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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. The *Duties Act 2001* (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); or
  - (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).
2. For this Public Ruling, 'self assessor' means a party self assessor or an agent self assessor.
3. 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).<sup>1</sup>
4. The lodgement, payment and assessment obligations of a self assessor in relation to a particular instrument or transaction differ dependent upon whether the self assessor is required to lodge a return or a transaction statement with the Commissioner in respect of that instrument or transaction.
5. This Public Ruling explains the rights and obligations under the Duties Act and the *Taxation Administration Act 2001* (the Administration Act) of a self assessor who is required to lodge transaction statements with the Commissioner.

<sup>1</sup> 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

## Ruling and explanation

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### Lodgement and payment

6. 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 arises<sup>2</sup> or
    - (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 seven days after the self assessor receives all instruments and other documents relating to the instrument or transaction<sup>3</sup>
  - (b) pay to the Commissioner any duty, assessed interest<sup>4</sup> and penalty tax<sup>5</sup> (collectively, assessed tax) received by the self assessor by 14 days after the transaction statement for the instrument or transaction is lodged<sup>6</sup> and
  - (c) stamp the instrument to which the transaction statement relates by endorsing it as required<sup>7</sup>:
    - (i) for a party self assessor—not later than when the assessed tax on the instrument is paid to the Commissioner<sup>8</sup>
    - (ii) for an agent self assessor who receives the assessed tax on the instrument—not later than when the assessed tax is paid by the self assessor to the Commissioner<sup>9</sup> or
    - (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.<sup>10</sup>
7. 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.
8. Failure to comply with the requirements outlined in paragraph 6 is an offence.<sup>11</sup> Alternatively a penalty may be applied.<sup>12</sup> Offences and penalties are dealt with in paragraphs 28–36 of this Public Ruling.

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<sup>2</sup> Section 455A(2) of the Duties Act

<sup>3</sup> 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).

<sup>4</sup> See s.54(3) of the Administration Act

<sup>5</sup> See s.58(1) of the Administration Act

<sup>6</sup> Section 30(1)(b) of the Administration Act

<sup>7</sup> Section 455A(4) of the Duties Act

<sup>8</sup> Section 455A(1)(b)(i) of the Duties Act

<sup>9</sup> Section 455A(1)(b)(ii)(A) of the Duties Act

<sup>10</sup> Section 455A(1)(b)(ii)(B) of the Duties Act

<sup>11</sup> Section 455A(1) of the Duties Act

<sup>12</sup> Section 488 of the Duties Act

**Assessment**

9. When a transaction statement is lodged, an assessment is taken to have been made by the Commissioner for the amount of the taxpayer's liability for tax stated in the statement.<sup>13</sup>
10. 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.<sup>14</sup> Consequently, the rights of objection and appeal in Part 6 of the Administration Act apply.<sup>15</sup>
11. 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.<sup>16</sup>

**Stamping requirements**

12. An instrument recorded in a transaction statement is properly stamped if it is stamped in accordance with s.455A(1)(b) of the Duties Act.<sup>17</sup>
13. The self assessor must stamp the instrument to which a transaction statement relates by endorsing the instrument as follows:
  - (a) for an instrument 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 number<sup>18</sup> for the instrument
    - (iv) the amount of any assessed tax (broken into components of duty, assessed interest and penalty tax) paid on the instrument
    - (v) the date the endorsement is made
    - (vi) the signature of the individual completing the endorsement and
    - (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.<sup>19</sup>
14. 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 or
  - (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 or

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<sup>13</sup> Sections 14A(a) and (b) of the Administration Act

<sup>14</sup> Sections 14A(d) and (e) of the Administration Act

<sup>15</sup> For more information regarding a taxpayer's objection and appeal rights refer to Public Ruling TA000.1

<sup>16</sup> Section 42 of the Administration Act

<sup>17</sup> Section 491(1) of the Duties Act

<sup>18</sup> See s.455(5) of the Duties Act

<sup>19</sup> Section 455A(4) of the Duties Act

(ii) in any other case—the assessed tax has been paid to the Commissioner.<sup>20</sup>

15. The stamping of an instrument by a self assessor in circumstances other than those outlined in paragraph 14 is an offence.<sup>21</sup> Offences and penalties are dealt with in paragraphs 28–36 of this Public Ruling.
16. When a person (the endorser) who is a self assessor, or an officer or employee of a self assessor, endorses an instrument:<sup>22</sup>
  - (a) the endorser must not incorrectly state the self assessor's client number, transaction number, or an amount of duty, assessed interest or penalty tax on the instrument
  - (b) the endorsement must not contain other information that the endorser knows, or should reasonably know, is false or misleading in a material particular and
  - (c) the endorser must not obscure all or part of the endorsement or otherwise make all or part of the endorsement illegible.
17. Failure to comply with the requirements set out in paragraph 16 is an offence.<sup>23</sup> Alternatively, a penalty may be applied. Offences and penalties are dealt with in paragraphs 28–36 of this Public Ruling.

