

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2017 (No 1)

Disallowable instrument DI2017–81

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 2017 (No 1)*.

2 Commencement

This instrument commences on 7 June 2017.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

concessional duty means the amount of duty that would be payable on an approved eligible transaction under this instrument.

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.

eligible home buyer means an applicant in relation to an approved eligible transaction for the Home Buyer Concession Scheme.

Note An eligible home buyer may apply to defer payment of duty under the Act, part 2.6A (Deferred payments—home buyers).

eligible property, subject to an eligible transaction, means—

- (a) a new home; or
- (b) vacant land.

eligible transaction—see section 4.

first executed, for an instrument (including a contract)—see the Act, section 243.

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.

interest—see the Act, dictionary.

new home means land in the ACT, a Crown lease or a declared land sublease that has a home built on it, if the home has not previously been occupied or sold as a place of residence.

non-concessional duty means the amount of duty that would be payable on an eligible transaction but for this instrument.

occupy, 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).

residence period means—

- (a) a continuous period of at least 1 year; or
- (b) if the Commissioner has determined a shorter period for an applicant— that period.

residence start date means—

- (a) for a new 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 the home that will be an applicant’s place of residence after the home has been built on the land.

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

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 Eligible transactions

This instrument applies to the following transactions or instruments (**eligible transactions**):

- (a) a transfer of eligible property first executed on or after 7 June 2017;
- (b) an agreement for the sale or transfer of eligible property first executed on or after 7 June 2017;
- (c) a grant of eligible property on or after 7 June 2017.

5 Application

- (1) A person may apply in writing to the Commissioner for the Home Buyer Concession Scheme in relation to an eligible transaction if the person—
 - (a) will hold an interest in eligible property on completion of the eligible transaction; or
 - (b) is the domestic partner of a person mentioned in paragraph (a), whether or not the domestic partner will hold an interest in the eligible property on completion of the eligible transaction.
- (2) The Commissioner must receive the application—
 - (a) for an ‘off the plan’ purchase agreement under the Act, section 16A (4)—
 - (i) within 14 days after the first of the events in the Act, section 16A (1) (a) to (d) happens; or
 - (i) before any of those events happens; or
 - (b) for any other eligible transaction—within 90 days after the transaction date.
- (3) The Commissioner may accept a late application if satisfied it is fair and reasonable to do so.

Example

The application was late because of a serious illness affecting the applicant.

6 Approval

- (1) The Commissioner must approve the eligible transaction for the Home Buyer Concession Scheme if satisfied that—
 - (a) the Commissioner has received an application from each person, and the domestic partner of each person, who will hold an interest in the eligible property on completion of the eligible transaction; and
 - (b) each applicant meets or will meet the eligibility requirements under sections 8 to 12; and
 - (c) the dutiable value of the eligible property is—
 - (i) for a new home—less than \$607 000; or
 - (ii) for vacant land—less than \$329 500.

Example—additional applicant

A transferee who signs an agreement to purchase a new home applies for the Home Buyer Concession Scheme. The Commissioner approves the transaction and concessional duty is paid. Before completion, a non-conforming transfer is completed and an additional transferee joined to the purchase.

The additional transferee must apply to the Commissioner for the Home Buyer Concession Scheme and must meet the eligibility requirements.

A transferee who is removed from the agreement before completion (by non-conforming transfer) may be eligible to apply for the Home Buyer Concession Scheme in their own right at a later date.

- (2) Despite subsection (1) (b), an applicant need not comply with the eligibility requirements to the extent that the Commissioner has exempted the applicant from compliance under this instrument.

7 Determination

- (1) The determined rate of duty payable on an approved eligible transaction for the Home Buyer Concession Scheme, subject to section 12 (3), is—
- (a) for a new home—the rate of concessional duty listed in column 2 of table 1 opposite the dutiable value of the new home under column 1; or
 - (b) for vacant land—the rate of concessional duty listed in column 2 of table 2 opposite the dutiable value of the vacant land under table 1.

Table 1 New homes

column 1 dutiable value	column 2 rate of duty
less than or equal to \$470 000	\$20
more than \$470 000 but less than \$607 000	the greater of— (a) \$20; or (b) \$13.05 for every \$100, or part of \$100, by which the dutiable value is greater than \$470 000

Table 2 Vacant land

column 1 dutiable value	column 2 rate of duty
less than or equal to \$281 200	\$20
more than \$281 200 but less than \$329 500	the greater of— (a) \$20; or (b) \$13.05 for every \$100, or part of \$100, by which the dutiable value is greater than \$281 200

- (2) If the approved eligible transaction is in relation to an undivided share of the eligible property, the amount of duty payable is the greater of—
- (a) \$20; or
 - (b) the amount worked out as follows:

$$C \times \frac{S}{W}$$

- (3) In this section:

C means the amount of concessional duty that would be payable for the eligible transaction under subsection (1) if it had been for the whole of the eligible property.

S means the amount of non-concessional duty that would be payable for the eligible transaction in relation to the undivided share in the eligible property.

W means the amount of non-concessional duty that would be payable for the eligible transaction if it had been for the whole of the eligible property.

8 Eligibility requirement—age

An applicant must be at least 18 years old on the transaction date.

