assessor reasonable assistance in complying with their obligations instead of proceeding with the imposition of a penalty.
45. Assistance that may be offered in this regard will be provided via the telephone, written correspondence or visits from Office of State Revenue (OSR) staff. It is anticipated that such advice will generally relate to the preparation of transaction statements, use of OSRconnect, stamping of instruments and other similar matters. In some cases, agent self assessors may be referred to public rulings and other publications issued by OSR.
46. Where assistance is provided, an agent self assessor may be notified that their future transaction statements will be closely monitored for a time specified by the Commissioner to ensure that the errors and/or non-compliance do not re-occur. If further non-compliance results during this time, a penalty as described in paragraph 43 may be imposed.
47. If, after such a penalty is imposed, an agent self assessor continues to commit errors and/or does not comply with the Commissioner's requirements, the Commissioner may investigate the matter. The Commissioner may also commence prosecution action.⁵²

Review of decision to impose penalty amount

48. A self assessor who is dissatisfied with the Commissioner's decision to require payment of a penalty amount (the original decision) may apply for a review of that decision.⁵³ The application for review must:

⁵¹ Section 488(2) of the Duties Act

⁵² See s.455A(1) of the Duties Act and/or s.121 of the Administration Act.

⁵³ Section 472(1) of the Duties Act

- (a) be made to the Commissioner within 28 days after the self assessor received the notice of the original decision
 - (b) state fully and in detail the grounds of the review.⁵⁴
49. The Commissioner may extend the time for applying for the review if the Commissioner is satisfied that the self assessor has a reasonable excuse for failing to apply for a review within the 28-day period.⁵⁵
50. The application does not stay the original decision.⁵⁶
51. The Commissioner will make a decision (the Commissioner's review decision) to confirm the original decision or set aside the decision and substitute another decision.⁵⁷
52. A notice of the Commissioner's review decision will be given to the self assessor.⁵⁸ This notice will state:
- (a) the Commissioner's review decision
 - (b) the reasons for the Commissioner's review decision
 - (c) that the self assessor may, within 28 days after receiving the notice⁵⁹, apply to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the Commissioner's review decision
 - (d) how to apply to QCAT.⁶⁰

Service of notices

53. In the event that the Commissioner determines there is an additional amount payable (whether for duty, UTI or penalty tax) on a self assessment, the Commissioner may issue a reassessment or otherwise demand payment of the amount, together with a request to lodge the relevant instrument.
54. Where the self assessment was included in a transaction statement lodged by an agent self assessor, the reassessment or demand in paragraph 53 will issue to the parties to the instrument or transaction via the self assessor.

⁵⁴ Section 472(2) of the Duties Act

⁵⁵ Section 472(3) of the Duties Act

⁵⁶ Section 472(4) of the Duties Act

⁵⁷ Section 473 of the Duties Act

⁵⁸ Section 474 of the Duties Act

⁵⁹ Section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*

⁶⁰ Section 474(2) of the Duties Act; s.157(2) of the *Queensland Civil and Administrative Tribunal Act 2009*

Date of effect

55. This public ruling takes effect from the date of issue.

Mark Jackson
 Commissioner of State Revenue
 Date of issue: 1 October 2020

References

| Public Ruling | Issued | Dates of effect | |
|-----------------------------------|------------------|------------------|----------------------------|
| | | From | To |
| DA000.2.8 | 1 October 2020 | 1 October 2020 | Current |
| DA000.2.7 | 12 November 2018 | 12 November 2018 | Date of issue of DA000.2.8 |
| DA000.2.6 | 11 December 2015 | 11 December 2015 | 11 November 2018 |
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| DA000.2.3 | 12 August 2011 | 1 August 2011 | 30 June 2012 |
| DA000.2.2 | 3 July 2009 | 3 July 2009 | 31 July 2011 |
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