

# Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2021

## Disallowable instrument DI2021–172

made under the

*Taxation Administration Act 1999*, s 139 (Determination of amounts payable under tax laws)

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### 1 Name of instrument

This instrument is the *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2021*.

### 2 Commencement

This instrument commences on 1 July 2021.

### 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 in the ACT) or a unit in a units plan 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.

*off the plan agreement* means an agreement for the sale of a unit in a units plan before the units plan is registered.

**registered**—for an off the plan agreement, means registered by the registrar-general under the *Land Titles Act 1925* or the *Land Titles (Unit Titles) Act 1970*.

**transfer** means—

- (a) a transfer of eligible property; or
- (b) an agreement for the sale or transfer of eligible property (including an off the plan agreement); or
- (c) a grant of eligible property.

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

**unit**—see the *Unit Titles Act 2001*, section 9.

**units plan**—see the *Unit Titles Act 2001*, dictionary.

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

#### **4 Meaning of *eligible property***

In this instrument:

***eligible property*** means—

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

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

In this instrument:

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

#### **6 Meaning of *eligible transaction***

(1) In this instrument:

***eligible transaction*** means a transfer with a transaction date on or after 1 July 2021 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 or transfer of the interest within the 2-year period that was subsequently cancelled and, sections 50 or 50A of the Act, or relevant provisions of a corresponding Act were applied so as to result in no duty payable;
- (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, within 1 year after the residence start date for the duration of the residence period; and
- (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, 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 an eligible transaction.

(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 1 total dependent children	column 2 income 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 2021, the previous financial year is 2020-21 (the period 1 July 2020 to 30 June 2021).

**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 a transferee; and
  - (ii) the Commissioner is satisfied that it is fair and reasonable in the circumstances to make the determination.

**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 an eligible home buyer not later than 18 months after the residence start date; and
  - (ii) the Commissioner is satisfied that the transferee is unable to occupy the eligible property for a continuous period of 1 year because of an unforeseen circumstance.

**residence start date** means—

- (a) for a 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) the later date is requested, in writing, for a transferee not later than 18 months after the applicable residence start date under subsection (a) or (b) above; and
  - (ii) the Commissioner is satisfied that the transferee 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.

## **7 Duty concession**

- (1) For the purposes of section 31 of the Act, I determine that the amount of duty payable by an eligible home buyer on an eligible transaction under this instrument is calculated using the specified rate of duty in column 2 of table 1 applied to the dutiable value listed opposite in column 1.

**Table 1 Amounts payable (Transfer rate)—Duties Act, s 31**

<b>column 1 dutiable value</b>	<b>column 2 rate of duty</b>
less than or equal to \$1 000 000	nil
more than \$1 000 000 but not more than \$1 455 000	\$6.40 for every \$100, or part of \$100, of the dutiable amount that is more than \$1 000 000
more than \$1 455 000	a flat rate of \$4.54 per \$100 applied to the total dutiable value, less an amount of \$35 910

- (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:

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

- (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 Application for Duty concession**

- (1) An eligible home buyer may apply to the Commissioner for the duty concession under this instrument on the lodgement of the transfer of the eligible property with the Registrar-General.
- (2) If an application is not made at the time specified in sub-section (1), an eligible home buyer may apply to the Commissioner to extend the time by which an application for the duty concession may be lodged.
- (3) An application to extend the time must—
- (a) be in writing addressed to the Commissioner; and
  - (b) specify—
    - (i) the name and address of the applicant; and
    - (ii) the grounds on which the extension is sought; and
  - (c) be made within 12 months of the date of lodgement of the transfer of the eligible property with the Registrar-General.

- (4) The Commissioner may accept an application to extend the application time specified in sub-section (1) if satisfied that the applicant was not able to apply for the duty concession because of an unforeseen circumstance.

**Example**

An application for the Home Buyer Concession was made late due to a serious illness affecting the applicant.

- (5) In this section:

***Registrar-General*** means the registrar-general under the *Land Titles Act 1925*.

## **9 Revocation**

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 3)*, DI2019-271.

## **10 Transitional provision**

DI2019-271 continues to apply for the period 16 December 2019 to 30 June 2021, inclusive.

Andrew Barr MLA  
Treasurer

28 June 2021