Australian Capital Territory

Taxation Administration (Amounts payable – Home Buyer Concession Scheme) Determination 2006 (No 2)

Disallowable instrument DI2006—265

made under the

***Taxation Administration Act 1999*, s139 Determination of amounts payable under tax laws**

EXPLANATORY STATEMENT

Name of Instrument

1. This instrument is the *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2006 (No 2).*

Commencement

2. This instrument commences on 1 January 2007.

Summary

3. The *Taxation Administration Act 1999* deals with the administration of various tax laws relating to the imposition of certain taxes, duties and fees. These tax laws are specified in section 4 of the *Taxation Administration Act 1999* and section 139 empowers the Minister to determine amounts payable for taxes, duties and fees, and the method by which an amount is to be calculated.

4. One of the specified tax laws is the *Duties Act 1999* (the Act), Chapter 2 of which deals with the grant of a Crown lease and the transfer or agreement for the transfer of land which is subject to duty. This Instrument determines the:

   a. income test and thresholds;
   b. eligibility criteria;
   c. conditions;
   d. method of calculation of duty payable under section 31 of the *Duties Act 1999*; and
   e. time limit for application.

5. Section 12 of the *Duties Act 1999* states that the duty is payable by the transferee (that is, the eligible homebuyer), and section 5 of the *Duties Act 1999* requires that the amount is payable to the Territory.

New in this Instrument

6. The definition of “total income” in paragraph 4 n) of the instrument has been modified to clarify that, for the purposes of determining eligibility for the concession:
   a) maintenance payments must be included in total income; and
   b) income for self-employed persons is the profit or gain made in the ordinary course of carrying on business. The net trading profit is taken to be the equivalent of salary and wages. This is to clarify that turnover is not the income of a self-employed person.

7. The Commissioner for ACT Revenue already has the discretion to extend the time for an applicant to meet the residency requirement where an applicant genuinely needs an extension of time to reside in the property. The Commissioner’s discretion has been extended in paragraph 5 c) of the instrument to approve a residency period shorter than 6 months or to exempt the applicant from this requirement. These discretions can only be exercised where the request for an extension of time, or exemption from the requirement, is made before the expiry of the 12-month period of time for compliance with the residency requirement.

8. An applicant is not eligible for the concession where they have owned property in the 2 years preceding the date of the grant, transfer or agreement for transfer, except where a person is required to relinquish that interest in land by a court order or an agreement as described in paragraphs 5 e) i. to iii. of the instrument (and has no interest in land other than the subject property).

9. This will be interpreted so that, for the exception to the 2-year rule to apply, the court order, financial agreement or domestic relationship agreement requiring the property to be relinquished must be made before the date the duty must be paid for the subject property. The concession will not be approved until the appropriate court order or agreement has been made within this timeframe.

10. The exception to the 2-year rule will not apply where an interest in property is transferred prior to an order or agreement, as property that has been transferred cannot be the subject of such an order or agreement.

11. The formulas in paragraphs 6 a) and b) of the instrument are used to calculate the amount of concessional duty and the result is then rounded down to the nearest multiple of 5 cents to arrive at the amount of duty payable per $100. Where an amount is not a multiple of 5 cents, section 123 of the *Taxation Administration Act 1999* allows the Commissioner to round amounts down to the nearest multiple of 5 cents.

Operation of the Scheme:

12. <u>Concessional Rates and Dutiable Value Thresholds</u>. The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and beyond the upper dutiable value thresholds. The dutiable value thresholds (the lower threshold and the upper threshold), and their method of calculation, are determined in a separate Disallowable Instrument.
    a) If the dutiable value of an **eligible property** does not exceed the **lower threshold**, an eligible home buyer is entitled to the maximum duty concession, with a minimum duty of $20 applied. Part concession is available for purchases of eligible homes more than the **lower threshold** but less than the **upper threshold**. The part concession is the concessional rate of duty for each $100 or part thereof exceeding the **lower threshold** up to the **upper threshold** at which point and beyond no concession is available.

b) If the dutiable value of an **eligible vacant block** does not exceed the **lower threshold**, an eligible home buyer is entitled to the maximum duty concession with the minimum duty of $20 applied. Part concession is available for purchases of vacant blocks greater than the **lower threshold**. The part concession is the concessional rate of duty for each $100 or part thereof exceeding the **lower threshold** up to the **upper threshold** at which point and beyond no concession is available.

c) Where the purchase is for a **share** in an eligible property or an eligible vacant block, the concession is proportional to the share purchased by the eligible home buyer.

13. Income Test and Threshold

a) The Income Threshold is $100,000 per annum and the allowance for each dependent child is $3,330 per annum, up to a maximum of $116,650 for an eligible home buyer with 5 or more dependent children as shown in the table below:

Number of dependent children	Threshold
0	$100,000
1	$103,330
2	$106,660
3	$109,990
4	$113,320
5 or more	$116,650

b) A ‘dependent child’ has the same meaning as in the *Social Security Act 1991* (Cwlth), which currently is a child under the age of 22 that meets certain income tests, and is the responsibility of the applicant.

c) ‘Total Income’ is the income of all persons named in the grant, transfer or agreement for transfer of the subject property, and their domestic partners. It includes income from all sources including benefits from a salary packaging arrangement and income classified as “exempt income” under the *Income Tax Assessment Act 1997* (Cwlth). It excludes eligible termination payments such as those made for years of service under a bona fide redundancy payment that are not assessable for income tax under the *Income Tax Assessment Act 1936* (Cwlth), Part 3, Division 2, Subdivision AA. Income for a self-employed person is the profit or gain made in the ordinary course of carrying on business.

d) The income test is applied as an annual test. Temporary or short term increases in income such as income from short term higher duties, the Commonwealth ‘baby bonus’, short term second job, and back pay received in the 12 months prior to the grant, transfer or agreement for transfer are to be included as income. The income test is that, on the date of the grant, transfer or agreement for transfer (whichever comes first), the grantee/s or transferee/s, together with their domestic partners, must have a combined total income over the previous 12 months (from the day of the grant, transfer or agreement for transfer – whichever comes first) less than or equal to the relevant income threshold. There is a requirement for the applicant/s to state that the details provided reflect their usual income.

14. Residence and Age Requirements

a) Applicants must reside in the home as their principal place of residence continuously for a period of not less than 6 months and such period is to commence within 12 months of completion of the transfer for an eligible property, or the date of the Certificate of Occupancy and Use following completion of construction of the residence on the eligible vacant block.

b) The Commissioner for ACT Revenue has the discretion to extend the time for an applicant to meet this requirement for compulsory or unforeseen circumstance such as work or health related issues, or to approve a residency period shorter than 6 months or to exempt the applicant from this requirement.

c) On the date of the grant, transfer or agreement for transfer (whichever comes first) the applicant must have attained the age of 18 years. However, if the Commissioner for ACT Revenue is satisfied there are good reasons to do so, he/she may exempt the applicant from the requirement to be at least 18 years old.

15. Limited time for receipt of application
There is a time limit for the receipt of applications. The "date the duty must be paid" is either 90 days after the liability to pay the duty arises (section 16 of the Act), or a period up to 12 months plus 14 days (section 16A of the Act) for an 'off the plan' purchase agreement.

Revocation
16. Determination DI2005-157 is revoked.

17. Determination DI2005-157 continues to apply in respect of transfers of interests in land which took place on 6 July 2005 to 31 December 2006.

Authorised by the Treasurer

Jon Stanhope MLA