

Office of State Revenue

2009-10

Investigations Program



Queensland Government



Foreword

An important part of our revenue management role is to ensure compliance with Queensland revenue laws.

We use a compliance model that differentiates our response depending on the client's behaviour. That is, we seek to make it easier for those clients who want to comply while using the full force of the law, where appropriate, for those engaged in intentional non-compliance.

Most people who live or do business in Queensland want to do the right thing when it comes to meeting their State tax obligations and receiving their correct entitlements. We support and encourage this voluntary compliance by providing information and education through a range of channels, including readily accessible internet based tools, online learning modules, face-to face training and seminars.

In July 2009 we introduced a major new revenue management system. This system – OSR Connect – supports self assessors by streamlining their electronic return processing and payment options. The system also assists us in monitoring and managing compliance with the revenue laws.

Enhancements to our information technology systems coupled with cross-government partnerships mean that we now capture and compare a broader range of information from a wide variety of national, state and other sources. This capability means that non-compliance with revenue laws will be more readily detected.

The 2009 -10 Investigations Program supports our on-going assessment and verification processes, and assists in the maintenance of a fair and equitable revenue system for all Queenslanders. By encouraging voluntary compliance, we aim to reduce costs and inconvenience for our clients and other stakeholders. However, voluntary compliance strategies must be complemented by comprehensive audit, investigation and enforcement activities.

I would encourage you to read the investigations program and if necessary make further enquiries through our website or contact centre if you are uncertain about your State revenue obligations and entitlements.

A handwritten signature in black ink, appearing to read 'David Smith'. The signature is stylized and fluid, with a large initial 'D' and 'S'.

David Smith
Commissioner of State Revenue

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About the Office of State Revenue

The Office of State Revenue (OSR) is part of Queensland Treasury and is responsible for:

- administration of state taxes (including duties, payroll tax, land tax and gambling taxes)
- administration of the community ambulance cover
- administration of the first home owner grant
- conducting compliance activities (including education, verification/audit, investigation and enforcement activities), and
- providing revenue policy advice and legislative services to the Government.

In 2008-09 we managed approximately \$9.4 billion in revenue, grant and subsidy transactions. Revenue collected is used to fund essential services for Queensland.

Our approach to compliance

The 2009-10 Investigations Program is guided by our Client Charter and Compliance Model. The Client Charter recognises the need to conduct investigation and enforcement activities in cases where clients do not comply with the revenue laws.

The Compliance Model is based on the premise that we are able to influence client behaviours through our interventions and responses. The following table summarises the types of client behaviours and our compliance responses to such behaviours.

Attitude of Taxpayer	Compliance Responses	Options
Willing to do the right thing	Make it easy	Persuasive activities focused on self regulation Provide appropriate administrative processes Provide education tailored to the needs of client segments Make information clear and easy to access
Try to, but don't always succeed	Assist to comply	Identify non-compliance from verification and data matching activity Remind clients of their obligations and entitlements Conduct audits and reviews Impose appropriate levels of interest and penalties
Don't want to comply	Deter by detection	Conduct audits and investigations Focus on investigation of individual transactions and avoidance schemes Impose appropriate levels of interest and penalties
Have decided not to comply	Use full force of the law	Conduct audits and investigations Focus on investigation of individual transactions, avoidance and evasion schemes Impose appropriate levels of interest and penalties Prosecution action

Audits and Investigations

Case selection

Audit and investigation cases are selected from various sources including:

- data matching to verify our records against third party information
- anomalies between information provided by clients and data held by OSR
- referrals from other agencies
- random sampling within an industry or client group
- field visits of clients
- voluntary and anonymous disclosures.

The audit process

If you are selected for audit/investigation an investigator will ordinarily:

- contact you to arrange a mutually convenient time and location for the audit
- explain the process and the scope of the investigation, including the records required for inspection
- allow a reasonable time for you to prepare records
- confirm the arrangements in writing.

During the audit/investigation process an investigator will normally interview you and examine your records to test compliance with the revenue laws. Any information obtained in the course of the audit/investigation is governed by strict confidentiality provisions and can only be disclosed for limited purposes prescribed by law. Also, investigators have an obligation to act professionally and ethically at all times.

