



# OFFICE OF STATE REVENUE

DEPARTMENT OF TREASURY AND FINANCE

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## **Circular 65      Stamp Duty – Instruments Containing a Special Condition Relating to Goods and Services Tax (GST)**

The practice outlined in the general circular of 1 June 2000 provided that where an instrument contained a clause (commonly referred to as a “*GST gross up clause*”) providing for the purchaser, in addition to the consideration payable, to pay any amount in relation to a GST liability that may be incurred by the vendor in respect of the transaction, duty would be assessed on the consideration and an amount for GST (usually an additional 10%).

The Department's practice has changed so that instruments that include a GST gross up clause will not be charged with duty in respect of an amount for GST where the Commissioner is satisfied that GST does not apply to the transaction.

Where it is claimed that no GST is payable, both parties (or their agents) are required to provide a Statement at the time the instrument is lodged for assessment of duty containing the following:

- (a) That to the best of their knowledge and belief, GST is not payable on the transaction the subject of the instrument.
- (b) Advice as to whether a ruling has been obtained or sought from the Australian Taxation Office on the transaction. If a ruling has been obtained a copy should be provided.
- (c) If no ruling has been obtained:
  - (i) The basis on which it is claimed that no GST is payable making reference to all relevant facts, legislative provisions, rulings and authorities;
  - (ii) Where the supply would be GST free if conditions or requirements specified in the Commonwealth *A New Tax System (Goods and Services Tax) Act 1999* are or will be satisfied the parties must declare in the Statement that those conditions or requirements are or will be met.

### **OBJECTIONS**

Persons who believe that they have overpaid stamp duty as a consequence of the Commissioner's previous practice may exercise their rights of objection to the assessment under section 32 of the Stamp Act. If the time for objection has expired, the Commissioner will not unreasonably deny a request for an extension of time to lodge an objection. Any request should be lodged promptly.

Objections disallowed in respect of this issue under the Commissioner's previous practice, will be reconsidered and it will not be necessary for parties to make a further objection.

### **REASSESSMENT**

The Commissioner has power to reassess under section 31AA of the Stamp Act if at the time of stamping the instrument the assessment was made on the basis that no GST was payable, but it later became apparent that a GST liability arose and the purchaser was required to pay additional consideration to the vendor under the GST gross up clause.

As the Commissioner intends to conduct a programme of post assessment audits of instruments of this type they should be re-presented to the Commissioner to allow stamp duty to be applied if any additional consideration is paid.

ASSISTANT COMMISSIONER (REVENUE SERVICES)

5 DECEMBER 2000