

Taxation Administration (Amounts payable – Eligibility - Home Buyer Concession Scheme) Determination 2008 (No 1)

Disallowable instrument DI2008–76

made under the

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

EXPLANATORY STATEMENT

1. This instrument is the *Taxation Administration (Amounts Payable—Eligibility-Home Buyer Concession Scheme) Determination 2008 (No 1)*.
2. The instrument commences on 6 May 2008.
3. 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* and section 139 empowers the Minister to determine amounts payable for taxes, duties and fees, and the method by which an amount is to be calculated.
4. 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 a crown lease which is subject to duty. Section 12 of the *Duties Act 1999* states that the duty is payable by the transferee (that is, the eligible homebuyer), and section 5 of the *Duties Act 1999* requires that the amount is payable to the Territory.
5. The instrument determines the:
 - (1) income test and thresholds;
 - (2) eligibility criteria;
 - (3) conditions;
 - (4) method of calculation of duty payable under section 31 of the *Duties Act 1999*; and

- (5) time limit for applications
6. The instrument contains a number of new provisions including paragraph 4 (3) which specifies when the duty is payable for a “Declared Affordable House and Land Package”.
 7. In addition, the definition of “relevant income threshold” in paragraph 4 (13) of the instrument has been modified to increase the income threshold amounts with reference to the number of dependant children.
 8. Paragraph 5 (d) (ii) is an additional exemption to allow Executors and Trustees of a deceased estate to be eligible for a home buyer concession if they held a legal or equitable interest in land in the 2 years preceding the date of the grant, transfer or agreement for transfer as a consequences of them performing their duties as an executor of trustee.
 9. Paragraph 7 amends the time limit for applications so that applicants now have 90 days or 1 year from the date the liability arises to apply for the scheme regardless of when duty is payable.
 10. Transition provisions have been included to clarify that the previous Disallowable Instrument continues to apply to grants, transfers or agreements for transfer entered into during this period 1 January 2007 to 5 May 2008.
 11. The operation of the scheme is otherwise unchanged. Thus, the concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and beyond the upper dutiable value thresholds. The dutiable value thresholds (the lower threshold and the upper threshold), and their method of calculation, are determined in a separate Disallowable Instrument.
 12. The instrument determines the dutiable value of an eligible property that does not exceed the lower threshold. In this case, an eligible home buyer is entitled to the maximum duty concession and a minimum duty of \$20 applies.
 13. A 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 this point and beyond, no concession is available.
 14. 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 and a minimum duty of \$20 applies.
 15. A 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.
 16. 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.

17. The instrument also provides for an Income Threshold of \$120,000 per annum with an allowance for each dependent child of \$3,330 per annum up to a maximum of \$136,650 for an eligible home buyer with 5 or more dependent children as shown in the table.
18. 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.
19. 'Total Income' is the income of all persons named in the grant, transfer or agreement for transfer of the subject property, and their domestic partners and 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* (Cwlth).
20. The instrument 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. Income for a self-employed person is the profit or gain made in the ordinary course of carrying on business.
21. The income test is applied as an annual test. Temporary or short term increases in income such as income from short term higher duties, the Commonwealth 'baby bonus', short term second job, and back pay received in the 12 months prior to the grant, transfer or agreement for transfer are included as income.
22. The income test is, 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, 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. Applicants must state that the details provided reflect their usual income.
23. 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 1 year of completion of the transfer for an eligible property, or the date of the Certificate of Occupancy following completion of construction of the residence on the eligible vacant block.
24. The Commissioner for ACT Revenue has the discretion to extend the time for an applicant to meet this requirement for compulsory or unforeseen circumstance such as work or health related issues, or to approve a residency period shorter than 6 months or to exempt the applicant from this requirement.
25. 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.

26. 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 [defined in paragraph 4 (3)] or 1 year whichever is earlier. For example in the case of an “Off the Plan Purchase “ or an “Affordable House and Land Package” applications must be received within 1 year of the liability to pay the duty arises.
27. DI2006-265 is revoked.
28. DI2006-265 continues to apply in respect of transfers of interests in land which took place on 1 January 2007 to 5 May 2008.

Authorised by the Treasurer
Jon Stanhope MLA