

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 2)

Disallowable instrument DI2016–305

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—Home Buyer Concession Scheme) Determination 2016 (No 2)*.

2 Commencement

This instrument commences on 1 January 2017.

3 Application

This instrument applies to—

- (a) a Crown lease that is granted on or after 1 January 2017; or
- (b) a transfer of a Crown lease first executed on or after 1 January 2017; or
- (c) an agreement for the transfer of a Crown lease, if—
 - (i) the agreement precedes the transfer of the Crown lease; and
 - (ii) the agreement is first executed on or after 1 January 2017.

4 Definitions

In this instrument:

Act means the *Duties Act 1999*.

certificate of occupancy means a certificate issued under section 69 of the *Building Act 2004*.

dependent child—see the *Social Security Act 1991* (Cwlth), section 5.

dutiable value—see the Act, section 20.

eligibility date, in relation to a grant, transfer or agreement for the transfer of a Crown lease, means the first of the following dates:

- (a) the date of the grant of the Crown lease;
- (b) the date of the transfer of the Crown lease;
- (c) the date of the agreement to transfer the Crown lease.

eligible property means an estate in fee simple or a Crown lease that—

- (a) has a dwelling upon it that is a new home or a substantially renovated home, or is subject to an ‘off the plan’ purchase agreement; and
- (b) has a dutiable value less than the upper threshold.

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.

employment termination payment—see the *Income Tax Assessment Act 1997* (Cwlth), section 82-130.

exempt income— see the *Income Tax Assessment Act 1997* (Cwlth), section 6-20.

lower threshold means—

- (a) in relation to an eligible property—the lower threshold of the property value thresholds determined in this instrument; or
- (b) in relation to an eligible vacant block—the lower threshold of the land value thresholds determined in this instrument.

new home means a dwelling that has not previously been occupied or sold as a place of residence.

occupied, in relation to a new home, includes occupation of the home on a short-term basis, regardless of the length of occupation or the intended length of occupation.

‘off the plan’ purchase agreement—see the Act, section 16A (4).

principal place of residence means the home a person primarily resides in on an ongoing and permanent basis as the person’s settled or usual home, but it is not sufficient to establish occupation—

- (a) if the occupation is transient, temporary or of a passing nature; or
- (b) the occupation is for some other purpose.

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	\$160 000
1	\$163 330
2	\$166 660
3	\$169 990
4	\$173 320
5 or more	\$176 650

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, civil union partner 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.

residency period means the period required by section 8 (3) (b).

self-employed includes a situation in which an individual is a sole trader or a partner in a partnership.

substantially renovated home means a home that—

- (a) has substantial renovations; and
- (b) as renovated, has not been previously occupied or sold as a place of residence.

substantial renovations, of a building, are renovations in which all, or substantially all, of the building is removed or replaced, whether or not the renovations involve removal or replacement of foundations, external walls, interior supporting walls, floors, roof or staircases.

subject property means the eligible property or the eligible vacant block in relation to which an application for concessional duty under this instrument is made.

total income—

- (a) includes the sum of all the gross income of all people named in the grant, transfer, or agreement for the transfer of the subject property; and
- (b) in relation to a person who has a domestic partner—includes the income of the person's domestic partner; and
- (c) 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

- (d) 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
- (e) excludes employment termination payments that are payments made for years of service under a genuine redundancy payment.

upper threshold means—

- (a) in relation to an eligible property—the upper threshold of the property value thresholds determined in this instrument; or
- (b) in relation to an eligible vacant block—the upper threshold of the land value thresholds determined in this instrument.

5 Application for concession

- (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 for an ‘off the plan’ purchase agreement—within 1 year of the eligibility date; or
 - (b) in respect of a grant, transfer, or agreement to transfer a Crown lease—within 90 days of the eligibility date.

Note **Commissioner** means the Commissioner for Australian Capital Territory Revenue.

- (2) Despite paragraph (1) (a), an application for concessional duty under this instrument must be received by the Commissioner within 14 days after the first occurrence of any of the events mentioned in section 16A (1) of the Act.
- (3) The Commissioner may accept a late application under this instrument if the Commissioner considers it fair and reasonable to do so.
- (4) The Commissioner may reassess the duty liability under section 9 of the *Taxation Administration Act 1999* for an eligible home buyer that has submitted a late application for concessional duty under this instrument.