Your obligations and rights

It is important to note that investigators are permitted in certain circumstances under the *Taxation Administration Act 2001* (and similar provisions in other revenue laws administered by OSR) to:

- access places
- inspect, examine, copy and seize documents (including in electronic form)
- require you to answer questions and provide information
- require you to provide reasonable assistance.

In some cases, investigators can obtain a warrant to gain access to premises, or to seize or examine documents and things. You should give complete and honest answers to questions and provide documents and information requested in a timely manner. Penalties or even prosecution may apply where a person obstructs an investigator, for example by failing to comply with lawful requests.

You have the right to:

- see the investigator's identification card and authority
- a receipt for any documents or things seized
- an opportunity to explain any discrepancies or issues
- an explanation of the findings of the investigation following its completion
- an explanation of how and why any penalties and interest have been applied
- information about your rights to object and appeal our decision.

Penalty tax

In certain circumstances penalty tax applies at a rate of 75%. It is payable in addition to any unpaid tax interest and acts as an incentive to comply with the revenue laws and ensures equitable treatment of all taxpayers.

The Commissioner of State Revenue may remit all or part of the penalty tax applied. The decision to remit penalty tax is guided by *Public Ruling TAA060.2.2 - Penalty tax* and *Public Ruling TAA060.3.2 - Penalty tax home concessions*.

Unpaid tax interest

Unpaid tax interest (UTI) applies whenever there is a delay in the payment of tax. The delay may result from:

- a failure to pay tax on time
- b actions that defer the making of an assessment and therefore the payment of tax. For example, non-compliance with a lodgment or information requirement.

The rate of UTI is 11.4% for 2009-2010.

UTI is imposed to encourage payment of tax on time and to compensate the State for the period that tax has been unpaid. The Commissioner of State Revenue will only remit UTI in exceptional circumstances. For more information about when the Commissioner will remit UTI, see *Public Ruling TAA060.1.2 - Remission of unpaid tax interest*.

Areas of focus in 2009-10

The OSR 2009-10
Investigations Program
details the verification,
audit, investigation and
enforcement activities
for revenue laws
administered by OSR.

Duties

The *Duties Act 2001* imposes duty on certain transactions, including transfer duty and insurance duty.

Areas of focus in 2009-10 include:

Transfer Duty Self Assessors — registered self assessors who assess transfer duty and submit returns.

Common issues for duties self assessors include ensuring that:

- the aggregation provision (s.30) is applied to dutiable transactions that together form, evidence or give effect to one arrangement
- the correct dutiable value is used (for example, including GST where appropriate)
- clients are eligible for any concession or exemption they claim
- complete records relating to transactions are kept on file (for example, completed and signed concession forms, related party valuations, statutory declarations and any other supporting documentation required as evidence of the transaction).

Did you know?

Enhancements to our Revenue Management System mean that we automatically identify transfers of land lodged at the Department of Environment and Resource Management where transfer duty has not been accounted for. Suspect matters are referred to the Investigations Division who will investigate and prosecute cases of fraud.

Insurance Duty Self Assessors — registered self assessors who assess insurance duty and submit monthly returns.

Common issues for insurance duty self assessors include ensuring that they:

- correctly classify their insurance products as general, life or accident insurance;
- calculate the correct dutiable value for the policy (including GST)
- apply the correct rate of duty to the insurance policy.

Home Concession

A person purchased a property in Queensland with the transfer being registered on 1 July 2008. The property was purchased as his principal place of residence so he was able to claim the home concession (not the first home concession, as he had previously owned a home with his former wife). He paid concessional transfer duty.

He moved into the home on 1 August 2008. Because of a change in circumstances relating to the ill health of his mother, he moved out of the home and rented the property to tenants on 1 February 2009. He notified OSR of his change in circumstances within the required 28 days. He was required to pay additional non-concessional transfer duty (calculated on a pro rata basis to take into account the period that he occupied the home). He also paid a relatively small amount of unpaid tax interest. Because he met his obligations under the law we remitted all penalty tax.

Home and Vacant Land Concessions — there are generous concessions on transfer duty for persons purchasing a home, first home, or vacant land on which a first home is to be built.

However, there are also conditions attached to these concessions. Taxpayers will lose their eligibility for the concessions if they –

- do not move into the home as their principal place of residence within 1 year of it being transferred to them (or 2 years for the vacant land concession)
- dispose of all or part of the land (by transferring, leasing or granting exclusive possession in another way) either
 - before occupying it as their principal place of residence, or
 - within 1 year of occupying it as their principal place of residence.

