

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 1)

Disallowable instrument DI2016-77

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 1)*.

2 Commencement

This instrument commences on 8 June 2016.

3 Application

This instrument applies to:

- (1) a Crown lease that is granted on or after 8 June 2016; or
- (2) a transfer of a Crown lease first executed on or after 8 June 2016; 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 8 June 2016.

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, 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.

- (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 that is a new home or a substantially renovated home, or is subject to an ‘off the plan’ purchase agreement as defined in Section 16A of the *Duties Act 1999*; 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 in this instrument; or
 - (b) in relation to an eligible vacant block—the lower threshold of the land value thresholds determined by the Minister in this instrument.
- (13) **New home** means a dwelling that has not previously been occupied or sold as a place of residence.
- (14) **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.
- (15) **Principal place of residence** means the home you primarily reside in. The most important characteristic of a principal place of residence is that the person is living in the residence on an ongoing and permanent basis as the person’s settled or usual home. When the occupation is transient, temporary or of a passing nature, or the occupation is for some other purpose, this is not sufficient to establish occupation as a principal place of residence.
- (16) **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 |

- (17) **Residency period** means the period required by section 8 (3) (b) (i).
- (18) **Self-employed** includes a situation in which an individual is a sole trader or a partner in a partnership.

- (19) **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.
- (20) **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.
- (21) **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.
- (22) **Total income** includes the sum of all the gross 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 under the *Income Tax Assessment Act 1997 (Cth)*; and
 - (d) excludes employment termination payments that are payments made for years of service under a genuine redundancy payment.
- (23) **Upper threshold** means—
- (a) in relation to an eligible property—the upper threshold of the property value thresholds determined by the Minister in this instrument; or
 - (b) in relation to an eligible vacant block—the upper threshold of the land value thresholds determined by the Minister 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 as defined under section 16A (4) (a) 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.
 - (b) in respect of a grant, transfer, or agreement to transfer a Crown lease—within 90 days of the first of the following to happen:
 - (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 5 (1) (a), an application for concessional duty under this instrument must be received by the Commissioner within 14 days of the occurrence of the first 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.
- (5) In this section:
'off the plan' purchase agreement—see the Act, section 16A (4).

6 Determination of amounts

- (1) I determine the following thresholds and amounts to be used to calculate duty under section 31 of the *Duties Act 1999* as payable to the Territory by an eligible applicant buying an eligible property under the Home Buyer Concession Scheme:

| Property Value Thresholds | Threshold Amount |
|--|------------------|
| Lower Threshold (Full Concession) | \$455,000 |
| Upper Threshold (at which Concession ceases) | \$585,000 |

| Land Value Thresholds | Threshold Amount |
|--|------------------|
| Lower Threshold (Full Concession) | \$272,200 |
| Upper Threshold (at which Concession ceases) | \$317,600 |

- (2) The following are the concessional duty rates calculated in accordance with the criteria determined under this Disallowable Instrument for the Home Buyer Concession Scheme:

| Concessional Duty Rates | Amount per \$100 (or part thereof) of the dutiable value in excess of the lower threshold |
|-------------------------|---|
| Eligible Property | \$13.60 |
| Eligible Vacant Block | \$13.55 |

7 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 applicant 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.

- (2) 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.

8 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) **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 for the subject property (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 for the subject property will:
 - (i) reside in the subject property as their principal place of residence for a continuous period of 1 year; 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; or
 - (iii) entered into an agreement to purchase a property within the preceding 2 year period (prior to the grant, transfer, or agreement for transfer of the subject property) 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 first date of the grant, transfer, or agreement for the transfer, all persons 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 on-line 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 Eligibility requirement—residency

- (1) Despite section 8 (3), 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.

- (2) The powers in section 9 (1) (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.

Example—unforeseen circumstance

A work or health-related issue

- (3) Subject to section 9 (2), the powers in section 9 (1) (a), (b), and (c) are exercisable only where a written request to exercise the power is lodged with the Commissioner within 18 months after the required start date.
- (4) If the residency period is not complied with, the applicant must, within 14 days after the ineligibility date—
- (a) give written notice of that fact to the Commissioner; and
 - (b) pay the Territory the amount of duty that would have been chargeable if the applicant had not been eligible for the Home Buyer Concession Scheme.
- (5) In this section:
- ineligibility date*** means 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.
- required start day*** means—
- (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 under section 69 of the *Building Act 2004* following completion of construction of the residence on the subject property.

10 Revocation

DI2015-333 is revoked.

11 Transitional Provisions

DI2015-333 continues to apply to a grant, transfer, or an agreement to transfer a lease, between 1 January 2016 and 7 June 2016, inclusive.

Andrew Barr MLA
Treasurer
3 June 2016