
Guidelines for suspending and cancelling registration of 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 to self assessors about the Commissioner's approach to suspending or cancelling a self assessor's registration under Chapter 12, Part 5 of the *Duties Act 2001* (Duties Act)
 - (b) facilitate consistency in decisions to suspend or cancel a self assessor's registration 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. As part of administering the self assessment system, the Commissioner may suspend or cancel a self assessor's registration under the Duties Act.¹

Grounds for suspension or cancellation

4. A self assessor's registration may be suspended or cancelled if the Commissioner considers one or more grounds exist to suspend or cancel the registration. Grounds for suspending or cancelling a self assessor's registration are as follows²:
 - (a) The self assessor or a representative of the self assessor has been convicted of an offence against the Duties Act, the *Taxation Administration Act 2001* (Administration Act) or the *Stamp Act 1894* (Stamp Act).
 - (b) The self assessor or a representative of the self assessor has contravened a provision of the Duties Act or the Stamp Act (being a provision a contravention of which is not an offence against the Duties Act, the Administration Act or the Stamp Act).
 - (c) The self assessor was registered because of a materially false or misleading representation or declaration.

¹ Section 469 of the Duties Act

² Section 465 of the Duties Act

- (d) The self assessor has been given a notice under section 488(2) of the Duties Act to pay a penalty amount and has failed to pay:
 - (i) the penalty amount by the date for payment stated in the notice
 - (ii) an instalment by the date it was required to be paid under an instalment arrangement.
- (e) The self assessor failed to give notice to the Commissioner (under section 470(3) of the Duties Act) that they have permanently or temporarily ceased to carry on the business for which they are registered.
- (f) If each of the following apply:
 - (i) The self assessor has endorsed an electronic lodgement network (ELN) transaction document³ on the basis that section 22(2A) of the Duties Act applies to the ELN transfer.
 - (ii) The ELN transaction document is registered under the *Land Title Act 1994*.
 - (iii) The commitment amount for the payment made for the relevant transfer agreement was not paid to the Commissioner in full as required.
- (g) The Commissioner reasonably believes that, having regard to the self assessor's conduct, the self assessor's registration poses an unacceptable risk that they will not comply with an obligation under the Duties Act or the Administration Act.

Show cause process

- 5. Other than in circumstances of an immediate suspension, as outlined in paragraphs 28–30, the Commissioner will only suspend or cancel a self assessor's registration following completion of the show cause process.
- 6. The purpose of the show cause process is to provide procedural fairness to a self assessor before a decision is made to suspend or cancel their registration.
- 7. If the Commissioner believes grounds exist to suspend or cancel a self assessor's registration, the Commissioner may give the self assessor a show cause notice.⁴ This commences the show cause process.
- 8. The show cause process provides the self assessor with the opportunity to make representations about the show cause notice.⁵ It requires the Commissioner to consider those representations⁶, if any, before making a decision to either take no further action⁷ or to suspend or cancel the self assessor's registration.⁸

³ Section 156D of the Duties Act

⁴ Section 466(1) of the Duties Act

⁵ Section 467 of the Duties Act

⁶ Section 467(2) of the Duties Act

⁷ Section 468 of the Duties Act

⁸ Section 469 of the Duties Act

9. Issuing a show cause notice will be considered where suspension or cancellation is the most appropriate remedy for a self assessor's non-compliant behaviour. The Commissioner decides whether or not to issue a show cause notice on a case-by-case basis. However, the experience of the Commissioner is that, generally, a show cause notice is appropriate in the following circumstances:
- (a) consistent late lodgement of transactions and underpayment of duty
 - (b) serious cases of endorsement of one or more documents without full payment of duty and unpaid tax interest (if applicable) being received
 - (c) behaviours that demonstrate a non-compliant attitude towards self assessor obligations (for example, non-compliance with a field audit request, repeated breaches of record keeping obligations, non-payment of penalty amounts for late lodgement or other non-compliant behaviours).

