

Australian Capital Territory

# Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2020

Disallowable instrument DI2020–178

made under the

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

## EXPLANATORY STATEMENT

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### Background

The *Taxation Administration Act 1999* (**the TAA**) governs 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 the amount of tax, duty, or licence fee payable, and the method by which an amount is to be calculated.

One of the specified tax laws is the *Duties Act 1999* (**the Duties Act**). Chapter 2 of the Duties 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 Duties Act provides that the duty is ordinarily payable by the transferee, and section 5 of the Duties Act establishes that the duty is payable to the Territory.

The Pensioner Duty Concession Scheme (**the PDCS**) assists eligible pensioners to move accommodation by reducing the duty payable on their new purchase of a residential home, or residential vacant land. The *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2019 (No 1)* is due to expire on 30 June 2020, and so the *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2020 (the 2020 Determination)* effectively extends it by determining the same amount and continuing the PDCS until 30 June 2021.

The 2020 Determination commences on 1 July 2020, following the expiry of the *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2019 (No 1)* (DI2019-101) (**the 2019 Determination**) on 30 June 2020.

## Pensioner Duty Concession Scheme

The 2020 Determination determines:

- the types of eligible property;
- the amounts;
- the method of calculation of duty payable under section 31 of the *Duties Act 1999* (**Duties Act**); and
- the eligibility requirements, including pensioner status, residency and property ownership.

### Application

The 2020 Determination applies to grants, transfers or agreements for sale or transfer of eligible property with a transaction date on or after 1 July 2019. The transaction date is the date that liability for duty arises under section 11 of the Duties Act; that is, when the transaction is first executed.

### Eligible properties

There are two types of eligible property for the amount of duty determined: 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:

- The lower threshold for eligible homes is \$440,000 and the upper threshold is \$570,000. The lower threshold was calculated utilising the highest sale price of the lowest 25 per cent of all sale prices for ACT residential properties for the 2019 calendar year. The upper threshold was calculated utilising the highest sale price of the lowest 50 per cent for ACT residential properties for the same year.
- For vacant land, the lower threshold for vacant land is \$278,650 and the upper threshold is \$390,000.

### Eligible transactions

A transaction is deemed eligible if the eligibility requirements specified in the 2020 Determination are met. These eligibility requirements are:

- 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); or a disability support pension and is 50 years of age or more; or holds a Department of Veterans' Affairs Gold Card for at least one year prior to the grant, transfer, or agreement.

- Property requirements

A transaction is not an eligible transaction if, on the transaction date, 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 one year of (before or after) the date the instrument effecting the transaction is registered with the Registrar-General on the land titles register under the *Land Titles Act 1925*. There may be exceptions to this, as set out below.

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 one year. That period must commence within one 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. Some exemptions apply to the residence requirement, as set out below.

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

A transferee cannot have previously received the Over 60s Home Bonus (which ended on 31 December 2016) or the PDCS.

## **Failure to comply with requirements**

If a transaction ceases to be eligible—for example, because a person failed to comply with an eligibility requirement—the 2020 Determination 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 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 fails to take steps to rectify the tax liability, under the TAA the transferee may be subject to penalty tax and payment of interest in addition to the primary duty. The TAA also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

## Exemptions

The 2020 Determination 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.

The 2020 Determination also gives the Commissioner the discretion to extend the time for a 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 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 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 \$14,424 and the concessional rate is \$11.05 per \$100 (or part thereof) of dutiable value more than \$440,000, worked out as follows:

$$\frac{\$14,424 \times 100}{\$570,000 - \$440,000} = \$11.09538 \text{ (unrounded)} = \$11.05 \text{ (rounded down)}$$

### **Vacant land rate**

For vacant land, the upper threshold duty is \$7,660 and the concessional rate is \$6.85 per \$100 (or part thereof) of dutiable value, worked out as follows:

$$\frac{\$7,660 \times 100}{\$390,000 - \$278,650} = \$6.87921 \text{ (unrounded)} = \$6.85 \text{ (rounded down)}$$

### **Application of the 2019 Determination**

The 2020 Determination does not affect the operation of the 2019 Determination. The 2019 Determination continues to be in force until its expiry.

### **Commencement and Expiry**

The 2020 Determination commences on 1 July 2020 and expires on 30 June 2021.

Authorised by the Treasurer  
Andrew Barr MLA