

Australian Capital Territory

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2017 (No 2)

Disallowable instrument DI2017–227

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 18 September 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 types of eligible property;
- 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 the *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 1)* DI2017-82 consequential to the commencement of the *Revenue Legislation Amendment Act 2017* (2017 Act) on 18 September 2017. The 2017 Act will make extensive amendments to taxation legislation to adopt a ‘Barrier Free’ model for the collection of conveyance duty.

The Barrier Free model moves the trigger date for payment from the date of exchange of contracts to the point that a buyer acquires the title to the property, which occurs after settlement.

As part of this change, the requirement to submit a PDCS application before settlement has been removed from this instrument. Home buyers who are eligible for the PDCS will claim the concession while lodging a transaction for registration at Access Canberra.

The requirement to sell or have sold the former property within 1 year of settlement or completion of construction has also been adjusted to refer to the registration date (the date that duty payment triggers in the Barrier Free model). The wording of this requirement has been clarified to refer to the periods both 1 year before and 1 year after the transaction date.

The 2017 Act also abolishes \$20 minimum duty; the \$20 minimum amount of duty has been removed from this instrument accordingly.

There have been no other changes to the PDCS eligibility requirements or the thresholds and rates from DI2017-82. There are also no changes to eligibility requirements that apply to the domestic partners of transferees, whether or not the partner will have an interest in the property.

The other change made in DI2017-82, relating to the exception to the property requirements where a relationship has ended, continues to be in effect under this instrument.

Application of PDCS

This instrument applies to grants, transfers or agreements for sale or transfer of eligible property with a transaction date on or after 18 September 2017. The transaction date is the date that liability for duty arises under section 11 of the Act; that is, when the transaction is first executed.

Eligible properties

The PDCS is limited to two types of eligible property: eligible homes and vacant land. Eligible homes may be new or established.

There are upper and lower thresholds on dutiable value for both eligible homes and vacant land under the PDCS. As there are no changes to thresholds from DI2017-82,

the ‘previous thresholds’ mentioned below refer to the thresholds in the *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 2)* DI2016-304.

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).

Eligible transactions

A transaction is deemed eligible for the PDCS if the eligibility requirements specified in the instrument are met.

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

A transaction is not eligible for the PDCS if, on the transaction date of the eligible transaction, a transferee or a transferee's domestic partner held an interest in land other than the eligible property and former property (if applicable).

Additionally, the applicant must sell or have sold the property from which the applicant is moving within 1 year of (before or after) the date the eligible transaction, or the instrument effecting the transaction, is registered with the Registrar-General on the land titles register under the *Land Titles Act 1925*.

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.

Residence requirements

At least one of the transferees of 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 an eligible 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 a transferee can only fulfil the residence requirements if they are a transferee themselves; that is, they are named in the grant, transfer or agreement and they hold a relevant interest in 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.

Previous concessions

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

Failure to comply with requirements

If a transaction ceases to be eligible for the PDCS—for example, because a person failed to comply with an eligibility requirement—this instrument requires written notice of that fact to be provided to the Commissioner. The notice should advise about the failure to meet the requirement. Notice must be given within 14 days after the end of the period allowed for compliance with the requirement or the date it first becomes apparent that the requirement will not be complied with (whichever comes first).

If the transaction ceases to be an eligible transaction, it will become liable for non-concessional duty as at the transaction date. In other words, the transferee 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 a transferee fails to give notice to the Commissioner or take steps to rectify the tax liability, the transferee 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 transferee 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 extend the time for an transferee to meet the residence requirement, to approve a residence period shorter than 1 year, or to exempt the transferee 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 an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

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 no duty is payable (\$0).

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:

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

Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2017 (No 1)* DI2017-82.

DI2017-82 continues to apply to a grant, transfer, or an agreement to transfer a lease, in the period 7 June 2017 to 17 September 2017, inclusive.

For more information about the handling of PDCS transactions with a transaction date before 18 September 2017, visit the ACT Revenue Office website at www.revenue.act.gov.au.

Authorised by the Treasurer
Andrew Barr MLA

5 September 2017