

COMMISSIONER'S GUIDELINE

CG-SD-007:

Conveyances – Goods and Services Tax (GST) 'gross-up' clauses

Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	12 May 2005	12 May 2005	31 December 2007
2	2 January 2008	1 January 2008	Current

Purpose

This Guideline explains the Territory Revenue Office's (TRO's) assessment practice and requirements in relation to conveyances of dutiable property that include a GST 'gross-up' clause where no GST is payable on the transaction or GST is payable under the 'margin scheme'.

GST and stamp duty

It is common for documents relating to the conveyance of dutiable property, such as land and certain business property, to include a clause requiring the purchaser to pay the amount of the GST that may be payable by the vendor on the transaction in addition to the stated consideration. This is commonly referred to as a GST 'gross-up' clause.

In calculating the stamp duty payable in respect of these documents, any amount payable by a purchaser in respect of a GST liability incurred by the vendor forms part of the amount or value of the consideration upon which duty is assessed.¹

There are occasions where the impact of GST requires further clarification in relation to the way stamp duty is assessed. These include where:

- 1) a document contains a GST 'gross-up' clause but no GST is payable on the transaction; and
- 2) GST is assessable under the 'margin scheme', and the amount of GST payable is less than one-eleventh of the purchase price or value of the property.

¹ Refer to the definitions of 'dutiable value', 'consideration' and 'unencumbered value' in section 4(1) of the *Stamp Duty Act*.
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Assessing practice and requirements where GST is not payable

Where TRO is satisfied that GST is not payable on the transaction, duty will only be assessed on the consideration or value of the property without the addition of the amount of GST, notwithstanding that the document contains a GST 'gross-up' clause.

Where it is claimed that no GST is payable, both the conveyor and conveyee (or their agents) are required to provide the following information at the time the document is lodged for assessment:

- 1) a statement confirming that to the best of their knowledge and belief, GST is not payable on the supply; and
- 2) a copy of a ruling obtained from the Australian Taxation Office indicating the GST treatment on the transaction. If no ruling has been obtained, the parties are to provide:
 - a. a statement detailing the basis on which it is claimed that GST is not payable on the supply, including reference to all relevant facts, legislative provisions, rulings and authorities; and
 - b. where the supply would be GST-free if conditions or requirements specified in the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* are or will be satisfied, include in that statement a declaration as to whether those conditions or requirements have been or will be met.

Assessing practice and requirements where GST is payable under the 'margin scheme'

The 'margin scheme' is a special set of GST rules that apply to a business that sells real property that it held before 1 July 2000. The rules were included to allow businesses a choice to pay GST on the difference between the selling price and either the purchase price or the value of the real property as at 1 July 2000.

Where GST is payable under the 'margin scheme', the lodging party is required to provide written evidence of this including the amount of GST payable on the transaction.

Requirement for re-lodgement where GST treatment has changed

An instrument must be re-lodged for assessment where it has been assessed for stamp duty on the basis that GST was not payable and GST is subsequently payable or a different amount of GST is paid or payable than assessed.

Also, it is an offence not to make a full and true disclosure where facts or circumstances become known to a taxpayer, or a tax adviser acting on behalf of a taxpayer, showing that the basis on which tax has been paid, or the basis on which the Commissioner has assessed a tax liability, is incorrect, which would include a

change in the amount of GST paid or payable on a transaction. For further information on the requirement for full and true disclosure, refer to Commissioner's Guideline CG-GEN-005: *Requirement for full and true disclosure*.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from TRO's website.

Date of effect

This version of the Guideline has effect from 1 January 2008.



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