

Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–275

made under the

Taxation Administration Act 1999, s 137E (Exemption scheme)

1 Name of instrument

This instrument is the *Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023 (No 2)*.

2 Commencement

This instrument commences on 27 November 2023.

3 Definitions

In this instrument:

dutiable value—see the *Duties Act 1999*, section 20.

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.

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

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.

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*.

residential unit means 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.

transaction date, of an eligible transaction, means the date that liability for duty arises under the *Duties Act 1999*, section 11.

transfer means the execution of an off the plan agreement.

transferee—see the *Duties Act 1999*, dictionary.

unit—see the *Unit Titles Act 2001*, dictionary.

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

4 Meaning of eligible property

In this instrument:

eligible property means a residential unit with a dutiable value of less than or equal to \$800 000.

5 Meaning of eligible transaction

(1) In this instrument:

eligible transaction means a transfer of eligible property:

- (a) with a transaction date on or after 27 November 2023; and
- (b) where at least 1 transferee will occupy the eligible property, as the transferee’s principal place of residence, within 1 year after the residence start date 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 an eligible transaction.

Example—transaction not an eligible transaction

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

6 Meaning of *residence period* and *residence start date*

(1) In this instrument:

residence period means a continuous period of at least 1 year.

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.

(2) The Commissioner may determine a shorter residence period (including no period), if—

- (a) the shorter period is requested, in writing, for an eligible home buyer not later than 18 months after the residence start date; and
- (b) 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.

Example—unforeseen circumstance

A health-related issue.

(3) The Commissioner may determine a later residence start date, if—

- (a) the later date is requested, in writing, for a transferee not later than 18 months after the applicable residence start date under subsection 6 (1); and
- (b) 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.

7 Determination

For the purposes of section 137E of the *Taxation Administration Act 1999*, I determine that a transferee in relation to an eligible transaction is exempt from duty payable under the *Duties Act 1999*.

8 Revocation

This instrument revokes the *Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023*, DI2023-164.

9 Human Rights Act 2004

In my opinion, as the Minister, this instrument is consistent with human rights.
This instrument is non-prejudicial because it does not limit existing rights.

Andrew Barr MLA
Treasurer

24 November 2023