

Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–285

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—Disability Duty Concession Scheme) Determination 2023 (No 2)*.

2 Commencement

This instrument commences on 27 November 2023.

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 Act 2023*, dictionary.

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.

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*.

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*, dictionary.

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

with a dutiable value of less than or equal to \$1 000 000.

5 Meaning of *eligible NDIS participant*

In this instrument:

eligible NDIS participant means a person who is in receipt of an individual funding package as a participant of the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth).

6 Meaning of *eligible transaction*

(1) In this instrument:

eligible transaction means a transfer with a transaction date on or after 27 November 2023 that meets the following requirements:

- (a) on the transaction date, at least 1 transferee is an eligible NDIS participant;

- (b) on the transaction date, the eligible NDIS participant and their domestic partner (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 eligible NDIS participant acquires both a legal and equitable interest in at least 51% of the eligible property;
- (d) the eligible NDIS participant will occupy the eligible property as the eligible NDIS participant's principal place of residence, within 1 year after the residence start date for the duration of the residence period; and
- (e) the eligible NDIS participant has not previously received a concession under—
 - (i) the Disability Duty Concession Scheme under the *Taxation Administration Act 1999*; or
 - (ii) the Home Buyer Concession Scheme under the *Taxation Administration Act 1999*; or
 - (iii) the Over 60s Home Bonus Scheme under the *Taxation Administration Act 1999*; or
 - (iv) the Pensioner Duty Concession Scheme under the *Taxation Administration Act 1999*.

- (2) If it becomes apparent that a transaction is not an eligible transaction, the eligible NDIS participant 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 eligible NDIS participant first becomes aware that the transaction is not an eligible transaction.

Example—transaction not an eligible transaction

The transaction ceases to be eligible because the eligible NDIS participant cannot occupy the eligible property as a principal place of residence.

- (3) In this section:

corresponding Act—see the Act, dictionary.

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

7 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 NDIS participant not later than 18 months after the residence start date; and
 - (b) the Commissioner is satisfied that the eligible NDIS participant 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 an eligible NDIS participant not later than 18 months after the applicable residence start date under subsection (a) or (b) above; and
 - (b) the Commissioner is satisfied that the eligible NDIS participant is unable to begin occupying the eligible property because of an unforeseen circumstance.

Example—unforeseen circumstance

A health-related issue.

8 Determination

For the purposes of section 31 of the Act, I determine that no duty is payable on an eligible transaction under this instrument.

9 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2023*, DI2023-166.

Andrew Barr MLA
Treasurer

24 November 2023