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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 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, subsidy 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 of a self assessor under the *Duties Act 2001* (the Duties Act) and the *Taxation Administration Act 2001* (the Administration Act), where they are registered:
 - (a) as a self assessor under Chapter 12, Part 2 of the Duties Act, that is, they are a party to particular instruments or transactions; or
 - (b) as a self assessor under Chapter 12, Part 3 of the Duties Act, that is, they are an agent for parties to certain dutiable instruments and transactions.
2. For this Public Ruling, 'self assessor' means a self assessor referred to in paragraph 1.

Ruling and explanation

Lodgement and payment

3. Subject to paragraph 4, a self assessor must:
 - (a) lodge returns, and documents required to accompany returns, for the return periods as required by the notice of the self assessor's registration
 - (b) pay any duty, assessed interest¹ and penalty tax² to the Commissioner when each return is lodged and

¹ See s.54(3) of the Administration Act

² See s.58(1) of the Administration Act

- (c) stamp the instruments to which each return relates by endorsing them as required³ not later than when the duty, assessed interest and penalty tax on the instruments has been paid to the Commissioner.⁴
4. A self assessor who is an agent does not have to comply with the requirements outlined in paragraph 3 to the extent that the self assessor has not received payment of duty, assessed interest or penalty tax by the persons liable to pay it.⁵
 5. Failure to comply with the requirements outlined in paragraph 3 is an offence.⁶ Alternatively a penalty may be applied.⁷ Offences and penalties are dealt with in paragraphs 30–38 of this Public Ruling.
 6. A self assessor who is an agent is not personally liable for duty, assessed interest or penalty tax payable on an instrument or transaction recorded in a return, unless the self assessor is a party to the instrument or transaction.
 7. Prior to 1 July 2008⁸, a self assessor who was registered under s.446A of the Duties Act was able to defer the endorsement of mortgages under paragraph 3(c) as provided by the self assessor's notice of registration.⁹

Assessment

8. When a return is lodged, an assessment is taken to have been made by the Commissioner for the amount of each taxpayer's liability for tax stated in the return.¹⁰ This means that the recording of each transaction in the return is treated as a separate assessment for each transaction.
9. The return is taken to be an assessment notice for each assessment given to the relevant taxpayers on the return lodgement date.¹¹ Consequently, the rights of objection and appeal in Part 6 of the Administration Act apply.¹²
10. 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.¹³

Stamping Requirements

11. An instrument recorded in a self assessor's return is properly stamped if it is stamped in accordance with s.455(1)(c) of the Duties Act.¹⁴

³ Section 455(2) of the Duties Act

⁴ Section 455(1) of the Duties Act

⁵ Section 455(3) of the Duties Act

⁶ Section 455(1) of the Duties Act

⁷ Section 488 of the Duties Act

⁸ Mortgage duty is abolished from 1 July 2008: s.247A of the Duties Act, subject to Chapter 17, Part 9, Division 1 of the Duties Act

⁹ Section 455(4) of the Duties Act as in force before 1 July 2008

¹⁰ Sections 14(a) and (b) of the Administration Act

¹¹ Sections 14(d) and (e) of the Administration Act

¹² For more information regarding a taxpayer's objection and appeal rights refer to Public Ruling TA000.1

¹³ Section 42 of the Administration Act

¹⁴ Section 491(1) of the Duties Act

12. The self assessor must stamp the instruments to which each return relates by endorsing the instruments 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 number¹⁵ for the instrument
 - (iv) the amount of any 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.¹⁶
13. A self assessor must not endorse an instrument unless the full amount of duty and any assessed interest and penalty tax has:
- (a) for a self assessor who is an agent—been received by the self assessor
 - (b) for a self assessor who is registered under Chapter 12, Part 2 of the Duties Act:
 - (i) and is a financial institution and the instrument is a mortgage under which the self assessor is the mortgagee—been received by the self assessor
 - (ii) for other self assessors—been paid to the Commissioner.¹⁷
14. The stamping of an instrument by a self assessor in circumstances other than those outlined in paragraph 13 is an offence.¹⁸ Offences and penalties are dealt with in paragraphs 30–38 of this Public Ruling.
15. When a person (the endorser) who is a self assessor, or an officer or employee of a self assessor, endorses an instrument:¹⁹
- (a) the endorser must not incorrectly state the self assessor's client number, transaction number, 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.
16. Failure to comply with the requirements set out in paragraph 15 is an offence.²⁰ Alternatively, a penalty may be applied. Offences and penalties are dealt with in paragraphs 30–38 of this Public Ruling.

¹⁵ See s.455(5) of the Duties Act

¹⁶ Section 455(2) of the Duties Act

¹⁷ Section 480 of the Duties Act

¹⁸ Section 480 of the Duties Act

¹⁹ Section 481A of the Duties Act

²⁰ Section 481A of the Duties Act

17. Where a self assessor who is an agent is in receipt of an instrument and the parties to the instrument have not provided the self assessor with sufficient funds for payment of the duty, assessed interest or penalty tax payable on the instrument, the shortfall should be sought from the relevant parties as soon as possible to minimise any UTI which may accrue.

