Australian Capital Territory

Duties (Pensioner Duty Deferral Scheme) Determination 2020

**Disallowable instrument DI2020–179**

made under the

*Duties Act 1999,* s75AG (Duty deferral schemes—determination)

**1 Name of instrument**

This instrument is the *Duties (Pensioner Duty Deferral Scheme) Determination 2020*.

**2 Commencement**

This instrument commences on 1 July 2020.

**3 Definitions**

In this instrument:

***Act*** means the *Duties Act 1999*.

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

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

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

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

***eligible property*** means property that is an eligible home or vacant land.

***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.

***pensioner*** means a person who meets the requirements under section 4 (1) (a) as a transferee of an eligible transaction.

***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

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

**4 Meaning of *eligible transaction***

(1) In this instrument:

***eligible transaction*** means a transfer with a transaction date on or after 1 July 2020 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) held a Department of Veterans’ Affairs Gold Card, and had held it for a continuous period of at least 1 year prior to the transaction date; and

(b) at least 1 transferee, who is a pensioner or their domestic partner (if any), will occupy the eligible property as the transferee’s principal place of residence—

(i) beginning within 1 year of the residence start date; and

(ii) for the duration of the residence period.

(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; or

(b) the date that the transferee first becomes aware that the transaction is not eligible.

**Example—transaction not an eligible transaction**

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

(3) In this section:

***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 on the land titles register.

***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, in writing, for a pensioner not later than 18 months after the residence start date; and

(ii) the Commissioner is satisfied that the pensioner is unable to occupy the eligible property because of an unforeseen circumstance.

***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 principal place of residence; or

(c) a later date determined by the Commissioner, if—

(i) a later date is requested, in writing, for a pensioner or their domestic partner (if any), not later than 18 months after the applicable residence start date under section 4 (3) (a) or (b); and

(ii) the Commissioner is satisfied that the pensioner or their domestic partner (if any) is unable to begin occupying the eligible property because of an unforeseen circumstance.

**Example—unforeseen circumstance**

A health-related issue.

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

**5 Determination—Pensioner Duty Deferral Scheme**

For the purposes of section 75AG of the Act, I determine a scheme for the deferred payment of duty by a pensioner and their domestic partner (if any) on an eligible transaction, subject to the conditions specified in section 6.

**6 Conditions of Duty Deferral**

(1) An application for the deferred payment of duty must be made in accordance with section 75AH of the Act.

(2) Interest at the market rate component determined under section 26 of the *Taxation Administration Act 1999* is payable on the deferred duty, calculated from the date the duty becomes payable until the amount deferred is paid in full.

(2) The deferred duty that is payable, and any accrued interest, must be paid on:

(a) the transfer of the eligible property to any other person;

(b) the transfer of the pensioner’s interest or their domestic partner’s interest (if any) in the eligible property to:

(i) any other transferee;

(ii) the administrator or executor of the estate of the pensioner; or

(iii) any other person.

(3) For the purposes of section 6 (2) (b) (ii), ‘transfer’ includes a transfer by transmission application.

**6 Expiry**

This instrument expires on 30 June 2021.

Andrew Barr MLA

Treasurer

25 June 2020