

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2017 (No 2)

Disallowable instrument DI2017–227

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—Pensioner Duty Concession Scheme) Determination 2017 (No 2)*.

2 Commencement

This instrument commences on 18 September 2017.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

Crown lease—see the *Land Titles Act 1925*, dictionary.

declared land sublease—see the *Planning and Development Act 2007*, section 312C.

dutiable value—see the Act, section 20.

home means a building (affixed to land) that—

- (a) may lawfully be used as a place of residence; and
- (b) is, in the Commissioner’s opinion, a suitable building for use as a place of residence.

Note *Commissioner* means the Commissioner for ACT Revenue.

eligible home means land in the ACT, a Crown lease or a declared land sublease that has a home built on it.

vacant land means land in the ACT, a Crown lease or a declared land sublease that does not have a home built on it.

4 **Meaning of *eligible property***

In this instrument:

eligible property means—

- (a) an eligible home with a dutiable value of less than \$895 000; or
- (b) vacant land with a dutiable value of less than \$434 500.

5 **Meaning of *eligible transaction***

(1) In this instrument:

eligible transaction means a transfer with a transaction date on or after 18 September 2017 that meets the following requirements:

- (a) on the transaction date, at least 1 transferee—
 - (i) received an Australian Centrelink age pension or Department of Veterans' Affairs age pension equivalent; or
 - (ii) received an Australian Centrelink disability support pension and was 50 years of age or older; or
 - (iii) had held a Department of Veterans' Affairs Gold Card for a period of at least 1 year;
- (b) on the transaction date, all transferees and their domestic partners (if any) did not hold a legal or equitable interest in land, other than an interest—
 - (i) in the former property; or
 - (ii) in the eligible property; or
 - (iii) that a person is required to relinquish under—
 - (A) an order of a court; or
 - (B) a financial agreement made under section 90B, section 90C, or section 90D of the *Family Law Act 1975* (Cwlth) that is binding on the person; or
 - (C) a part VIIIAB financial agreement made under section 90UB, section 90UC, or section 90UD of the *Family Law Act 1975* (Cwlth) that is binding on the person; or
 - (D) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994* to which the person is a party; or
 - (iv) that a person acquires as an executor or trustee (but not a beneficiary) under a will;
- (c) the former property is sold within 1 year before or after the registration date, except if the Commissioner is satisfied that the transferee is unable to sell the former property in this time because of an unforeseen circumstance;

Example—unforeseen circumstance

A person purchased the eligible property off the plan on 1 October 2017 and sold the former property on 31 December 2017. As an off the plan purchase, completion of the eligible transaction is subject to the construction of a residence on the land. The residence is not constructed until 2019 and the transaction is registered on 1 October 2019.

Even though the sale of the former property was over 1 year before registration of the eligible transaction, the person could not have foreseen the exact completion date or registration date at the time of sale.

- (d) the ownership of the eligible property is in the same name or names as the former property, except if—
 - (i) a person is required to relinquish an interest in the former property under—
 - (A) an order of a court; or
 - (B) a financial agreement made under section 90B, section 90C, or section 90D of the *Family Law Act 1975* (Cwlth) that is binding on the person; or
 - (C) a part VIIIAB financial agreement made under section 90UB, section 90UC, or section 90UD of the *Family Law Act 1975* (Cwlth) that is binding on the person; or
 - (D) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994* to which the person is a party; or
 - (ii) an exemption is requested from this requirement for a transferee, and the Commissioner is satisfied that it is fair and reasonable to exempt the transferee, taking into account anomalous or unusual circumstances;

Example—anomalous or unusual circumstances

The person is selling the former property that has a deceased partner on the title, while the eligible property will be purchased only in the name of the surviving partner

- (e) at least 1 transferee will occupy the eligible property as the transferee's principal place of residence—
 - (i) beginning within 1 year after the residence start date; and
 - (ii) for the duration of the residence period;
 - (f) no transferee has previously received a concession under—
 - (i) the Over 60s Home Bonus Scheme under the *Taxation Administration Act 1999*; or
 - (ii) the Pensioner Duty Concession Scheme under the *Taxation Administration Act 1999*.
- (2) If it becomes apparent that a transaction is not an eligible transaction, a transferee must give the Commissioner written notice of that fact within 14 days after the first of the following events:

- (a) the end of any period allowed for compliance with a requirement of the transaction;
- (b) the date that it first becomes apparent that the transaction is not eligible.

