
Guidelines for imposing penalty amounts on self assessors

The self assessor guidelines represent the published view of the Commissioner of State Revenue (the Commissioner) in relation to the management of the transfer duty self assessor framework.

What this document is about

1. The purpose of this document is to:
 - (a) provide transparency for self assessors about the Commissioner's approach to imposing a penalty amount on a self assessor under section 488 of the *Duties Act 2001* (Duties Act)
 - (b) facilitate consistency in decisions to impose a penalty amount by the Commissioner's delegates.
2. This document applies to self assessors for transfer duty, registered under Chapter 12, Parts 2 or 3 of the Duties Act.
3. To the extent this document deals with imposing penalty amounts, it also applies to any other person the Commissioner may require to pay a penalty amount under section 488(be), (c) and (e) of the Duties Act.
4. A penalty amount imposed by a notice under section 488 of the Duties Act is payable by the person to whom the notice is given.

Penalty amounts—an alternative to prosecution

5. The Commissioner may, by notice, require a self assessor to pay a penalty (the penalty amount) when a self assessor:
 - (a) does not lodge a return or pay an amount in contravention of section 455(1)(a) or (b) of the Duties Act¹
 - (b) does not lodge a transaction statement in contravention of section 455A(1)(a) of the Duties Act²
 - (c) contravenes section 35(b) of the *Taxation Administration Act 2001* (Administration Act) in relation to an amount paid to it for tax (if self assessor is a tax agent)³

¹ Section 488(1)(a) of the Duties Act

² Section 488(1)(b) of the Duties Act

³ Section 488(1)(ba) of the Duties Act

- (d) contravenes section 455(1)(c) or section 455A(1)(b) of the Duties Act in relation to the stamping of an instrument or electronic lodgement network (ELN) transaction document⁴
 - (e) contravenes section 480 of the Duties Act in relation to the endorsement of an instrument⁵
 - (f) contravenes section 480A of the Duties Act in relation to the endorsement of an ELN transaction document⁶
 - (g) lodges a transaction statement containing false or misleading information in contravention of sections 122 or 123 of the Administration Act.⁷
6. The Commissioner may also, by notice, require any other person to pay a penalty amount where the person:
- (a) contravenes section 481 of the Duties Act in relation to making a notation or endorsement on an instrument or ELN transaction document without authority⁸
 - (b) contravenes section 481A of the Duties Act in relation to the endorsement of an instrument or ELN transaction document⁹
 - (c) gives false or misleading information—in making an application to register or transfer a vehicle (other than a special vehicle)—about the dutiable value of the vehicle in contravention of section 53 of the *Transport Operations (Road Use Management) Act 1995*.¹⁰
7. The penalty amount that may be imposed will be the greater of:
- (a) not more than 75% of the amount of duty payable under the transaction statement or instrument
- or
- (b) \$100.00.¹¹
8. These penalty amounts are an alternative to prosecution of the offences referred to above.¹²

General compliance

9. The Commissioner publishes material to help self assessors to meet their obligations under the tax laws. In particular, the Commissioner has published the *SA1—Instructions for*

⁴ Sections 156D and 488(1)(bb) of the Duties Act

⁵ Section 488(1)(bc) of the Duties Act

⁶ Section 488(1)(bd) of the Duties Act

⁷ Section 488(1)(d) of the Duties Act

⁸ Section 488(1)(be) of the Duties Act

⁹ Section 488(1)(c) of the Duties Act

¹⁰ Section 488(1)(e) of the Duties Act

¹¹ Section 488(2) of the Duties Act

¹² Section 489 of the Duties Act

registered self assessors and SA3—Guidelines on statutory rights and obligations of self assessors.

