Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2017 (No 1)

Disallowable instrument DI2017–81

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 7 June 2017.

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.

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, and section 5 of the Act states that the duty is payable to the Territory.

Home Buyer Concession Scheme

The Home Buyer Concession Scheme (HBCS) is an ACT Government initiative administered by the ACT Revenue Office to assist people in purchasing a new residential home or residential vacant land by charging duty at a concessional rate.

This instrument determines, for the purposes of the HBCS:

- the time limit for applications;
- the eligibility criteria of the eligible property;
- the determination of amounts;
- the method of calculation of duty payable under section 31 of the Act; and
- the eligibility requirements, including property ownership and residency.

Updates

This instrument replaces *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 2)* DI2016-305. The instrument has been modified to update language.

Other changes from DI2016-305 are as follows:

Substantially renovated homes

Substantially renovated homes are no longer eligible homes for the purposes of the HBCS. This will simplify administration.

Period for assessing income

The income requirement is now assessed by reference to the previous full financial year, instead of the 1 year period prior to exchange of contract. This reform relieves applicants from assessing their income for part of a financial year.

For example, an applicant exchanging contracts on 1 August 2017 would have had to substantiate their income for the period 1 August 2016 to 31 July 2017 under the old system. This would have overlapped most of the 2016-17 financial year and part of 2017-18.

Under this instrument, the applicant would only need to provide income evidence for the 2016-17 financial year.

Property thresholds

Finally, HBCS thresholds have been updated as normal, but future updates will be made every 3 years instead of every 6 months. Updates will be made on the basis of house price movements over the previous 3 years rather than the previous 2 quarters.

This measure will smooth out volatility caused by short-term movements in the property market and make it easier for practitioners to advise their clients on the concessions available.

Eligible transactions

This instrument applies to eligible transactions, which are grants, transfers or agreements for sale or transfer of eligible property first executed on or after 7 June 2017. (See section 243 of the Act for the meaning of ‘first executed’.)

The HBCS is limited to two types of eligible property: new homes and vacant land.

Applications

An application for the HBCS must be received by the Commissioner for ACT Revenue (the Commissioner) within 90 days of the date of grant, transfer or agreement for sale or transfer of an eligible property.

For an ‘off the plan’ purchase agreement under section 16A of the Act, the application must be received in the time that duty is payable for the agreement. The maximum time period for the Commissioner to receive the application, under section 16A (1), is 1 year and 14 days after the date of the off the plan agreement.

If an applicant is not received within the relevant time limit, the Commissioner may accept the late application if it is considered fair and reasonable to do so (for example, in circumstances of serious illness).

Approval

The Commissioner will approve a HBCS application if satisfied that all parties who will have an interest in the property on settlement have made an application for the HBCS. Domestic partners must also be party to applications, whether or not they will have an interest in the property.

All applicants must meet (or undertake to meet) the eligibility requirements for the HBCS to the extent that they are not exempted.

Thresholds

There are upper and lower thresholds on dutiable value for both new homes and vacant land under the HBCS.

New home thresholds

For new homes, the lower threshold is the highest sale price of the lowest 40 per cent of all sale prices for ACT residential properties (new and established) for the 2 quarters between October 2016 and March 2017. The upper threshold is the highest sale price of the lowest 65 per cent for ACT residential properties for the same 2 quarters.

The lower threshold for new homes determined in this instrument is $470,000, which is an increase of 0.4274 per cent from the previous threshold of $468,000.

The upper threshold for new homes determined in this instrument is $607,000, which is an increase of 2.8814 per cent from the previous threshold of $590,000.

Vacant land thresholds

Vacant land thresholds are determined by applying the percentage change from the previous to the current new home threshold to the previous vacant land threshold. This amount is then rounded to the nearest $100.

Using the percentage change in the new home thresholds compensates for the volatility of sales in vacant land, which is affected by the land release program.

The lower threshold for vacant land determined in this instrument is $281,200, which is an increase of 0.4274 per cent from the previous threshold of $280,000 (and rounded to the nearest $100).

The upper threshold for vacant land determined in this instrument is $329,500, which is an increase of 2.8814 per cent from the previous threshold of $320,300 (and rounded to the nearest $100).

Concessional rates

The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and above the upper dutiable value thresholds.

At or below the lower threshold, an approved transaction is entitled to the maximum duty concession, meaning that $20 in duty is payable.

A partial concession is available for purchases of eligible properties with a dutiable value between the lower and upper thresholds. The partial concession rate is worked out as follows then rounded down to the nearest 5 cents:

$$concessional\ rate\ of\ duty = \frac{upper\ threshold\ duty \times 100}{upper\ threshold - lower\ threshold}$$

In this formula, ***upper threshold duty*** means the non-concessional duty, or full amount of duty, that would be payable for a dutiable transaction with a dutiable value equal to the upper threshold.

