

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

Disallowable instrument DI2023–286

made under the

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

Part 1 Preliminary

1 Name of instrument

This instrument is the *Taxation Administration (Amounts Payable—Duty) Determination 2023 (No 2)*.

2 Commencement

This instrument commences on 27 November 2023.

3 Definitions

In this instrument:

chapter 3 transaction—see the Duties Act, section 76.

commercial purpose means a purpose other than a residential purpose, a primary production purpose or a home business—see the Duties Act, dictionary and, in relation to a home business, see the *Planning Act 2023*, section 276 (3).

Examples—commercial purpose

- industrial use – warehouses, factories
- business use – offices, restaurants, cafes, hotels or commercially run accommodation such as student accommodation, retirement villages, caravan parks
- retail use – shops, shopping centres, retail outlets

Note An example is part of the instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

dutiable amount means—

- (a) for a dutiable transaction—the dutiable value of the dutiable property subject to the transaction; and
- (b) for a chapter 3 transaction—the amount on which duty is payable under the Duties Act sections 90, 90A or 90B.

dutiable property—see the Duties Act, section 10.

dutiable transaction—see the Duties Act, section 7 (2).

dutiable value—see the Duties Act, section 20.

Duties Act means the *Duties Act 1999*.

eligible owner occupier transaction—see Schedule 1 of this instrument.

Part 2 Determination of amounts payable (Transfer rate)—Duties Act, s 31

4 Application of pt 2

This part applies to a dutiable transaction of dutiable property used, or that will be used, wholly for purposes other than a commercial purpose.

Examples—dutiable property used, or that will be used, wholly for purposes other than a commercial purpose

- Ms Winter buys a house to reside in
- Mr Zhang buys farmland and intends to use part of it for cultivation of crops and the rest for grazing (primary production purposes)
- Ms Spring buys a home and will use part of the house to run her bookkeeping business

Note An example is part of the instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

5 Amounts payable (Transfer rate)

- (1) For the purposes of section 31 of the Duties Act, the duty payable on a dutiable transaction to which this part applies is:

- (a) for an eligible owner occupier transaction—calculated using the rate of duty specified in column 2 of table 1 applied to the dutiable amount listed opposite in column 1; or

Note The rate of duty for an eligible owner occupier transaction is not a **home buyer concession scheme** for the purposes of part 2.6A of the Duties Act.

- (b) for a transaction that is not an eligible owner occupier transaction—calculated using the rate of duty specified in column 2 of table 2 applied to the dutiable amount listed opposite in column 1.

Table 1 Amounts payable (Transfer rate—eligible owner occupier transaction)—Duties Act, s 31

column 1	column 2
dutiable amount	rate of duty (eligible owner occupier transaction)
less than or equal to \$260 000	\$0.49 for every \$100, or part of \$100, of the dutiable amount
more than \$260 000 but not more than \$300 000	\$1 274 plus \$2.20 for every \$100, or part of \$100, of the dutiable amount that is more than \$260 000
more than \$300 000 but not more than \$500 000	\$2 154 plus \$3.40 for every \$100, or part of \$100, of the dutiable amount that is more than \$300 000
more than \$500 000 but not more than \$750 000	\$8 954 plus \$4.32 for every \$100, or part of \$100, of the dutiable amount that is more than \$500 000
more than \$750 000 but not more than \$1 000 000	\$19 754 plus \$5.90 for every \$100, or part of \$100, of the dutiable amount that is more than \$750 000
more than \$1 000 000 but not more than \$1 455 000	\$34 504 plus \$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 amount

