

Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2009 (No 2)

Disallowable instrument DI2009—244

made under the

Taxation Administration Act 1999, s 139 (Determination of amounts payable under tax laws)

1 Name of instrument

This instrument is the *Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2009 (No 2)*.

2 Commencement

This instrument commences on 1 January 2010.

3 Application

This instrument applies to:

- (1) a Crown lease that is granted on or after 1 January 2010; or
- (2) a transfer of a Crown lease first executed on or after 1 January 2010; or
- (3) an agreement for the transfer of a Crown lease, if—
 - (a) the agreement precedes the transfer of the Crown lease; and
 - (b) the agreement is first executed on or after 1 January 2010.

4 Definitions

In this instrument:

- (1) ***The Act*** means the *Duties Act 1999*.
- (2) ***Certificate of Occupancy*** means a certificate issued under section 69 of the *Building Act 2004*.
- (3) ***Commissioner*** means the Commissioner for ACT Revenue.
- (4) ***Dependent child***—see the *Social Security Act 1991* (Cwlth), section 5.
- (5) ***Domestic partner***—see the *Legislation Act 2001*, section 169.

Note 1 Under section 169 of the *Legislation Act 2001*, a reference to a person's domestic partner is a reference to someone who lives with the person in a domestic partnership and includes a reference to a spouse or civil partner of the person.

Note 2 Section 169 of the *Legislation Act 2001* defines a domestic partnership as the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis. The section also provides some examples of indicators used to decide whether or not 2 people are in a domestic partnership.

- (6) ***Dutiable value***—see the *Duties Act 1999*, section 20.
- (7) ***Eligible property*** means an estate in fee simple or a Crown lease that—
 - (a) has a dwelling upon it; and
 - (b) has a dutiable value less than the upper threshold.
- (8) ***Eligible vacant block*** means an estate in fee simple or a Crown lease that—
 - (a) does not have a dwelling upon it; and
 - (b) has a dutiable value less than the upper threshold.
- (9) ***Employment termination payment***—see the *Income Tax Assessment Act 1997* (Cwlth), section 82-130.
- (10) ***Exempt income***—see the *Income Tax Assessment Act 1997* (Cwlth), section 6-20.
- (11) ***Leave*** includes maternity leave, leave without pay, leave on half pay, and leave while receiving workers' compensation payments.
- (12) ***Lower threshold*** means—
 - (a) in relation to an eligible property—the lower threshold of the property value thresholds determined by the Minister for the Home Buyer Concession Scheme under section 139 of the *Taxation Administration Act 1999*; or
 - (b) in relation to an eligible vacant block—the lower threshold of the land value thresholds determined by the Minister for the Home Buyer Concession Scheme under section 139 of the *Taxation Administration Act 1999*.
- (13) ***Relevant income threshold*** means the income threshold in Table 1 that corresponds to the total number of dependent children that all applicants and their domestic partners have.

Table 1 – Relevant income thresholds

Number of dependent children	Income threshold
0	\$120,000
1	\$123,330
2	\$126,660
3	\$129,990
4	\$133,320
5 or more	\$136,650

- (14) ***Residency period*** means the period required by section 5(1)(b)(i).
- (15) ***Subject property*** means the eligible property or the eligible vacant block in respect of which an application for concessional duty under this instrument is made.

- (16) **Total income** includes the sum of all the income of all persons named in the grant, transfer, or agreement for the transfer of the subject property.
Total income—
- (a) in relation to a person who has a domestic partner—includes the income of their domestic partner; and
 - (b) in relation to a self-employed person—includes the net trading profit or gain made in the ordinary course of carrying on the person’s business, rather than the business’ turnover; and
 - (c) includes income from all sources, such as benefits from a salary packaging arrangement, short term higher duty payments, short term second job payments, maintenance payments, and income that is exempt income; and
 - (d) excludes employment termination payments that are payments made for years of service under a genuine redundancy payment.
- (17) **Upper threshold** means—
- (a) in relation to an eligible property—the upper threshold of the property value thresholds determined by the Minister for the Home Buyer Concession Scheme under section 139 of the *Taxation Administration Act 1999*; or
 - (b) in relation to an eligible vacant block—the upper threshold of the land value thresholds determined by the Minister for the Home Buyer Concession Scheme under section 139 of the *Taxation Administration Act 1999*.

5 Definition—eligible home buyer

- (1) **Eligible home buyer** means a person who provides written evidence to the Commissioner that:
- (a) during the 1 year prior to the date of the first of the following—
 - (i) the grant of the Crown lease; or
 - (ii) the transfer of the Crown lease; or
 - (iii) the agreement for the transfer of the Crown lease—

all persons named in the grant, or transfer, or agreement (and their domestic partners) had a total income that—

 - (iv) is less than or equal to the relevant income threshold; and
 - (v) reflects their usual income; and
 - (b) at least one of the persons named in the grant, or transfer, or agreement will:
 - (i) reside in the subject property as their principal place of residence for a continuous period of 6 months; and
 - (ii) start the residency period within 1 year of—