## **UTI**

### Imposition

18. UTI is simple interest which accrues at the prescribed rate<sup>24</sup> on any amount of duty which is paid late or underpaid, including due to late lodgement of information necessary to assess liability.<sup>25</sup>
19. The person or persons liable for the unpaid duty amount will also be liable for any UTI that will accrue on that amount.
20. UTI that has accrued when a transaction statement is lodged must be included in the statement (and will therefore be assessed interest).<sup>26</sup>

### Remission

21. The Commissioner may remit all or part of UTI.<sup>27</sup>
22. 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.

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<sup>20</sup> Section 480 of the Duties Act

<sup>21</sup> Section 480 of the Duties Act

<sup>22</sup> Section 481A of the Duties Act

<sup>23</sup> Section 481A of the Duties Act

<sup>24</sup> Section 6(1) of the *Taxation Administration Regulation 2002*. For the current rate, see the Office of State Revenue website at [www.osr.qld.gov.au](http://www.osr.qld.gov.au).

<sup>25</sup> See s.54 of the Administration Act

<sup>26</sup> Section 54(3) of the Administration Act

<sup>27</sup> Section 60(1) of the Administration Act

## **Penalty tax**

### Imposition

23. Penalty tax is imposed upon the making of a default assessment or a reassessment in certain circumstances.<sup>28</sup>
24. 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.<sup>29</sup>
25. Any penalty tax payable in relation to an instrument or transaction recorded in a transaction statement must be included in the statement.

### Remission

26. The Commissioner may remit all or part of penalty tax.<sup>30</sup>
27. 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**

28. 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 6 of this Public Ruling
  - (b) s.480 of the Duties Act, outlined in paragraph 14 of this Public Ruling
  - (c) s.481A of the Duties Act, outlined in paragraph 16 of this Public Ruling.
29. Other offences which may have application to self assessors include ss.122 and 123 of the Administration Act dealing with false or misleading information.
30. 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.

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<sup>28</sup> Section 58 of the Administration Act

<sup>29</sup> Section 456 of the Duties Act and s.24 of the Administration Act

<sup>30</sup> Section 60(1) of the Administration Act

### 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 first home. 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 first 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 first 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 first home concession and the self assessor fraudulently retains the client's funds (ie. the difference between the normal transfer duty payable and the transfer duty first home concession).*

Sanction – prosecution of the self assessor as the self assessor is directly responsible for the false statement.

### **Self assessor penalties**

31. As an alternative to prosecution of the offences referred to in paragraph 28<sup>31</sup>, the Commissioner may, by notice, impose a penalty (the penalty amount) in the following circumstances:<sup>32</sup>
- (a) a self assessor does not lodge a transaction statement in contravention of s.455A(1)(a) or
  - (b) a self assessor contravenes s.481A in relation to the endorsement of an instrument or
  - (c) a self assessor lodges a transaction statement containing false or misleading information in contravention of ss.122 or 123 of the Administration Act.

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<sup>31</sup> Section 489 of the Duties Act

<sup>32</sup> Section 488 of the Duties Act

32. 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.
33. 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.
34. 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 the OSR.
35. 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 32 may be imposed.
36. 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 matter may be referred to the Investigations Division for review. The Commissioner may also commence prosecution action.<sup>33</sup>

### **Review of decision to impose penalty amount**

37. 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.<sup>34</sup> The application for review must –
- (a) be made to the Commissioner within 28 days after the self assessor received the notice of the original decision and
  - (b) state fully and in detail the grounds of the review.<sup>35</sup>
38. 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.<sup>36</sup>
39. The application does not stay the original decision.<sup>37</sup>
40. The Commissioner will make a decision (the review decision) to confirm the original decision or set aside the decision and substitute another decision.<sup>38</sup>

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<sup>33</sup> See s.455A(1) of the Duties Act and/or s.121 of the Administration Act

<sup>34</sup> Section 472(1) of the Duties Act

<sup>35</sup> Section 472(2) of the Duties Act

<sup>36</sup> Section 472(3) of the Duties Act

<sup>37</sup> Section 472(4) of the Duties Act

<sup>38</sup> Section 473 of the Duties Act

41. A notice of the review decision will be given to the self assessor.<sup>39</sup> This notice will state—
- (a) the reasons for the review decision
  - (b) that the self assessor may, within 28 days after receiving the notice, appeal to the Magistrates Court against the decision and
  - (c) how to appeal.

### Service of Notices

42. 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.
43. Where the self assessment was included in a transaction statement lodged by an agent self assessor, the reassessment or demand in paragraph 42 will issue to the parties to the instrument or transaction via the self assessor.

### Date of effect

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44. This Public Ruling takes effect from 1 August 2011.

David Smith  
 Commissioner of State Revenue  
 Date of Issue 12 August 2011

### References

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Public Ruling	Issued	Dates of effect	
		From	To
DA000.2.3	12 August 2011	1 August 2011	Current
DA000.2.2	3 July 2009	3 July 2009	31 July 2011
DA000.2.1	24 February 2009	24 February 2009	2 July 2009
Supersedes Revenue Ruling DA 20.3	14 July 2008	1 July 2008	23 February 2009

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<sup>39</sup> Section 474 of the Duties Act