

Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2017 (No 2)

Disallowable instrument DI2017–289

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—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2017 (No 2)*.

2 Commencement

This instrument commences on 15 December 2017.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

buyback scheme—see the *Dangerous Substances Act 2004*, section 47N (6).

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

Note A Crown lease includes a territory lease, which includes a lease for a unit.

loose-fill asbestos insulation—see the *Dangerous Substances Act 2004*, section 47M.

surrendered includes acquired by the Territory under the buyback scheme under a contract for sale.

transferee—see the Act, dictionary.

unit means a unit under the *Unit Titles Act 2001*, section 9.

4 **Meaning of *affected lease***

- (1) In this instrument:

affected lease means a Crown lease on which residential premises are or were located if the premises contain or have contained loose-fill asbestos insulation.

- (2) In this section:

loose-fill asbestos insulation—see the *Dangerous Substances Act 2004*, section 47M.

5 **Meaning of *eligible homeowner***

- (1) In this instrument:

eligible homeowner means a person who—

- (a) is or was a Crown lessee of an affected lease surrendered or sold to the Territory under the buyback scheme; and
- (b) acquired the lease—
 - (i) on or before 18 February 2014; or
 - (ii) after 18 February 2014 but before 28 October 2014 as a result of a contract for sale to purchase the lease entered into on or before 18 February 2014;
 - (iii) after 18 February 2014 as a beneficiary of a deceased estate; or
 - (iv) after 18 February 2014 as a result of—
 - (A) 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
 - (B) 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
 - (C) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994* to which the person is a party; or
 - (v) after 18 February 2014 in circumstances other than those mentioned in subparagraphs (ii) to (iv) if—
 - (A) the person has made a submission to the Asbestos (Coordinator General) about the extent of their knowledge of the presence and implications of the presence of loose-fill asbestos insulation in premises on the lease; and
 - (B) the Asbestos (Coordinator General) is satisfied that the person was an innocent purchaser for value of the lease.

(2) In this section:

Asbestos (Coordinator General) means the public servant appointed by the Minister to deal with matters relating to asbestos in the Territory.

6 Meaning of *eligible property*

(1) In this instrument:

eligible property means land in the ACT, a Crown lease or a declared land sublease that will be used for residential purposes only.

(2) In this section:

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

7 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) at least 1 transferee is an eligible homeowner;

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

(b) the ownership of the eligible property is in the same name or names as the affected lease, except if—

(i) the eligible homeowner is or was a joint tenant or tenant in common of the affected lease; and

(ii) the Commissioner is satisfied that all other joint tenants or tenants in common of the affected lease consent to the ownership of the eligible property in a different name or names;

(c) the eligible homeowner has not previously received a concession—

(i) on the eligible transaction—

(A) under the Home Buyer Concession Scheme under the *Taxation Administration Act 1999*; or

(B) under the Over 60s Home Bonus Scheme under the *Taxation Administration Act 1999*; or

(C) under the Pensioner Duty Concession Scheme under the *Taxation Administration Act 1999*; or

(ii) on any other transaction—under the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme under the *Taxation Administration Act 1999*, if it is in relation to the same affected lease.

Note The Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme for Eligible Impacted Properties under the *Taxation Administration Act 1999* is a separate scheme that applies to eligible impacted properties.

- (2) If it becomes apparent that a transaction is not an eligible transaction, an eligible homeowner 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 an eligible transaction.

Example—transaction not an eligible transaction

The transaction ceases to be eligible because a deed of surrender for the affected lease was entered into but the lease was not subsequently surrendered.

- (3) In this section:

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.

8 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) if the notional duty is less than or equal to the buyback concession amount—nil; or
 - (b) if the notional duty is more than the buyback concession amount—the difference between the buyback concession amount and the notional duty.
- (2) In this section:

affected residential premises register—see the *Dangerous Substances Act 2004*, section 47N.

buyback concession amount means the amount of duty that would have been payable on a transfer of the affected lease if—

- (a) the transfer was a dutiable transaction; and
- (b) the dutiable value of the lease was equal to the surrender sum; and
- (c) the transfer occurred on—
 - (i) for a lease first identified as an affected lease after 28 October 2014—the date that the Minister responsible for the *Dangerous Substances Act 2004*, chapter 3A (Asbestos) added the premises on the lease to the affected residential premises register; or
 - (ii) for any other lease—28 October 2014.

dutiable value—see the Act, section 20.

notional duty means the amount of duty that would be payable for the eligible transaction but for this instrument.

surrender sum means—

- (a) for a Crown lease surrendered to the Territory under the buyback scheme—the amount paid to the lessee for an affected lease under a deed of surrender between the lessee and the Territory less \$1 000; and
- (b) for a unit sold to the Territory under the buyback scheme—the consideration paid to the lessee under the contract for sale less \$1 000.

9 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2017 (No 1)* DI2017-231.

10 Transitional

DI2017-231 continues to apply for the period 18 September 2017 to 14 December 2017, inclusive.

Andrew Barr MLA
Treasurer
13 December 2017