Taxpayers must notify OSR within 28 days of a change in circumstances affecting their eligibility for a home concession by completing and lodging with OSR a *Form 2.4 – Notice for Reassessment of Transfer Duty Home and Vacant Land Concessions*.

Did you know?

OSR matches data with other government agencies and is able to establish when a person does not comply with the home or vacant land concession requirements. If you have not complied with any of the eligibility conditions you will be required to repay the concession for the period of non compliance. You will also be required to pay unpaid tax interest, and penalty tax could also apply. You could also be prosecuted in certain cases, such as deliberate default or providing false or misleading information.

Duties

Land Rich Duty and Land Holding Trusts

Land rich duty applies to relevant acquisitions of interests in land rich corporations. Transfer duty rates apply to the relevant proportion of the value of the Queensland land holdings of the corporation.

OSR will be examining transactions to which land rich duty may apply, as well as transactions relating to public unit trusts which are land-holding trusts. Areas of focus will include the failure to lodge dutiable transactions and relevant acquisitions, and issues relating to the valuation of land and other property.

Other trust and partnership transactions

OSR will examine dutiable transactions for trusts (including trust acquisitions, trust surrenders, trust creations and trust terminations) and transactions which create a liability for Corporate Trustee Duty. Partnership acquisitions will also be examined.

Areas of focus will include the failure to lodge dutiable transactions and the valuation of dutiable property held by the partnership or trust.

High value and complex transactions

Areas of focus in 2009-10 include:

- corporate reconstruction exemption claims
- failure to lodge transfers of business assets including goodwill, stock in trade etc. and the dutiable value of these transactions
- failure to disclose aggregated transactions
- avoidance schemes.

Did you know?

In 2008-09 a Complex Investigation Unit (CIU) was established in the Investigations Division of OSR to deal with high value and complex investigations. In the area of duties compliance CIU focuses on land rich duty, land holding trusts, and dutiable trust and partnership transactions. CIU also investigates complex or high value payroll tax matters.

CIU oversees prosecution actions in appropriate cases. OSR's aim is to maximise voluntary compliance. However where there is deliberate abuse of the revenue laws, prosecution action is considered necessary to maintain public confidence in the administration of those laws and to act as a deterrent to others considering similar behaviour.

Did you know?

In 2009-10 we will be undertaking a review of companies that may be subject to land rich duty under the *Duties Act 2001*.

Companies of interest under this audit program have already been identified and will be required to provide information and documents to determine if any relevant acquisitions have occurred.

You can find out more about land rich duty by visiting the OSR website. If after visiting the website you need further information or you wish to make a voluntary disclosure you can telephone the Client Contact Centre and ask to speak with an officer from the Complex Investigations Unit (see contact details on the last page).

Areas of focus in 2009-10

Payroll tax

Payroll tax is payable when an employer's total annual Australian wages for a financial year, or those of a group of related employers, exceed \$1 million.

Employers who pay between \$1 million and \$5 million in wages receive a reducing deduction, which ceases after \$5 million. The amount of the deduction depends on the amount by which the annual wages exceed the exemption threshold. For every \$4 of wages over the \$1 million threshold, the deduction reduces by \$1.

Employers liable for payroll tax are required to register with OSR and pay payroll tax on their taxable wages.

Areas of Focus in 2009-10 include:

- employers whose total wages exceed the threshold and who have not registered for payroll tax
- wage and deduction discrepancies including failure to declare all –
 - eligible terminations payments
 - payments for employee share schemes
 - salary sacrifice superannuation payments
 - cash-in-hand payments to employees, and
 - grossed up fringe benefit tax payments
- the obligation to register as a group where businesses are linked by common ownership or control, or share employees
- the obligation to include wages:
 - paid or payable to contractors where the contract is characterised as one of employment (rather than a contract for services) and
 - relating to “relevant contracts” (post 1 July 2008)
- arrangements for the avoidance of payroll tax.

An employer exceeding the payroll tax threshold

An employer's business grew rapidly over a few years and consequently their total weekly Australian wages exceeded the payroll tax registration threshold of \$19,230. The employer did not register for payroll tax.

