

Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2011 (No 1)

Disallowable instrument DI2011–136

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—Pensioner Duty Concession Scheme) Determination 2011 (No 1)*.

2 Commencement

This instrument commences on 1 July 2011.

3 Application

This instrument applies to:

- (1) a Crown lease that is granted on or after 1 July 2011; or
- (2) a transfer of a Crown lease first executed on or after 1 July 2011; 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 July 2011.

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) **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.

- (5) ***Dutiable value***—see the *Duties Act 1999*, section 20.
- (6) ***Eligible pensioner*** means a person who:
- (a) receives an Australian Centrelink age pension or a Department of Veterans' Affairs age pension equivalent; or
 - (b) receives a Centrelink disability support pension and is 50 years of age or over; or
 - (c) holds a Department of Veterans' Affairs Gold Card and has done so for at least 1 year prior to the first of the—
 - (i) date of the grant; or
 - (ii) date of the transfer; or
 - (iii) date of the agreement for the transfer—
of the subject property.
- (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) ***Lower threshold*** means—
- (a) in relation to an eligible property—the lower threshold of the property value thresholds determined by the Minister for the Pensioner Duty 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 Pensioner Duty Concession Scheme under section 139 of the *Taxation Administration Act 1999*.
- (10) ***Residency period*** means the period required by section 5(1)(a)(i).
- (11) ***Residential property*** means land located in Australia:
- (a) in which the person resided as the person's principal place of residence immediately prior to purchasing the subject property; or
 - (b) that was the person's principal place of residence immediately prior to selling it within 1 year of the purchase of the subject property.

Example

An applicant sold their ACT principal place of residence on 1 April 2010. After it was sold, the applicant rented another home in the ACT to live in. On 1 December 2010, the

applicant purchased the subject property. The home the applicant sold on 1 April 2010 is a residential property for the purposes of this instrument even though the applicant was not resident immediately before purchasing the subject property. This also satisfies the requirements under section 5 (1) (b), because the residential property was sold within 1 year of the applicant buying the subject property.

- (12) ***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.
- (13) ***Upper threshold*** means—
- (a) in relation to an eligible property—the upper threshold of the property value thresholds determined by the Minister for the Pensioner Duty 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 Pensioner Duty Concession Scheme under section 139 of the *Taxation Administration Act 1999*.

5 Definition—eligible home buyer

- (1) In this instrument, eligible home buyer means an eligible pensioner who provides written evidence to the commissioner that:
- (a) at least one of the eligible pensioners 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
 - (b) the eligible pensioner will sell or have sold the residential property within 1 year or a longer period approved by the commissioner, of:
 - (i) the date of the completion of the transfer of the subject property; or
 - (ii) the date of the certificate of occupancy following completion of construction of the residence on the subject property; and
 - (c) the eligible pensioner 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 residential property and the subject property; and

- (d) under the grant or transfer the eligible pensioner is acquiring both a legal and an equitable interest in the subject property.
- (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.
- (3) The powers in section 5(2) are exercisable only where an applicant is unable to reside in the subject property because of an unforeseen circumstance, such as a 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.

6 Other Eligibility Criteria

- (1) To be eligible for the scheme, ownership of the property being purchased must be in the same name/s as the property being sold.
- (2) The concession is available where at least one owner of the existing property is an eligible pensioner and all other criteria are satisfied.
- (3) An applicant is limited to no more than one concession for this scheme.

7 Determined amount

- (1) The determined amount of duty that is payable on the purchase of an eligible property or eligible vacant block 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 on 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 on an ordinary conveyance of land having a dutiable value equal to the upper threshold but for this instrument.

G = upper threshold less lower threshold.

8 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) of the Act, within 14 days of the occurrence of any of the events mentioned in section 16A(1) of the Act.

- (2) 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.
- (3) Subsection (2) applies regardless of whether or not the eligible home buyer would otherwise be eligible for concessional duty under this instrument.

9 Revocation

DI2010-308 is revoked.

10 Transitional Provisions

DI 2010-308 continues to apply to a grant, transfer, or an agreement to transfer a lease, between 1 January 2011 and 1 July 2011 inclusive.

Treasurer
Katy Gallagher MLA
21 June 2011