

Australian Capital Territory

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2017 (No 1)

Disallowable instrument DI2017–82

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.

Pensioner Duty Concession Scheme

The Pensioner Duty Concession Scheme (PDCS) assists eligible pensioners, who own a residential home, to move to accommodation more suited to their needs (e.g. from a house to a townhouse) by reducing the duty payable on their new purchase of a residential home or residential vacant land. As part of the 2016-17 Budget, the Government has extended the PDCS until 30 June 2018.

This instrument determines, for the purposes of the PDCS:

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

Updates

This instrument replaces *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 2)* DI2016-304. The instrument has been modified to update language.

Other changes from DI2016-304 are as follows:

Exception to property requirements

This instrument introduces a new provision dealing with situations where a former property was owned in the names of two partners, but a property is being purchased in the name of only one owner because a relationship has ended.

In these situations, the requirement that the eligible property be in the same names as the former property will not apply to the applicant's interest in the eligible property. However, the interest in the former property must be subject to a court order or agreement concerning the distribution of property between partners entered into before the date of the eligible transaction.

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'.)

Applications

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

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

Thresholds

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

Eligible home thresholds

For eligible homes, the lower threshold is the highest sale price of the lowest 75 per cent of all sale prices for ACT residential properties for the 2 quarters between October 2016 and March 2017. The upper threshold is the highest sale price of the lowest 90 per cent for ACT residential properties for the same 2 quarters.

The lower threshold for eligible homes determined in this instrument is \$680,500, which is an increase of 2.9501 per cent from the previous threshold of \$661,000.

The upper threshold for eligible homes determined in this instrument is \$895,000, which is an increase of 4.0698 per cent from the previous threshold of \$860,000.

Vacant land thresholds

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

Using the percentage change in the eligible 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 \$361,700, which is an increase of 2.9501 per cent from the previous threshold of \$351,300 (and rounded to the nearest \$100).

The upper threshold for vacant land determined in this instrument is \$434,500, which is an increase of 4.0698 per cent from the previous threshold of \$417,500 (and rounded to the nearest \$100).

Calculation of duty

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:

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

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 PDCS and full duty is payable.

Eligible home rate

For eligible homes, the upper threshold duty is \$33,885 and the concessional rate is \$15.75, worked out as follows:

$$\frac{\$33,885 \times 100}{\$895,000 - \$680,500} = \$15.7972 \text{ (unrounded)} = \$15.75 \text{ (rounded)}$$

Vacant land rate

For vacant land, the upper threshold duty is \$10,311 and the concessional rate is \$14.15, worked out as follows:

$$\frac{\$10,311 \times 100}{\$434,500 - \$361,700} = \$14.1635 \text{ (unrounded)} = \$14.15 \text{ (rounded)}$$

Pensioner requirement

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.

Property requirements

An applicant is not eligible for the concession if, on the day of the grant, transfer, or agreement for transfer (whichever is first) of the eligible property, the applicant held an interest in land other than the former property and the eligible property. This requirement extends to the applicant's domestic partner as party to the PDCS application.

Additionally, 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 eligible property.

Ownership of the eligible property being purchased must be in the same name or names as the property being sold.

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.

Previous concessions

The PDCS is restricted to a single concession for each applicant. An applicant must not receive this concession more than once. An applicant for the PDCS cannot have previously received the Over 60s Home Bonus (which ended on 31 December 2016).

Residence requirements

At least one of the applicants who will hold a relevant interest in the property must occupy the eligible 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.

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.

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 PDCS.

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 allows the Commissioner to consider a request in writing from a potential or current applicant to exempt the eligible transaction from compliance with the requirement about ownership in the same names, or the requirement to sell the former property within 1 year. The Commissioner can grant an exemption if anomalous or unusual circumstances exist.

This instrument also gives the Commissioner the discretion to exempt an applicant from compliance with the residence period, to approve a residence period shorter than 1 year, or to extend time for an applicant to meet 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—Pensioner Duty Concession Scheme) Determination 2016 (No 2)* DI2016-304.

DI2016-304 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