Table 2 Amounts payable (Transfer rate—transaction that is not an eligible owner occupier transaction)—Duties Act, s 31

column 1	column 2
dutiable amount	rate of duty (transaction that is not an eligible owner occupier transaction)
less than or equal to \$200 000	\$1.20 for every \$100, or part of \$100, of the dutiable amount
more than \$200 000 but not more than \$300 000	\$2 400 plus \$2.20 for every \$100, or part of \$100, of the dutiable amount that is more than \$200 000
more than \$300 000 but not more than \$500 000	\$4 600 plus \$3.40 for every \$100, or part of \$100, of the dutiable amount that is more than \$300 000
more than \$500 000 but not more than \$750 000	\$11 400 plus \$4.32 for every \$100, or part of \$100, of the dutiable amount that is more than \$500 000
more than \$750 000 but not more than \$1 000 000	\$22 200 plus \$5.90 for every \$100, or part of \$100, of the dutiable amount that is more than \$750 000
more than \$1 000 000 but not more than \$1 455 000	\$36 950 plus \$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 amount

Part 3 Determination of amounts payable (Commercial transfer rate)—Duties Act, ss 31, 90, 90A and 90B

6 Application of pt 3

This part applies to—

- (a) a dutiable transaction of dutiable property used, or that will be used, partly or wholly for a commercial purpose; and
- (b) a chapter 3 transaction for which duty is payable at the determined rate under the Duties Act, sections 90, 90A and 90B.

Examples—dutiable property used, or that will be used, partly or wholly for a commercial purpose

- Mr Smith buys land on which there is an existing office building
- Mr Jones buys land on which there is an existing building comprised of a suite of offices on the ground floor, and three levels of apartments on levels one, two and three
- Ms Chen buys land on which there is an existing farm. She plans to build chalets on part of the land from which to run her bed and breakfast business, while retaining the remainder of the land as a farm
- Baker Pty Ltd buys an old warehouse with the intention of converting it into an apartment tower and shopping complex

Note An example is part of the instrument, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

7 Amounts payable (Commercial transfer rate)

- (1) For the purposes of sections 31, 90, 90A and 90B of the Duties Act, the duty payable on a transaction to which this part applies is calculated using the rate of duty listed in column 2 of table 3 applied to the dutiable amount listed opposite in column 1.

**Table 3 Amounts payable (Commercial transfer rate)—Duties Act,
ss 31 and 90, 90A and 90B**

column 1 dutiable amount	column 2 rate of duty
less than or equal to \$1 800 000	nil
more than \$1 800 000	a flat rate of \$5.00 per \$100 applied to the total dutiable amount

Part 4 Determination of amounts payable (Certain business assets)—Duties Act, s 33

8 Application of pt 4

In this part:

relevant amount means, for property to which the Duties Act, section 33 (1) (a) or (b) (Certain business assets) applies that is the subject of a dutiable transaction, the dutiable value of the property.

9 Amounts payable (Certain business assets)

For the purposes of section 31 of the Duties Act, the duty payable is calculated using a rate of duty of 60 cents for every \$100, or part of \$100, of the relevant amount.

Part 5 Miscellaneous

10 Revocation

This instrument revokes the *Taxation Administration (Amounts Payable—Duty) Determination 2023*, DI2023-162.

Andrew Barr MLA
Treasurer

24 November 2023

Schedule 1—Eligible owner occupier transactions

1 Meaning of *eligible owner occupier transaction*

(1) In this instrument:

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

- (a) all eligible owner buyers acquire both a legal and an equitable interest in eligible property on completion of the transaction; and
 - (b) at least 1 eligible owner buyer will occupy the eligible property, as the eligible owner buyer'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 owner occupier 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 owner occupier transaction.

Example—transaction not an eligible owner occupier transaction

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

2 Meaning of *eligible property*

In this instrument:

eligible property means—

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

3 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 schedule 1, subsection 3 (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.

4 Related definitions

In this instrument:

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

declared land sublease—see the *Planning Act 2023*, dictionary.

eligible owner buyer means a transferee in relation to an eligible owner occupier transaction.

home means a building (affixed to land in the ACT) or 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 property a person primarily and lawfully 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*.

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

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 Duties 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 a declared land sublease that does not have a home built, in full or in part, on it.