Show cause notice

10. The show cause notice must state the following⁹:
- (a) the proposal to suspend or cancel the self assessor's registration (the proposed action)
 - (b) the grounds for the proposed action
 - (c) an outline of the facts and circumstances forming the basis for the grounds
 - (d) the proposed suspension period (if the proposed action is suspension of registration)
 - (e) an invitation to the self assessor to show—within a stated period (the show cause period)—why the proposed action should not be taken.

Responding to show cause notice—representations by the self assessor

11. The self assessor will have a minimum of 21 days (show cause period) to provide written representations as to why the proposed action detailed in the show cause notice should not be taken.¹⁰
12. Generally, it is expected the representations will:
- (a) provide further information about the facts and circumstances forming the basis of the grounds for the proposed action, including information explaining, mitigating or clearing any wrongdoing, where applicable
 - (b) propose amendments to the self assessor's existing practices or procedures (or other measures) to prevent recurrence of the same circumstances leading to the breach (or breaches), the subject of the show cause notice, and demonstrate contrition

⁹ Section 466(2) of the Duties Act

¹⁰ Section 466(3) of the Duties Act

- (c) set out when payment will be made, along with any arrangements to pay the interest that has accrued on the liability—where the breach is in relation to payment of a liability.

Consideration of representations

13. The Commissioner must consider all written representations made by the self assessor in the show cause period (the accepted representations).¹¹
14. The Commissioner will consider each case on its merits, having regard to the self assessor's conduct and the circumstances surrounding the breach including:
 - (a) the seriousness of the grounds supporting the proposed suspension or cancellation, and its circumstances
 - (b) the nature and extent of the self assessor's culpability
 - (c) the reasons for the self assessor's failure to meet their obligations, 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 self assessment processes)
 - (d) the nature and circumstances of any voluntary disclosure made by the self assessor concerning the grounds supporting the proposed suspension or cancellation
 - (e) the self assessor's previous failure (if any) to comply with the tax laws, statements by the Commissioner in the *SA1—Instructions for registered self assessors* or any statutes repealed by a tax law
 - (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.
15. The above considerations are not exclusive, and the Commissioner may take other circumstances into account so that genuine consideration is given to the merits of the matter.

Ending show cause process

16. The show cause process will end either with notification being given to the self assessor of no further action being taken or with the suspension or cancellation of their registration.

¹¹ Section 467(2) of the Duties Act

No further action and notice

17. If, after considering the accepted representations made by the self assessor in response to the show cause notice, the Commissioner no longer believes grounds exist to suspend or cancel the self assessor's registration, the Commissioner must not take any further action on the show cause notice.¹²
18. Also, the Commissioner must not take any further action where¹³:
 - (a) the grounds mentioned in paragraph 4(f) of this document are the only ones for the proposed action stated in the show cause notice
 - (b) after considering the accepted representations made by the self assessor in response to the show cause notice, the Commissioner is reasonably satisfied the reason the commitment amount was not paid in full as required was beyond the self assessor's control.
19. A notice stating that no further action is to be taken must be given to the self assessor by the Commissioner.¹⁴

Suspension or cancellation and information notice

20. If, after considering the accepted representations made by the self assessor in response to the show cause notice, the Commissioner still believes grounds exist to suspend or cancel the self assessor's registration—and that suspension or cancellation is warranted—the Commissioner may¹⁵:
 - (a) suspend the registration for not longer than the stated period, if the proposed action stated in the show cause notice was to suspend the self assessor's registration for a stated period
 - (b) either cancel the registration or suspend the self assessor for a period, if the proposed action stated in the show cause notice was to cancel the self assessor's registration.
21. The Commissioner may also take the above actions if there are no accepted representations made by the self assessor in response to the show cause notice.¹⁶
22. The Commissioner must immediately give the self assessor an information notice for the decision.¹⁷ The decision will take effect on¹⁸:
 - (a) the day the information notice is given to the self assessoror
 - (b) the later day, if a later day of effect is stated in the information notice.