Example—transaction not an eligible transaction

The transaction ceases to be eligible because no transferee can occupy the eligible property as a principal place of residence.

- (3) In this section:

former property, of a person, means land in Australia that the person occupied as the person's principal place of residence—

- (a) immediately before the transaction date; or
- (b) immediately before the land was sold within a 1 year period ending on the transaction date.

Example—former property

A person sold an ACT principal place of residence on 1 October 2014. After it was sold, the person rented another home in the ACT to live in. On 1 July 2015, the person purchased the eligible property.

The home that the person sold on 1 October 2014 is a former property for the purposes of this instrument even though the person was not resident immediately before purchasing the eligible property.

The purchase of the eligible property is an eligible transaction because the person sold the former property within 1 year before or after purchasing the eligible property.

occupy, in relation to a principal place of residence, does not include occupation—

- (a) of a transient, temporary or passing nature; or
- (b) for a purpose other than as a place of residence.

principal place of residence means the home a person primarily occupies on an ongoing and permanent basis as the person's settled or usual home.

registration date means the date that the eligible transaction is registered with the Registrar-General under the *Land Titles Act 1925*.

residence start date means—

- (a) for an eligible home—the date of completion of the eligible transaction; or
- (b) for vacant land—the date that a certificate of occupancy has been issued under the *Building Act 2004* for a home on the land that will be a person's place of residence; or
- (c) a later date determined by the Commissioner, if—
 - (i) the later date is requested for a transferee not later than 18 months after the residence start date; and

- (ii) the Commissioner is satisfied that the transferee is unable to begin occupying the eligible property because of an unforeseen circumstance.

Example—unforeseen circumstance

A health-related issue

residence period means—

- (a) a continuous period of at least 1 year; or
- (b) a shorter period (including no period) determined by the Commissioner, if—
 - (i) the shorter period is requested for a transferee not later than 18 months after the residence start date; and
 - (ii) the Commissioner is satisfied that the transferee is unable to occupy the eligible property because of an unforeseen circumstance.

transaction date, of an eligible transaction, means the date that liability for duty arises under the Act, section 11.

transfer means—

- (a) a transfer of eligible property; or
- (b) an agreement for the sale or transfer of eligible property; or
- (c) a grant of eligible property.

transferee—see the Act, dictionary.

6 Determination

- (1) For the purposes of section 31 of the Act, I determine that the rate of duty payable on an eligible transaction under this instrument is—
 - (a) for an eligible home—the rate of duty listed in column 2 of table 1 opposite the dutiable value of the new home listed under column 1; or
 - (b) for vacant land—the rate of duty listed in column 2 of table 2 opposite the dutiable value of the vacant land listed under column 1.

Table 1 Eligible homes

column 1 dutiable value	column 2 rate of duty
less than or equal to \$680 500	nil
more than \$680 500 but less than \$895 000	\$15.75 for every \$100, or part of \$100, by which the dutiable value is greater than \$680 500

Table 2 Vacant land

column 1 dutiable value	column 2 rate of duty
less than or equal to \$361 700	nil

column 1 dutable value	column 2 rate of duty
more than \$361 700 but less than \$434 500	\$14.15 for every \$100, or part of \$100, by which the dutable value is greater than \$361 700

7 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2017 (No 1)* DI2017-82.

8 Transitional

DI2017-82 continues to apply for the period 7 June 2017 to 17 September 2017, inclusive.

9 Expiry

This instrument expires on 30 June 2018.

Andrew Barr MLA
Treasurer

5 September 2017