

Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme—Eligible Impacted Properties) Determination 2017 (No 1)

Disallowable instrument DI2017–232

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.

Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme

On 28 October 2014, the ACT Government announced the Loose-fill Asbestos Insulation Eradication Scheme under which it has offered to buy all homes in the ACT affected by loose-fill asbestos (Mr Fluffy) insulation.

Under the Loose-fill Asbestos Insulation Eradication Scheme, the ACT Government will acquire, demolish and safely dispose of all affected homes, remediate eligible impacted properties and then resell them to defray overall scheme costs.

One of the elements of the Loose-fill Asbestos Insulation Eradication Scheme announced on 28 October 2014 was a duty waiver. This was given effect as the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme.

Eligible homeowners who surrender a lease with affected residential premises under the buyback programs are entitled to a concession on duty on a purchase of a residential dwelling in the Territory. The value of the concession will be capped at the value of duty that would have been payable on a property of the value determined in the valuation of the eligible impacted property under the buyback program.

Eligible impacted properties

Government amendments to the Building (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015 extended the legislative architecture in place for ‘Mr Fluffy’ properties relating to acquisition, demolition and re-sale to ‘eligible impacted properties’.

Section 9A of the *Civil Law (Sale of Residential Property) Act 2003* defines **eligible impacted property** and **eligible impacted property buyback program**.

A property becomes an eligible impacted property when the Minister makes a determination that it is eligible. The new provisions also set out the factors the Minister may consider in making such a determination.

Essentially the Eligible Impacted Property Buyback Program is intended to deal with properties where:

- the affected residential premises (the ‘Mr Fluffy’ property) is structurally dependent on the property;
- there is a migration pathway for loose fill asbestos insulation fibres from the affected residential premises to the property;
- the affected residential premises cannot be demolished because of a safety, economic or practical impediment related to the nature of the other property.

The program enables the ACT Government to make an offer to purchase a property not affected by asbestos directly, but if purchased will facilitate the safe and efficient demolition of an asbestos affected property acquired under the Scheme.

Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme for Eligible Impacted Properties

This instrument establishes a Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme for Eligible Impacted Properties (the Scheme).

This Scheme is a separate, but complementary duty concession scheme to the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme under the *Taxation Administration Act 1999*. It is important to note that the duty concession in this instrument will only apply to properties that eligible impacted property owners acquire after 19 November 2015.

This instrument determines, for the purposes of the Scheme:

- the eligibility requirements;
- the value of the concession;
- the conditions; and
- the timing for applications.

Updates

This instrument replaces the *Taxation Administration (Eligible Impacted Properties—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2016 (No 1)* DI2016-4 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, some aspects of the application process for the Scheme have changed under this instrument.

However, there have been no substantive changes to the Scheme eligibility requirements or the amount of the concession under DI2016-4.

Further information on the handling of Scheme transactions with a transaction date on and after 18 September 2017 is available on the ACT Revenue Office website at <http://www.revenue.act.gov.au/>.

Application of Scheme

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 Scheme is available for ACT property including new homes, established homes and vacant land.

The term ‘eligible property’ in this instrument means the property to which the concession will be applied under the Scheme.

Eligible transactions

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

Eligible homeowners

At least one transferee of the transaction to which the concession will apply must be an eligible homeowner, meaning a person who:

- is or was a Crown lessee of an eligible impacted property acquired before 19 November 2015; and
- has entered into a contract for sale of the property to the Territory under the Eligible Impacted Property Buyback Program (whether or not the contract for sale has been completed).

Ownership requirements

In addition to at least one transferee being an eligible homeowner, the ownership of the eligible property being purchased must be in the same name or names as the eligible impacted property. This is to clarify that only one buyback concession amount may be granted in relation to each eligible impacted property that is surrendered.

The Scheme can be applied to the purchase of a property in a different name or names only if the eligible homeowner purchasing the property satisfies the Commissioner for ACT Revenue (the Commissioner) that they have authority to use the concession.

This may require the eligible homeowner to produce evidence of the consent of all other joint tenants or tenants in common of the eligible impacted property at the date of surrender for the applicant to the use of the concession on the new purchase.

Alternatively, the eligible homeowner may be required to produce orders from a court that authorise the use of the Scheme concession notwithstanding the absence of consent from all other joint tenants or tenants in common of the relevant eligible impacted property at the date of surrender.

Other concessions

The concession under this Scheme cannot be used with any other duty concession scheme.

Failure to comply with requirements

If a transaction ceases to be eligible for the Scheme—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 Scheme.

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.

Concessional rates

The value of the duty concession and related conditions remain unchanged.

The value of the duty concession is the amount of duty that would have been payable on a property of the value determined in the valuation of the eligible impacted property.

If the value of the property being purchased exceeds the assessed value of the eligible impacted property, the person will be liable to pay the duty on the dutiable value of the new property, less the amount available under the concession. The following example is provided to explain how this works:

Denise has an eligible impacted property which she surrenders under the buyback program. The agreed price for the eligible impacted property is \$500,000. Duty payable on that amount is \$15,800. If Denise buys a new home for a purchase price of \$600,000, the duty on that amount is \$20,800. Denise may present her concession to the value of \$15,800 and pay the additional \$5,000.

No credit or refund is available if the value of the new property is less than the assessed value of the eligible impacted property.

Revocation

This instrument revokes *Taxation Administration (Eligible Impacted Properties—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2016 (No 1) DI2016-4*.

DI2016-4 continues to apply to a grant, transfer, or an agreement to transfer a lease, in the period 5 February 2016 to 17 September 2017, inclusive.

For more information about the handling of Scheme 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