UTI

Imposition

18. UTI accrues at the prescribed rate²¹ on any unpaid amount of duty payable on a self assessment²² from the day after the return is required to be lodged for the self assessment until the day on which the duty is paid in full, both dates inclusive. The person or persons liable for the unpaid duty amount will also be liable for any UTI that will accrue on that amount.²³
19. UTI is simple interest which accrues only on unpaid duty.
20. UTI that has accrued when a return is lodged must be included in the return.²⁴
21. If the party to an instrument or transaction pays, to a self assessor who is an agent, all of the duty, assessed interest and penalty tax payable on the instrument or transaction after the date a return is required to be lodged, the instrument or transaction should be included in a later return. However, UTI will continue to accrue until the duty payable on the instrument or transaction is paid to the Commissioner in full.
22. Where a self assessor who is an agent has received only part payment of duty, assessed interest or penalty tax payable on an instrument or transaction when the return must be lodged, the self assessor may do the following to minimise any UTI that may accrue:
- (a) record the instrument or transaction in that return, noting in the return the full amount of the duty, assessed interest and penalty tax payable in relation to the instrument or transaction and making any other notation as required by the Office of State Revenue (OSR) and
 - (b) pay to the Commissioner the amount received and
 - (c) forward further payments when received (including any outstanding UTI as at the date of payment).

However, as noted above in paragraph 13, the instrument must not be stamped until the full amount of duty, assessed interest and penalty tax has been received by the self assessor.

Remission

23. The Commissioner may remit all or part of UTI.²⁵

²¹ Section 6 of the *Taxation Administration Regulation 2002*. For the current rate, see the Office of State Revenue website at www.osr.qld.gov.au.

²² See s.14(a) of the Administration Act

²³ See ss.54(1), (2) and (4)(a) of the Administration Act

²⁴ Section 54(3) of the Administration Act

²⁵ Section 60(1) of the Administration Act

24. 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

25. Penalty tax is imposed upon the making of a default assessment or a reassessment in certain circumstances.²⁶
26. A self assessor can make a reassessment only if expressly authorised to do so by the notice of registration as a self assessor.²⁷
27. Any penalty tax payable in relation to an instrument or transaction recorded in a return must be included in the return.

Remission

28. The Commissioner may remit all or part of penalty tax.²⁸
29. 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

30. Failure by a self assessor to comply with any of the requirements in the following provisions is an offence:
- (a) s.455(1) of the Duties Act, outlined in paragraph 3 of this Public Ruling
 - (b) s.480 of the Duties Act, outlined in paragraph 13 of this Public Ruling
 - (c) s.481A of the Duties Act, outlined in paragraph 15 of this Public Ruling.
31. Other offences which may have application to self assessors include ss.122 and 123 of the Administration Act dealing with false or misleading information.
32. Where a false statement is made in a return lodged by a self assessor who is an agent, prosecution action will be considered where the statement is that of the self assessor or 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.

²⁶ Section 58 of the Administration Act

²⁷ Section 456 of the Duties Act and s.24 of the Administration Act

²⁸ 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 residence. The purchaser falsely advises the self assessor that he intends to use the residence as his principal residence. The self assessor lodges a return claiming the concession for homes 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 return claiming the concession for homes 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 return claiming a concession for homes and the self assessor fraudulently retains the client's funds (ie. the difference between the normal transfer duty payable and the concession for homes transfer duty).

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

Self assessor penalties

33. As an alternative to prosecution of the offences referred to in paragraph 30²⁹, the Commissioner may, by notice, impose a penalty ("the penalty amount") in the following circumstances:³⁰
- (a) a self assessor does not lodge a return or pay an amount in contravention of s.455(1)(a) or (b) or
 - (b) a self assessor contravenes s.481A in relation to the endorsement of an instrument or
 - (c) a self assessor lodges a return containing false or misleading information in contravention of ss.122 or 123 of the Administration Act.
34. The penalty amount imposed will be the greater of—
- (a) not more than 75% of the amount of duty payable under the return or instrument
 - (b) \$100.00.

²⁹ Section 489 of the Duties Act

³⁰ Section 488 of the Duties Act

35. 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 returns), the Commissioner will first offer the self assessor reasonable assistance in complying with their obligations instead of proceeding with the imposition of a penalty.
36. Assistance that may be offered in this regard will be provided via the telephone, written correspondence or visits from OSR staff. It is anticipated that such advice will generally relate to the preparation of returns, use of OSR Duties Online, stamping of instruments and other similar matters. In some cases, self assessors who are agents may be referred to Public Rulings, Information Sheets and other publications issued by the OSR.
37. Where assistance is provided, a self assessor who is an agent may be notified that their future returns 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 34 may be imposed.
38. If, after such a penalty is imposed, a self assessor who is an agent 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.³¹

Review of decision to impose penalty amount

39. 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.³² 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.³³
40. 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.³⁴
41. The application does not stay the original decision.³⁵
42. The Commissioner will make a decision (the review decision) to confirm the original decision or set aside the decision and substitute another decision.³⁶

³¹ See s.455(1) of the Duties Act and/or s.121 of the Administration Act

³² Section 472(1) of the Duties Act

³³ Section 472(2) of the Duties Act

³⁴ Section 472(3) of the Duties Act

³⁵ Section 472(4) of the Duties Act

³⁶ Section 473 of the Duties Act

43. A notice of the review decision will be given to the self assessor.³⁷ 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

44. 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.
45. Where the self assessment was included in a return lodged by a self assessor who is an agent, the assessment or demand in paragraph 44 will issue to the parties to the instrument or transaction via the self assessor.

Date of effect

46. This Public Ruling takes effect from the date of issue.

David Smith
 Commissioner of State Revenue
 Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
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

³⁷ Section 474 of the Duties Act