

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–288

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—Home Buyer 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 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 27 November 2023 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 | \$170 000 |
| 1 | \$173 330 |
| 2 | \$176 660 |
| 3 | \$179 990 |
| 4 | \$183 320 |
| 5 or more | \$186 650 |

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 December 2023, the previous financial year is 2022-23 (the period 1 July 2022 to 30 June 2023).

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.

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 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 (a) or (b) above; 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.

8 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 2 applied to the dutiable value listed opposite in column 1.

Table 2 Amounts payable (Transfer rate)—Duties Act, s 31

| column 1 dutiable value | column 2 rate of duty |
|---|---|
| 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 value 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 \$34 504 |

- (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.

9 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*.

10 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2023*, DI2023-163.

Andrew Barr MLA
Treasurer

24 November 2023