10. Both documents set out offences relevant to self assessors and explain that penalty amounts may be imposed as an alternative to prosecution in respect of those offences.
11. 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 to comply with their obligations instead of proceeding with the imposition of a penalty amount.
12. Assistance that may be offered will be provided via phone and written correspondence. It is anticipated that such assistance will generally relate to the preparation of transaction statements, use of QRO Online, stamping of instruments, payment and other similar matters.
13. Where assistance is provided, a 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 amount may be imposed.
14. If, after a penalty amount is imposed, a self assessor continues to commit errors and/or does not comply with the Commissioner's requirements, the Commissioner may investigate the matter and consider whether to suspend or cancel the self assessor's registration under *SA5—Guidelines for suspending and cancelling registration of self assessors*. The Commissioner may also commence prosecution action.¹³

Imposing penalty amounts

15. The Commissioner will decide whether to impose a penalty amount on a case-by-case basis, determining what is reasonable considering all relevant facts and circumstances including:
 - (a) the seriousness of the contravention supporting the proposed penalty amount
 - (b) the nature and extent of the self assessor's culpability
 - (c) the reasons for the self assessor's contravention, including
 - (i) the nature of attempts made by the self assessor to comply with their obligations
 - (ii) the processes the self assessor has in place to ensure compliance with the tax laws (such as staff training, regular internal quality assurance, checklists for staff to complete for the file and documented processes)
 - (d) the nature and circumstances of any voluntary disclosure made by the self assessor concerning the contravention
 - (e) the self assessor's previous failure (if any) to comply with the tax laws or any statutes repealed by a tax law, including previous contraventions for which a penalty amount was required

¹³ Chapter 14 of the Duties Act

- (f) the level of co-operation by the self assessor with the Commissioner—where an investigation has been, or is being conducted, in relation to the self assessor.
16. In the Commissioner's experience, many of the circumstances resulting in contraventions often fall within one of the three categories set out below.
 17. These categories are illustrative only, and each self assessor's circumstances will be considered on merit. The Commissioner may also seek information to help determine which category applies, such as evidence from third parties. A self assessor will be informed of, and given the opportunity to respond to, any information considered by the Commissioner that is adverse to the self assessor's interests.¹⁴
 18. Attachment 1 has the penalty percentages relevant to each category.

Category 1—Reasonable care

19. One of the factors that the Commissioner will consider is whether the self assessor took reasonable care.
20. Reasonable care requires the self assessor to make a reasonable attempt to meet their obligations as a self assessor.
21. The Commissioner will generally be satisfied that reasonable care has been taken by the self assessor where they have taken the same care in fulfilling their obligations that could be expected of a reasonable person in the self assessor's circumstances.
22. When determining if a self assessor took reasonable care, the Commissioner considers whether the self assessor, in appropriate circumstances:
 - (a) kept complete and accurate records
 - (b) made diligent efforts to understand and comply with the law
 - (c) was honest and open in their dealings with the Commissioner
 - (d) set in place appropriate processes to ensure compliance with the tax laws.
23. The above considerations are indicative only. Meeting one or more of these criteria does not necessarily mean that reasonable care has been taken. All circumstances resulting in the contravention will be considered in determining whether reasonable care has been taken.
24. If the Commissioner is satisfied that reasonable care has been taken, no penalty amount will be imposed.
25. Examples of cases that do not involve reasonable care include where the self assessor:
 - (a) did not know of the provision contravened
 - (b) did not act in a genuine and honest manner

¹⁴ *Kioa v West* (1985) 159 CLR 550

- (c) provided false or misleading information to the Commissioner
- (d) did not provide all relevant facts to the Commissioner
- (e) did not advise the Commissioner in writing within a reasonable time after discovering the contravention.