At and above the upper threshold, the transaction is not eligible for the HBCS and full duty is payable.

New home rate

For new homes, the upper threshold duty is $17,914.60 and the concessional rate is $13.05, worked out as follows:

$$\frac{\$17{,}914.60 \times 100}{\$607{,}000 - \$470{,}000} = \$13.0764\ (unrounded) = \$13.05\ (rounded)$$

Vacant land rate

For vacant land, the upper threshold duty is $6,321.00 and the concessional rate is $13.05, worked out as follows:

$$\frac{\$6{,}321 \times 100}{\$329{,}500 - \$281{,}200} = \$13.0870\ (unrounded) = \$13.05\ (rounded)$$

Undivided shares

Where the eligible transaction is for a share in an eligible property, the concessional duty payable is proportional to the share purchased by the eligible applicant.

Income requirements

To be eligible for the HBCS, the combined total of all applicants' gross income in the previous financial year must be less than or equal to the income threshold. The stated income must reflect the applicants' usual income.

The income threshold is $160,000 per year. An additional allowance of $3,330 per year is provided for each dependent child of an applicant. Each applicant's dependent children are added together for this purpose. Dependent child is defined by reference to the *Social Security Act 1991* (Cwlth), namely, a child or young person under the age of 22 who meets certain income tests and is dependent on the applicant.

Income means income from all sources, such as such as benefits from a salary packaging arrangement and income classified as exempt income under the *Income Tax Assessment Act 1997* (Cwlth).

For an applicant that is self employed, total income includes the net trading profit or gain made in the ordinary course of carrying on business, rather than the total business turnover.

Temporary or short-term increases in income such as income from short-term higher duties, a short-term second job, and back-pay received in the 12 months prior to the grant, transfer or agreement are included as income.

Property requirements

An applicant is not eligible for the concession if, in the 2 years preceding the day of the transaction date of the eligible transaction, the applicant held an interest in land other than the eligible property. This requirement extends to the applicant's domestic partner as party to the HBCS application.

Exceptions apply if a court order, financial agreement, or domestic relationship agreement required the other property to be relinquished. However, these orders or agreements must be made before the transaction date.

Exceptions also apply if the other property is subject to a will, or if the applicant had entered an agreement to purchase the property and subsequently cancelled (rescinded) the agreement to purchase the other property.

Residence requirements

At least one of the applicants who will hold a relevant interest in the eligible property must occupy the property as their principal place of residence continuously for a period of at least 1 year. That period must commence within 1 year of completion of the transfer for a new home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

The domestic partner of an applicant can only fulfil the residence requirements if they hold a relevant interest in the eligible property (that is, they are named in the grant, transfer or agreement for the property).

A principal place of residence is defined as the home a person primarily occupies, on an ongoing and permanent basis, as their settled or usual home. However, when the occupation is transient, temporary or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

While short-term occupation will count as occupation for the purposes of determining whether a home is a new home, short-term occupation is not generally sufficient to establish whether a home has been an applicant's principal place of residence.

Failure to comply with residence requirement

If an applicant fails to comply with the residency requirement, the applicant is required under this instrument to provide written notice to the Commissioner. The notice should advise about the failure to meet the residency requirement. Notice must be given within 14 days after the end of the period allowed for compliance with the residency requirement or the date it first becomes apparent that the residency requirement will not be complied with during the period allowed for compliance (whichever comes first).

The eligible transaction will also become liable for non-concessional duty as at the transaction date. In other words, the applicant will become liable to pay the Territory the amount of duty that would have been payable on the eligible transaction if the transaction had not been eligible for the HBCS.

If an applicant fails to give notice to the Commissioner or take steps to rectify the tax liability, the applicant may be subject to penalty tax and payment of interest in addition to the primary duty.

Exemptions

This instrument gives the Commissioner the discretion to exempt an applicant under 18 years of age from the age requirement if satisfied that it is fair and reasonable to do so.

This instrument also gives the Commissioner the discretion to extend the time for an applicant to meet the residence requirement, to approve a residence period shorter than 1 year, or to exempt the applicant from the residence requirements, in the event of unforeseen circumstances (such as health-related issues).

Discretions in relation to residence 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 a new home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 2)* DI2016-305.

DI2016-305 continues to apply to a grant, transfer, or an agreement to transfer a lease, in the period 1 January 2017 to 6 June 2017, inclusive.

Authorised by the Treasurer
Andrew Barr MLA

31 May 2017