OSR used data matching with internal and external sources and determined that the employer should have been registered for payroll tax. OSR wrote to the employer, asking them to declare their taxable wages for payroll tax and to provide certain information and documents to support their declaration. Payroll tax assessments were issued from the date their wages first exceeded the threshold. Unpaid tax interest was also applied to the employer's payroll tax liability. Because the employer fully cooperated during the audit, penalty tax was substantially reduced.

Contractors who are employees

A medical practice engaged doctors as contractors to practice in a surgery. The medical practice determined that the payments to the doctors were wages under the relevant contractor provisions that came into effect from 1 July 2008.

However an investigation into the liability of the medical practice prior to 1 July 2008 showed that, based on the contractual arrangements between the medical practice and the doctors, the nature of their relationship was that of employer and employee rather than the doctors being independent contractors. The payments to the doctors prior to 1 July 2008 should have been treated as taxable wages for payroll tax purposes.

The medical practice was required to pay payroll tax on its taxable wages for the five years prior to 1 July 2008. In addition, the practice was required to pay penalty tax and unpaid tax interest on their payroll tax liability.

Areas of focus in 2009-10

First Home Owner Grant

The First Home Owner Grant provides first home buyers who satisfy the eligibility criteria with a \$7,000 grant.

The First Home Owner Boost supplements the First Home Owner Grant. The Boost provides:

14 October 2008 to 30 September 2009 (Contract Date)

- an additional \$7,000 to first home buyers who purchase an established home, and
- an additional \$14,000 to first home buyers who build a new home or purchase a newly constructed home.

1 October 2009 to 31 December 2009 (Contract Date)

- an additional \$3,500 to first home buyers who purchase an established home, and
- an additional \$7,000 to first home buyers who build a new home or purchase a newly constructed home.

In most cases, applicants apply for the grant through their lending institution which will require evidence of identification and evidence that applicants are eligible for the grant. After applicants have received the grant, they are required to meet the residence requirements – they must move into the home within 1 year of purchasing it and live in the home as their principal place of residence for a continuous period of 6 months.

Areas of focus in 2009-10 include:

- monitoring applicants' compliance with the residency and other requirements for receiving the grant
- ensuring that lending institutions who are approved agents of the Commissioner of State Revenue comply with their obligations, in particular their record keeping obligations.

First Home Owner Grant and First Home Concession

A couple purchased an existing home with the transfer being registered on 1 July 2008. They claimed the first home concession because neither of them had previously owned a property. They did not have to pay any transfer duty on the purchase because of their concession claim. The couple also claimed the First Home Owner Grant of \$7,000 through their financial institution.

The couple did not move into the home, and instead renovated and sold it. The transfer was registered on 15 October 2008. They did not notify OSR about not occupying the home as their principal place of residence, or that they had sold the home.

By matching data with other government agencies, OSR was able to identify that the couple transferred the property and had not complied with the home concession eligibility requirements. The couple received an assessment for the non concessional transfer duty. They were also required to pay unpaid tax interest and a substantial penalty.

They could have been prosecuted for failing to give the required notice to OSR.

The couple also did not meet the residence requirements for the First Home Owner Grant. They were required to repay the \$7,000 grant and were also liable for a penalty.

The couple were required to pay a substantial amount of duty, the grant, penalty and interest (approximately \$40,000).

Areas of focus in 2009-10

Community Ambulance Cover

The Community Ambulance Cover levy helps provide a secure funding base for the Queensland Ambulance Service.

The levy is collected by electricity retailers and special approval holders and is generally based on the billing arrangements for the supply of electricity to homes or businesses, measured by a meter.

Areas of focus in 2009-10 include:

- electricity retailers and special approval holders' obligations to collect the correct amount of the levy, remit levy collections when due and correctly process exemption claims
- electricity on-suppliers and their contractors
- exemption claims by religious bodies and other public benefit type institutions or their trustees.

More information

You can obtain more information regarding Queensland taxes, grants and subsidies by visiting the OSR website - www.osr.qld.gov.au If after visiting the website you require further information or assistance, you can contact OSR by telephone or email through the following options.

General Enquiries via telephone 1300 300 734 (telephone enquiries are available 8am-5pm Monday to Friday) or email clientcontactcentre@osr.treasury.qld.gov.au

First Home Owner Grant enquiries: email firsthomeownergrant@osr.treasury.qld.gov.au

Reporting non-compliance

If you suspect an incident of non-compliance you can report it in confidence to OSR via email at informant@osr.treasury.qld.gov.au or telephone 1800 001 510.

