

Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2017 (No 1)

Disallowable instrument DI2017–228

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—Disability Duty Concession Scheme) Determination 2017 (No 1)*.

2 Commencement

This instrument commences on 18 September 2017.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

4 Meaning of *eligible property*

(1) In this instrument:

eligible property means land in the ACT, a Crown lease or a declared land sublease with a dutiable value less than or equal to \$750 000.

(2) In this section:

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.

5 **Meaning of *eligible NDIS participant***

In this instrument:

eligible NDIS participant means a person who is in receipt of an individual funding package as a participant of the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth).

6 **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 is an eligible NDIS participant;
- (b) on the transaction date, the eligible NDIS participant and the participant's domestic partner (if any) have not held a legal or equitable interest in land within the previous 2 years, other than an interest—
 - (i) in the eligible property; or
 - (ii) 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
 - (iii) that a person acquires—
 - (A) as an executor or trustee (but not a beneficiary) under a will; or
 - (B) under an agreement for the sale or transfer of the interest within the 2 year period that was subsequently cancelled under the Act, sections 50 or 50A, or under the relevant provisions of a corresponding Act;
- (c) the eligible NDIS participant acquires both a legal and equitable interest in at least 51% of the eligible property;
- (d) the eligible NDIS participant will occupy the eligible property as the participant's principal place of residence—
 - (i) beginning within 1 year after the residence start date; and

- (ii) for the duration of the residence period;
- (e) the eligible NDIS participant has not previously received a concession under—
 - (i) the Disability Duty Concession Scheme under the *Taxation Administration Act 1999*; or
 - (ii) the Home Buyer Concession Scheme under the *Taxation Administration Act 1999*; or
 - (iii) the Over 60s Home Bonus Scheme under the *Taxation Administration Act 1999*; or
 - (iv) the Pensioner Duty Concession Scheme under the *Taxation Administration Act 1999*.
- (2) If it becomes apparent that a transaction is not an eligible transaction, the eligible NDIS participant 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 the eligible NDIS participant cannot occupy the eligible property as a principal place of residence.

Note **Commissioner** means the Commissioner for ACT Revenue.

- (3) In this section:

corresponding Act—see the Act, dictionary.

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.

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.

residence start date, of an eligible property, means—

- (a) if the property has a home built on it—the date of completion of the eligible transaction; or

- (b) if the property does not have a home built on it—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 an eligible NDIS participant not later than 18 months after the residence start date; and
 - (ii) the Commissioner is satisfied that the participant 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 an eligible NDIS participant not later than 18 months after the residence start date; and
 - (ii) the Commissioner is satisfied that the participant is unable to occupy the eligible property because of an unforeseen circumstance.

transferee—see the Act, dictionary.

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.

7 Determination

For the purposes of section 31 of the Act, I determine that no duty is payable on an eligible transaction under this instrument.

8 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2016 (No 1)* DI2016-142.

9 Transitional

DI2016-142 continues to apply for the period 1 July 2016 to 17 September 2017, inclusive.

Andrew Barr MLA
Treasurer

5 September 2017