Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 1)

**Disallowable instrument DI2019–70**

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 2019 (No 1)*.

**2 Commencement**

This instrument commences on 5 June 2019.

**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.

***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*.*

***occupy***, in relation to a new home, includes occupation on a short‑term basis, regardless of the length of occupation or the intended length of occupation.

***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) a new home with a dutiable value of less than $607 000; or

(b) vacant land with a dutiable value of less than $329 500.

*Note* The upper property value threshold for the purposes of the Act, section 75AA, definition of ***eligible property*** is $607 000.

**5 Meaning of *eligible home buyer***

(1) In this instrument:

***eligible home buyer*** means a transferee in relation to an eligible transaction.

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

(2) In this section:

***transferee***—see the Act, dictionary.

**6 Meaning of *eligible transaction***

(1) In this instrument:

***eligible transaction*** means a transfer with a transaction date on or after 5 June 2019 that meets the following requirements:

(a) all eligible home buyers acquire both a legal and an equitable interest in eligible property on completion of the transaction;

(b) on the transaction date, all eligible home buyers and their domestic partners (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 of 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 total gross income of all eligible home buyers and their domestic partners (if any) in the previous financial year—

(i) is less than or equal to the income threshold; and

(ii) reflects the usual income of each person;

(d) at least 1 eligible home buyer will occupy the eligible property as the eligible home buyer’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) all eligible home buyers are at least the required age on the transaction date.

(2) If it becomes apparent that a transaction is not an eligible transaction, an eligible home buyer 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 an eligible home buyer cannot occupy the eligible property as a principal place of residence

(3) In this section:

***corresponding Act***—see the Act, dictionary.

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

 ***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

***income threshold*** means the amount listed in column 2 of table 1 opposite the total number of dependent children of all eligible home buyers and their domestic partners (if any) listed in column 1.

Table 1 Income thresholds

| column 1total dependent children | column 2income threshold |
| --- | --- |
| 0 | $160 000 |
| 1 | $163 330 |
| 2 | $166 660 |
| 3 | $169 990 |
| 4 | $173 320 |
| 5 or more | $176 650 |

***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.

***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 (the period 1 July 2016 to 30 June 2017)

***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.

***required age*** means—

(a) 18 years of age; or

(b) a younger age determined by the Commissioner, if—

(i) the younger age is requested for an eligible home buyer; and

(ii) the Commissioner is satisfied that it is fair and reasonable in the circumstances to make the determination.

***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 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 home buyer not later than 18 months after the residence start date; and

(ii) the Commissioner is satisfied that the home buyer 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 1 year; or

(b) a shorter period (including no period) determined by the Commissioner, if—

(i) the shorter period is requested for a eligible home buyer not later than 18 months after the residence start date; and

(ii) the Commissioner is satisfied that the home buyer is unable to occupy the eligible property for the full residence period 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.

**7 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 a new home—the rate of duty listed in column 2 of table 2 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 3 opposite the dutiable value of the vacant land listed under column 1.

Table 2 New homes

| column 1dutiable value | column 2rate of duty |
| --- | --- |
| less than or equal to $470 000 | nil |
| more than $470 000 but less than $607 000 | $12.35 for every $100, or part of $100, of the dutiable value that is more than $470 000  |

Table 3 Vacant land

| column 1dutiable value | column 2rate of duty |
| --- | --- |
| less than or equal to $281 200 | nil |
| more than $281 200 but less than $329 500 | $12.30 for every $100, or part of $100, of the dutiable value that is more than $281 200  |

(2) If the eligible transaction is in relation to an undivided share of the eligible property, the amount of duty payable is the amount worked out as follows:

 $C×\frac{S}{W}$

(3) In this section:

 ***C*** means the amount of duty that would be payable for the eligible transaction under this instrument if it had been for the whole of the eligible property.

***S*** means the amount of duty that would be payable for the eligible transaction but for this instrument in relation to the undivided share in the eligible property.

***W*** means the amount of duty that would be payable for the eligible transaction but for this instrument if it had been for the whole of the eligible property.

**8 Expiry**

This instrument expires on 30 June 2019.

Andrew Barr MLA

Treasurer
23 May 2019