

Taxation Administration (Amounts Payable—Eligibility—Existing Homes—Home Buyer Concession Scheme) Determination 2012 (No 1)

Disallowable instrument DI2012–97

made under the

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

EXPLANATORY STATEMENT

Introduction

1. The ACT Government announced in the 2012-13 Budget that it would make changes to the Home Buyer Concession Scheme to encourage the building of new housing and support the construction industry in the Territory. To minimise any possible distortions in the housing market, the current scheme for existing homes will be run alongside the new scheme for new houses and land until 31 August 2012.
2. This instrument is the *Taxation Administration (Amounts Payable—Eligibility—Existing Homes—Home Buyer Concession Scheme) Determination 2012 (No 1)*.
2. This instrument commences on 6 June 2012.
3. The *Taxation Administration Act 1999* (the TAA) 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 TAA. Section 139 of the TAA 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 the Act deals with the imposition of duty on the grant of a Crown lease and the transfer or agreement for the transfer of a Crown lease which are subject to duty. Section 12 of the Act states that the duty is payable by the transferee (that is, the eligible home buyer), and section 5 of the Act states that the duty is payable to the Territory.
5. This instrument determines, for the purposes of the Home Buyer Concession Scheme:
 - (a) the income test and thresholds; and

- (b) the eligibility criteria; and
 - (c) the conditions; and
 - (d) the method of calculation of duty payable under section 31 of the Act; and
 - (e) the time limit for applications.
6. Transitional provisions have been included to clarify that the previous Disallowable Instrument continues to apply to grants, transfers, or agreements for transfers entered into during the period 1 January 2012 to 5 June 2012.

Eligible Properties

7. An eligible property under this scheme will be limited to existing homes. The concession for established homes will cease on 31 August 2012. The Home Buyer Concession will also be available for the purchase of new and substantially renovated homes and land only. The scheme for these categories of purchases is dealt with in a separate instrument.
8. The definition of substantial renovations in this instrument is identical to the definition in section 11 of the *Land Tax Act 2004*. It should be further emphasised that this instrument does not apply to purchases under an ‘off the plan’ purchase agreement as defined in section 16A of the *Duties Act 1999*.

Thresholds and calculation

7. The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and above the upper dutiable value thresholds. The dutiable value thresholds (i.e. the lower threshold and the upper threshold), and their method of calculation, are determined in a separate Disallowable Instrument.
8. If the dutiable value of the eligible property is not higher than the lower threshold, an eligible home buyer is entitled to the maximum duty concession, and minimum duty of \$20 is payable.
9. A partial concession is available for purchases of eligible properties with a dutiable value more than the lower threshold, but less than the upper threshold. The concessional duty payable is the concessional rate of duty for each \$100 (or part thereof) of the difference between the dutiable value of the eligible property, and the lower threshold. At and above the upper threshold, no concession is available.
10. Where the purchase is for a share in an eligible property, the concessional duty payable is proportional to the share purchased by the eligible home buyer.

The income test

11. The income test determined by this instrument applies an income threshold of \$120,000 per annum with an additional allowance for each dependent child of \$3,330 per annum. The income threshold increases to a maximum of \$136,650 for an eligible home buyer with 5 or more dependent children. This

instrument defines dependent child in the same way as the *Social Security Act 1991* (Cth); namely, a child under the age of 22 who meets certain income tests and who is the responsibility of the applicant.

12. In this instrument, total income is the income of all persons named in the grant, transfer or the agreement for the transfer of the subject property. Total income includes the combined total income of a person and their domestic partner. It includes income from all sources such as benefits from a salary packaging arrangement and income classified as exempt income under the *Income Tax Assessment Act 1997* (Cth). For a self-employed person, total income includes the net trading profit or gain made in the ordinary course of carrying on business, rather than the business' turnover.
13. 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 Australian Government's 'baby bonus', a short-term second job, and back-pay received in the 12 months prior to the grant, transfer or the agreement for the transfer are included as income.
14. On the date of the grant, transfer, or agreement for the transfer of the subject property (whichever is first), the income test requires the grantee(s) or transferee(s) (together with their domestic partners), to have a total income over the previous year that is less than or equal to the applicable income threshold. Applicants must state that the details provided reflect their usual income.

Residency and other criteria

15. At least one of the applicants must reside in the subject property as their principal place of residence continuously for a period of not less than 6 months. That period must commence within 1 year of completion of the transfer for an eligible property.
16. This instrument gives the Commissioner for ACT Revenue (the Commissioner) a discretion to extend the time for an applicant to meet the residency requirement, or to approve a residency period shorter than 6 months, or to exempt the applicant from the residency requirements, in the event of compulsory or unforeseen circumstances (such as work or health-related issues).
17. However, these discretions can only be exercised by the Commissioner where a written request to exercise them is made within 18 months of completion of the transfer for an eligible property.
18. On the date of the grant, transfer, or agreement for the transfer (whichever comes first) applicants must have attained the age of 18 years. However, if the Commissioner is satisfied there are good reasons for doing so, the Commissioner may exempt an applicant from that requirement.
19. This instrument provides for an exception to the requirement in section 5(1)(d) that an applicant must not have owned property in the 2 previous years. However for the exception to apply, a court order, financial agreement, or domestic relationship agreement requiring the prior property to be relinquished must be made in writing before the date duty for the subject property would otherwise be payable under the Act.

Time limits for applications

20. Section 7 of this instrument clarifies that an application for concessional duty under the scheme must be received by the Commissioner for a grant, transfer or an agreement for the transfer of a lease, within 90 days unless it is deemed unduly onerous for the application to have been lodged within time.

Application of this instrument and changes

21. This instrument revokes DI2011-316.
22. DI2011-316 continues to apply to transactions which took place on 1 January 2012 to 5 June 2012 inclusive.

Authorised by Treasurer
Andrew Barr MLA