Category 2—Carelessness, recklessness or no reasonable care

26. It is considered likely that this category will apply where the self assessor either:
- (a) failed to comply with their obligations under the tax laws due to carelessness or recklessness
- or
- (b) did not take reasonable care to determine their liability for tax and meet their obligations under the tax laws.
27. For this category to apply, it is not necessary to establish that the self assessor acted dishonestly or with intentional disregard of their obligations. Ignorance of the tax law will suffice.
28. The concept of recklessness has been held to apply where ‘the person’s conduct shows disregard of, or indifference to, consequences foreseeable by a reasonable person’.¹⁵
29. Examples of cases involving carelessness, recklessness or no reasonable care may include:
- (a) occasional contraventions of section 480 of the Duties Act, where an instrument is endorsed without payment to the Commissioner or receipt of an amount for tax by the self assessor
 - (b) occasional contraventions of section 455A of the Duties Act, where an endorsed instrument is lodged with the Registrar of Titles but the self assessor has failed to lodge a transaction statement with the Commissioner.
30. While each matter is considered on a case-by-case basis, Category 2 penalty amounts will generally start at 10% of the amount of primary tax payable under the transaction statement or instrument, with repeated failure indicative of increased culpability. Where repeated failures over an extended time occur, a 10% increase (of primary tax amount) in penalty amount is likely to apply for each subsequent failure to comply. For example, for failure due to carelessness, recklessness or no reasonable care:
- (a) first failure—10%
 - (b) second failure—20%
 - (c) third failure—30%.

¹⁵ *Hart v Commissioner of Taxation* [2003] FCAFC 105 at [43]

31. In imposing percentage penalty amounts, the Commissioner will also consider the dollar value of the penalty amount, particularly where a group of similar contraventions is discovered in a single instance.
32. Where repeated failures result in increased penalty amounts, a 12-month period of compliance will generally reset the penalty amount back to the baseline 10%.

Category 3—Intentional disregard

33. In determining whether a self assessor has intentionally disregarded their obligations, the Commissioner considers the intentions of the self assessor.
34. The Commissioner will be satisfied that the self assessor has intentionally disregarded their obligations where there is evidence that they were aware of their obligations and made a conscious choice to ignore them.¹⁶
35. Intentional disregard can be inferred from the facts and surrounding circumstances.
36. Examples of cases involving intentional disregard may include:
 - (a) habitual contraventions of section 480 of the Duties Act, where an instrument is endorsed without payment to the Commissioner or receipt of an amount for tax by the self assessor
 - (b) habitual contraventions of section 455A of the Duties Act where an endorsed Form 1 Transfer is lodged with the Registrar of Titles for registration, but the self assessor fails to lodge a transaction statement with the Commissioner
 - (c) a contravention of section 35 of the Administration Act, where the self assessor has applied the taxpayer's funds to the self assessor's benefit without authority from the taxpayer.
37. Category 3 penalty amounts will generally be imposed at a rate of between 50% and 75% of the amount of primary tax payable under the transaction statement or instrument. Where repeated failures over an extended time occur, an increase in penalty amount (as a percentage of the primary tax amount) is likely to apply for each subsequent failure to comply.

¹⁶ *Price Street Professional Centre Pty Ltd v Federal Commissioner of Taxation* 2007 ATC 4320 at [43]

Notices

38. Section 488 of the Duties Act provides that payment of a penalty amount must be required by notice.¹⁷ The notice must state¹⁸:
- (a) the date for payment of the penalty amount, being a day that is at least 30 days after the person receives the notice
 - (b) the reasons for the decision to require payment of the penalty amount
 - (c) that the person may apply for a review of the decision within 28 days
 - (d) how to apply for the review.
39. Section 488 also requires the notice be an information notice. The Duties Act requires that in addition to the above, the information notice must also include the decision.¹⁹
40. The Commissioner will therefore provide an information notice that identifies the:
- (a) decision that the Commissioner requires the person to pay a penalty amount
 - (b) value of the penalty amount
 - (c) date for the payment of the amount (being a day that is at least 30 days after the person receives the notice)
 - (d) reasons for the decision including the grounds under section 488(1) to which the penalty amount relates, the basis for the penalty amount and the outcomes of any representations considered
 - (e) review rights available to challenge the decision, how to apply for review and the time limits.