¹² Section 468(2) of the Duties Act

¹³ Section 468(1A) of the Duties Act

¹⁴ Section 468(3) of the Duties Act

¹⁵ Section 469(3) of the Duties Act

¹⁶ Section 469(2) of the Duties Act

¹⁷ Section 469(4) of the Duties Act

¹⁸ Section 469(5) of the Duties Act

23. The Duties Act requires that an information notice includes the decision, the reasons for the decision, review rights and how to apply for a review.¹⁹ However, it is important that information notices also demonstrate clear decision-making.
24. The Commissioner will therefore provide an information notice that identifies the:
- (a) decision that the Commissioner still believes grounds exist to suspend or cancel the self assessor's registration
 - (b) decision that the Commissioner believes suspension or cancellation of the self assessor's registration is warranted
 - (c) impact of the decision; that is, the period of suspension of the self assessor's registration, or that their registration is cancelled and the date it takes effect
 - (d) decision-maker, including their name and designation
 - (e) decision-making process—that is, the main steps taken in making the decision
 - (f) facts and findings on which the decision is based
 - (g) reasons for the decision including the representations considered
 - (h) review rights²⁰ available to challenge the decision, how to apply for review and the time limits.
25. While not a requirement under the Duties Act, the Commissioner will notify the self assessor in writing where a period of suspension ends and the registration resumes.
26. Where the conduct of a self assessor gives rise to grounds for suspending their registration—and they are obliged to rectify the conduct before the period of suspension ends—a show cause process to cancel their registration will be commenced if their conduct is not rectified before the suspension period ends. Failure to rectify conduct during a suspension period is likely to demonstrate a non-compliant attitude towards their obligations.

Immediate suspension

27. The Commissioner may also decide to immediately suspend a self assessor's registration if the Commissioner believes grounds exist and the self assessor's registration must be suspended immediately to²¹:
- (a) protect the integrity of the self assessment system
 - (b) remove an immediate unacceptable risk that the self assessor will not comply with an obligation under the Duties Act or the Administration Act.

¹⁹ See definition of 'information notice', Schedule 6 of the Duties Act

²⁰ Chapter 13, Part 1 of the Duties Act

²¹ Section 469A of the Duties Act

Notice of immediate suspension

28. If the Commissioner decides to immediately suspend the self assessor's registration, the Commissioner must give the self assessor an information notice for the decision.²²
29. The Commissioner will provide an information notice that identifies the:
- (a) decision that the Commissioner will immediately suspend the self assessor's registration
 - (b) impact of the decision; that is, the period of suspension of the self assessor's registration²³ and that the period starts immediately after they are given the information notice²⁴
 - (c) decision-maker, including their name and designation
 - (d) decision-making process—that is, the main steps taken in making the decision
 - (e) facts and findings on which the decision is based
 - (f) Commissioner's belief that
 - (i) grounds exist for suspending or cancelling registration, and their particulars
 - (ii) the self assessor's registration must be suspended immediately to either protect the integrity of the self assessment system, or to remove an immediate and unacceptable risk the self assessor will not comply with an obligation
 - (g) reasons demonstrating the need for immediate suspension rather than the usual show cause process for suspension or cancellation
 - (h) review rights²⁵ available to challenge the decision, how to apply for the review and the time limits.
30. In all cases, the Commissioner will give the self assessor a show cause notice with the immediate suspension notice. The show cause process and requirements are explained in paragraphs 5 to 26 of this document.

Suspension

31. The suspension starts immediately after the self assessor is given the information notice.²⁶ Generally, this will be when the notice is sent to the self assessor's email address as given to the Commissioner by the self assessor, or by personal delivery.²⁷

²² Section 469A(3) of the Duties Act

²³ That period is always 56 days—Section 469A(5)(b)(i) of the Duties Act.

