

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 1)

Disallowable instrument DI2016–74

made under the

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

EXPLANATORY STATEMENT

Introduction

1. This instrument is the *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 1)*.
2. This instrument commences on 8 June 2016. The Pensioner Duty Concession (PDCS) was extended for a further year in the 2015-16 Budget, to 30 June 2016. As part of the 2016-17 Budget, the Government has extended the PDCS for a further two years, to 30 June 2018.
3. The PDCS runs in conjunction with the Over 60s Home Bonus (which is available to eligible applicants aged 60 years and over).
4. 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.
5. One of the specified tax laws is the *Duties Act 1999* (the Act). Chapter 2 of the Act deals with 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.
6. This instrument determines, for the purposes of the PDCS:
 - (a) the time limit for applications;
 - (b) the determination of amounts;
 - (c) the method of calculation of duty payable under section 31 of the Act; and
 - (d) the eligibility requirements, including pensioner status, residency and property ownership.

Time limit for applications

7. Section 5 of this instrument clarifies that an application for duty exemption under the PDCS must be received by the Commissioner within:
 - (a) for a grant, transfer or an agreement for the transfer of a lease, within 90 days; or
 - (b) for an 'off the plan' purchase, if one of the events in section 16A (1) of the Act happens, the concession application must be received within 14 days of the first such event. Otherwise, it must be received within 1 year of the grant, transfer, or agreement for the transfer of the lease.
8. If an application is not received within the relevant time limit required by section 5, the Commissioner may accept the late application if it is considered fair and reasonable to do so. Following acceptance of the late application, the Commissioner may reassess the duty liability in accordance with section 9 of the *Taxation Administration Act 1999*.

Thresholds and calculation

9. 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) are shown in this instrument, for both vacant land and property.
10. If the dutiable value of the eligible property or eligible vacant block 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.
11. A partial concession is available for purchases of eligible properties or eligible vacant blocks 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 or the eligible vacant block, and the lower threshold. At and above the upper threshold, no concession is available.
12. The property value threshold amounts for the calculation of concessional duty for eligible property are as follows:
 - (a) the lower threshold is equal to the lowest sale price of the highest 25% of all sale prices for ACT residential properties for the 2 quarters between October 2015 and March 2016. The determined value for the lower threshold is \$660,000 which is an increase of 5.1793 per cent from the previous threshold of \$627,500; and
 - (b) the upper threshold is equal to the lowest sale price of the highest 10% of all sale prices for ACT residential properties for the 2 quarters between October 2015 and March 2016. The determined value for the upper threshold is \$865,000 which is an increase of 7.1871 per cent from the previous threshold of \$807,000.
13. The land value threshold amounts applicable to the calculation of concessional duty for an eligible vacant block have been determined using the same percentage movement in property value threshold amounts from the previous determined amount, and as applying to the property value thresholds for eligible property in paragraph 11, rounded up to the nearest \$100. They are as follows:

- (a) the lower threshold is determined at \$350,800. It reflects a 5.1793 per cent increase from the previous threshold of \$333,500; and
- (b) the upper threshold is determined at \$419,900. It reflects a 7.1871 per cent increase from the previous threshold of \$391,700.

Eligibility requirements

Pensioner

- 14. The concession is only available to a person who is in receipt of an Australian age pension (Centrelink or Department of Veterans' Affairs equivalent) and who holds a pensioner concession card; or a disability support pension and is 50 years of age or more and who holds a pensioner concession card; or a Department of Veterans' Affairs Gold Card for one year prior to the grant, transfer, or agreement for the transfer (whichever is first) of the subject property.
- 15. The use of these criteria ensures that the PDCS is appropriately targeted to those individuals who most benefit from access to the Scheme.

Residency

- 16. An individual who is eligible for the PDCS must live in the purchased property as their principal place of residence, for a continuous period of at least a year. That period must commence within 1 year of completion of the transfer for the subject property – that is, within one year of settlement. For a newly constructed house, the one-year residency must commence from the date the certificate of occupancy was issued following completion of construction of the house on the purchase property.
- 17. The Commissioner for ACT Revenue has a discretion to extend the time for an applicant to meet the residency requirement in the event of an unforeseen circumstance (such as a health-related issue), or to approve a residency period shorter than 1 year. The Commissioner can also extend the time in which the applicant must start the residency period, or to exempt the applicant from the residency requirements.
- 18. The discretions in paragraph 17 can only be exercised by the Commissioner if the eligible applicant submits a written request to the Commissioner within 18 months of settlement or the date of the certificate of occupancy.
- 19. Section 9 (6) provides that if an applicant fails to comply with the residency requirement of one year, they must provide written notice to the Commissioner regarding that fact and repay the amount of duty (and any applicable interest and penalty tax, depending on the circumstances) that would have been chargeable if they were not eligible for the PDCS.
- 20. The notice required in paragraph 19 must be given to the Commissioner within 14 days after the end of the allowed residency requirements compliance period, or the date it first becomes apparent that the residency requirement will not be met (whichever comes first).

Property ownership

21. An applicant is not eligible for the concession if, at the date of grant, transfer, or agreement for transfer (whichever is first) of the subject property, the applicant holds an interest in land other than the subject property and the property from which the applicant is moving.
22. The applicant must sell or have sold the property from which the applicant is moving, within 1 year of the date of completion of the transfer or the date of the Certificate of Occupancy and Use for the subject property, or a longer period only if approved by the Commissioner for ACT Revenue (the Commissioner).
23. This instrument provides for an exception to the requirement in section 10 (1) that an applicant must not have an interest in any land other than the residential property from which they are moving and the subject property. For the exception to apply to the other interest in land, it must have been acquired by virtue of being an Executor or Trustee (but not a beneficiary) under a will.
24. Ownership of the property being purchased must be in the same name or names as the property being sold. The Commissioner may take anomalous or unusual circumstances into consideration when assessing this criterion, if considered fair and reasonable to do so.

Previous concession

25. The concession is restricted to a single concession for each applicant. An applicant must not receive this concession more than once.
26. An applicant for the PDCS cannot have previously received the Over 60s Home Bonus. An applicant cannot receive both the Pensioner Duty Concession and the Over 60s Home Bonus.

Revocation

27. This instrument revokes DI2015-334.
28. DI2015-334 continues to apply to a grant, transfer, or an agreement to transfer a lease, between 1 January 2016 and 7 June 2016, inclusive.

Authorised by the Treasurer
Andrew Barr MLA