6 Determination—thresholds and rates

- (1) I determine the thresholds and amounts in tables 2 and 3 to be used to calculate duty payable to the Territory under section 31 of the Act by an eligible home buyer buying an eligible property or eligible vacant block under the Home Buyer Concession Scheme:

Table 2—property value thresholds

Threshold	Amount
Lower threshold (full concession)	\$468 000
Upper threshold (at which concession ceases)	\$590 000

Table 3—land value thresholds

Threshold	Amount
Lower threshold (full concession)	\$280 000
Upper threshold (at which concession ceases)	\$323 300

- (2) I determine the concessional duty rates in table 4 calculated in accordance with the criteria under this instrument for the Home Buyer Concession Scheme:

Table 4—concessional duty rates

Property type	Amount per \$100 (or part thereof) of the dutiable value in excess of the lower threshold
Eligible property	\$14.70
Eligible vacant block	\$15.55

7 Determination—calculation of concessional duty

- (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, 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 minus 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, 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 minus 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

- (2) In respect of an undivided share of a subject property—
- (a) the dutiable value of the subject property must be below the upper threshold; and
- (b) a person is not an eligible home buyer unless all people acquiring undivided shares of the subject property meet the criteria under this instrument; and

- (c) the person is eligible if the person is acquiring an additional interest in the subject property.

8 Meaning of *eligible home buyer*

- (1) All parties (and their domestic partners) who will have an interest in the subject property upon settlement must be an applicant for the Home Buyer Concession and must be an eligible home buyer.

Example

A transferee, who signs a contract to purchase the subject property, applies for and receives the Home Buyer Concession. Concessional duty is paid. At a later date prior to settlement, a non-conforming transfer is completed and an additional transferee joined to the purchase. The additional transferee must be an applicant for the Home Buyer Concession and also be an eligible home buyer. The combined income of both transferees must not exceed the relevant income threshold.

A transferee who is removed from the agreement to purchase the subject property prior to settlement (via a non-conforming transfer) may be eligible to apply for the Home Buyer Concession in their own right at a later date (provided all other eligibility criteria are met).

- (2) Eligibility for the Home Buyer Concession is determined with reference to the date of agreement for the transfer of the Crown lease (that is, the date of execution of the contract), subject to the provisions of section 5.
- (3) An *eligible home buyer* is a person who provides written evidence to the Commissioner that—
 - (a) during the 1 year prior to the eligibility date, all people named in the grant, or transfer, or agreement for the subject property (and their domestic partners) had a total income that—
 - (i) is less than or equal to the relevant income threshold; and
 - (ii) reflects their usual income; and
 - (b) at least one of the people named in the grant, or transfer, or agreement for the subject property will—
 - (i) reside in the subject property as their principal place of residence for a continuous period of 1 year (the *residency period*); 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 the person's domestic partner do not, either alone or jointly with another person, have a legal or an equitable interest in land other than the subject property; and
 - (d) the person and the person's domestic partner have not had a legal or an equitable interest in land other than the subject property in the 2 years preceding the eligibility date, 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; or
 - (iii) entered into an agreement to purchase a property within the preceding 2 year period and subsequently rescinded this agreement under section 50 or 50A of the Act, or rescinded the agreement under the relevant provisions of another jurisdiction; 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 eligibility date, all people acquiring an interest in the subject property were at least or will be 18 years of age.
- (4) As part of the written evidence provided to the Commissioner, an eligible home buyer is required to substantiate their income and other details with supporting documents. These documents include, but are not limited to, payslips, full income tax return (not the notice of assessment), and the home loan application (not the loan approval, contract or online application pack).
- (a) The home loan application must be the same application as was lodged with the eligible home buyer's financial institution. Evidence may be requested to show that the home loan application provided to the Commissioner is the same as that lodged with the financial institution.

9 Residence requirements

- (1) An applicant for the Home Buyer Concession may lodge a written request with the Commissioner to—
 - (a) approve a period shorter than the residency period; or
 - (b) exempt the person from the residency period; or
 - (c) extend the period under section 8 (3) (b) (ii) in which to start the residency period; or
 - (d) exempt the person from the requirement under section 8 (3) (f) to be at least 18 years of age.
- (2) For a request under paragraphs (1) (a) to (c), the applicant must lodge the request within 18 months after—
 - (a) in relation to an eligible property—the day the transfer of the subject property is completed; or
 - (b) in relation to an eligible vacant block—the day a certificate of occupancy is issued following completion of construction of the residence on the subject property.
- (3) If the Commissioner receives a request under subsection (1), the Commissioner may grant the request if satisfied that—
 - (a) for a request under paragraphs (1) (a) to (c)—the person is unable to reside in the subject property because of a compulsory or unforeseen circumstance; and
 - (b) there are good reasons to grant the request.

Example—unforeseen circumstance

A health-related issue

- (4) If an applicant has not or will not comply with the residency period, the applicant—
 - (a) must give written notice of that fact to the Commissioner; and
 - (b) is liable to pay the Territory the amount of duty that would have otherwise been payable if the applicant had not been eligible for the Home Buyer Concession.
- (5) The applicant must do the things mentioned in subsection (4) within 14 days of the earlier of the following:
 - (a) the end of the period allowed for compliance with the residency period;
 - (b) the date it first becomes apparent that the residency period will not be complied with during the period allowed for compliance.

12 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 1) DI2016-77*.

13 Transitional effect

DI2016-77 continues to apply to a grant, transfer, or agreement to transfer a lease for the period 8 June 2016 to 31 December 2016, inclusive.

Andrew Barr MLA
Treasurer
15 December 2016