²⁴ Section 469A(5) of the Duties Act

²⁵ Chapter 13, Part 1 of the Duties Act

²⁶ Section 469A(5) of the Duties Act

²⁷ Section 148 of the Administration Act. Immediate suspension is not well supported by the postal system available to the Commissioner.

Ending the suspension

32. The suspension will end on the earliest of the following²⁸:
- (a) the day that is 56 days after the day on which the suspension period started
 - (b) when a decision is made by the Commissioner under section 469 of the Duties Act about a show cause notice given to the self assessor
 - (c) when notice is given by the Commissioner to the self assessor ending the suspension because the Commissioner no longer believes grounds for suspension or cancellation exist, or there is no longer a need for immediate suspension.

Ceasing to carry on a business

33. The Commissioner may suspend or cancel the registration of a self assessor registered under Chapter 12, Part 3 of the Duties Act (agent self assessor) if they permanently or temporarily cease to carry on, in Queensland, the business for which they are registered.²⁹

Self assessor must give notice

34. The agent self assessor must give notice (using Form D12.4) to the Commissioner within 14 days after ceasing to carry on the business.³⁰
35. If the agent self assessor is temporarily ceasing to carry on—in Queensland—the business for which they are registered, the notice must state the period (the temporary cessation period) for which they will temporarily cease to carry on the business.³¹
36. Failure by a self assessor to give notice to the Commissioner as required under section 470(3) of the Duties Act is grounds for suspension or cancellation³², and the Commissioner may commence a show cause process. The show cause process is explained in paragraphs 5 to 26 of this document.

Suspension or cancellation and notice

37. On receiving a notice from the agent self assessor, the Commissioner must give notice to them stating the self assessor's registration is:
- (a) cancelled effective from the day stated in the notice³³—if they permanently cease to carry on the business
 - (b) suspended for the period stated in the notice³⁴—if they temporarily cease to carry on the business.

²⁸ Section 469A(5)(b) of the Duties Act

²⁹ Section 470(1) and (2) of the Duties Act

³⁰ Section 470(3) of the Duties Act

³¹ Section 470(4) of the Duties Act

³² Section 465(e) of the Duties Act

³³ Section 470(5)(b)(i) of the Duties Act

³⁴ Section 470(5)(b)(ii) of the Duties Act

38. If the self assessor is temporarily ceasing to carry on the business, the period stated in the notice must not be longer than the temporary cessation period.³⁵
39. This notice is not an information notice under the Duties Act, therefore the prescribed requirements for an information notice do not apply.³⁶

Interaction with imposing penalty amounts

40. Under the Duties Act, offences committed by self assessors are generally dealt with by starting a proceeding against them (prosecution), requiring the self assessor to pay a penalty amount, or suspending or cancelling their registration. The processes outlined in *SA4—Guidelines for imposing penalty amounts on self assessors* and the suspension and cancellation processes 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)³⁷
 - (b) the conduct of the self assessor is sufficiently serious to warrant administrative penalty amounts and suspension or cancellation.
41. The purpose of this section is to clarify that intersection.

Imposition of penalty amounts and debt recovery

42. Where a penalty amount is required by notice and is unpaid, the Commissioner will undertake the usual debt recovery processes. However, before issuing a letter advising of the commencement of legal proceedings to recover the debt, 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.
43. In that case, the show cause process outlined in paragraphs 5 to 26 of this document 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.
44. 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 interest³⁸—the Commissioner will issue a no further action notice. Missed instalments will result in a further show cause process.
45. Where the penalty amount is unpaid, the Commissioner may suspend the self assessor's registration with the stated period being 'until payment is received'. At the same time, the Commissioner will continue the usual debt recovery processes including instituting legal proceedings to collect the debt as necessary.

³⁵ Section 470(6) of the Duties Act

³⁶ See definition of 'information notice', Schedule 6 of the Duties Act.

³⁷ Section 465(d) of the Duties Act

³⁸ Section 488(5) and (6) of the Duties Act

Concurrent imposition of a penalty amount and suspension or cancellation

46. 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.

47. 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. 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
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