

Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2008 (No 2)

Disallowable instrument DI2008–288

made under the

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

EXPLANATORY STATEMENT

1. This instrument is the *Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2008 (No 2)*.
2. The instrument continues a 3 year moratorium on payment of the full amount of duty which commenced on 1 July 2008 to 30 June 2011. The moratorium comprises the statutory suspension of the legal obligation to pay the full amount of duty for its duration, namely, from 1 July 2008 to 30 June 2011 inclusive (the *moratorium period*).
3. A new definition of *residential property* has been added to clarify that the property sold or to be sold is an Australian property and is the principal place of residence of the eligible pensioner/s.
4. The definition of *eligible pensioner* has been amended to clarify that a eligible pensioner is someone who receives an Australian pension or a Department of Veterans' Affairs age pension equivalent.
5. Regardless of the cessation of the moratorium on 30 June 2011, this Disallowable Instrument will apply to transactions entered into during the remainder of the moratorium period from 1 January 2009 to 30 June 2011.
6. 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.
7. 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 a crown lease which is subject to duty. This Disallowable Instrument determines, for the purpose of the Pensioner Duty Concession Scheme:
 - (a) the eligibility criteria;

- (b) the conditions;
 - (c) the method of calculation of duty payable under section 31 of the Act;
and
 - (d) the time limit for applications.
8. Section 12 of the Act states that the duty is payable by the transferee (in this case, eligible pensioners). Under section 5 of the Act, the amount is payable to the Territory.
 9. An applicant is not eligible for the concession if the applicant holds an interest in land other than the subject property and the property from where the applicant is moving. The applicant must sell or have sold the property from where the applicant is moving within 1 year of occupancy of the subject property, or a longer period approved by the Commissioner for ACT Revenue (the Commissioner).
 10. The formulae in section 6 of the Disallowable Instrument are used to calculate the amount of concessional duty which is then rounded down to the nearest multiple of 5 cents to arrive at the amount of duty payable per \$100 or part thereof. 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.
 11. 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.
 12. 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.
 13. 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.
 14. 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.
 15. An applicant must occupy the home to which his or her application relates as the applicant's principal place of residence for a continuous period of at least 6 months, with the period of occupation starting within 1 year after completion of the eligible transaction to which the application relates i.e. transfer of the

eligible property or the date of the Certificate of Occupancy following completion of construction of the residence on the eligible vacant block.

16. The Commissioner has the discretion to extend the time for an applicant to start the residency requirement, or to approve a residency period shorter than 6 months, or to exempt the applicant from the residency requirement altogether. The discretion will be exercised only where there are unforeseen circumstances or in circumstances over which the applicant has no control. An example is where the applicant is obliged to move from his or her principal place of residence for health reasons.
17. Section 7 of the Disallowable Instrument has been amended to clarify that an application for concessional duty under the Scheme must be received by the Commissioner by the date the duty must be paid or within 1 year, whichever is earlier. For example:
 - (a) for a grant, transfer or agreement for transfer of a lease, the duty is payable and the concession application must be received within 90 days;
 - (b) for an Off the Plan Purchase, including a Declared Affordable House and Land Package, if one of the events in section 16A of the Act happens, the duty is payable and the concession application must be received, within 14 days of the event; and
 - (c) where the maximum period to pay duty is 2 years plus 14 days for a Declared Affordable House and Land Package or 1 year plus 14 days for any other Off the Plan Purchase, the concession application must be received within 1 year regardless of when the duty must be paid.
18. DI2008-78 is revoked. However, DI2008-78 continues to apply to transactions between 1 July 2008 and 31 December 2008 inclusive.

Authorised by the Treasurer
Katy Gallagher