



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

This Circular explains Territory Revenue Management's (TRM's) assessment practice and requirements in relation to conveyances of dutiable property that include a 'Goods and Services Tax (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 (in addition to the stated consideration) the amount of the GST that **may** be payable by the vendor on the transaction. 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 assessed¹.

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

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

Where TRM 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 a statement at the time the document is lodged for assessment containing:

- (a) a statement that to the best of their knowledge and belief, GST is not payable on the transaction subject to the document; and
- (b) a copy of a ruling obtained from the Australian Taxation Office indicating the GST treatment on the transaction. If no ruling has been obtained:
 - (i) the basis on which the GST treatment is claimed, making reference to all relevant facts, legislative provisions, rulings and authorities; and
 - (ii) 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, the parties must declare in a statement that those conditions or requirements are or will be met.

Assessing practice and requirements where GST is not payable

¹ Refer to the definitions of 'consideration' and 'unencumbered value' in section 4(1) of the *Taxation (Administration) Act*.

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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 confirmation 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.

Revenue Circular RA 001, which sets out information on the revenue circular system, is incorporated into and is to be read as one with this Circular.



Authorised by
the Commissioner of Taxes
January 2005