Australian Capital Territory

Taxation Administration (Amounts payable – Home Buyer Concession Scheme) Determination 2004 (No 5)

Disallowable instrument DI2004—262

made under the

***Taxation Administration Act 1999*, s139 Determination of amounts payable under tax laws**

EXPLANATORY STATEMENT

The purpose of this instrument is to revoke Disallowable Instrument DI2004-76 which was notified on the ACT Legislation Register dated 31 May 2004.

This instrument also determines the eligibility and methods of calculation for the Home Buyer Concession Scheme (the Scheme).

This determination takes effect on and from 1 January 2005.

Summary
The *Taxation Administration Act 1999* deals with the administration of various tax laws relating to the imposition of certain taxes, duties and fees. These tax laws are specified in section 4 of the *Taxation Administration Act 1999*. Section 139 of the *Taxation Administration Act 1999* empowers the Minister to determine these taxes, duties and fees.

One of the specified tax laws is the *Duties Act 1999* (the Act), Chapter 2 of which deals with the grant of a Crown lease and the transfer or agreement for the transfer of land which are subject to duty.

This determination revokes Determination DI2004-76, which was notified on the ACT Legislation Register on 31 May 2004, made under the *Taxation Administration Act 1999*. This determination modifies the existing Scheme and applies to transfers of interests in land which take place on and from 1 January 2005.

Determination DI2003-169 will continue to apply in respect of transfers of interests in land, which took place from 1 July 2003 to 30 June 2004 and Determination DI2004-76 continues to apply in respect of transfers of interests in land which took place from 1 July 2004 to 31 December 2004.

Changes in this Determination

- Total Income. The definition of "total income" has been amended to clarify that it is the income of all persons named in the grant, transfer or agreement for transfer of the subject property, and their domestic partners. It includes income from all sources including benefits from a salary packaging arrangement and income classified as "exempt income" under the *Income Tax Assessment Act 1997*. It excludes eligible termination payments such as those made for years of service under a bona fide redundancy payment that are not assessable for income tax under the *Income Tax Assessment Act 1936* (Cwlth), Part 3, Division 2, Subdivision AA.

- Annual Income Test. The income test is now to be applied only as an annual test. The previous requirement to meet all three income tests (weekly, monthly and annual) meant that some prospective applicants could not meet the strict criteria through temporary/short term increases in income. Examples of such circumstances are where the tests included income from short term higher duties, the Commonwealth 'baby bonus', short term second job, and back pay received in the week or month prior to the grant, transfer or agreement for transfer. These items will still be included as income but in a single annual test. The new test is that:

  > on the date of the grant, transfer or agreement for transfer (whichever comes first), the grantee/s or transferee/s, together with their domestic partners, must have a combined total income over the previous 12 months (from the day of the grant, transfer or agreement for transfer – whichever comes first) less than or equal to the relevant income threshold. There is a requirement for the applicant/s to state that the details provided reflect their usual income.

- Current income. The definition of "current income", which applied to weekly income, has been deleted as it is no longer required.

- Date the duty must be paid. A new definition has been introduced to allow a time limit for receipt of applications. The "date the duty must be paid" is either 90 days after the liability to pay the duty arises (section 16 of the Act), or a period up to 12 months (section 16A of the Act) for an 'off the plan' purchase agreement.

- Limited time for receipt of application. The time to apply for a concession under the Scheme has been limited:
  - For a grant, transfer or agreement for transfer made after 31 December 2004, an application for concessional duty under the Scheme must be received by the Commissioner for ACT Revenue before the **date the duty must be paid**. This is usually 90 days or can be up to 12 months for a purchase "off the plan", from the date of the grant, transfer or agreement for transfer (whichever comes first).
  - For a grant, transfer or agreement for transfer made up to 31 December 2004, an application for concessional duty must be received by the Commissioner for ACT Revenue by 31 December 2005.

Unchanged Operation of the Scheme:
Concessional Rates and Dutiable Value Thresholds:
The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and beyond the upper dutiable value thresholds:

- If the dutiable value of an **eligible property** does not exceed the **lower threshold** an eligible home buyer is entitled to the maximum duty concession, with a minimum duty of $20 applied. Part concession is available for purchases of eligible homes more than the **lower threshold** but less than the **upper threshold**. The part concession is the concessional rate of duty for each $100 or part thereof exceeding the **lower threshold** up to the **upper threshold** at which point and beyond no concession is available.

- If the dutiable value of an **eligible vacant block** does not exceed the **lower threshold** an eligible home buyer is entitled to the maximum duty concession with the minimum duty of $20 applied. Part concession is available for purchases of vacant blocks greater than the **lower threshold**. The part concession is the concessional rate of duty for each $100 or part thereof exceeding the **lower threshold** up to the **upper threshold** at which point and beyond no concession is available.

- Where the purchase is for a **share** in an eligible property or an eligible vacant block, the concession is proportional to the share purchased by the eligible home buyer.

Note that the dutiable value thresholds (the **lower threshold** and the **upper threshold**) are determined in a separate Disallowable Instrument.

Income Threshold

- The Income Threshold is **$100,000** per annum and the allowance for each dependent child is **$3,330** per annum, up to a maximum of **$116,650** for an eligible home buyer with 5 or more dependent children as shown in the table below:

Number of dependent children	Threshold
0	$100,000
1	$103,330
2	$106,660
3	$109,990
4	$113,320
5 or more	$116,650

A ‘dependent child’ has the same meaning as in the *Social Security Act 1991* (Cwlth), which currently is a child under the age of 22 that meets certain income tests, and is the responsibility of the applicant.

- Applicants must reside in the home as their principal place of residence continuously for a period of not less than 6 months and such period is to commence within 12 months of completion of the transfer for an eligible property, or the date of the **Certificate of Occupancy and Use** following completion of construction of the residence on the eligible vacant block.

- The Commissioner for ACT Revenue has the discretion to extend the time for an applicant to meet this requirement for compulsory or unforeseen circumstance e.g. work or health related issues.

- On the date of the grant, transfer or agreement for transfer (whichever comes first) the applicant must have attained the age of 18 years. However, if the Commissioner for ACT Revenue is satisfied there are good reasons to do so, he/she may exempt the applicant from the requirement to be at least 18 years old.

Authorised by the Treasurer, Ted Quinlan MLA