- A. in relation to an eligible property—the date of the completion of the transfer of the subject property; or
 - B. in relation to an eligible vacant block—the date of the certificate of occupancy following completion of construction of the residence on the subject property; and
 - (c) the person and their domestic partner do not, either alone or jointly with another person or persons, have a legal or an equitable interest in land other than the subject property; and
 - (d) the person and their domestic partner have not had a legal or an equitable interest in land other than the subject property in the 2 years preceding the date of the grant, transfer, or agreement for the transfer (whichever is first), except if a person:
 - (i) is required to relinquish an interest in land by virtue of:
 - A. an order of a court; or
 - B. a written financial agreement made under section 90B, 90C, 90D, 90UB, 90UC, or 90UD of the *Family Law Act 1975* (Cwlth) that is binding on them, and their relationship has ended; or
 - C. a written domestic relationship agreement or a termination agreement under the *Domestic Relationships Act 1994* as a consequence of the termination of a relationship between domestic partners; or
 - (ii) acquired their interest in the land by virtue of being an Executor or a Trustee (but not a beneficiary) under a will; and
 - (e) under the grant or transfer all persons are acquiring both a legal and an equitable interest in the subject property; and
 - (f) on the first of the date of the grant, transfer, or agreement for the transfer, all persons acquiring an interest in the subject property were at least 18 years of age.
- (2) Despite section 5(1), and if satisfied that there are good reasons for doing so, the commissioner may:
 - (a) approve a period shorter than the residency period; or
 - (b) exempt the applicant from the residency period; or
 - (c) extend the 1 year period in which to start the residency period; or
 - (d) exempt the applicant from the requirement to be at least 18 years of age.
- (3) The powers in section 5(2)(a), (b), and (c) are exercisable only where an applicant is unable to reside in the subject property because of a

compulsory or unforeseen circumstance, such as a work or health-related issue.

- (4) Subject to section 5(3), the powers in section 5(2)(a), (b), and (c) are exercisable only where a written request to exercise the power is lodged with the commissioner within 18 months of –
- (a) in relation to an eligible property—the date of the completion of the transfer of the subject property; or
 - (b) in relation to an eligible vacant block—the date of the certificate of occupancy following completion of construction of the residence on the subject property.
- (5) In respect of an undivided share of a subject property:
- (a) the total dutiable value of the subject property must be below the upper threshold; and
 - (b) a person is not an eligible home buyer unless all persons acquiring undivided shares of the subject property meet the criteria under this section; and
 - (c) the person is eligible if they are acquiring an additional interest in the subject property.

6 Determined amount

- (1) The determined amount of duty that is payable on the purchase of an eligible property or eligible vacant block (or an undivided share of either) by an eligible home buyer for the purposes of section 31 of the Act is—
- (a) in relation to an eligible property:
 - (i) \$20, where the dutiable value of the eligible property does not exceed the lower threshold; or
 - (ii) the greater of:
 - A. \$20; or
 - B. the concessional duty rate for each \$100 (or part thereof) by which the dutiable value of the eligible property exceeds the lower threshold, that is calculated using the following formula and rounded down to the nearest multiple of 5 cents:

$$\frac{F \times 100}{G}$$

Where:

F = the amount of duty that would otherwise be payable under the Act for an ordinary conveyance of property having a dutiable value equal to the upper threshold but for this instrument.

G = upper threshold less lower threshold.

- (b) in relation to an eligible vacant block:
- (i) \$20, where the dutiable value of the eligible vacant block does not exceed the lower threshold; or
 - (ii) the greater of:
 - A. \$20; or
 - B. the concessional duty rate for each \$100 (or part thereof) by which the dutiable value of the eligible vacant block exceeds the lower threshold, that is calculated using the following formula and rounded down to the nearest multiple of 5 cents:

$$\frac{F \times 100}{G}$$

Where:

F = the amount of duty that would otherwise be payable under the Act for an ordinary conveyance of land having a dutiable value equal to the upper threshold but for this instrument.

G = upper threshold less lower threshold.

- (c) in relation to one or more undivided shares in the eligible property or eligible vacant block—the greater of:
- (i) \$20; or
 - (ii) the duty calculated using the following formula:

$$\frac{C \times E}{D}$$

Where:

C = the amount of duty that would be payable under either paragraph (a) or (b) for the grant, transfer, or agreement for the transfer of the whole of the eligible property or eligible vacant block.

D = the amount of duty that would be otherwise payable under the Act on an ordinary conveyance of the whole of the eligible property or vacant block but for this instrument.

E = the amount of duty that would be otherwise payable under the Act on an ordinary conveyance of the relevant share of the eligible property or eligible vacant block but for this instrument.

7 Time limit for applications

- (1) An application for concessional duty under this instrument must be received by the commissioner—
 - (a) in respect of a grant, transfer, or agreement to transfer a Crown lease other than a Crown lease referred to in paragraph (b), within 90 days of the first of—
 - (i) the date of the grant of the Crown lease; or
 - (ii) the date of the transfer of the Crown lease; or
 - (iii) the date of the agreement to transfer the Crown lease.
 - (b) in respect of a grant, transfer, or agreement to transfer a Crown lease for an ‘off the plan’ purchase agreement as defined under section 16A(4)(a) or (b) of the Act, within 1 year of the first of—
 - (i) the date of the grant of the Crown lease; or
 - (ii) the date of the transfer of the Crown lease; or
 - (iii) the date of the agreement to transfer the Crown lease.
- (2) Despite section 7(1)(b), an application for concessional duty under this instrument must be received by the commissioner within 14 days of the occurrence of any of the events mentioned in section 16A(1) of the Act.
- (3) If an application is not received within the relevant time limit required by this section, the eligible home buyer is not eligible for concessional duty under this instrument.
- (4) Subsection (3) applies regardless of whether or not the eligible home buyer would otherwise be eligible for concessional duty under this instrument.

8 Revocation

DI2009-113 is revoked.

9 Transitional Provisions

DI2009-113 continues to apply to a grant, transfer, or an agreement to transfer a lease, between 1 July 2009 and 31 December 2009 inclusive.

Treasurer
Katy Gallagher MLA

10 December 2009