Interaction with suspending and cancelling registration

41. Under the Duties Act offences committed by self assessors are generally dealt with by starting a proceeding against the self assessor (prosecution), requiring them to pay a penalty amount, or suspending or cancelling their registration.²⁰
42. The processes outlined in *SA5—Guidelines for suspending and cancelling registration of self assessors* and the process for imposing a penalty amount (outlined in this document) intersect where:
- (a) a penalty amount is required but the self assessor has failed to pay it (or part of it under an instalment arrangement with the Commissioner)²¹

¹⁷ Section 488(2) of the Duties Act

¹⁸ Section 488(3) of the Duties Act

¹⁹ Information notice, see schedule 6 of the Duties Act.

²⁰ See *SA5—Guidelines for suspending and cancelling registration of self assessors*.

- (b) the conduct of the self assessor is sufficiently serious to require a penalty amount and suspension or cancellation.

43. The purpose of this section is to clarify that intersection.

Imposition of penalty amounts and debt recovery

- 44. Where a self assessor or other person is required (by notice) to pay a penalty amount—and the penalty amount is unpaid by the date for payment in the notice—the Commissioner will undertake debt recovery processes to collect the penalty amount from the self assessor or other person. As part of this process, the Commissioner may commence a show cause process with a view to suspending the self assessor’s registration until payment of the penalty amount is made.
- 45. In that case, the show cause process outlined in paragraphs 5 to 26 of SA5—*Guidelines for suspending and cancelling registration of self assessors* will be followed, with the period of proposed suspension (being ‘until the penalty amounts required under the notice are paid’) and the period to make representations being the minimum 21 days.
- 46. The Commissioner may also enter into an arrangement for payment of the penalty amount by instalments.²²
- 47. Where the penalty amount is paid in the 21-day period—or the self assessor has paid 50% of the penalty amount and entered into an instalment arrangement with the Commissioner for payment of the balance of the penalty amount including payment of interest²³—the Commissioner will issue a no further action notice. Missed instalments will result in a further show cause process.
- 48. Where the penalty amount is unpaid following the show cause period, the Commissioner may suspend the self assessor’s registration with the stated period being ‘until payment of the penalty amount is received’. This suspension will run concurrently with the debt recovery processes.
- 49. The Commissioner may commence legal proceedings against the self assessor or other person to recover the debt as necessary.²⁴

Concurrent imposition of a penalty amount and suspension or cancellation

- 50. The grounds for suspension or cancellation in section 465(g) of the Duties Act are broad, and include circumstances where:

the commissioner reasonably believes that, having regard to the self assessor’s conduct, the self assessor’s registration poses an unacceptable risk that the self assessor will not comply with an obligation under this Act or the Administration Act.
- 51. Suspension or cancellation is usually a stepped process (i.e. a penalty amount notice followed by non-payment of a penalty amount) and will generally be administered in that way.

²¹ Section 465(d) of the Duties Act

²² Section 488(5) of the Duties Act

²³ Section 488(5) and (6) of the Duties Act

²⁴ Section 45(2)(b) of the Administration Act

However, the Commissioner is not precluded from requiring a penalty amount and suspending or cancelling on conduct grounds in cases of serious non-compliance.

Mark Jackson
Commissioner of State Revenue
Date: 7 October 2022

Attachment 1

Any penalty amount imposed will be the greater of²⁵:

- not more than 75% of the amount of duty payable under the transaction statement or instrument

or

- \$100.00.

This table outlines the penalty percentages for the circumstances surrounding the contravention (noting that if the resulting amount is less than \$100, the penalty amount will be \$100).

Category	Circumstance	Penalty percentage
1	Failure to comply despite taking reasonable care	No penalty amount
2	<p>Failure to comply due to carelessness, recklessness or no reasonable care</p> <p>Repeated failure will generally be considered as increased culpability with a 10% increase (of primary tax amount) in penalty amount applied for each subsequent failure to comply.</p> <p>For example, for failure due to carelessness, recklessness or no reasonable care:</p> <ul style="list-style-type: none"> • first failure—10% • second failure—20% • third failure—30%. <p>A 12-month period of compliance will generally reset the penalty amount back to the baseline 10%.</p>	10%–50% of the primary tax amount
3	Failure to comply due to intentional disregard of obligations	50%–75% of the primary tax amount

²⁵ Section 488(2) of the Duties Act