9 Eligibility requirement—legal and equitable interest

An applicant who will hold an interest in the eligible property on completion of the eligible transaction must acquire both a legal and an equitable interest in the eligible property.

10 Eligibility requirement—income

- (1) The total gross income of all applicants in the previous financial year must—
 - (a) be less than or equal to the income threshold; and
 - (b) reflect the usual income of each applicant.
- (2) An applicant must give the Commissioner copies of the following as part of a Home Buyer Concession Scheme application:
 - (a) the applicant's PAYG payment summaries for the previous financial year;
 - (b) the applicant's full income tax return (not the notice of assessment) for the previous financial year;
 - (c) the home loan application (not the loan approval, contract or online application pack) as lodged with the applicant's financial institution;
 - (d) any other written information requested by the Commissioner to determine compliance with subsection (1).
- (3) In this section:

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

income threshold means the amount listed in column 2 of table 3 opposite the total number of dependent children of all applicants listed in column 1.

Table 3 Income thresholds

column 1 total dependent children	column 2 income threshold
0	\$160 000
1	\$163 330
2	\$166 660
3	\$169 990
4	\$173 320

column 1 total dependent children	column 2 income threshold
5 or more	\$176 650

previous financial year means the financial year ending immediately before the financial year of the eligible transaction's transaction date.

Example

If the transaction date is 1 August 2017, the previous financial year is 2016-17.

income means income from all sources—

- (a) other than employment termination payments under the *Income Tax Assessment Act 1997* (Cwlth), section 82-130, if the payments are made for years of service under a genuine redundancy payment; and
- (b) for a self-employed person—including the net trading profit or gain made in the ordinary course of carrying on the person's business, but not including the business's turnover.

Examples—sources of income

- benefits from a salary packaging arrangement
- exempt income under the *Income Tax Assessment Act 1997* (Cwlth), section 6-20
- maintenance payments
- short-term higher duty payments
- short-term second job payments

11 Eligibility requirement—other property

- (1) An applicant must not have held a legal or equitable interest in land other than the eligible property within a period of 2 years ending on the transaction date.
- (2) Subsection (1) does not apply to an interest in land if—
 - (a) the applicant is required to relinquish the interest under—
 - (i) an order of a court; or
 - (ii) a financial agreement made under section 90B, section 90C, or section 90D of the *Family Law Act 1975* (Cwlth) that is binding on the applicant, if the applicant's marriage has ended; or
 - (iii) 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 applicant, if the applicant's de facto relationship has ended; or
 - (iv) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994* to which the applicant is a party, if the applicant's domestic relationship has ended; or
 - (b) the applicant acquired the interest as an executor or trustee (but not a beneficiary) under a will; or

- (c) the applicant entered into an agreement for the sale or transfer of the interest in the 2 year period mentioned in subsection (1), and subsequently cancelled the agreement—
 - (i) under the Act, sections 50 or 50A; or
 - (ii) under the relevant provisions of a corresponding Act.
- (3) In this section:
corresponding Act—see the Act, dictionary.

12 Eligibility requirement—residence

- (1) At least 1 applicant who will hold an interest in the eligible property on completion of the eligible transaction must occupy the eligible property as the applicant's principal place of residence for the duration of the residence period.
- (2) The applicant must begin the residence period within 1 year after the residence start date.
- (3) If the applicant cannot comply with subsections (1) or (2)—
 - (a) the applicant must give written notice of that fact to the Commissioner; and
 - (b) the determined rate of duty payable on the eligible transaction is non-concessional duty.
- (4) The applicant must give written notice under subsection (3) (a) within 14 days after the first of the following events:
 - (a) the end of the period allowed for compliance with subsections (1) or (2);
 - (b) the date that it first becomes apparent that subsections (1) or (2) will not be complied with during the period allowed for compliance.
- (5) In this section:
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, but it is not sufficient to establish occupation as a principal place of residence if—
 - (a) the occupation is of a transient, temporary or passing nature; or
 - (b) the occupation is for some other purpose.

13 Exemption—age

- (1) A person may apply in writing to the Commissioner to exempt the person from compliance with the age requirement in section 8 (1).
- (2) If the Commissioner receives an application under subsection (1), the Commissioner may exempt the person if satisfied it is fair and reasonable to do so.

14 Exemption—residence

- (1) An applicant in relation to an approved eligible transaction may apply in writing to the Commissioner to—
 - (a) exempt the applicant from compliance with the residence period under section 12 (1); or
 - (b) exempt the applicant from the full residence period, and determine a shorter residence period for the applicant; or
 - (c) exempt the applicant from the requirement to begin the residence period within 1 year under section 12 (2), and extend the time in which the applicant can begin the residence period.
- (2) The Commissioner must receive the application—
 - (a) before the residence start date; or
 - (b) within 18 months after the residence start date.
- (3) If the Commissioner receives an application under subsection (1), the Commissioner may exempt the applicant if satisfied that the applicant is unable to occupy the eligible property because of an unforeseen circumstance.

Example—unforeseen circumstance

A health-related issue

15 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 2) DI2016-305*.

16 Transitional

DI2016-305 continues to apply for the period 1 January 2017 to 6 June 2017, inclusive.

Andrew Barr MLA
Treasurer

31 May 2017