

Australian Capital Territory

# Taxation Administration (Owner Occupier Duty) COVID-19 Exemption Scheme Determination 2020

Disallowable instrument DI2020–205

made under the

*Taxation Administration Act 1999*, s 137E (COVID-19 exemption scheme)

## EXPLANATORY STATEMENT

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As part of ACT Government’s COVID-19 Recovery Plan to support local construction jobs, the *Taxation Administration (Owner Occupier Duty) COVID-19 Exemption Scheme Determination 2020* (the **Owner Occupier Duty Exemption Determination**) determines a scheme for a concession (by way of exemption) from conveyance duty for eventual owner-occupiers on the purchase of prescribed new homes for agreements entered into during the period 4 June 2020 to 30 June 2021.

For purchases of vacant single residential blocks of ACT land the exemption provides for zero duty payable.

Off the plan unit purchases (including apartments and townhouses) valued at up to \$500,000 will be subject to zero duty. For off the plan unit purchases valued between \$500,000 and \$750,000, a duty exemption of \$11,400 will apply.

### Owner Occupier Duty Exemption

The Owner Occupier Duty Exemption Determination will:

- encourage growth in the residential property construction;
- give certainty to the construction industry and provide a pipeline for further residential construction work, keeping Canberrans in jobs; and
- save new home buyers thousands of dollars, whether they are entering the housing market for the first time or looking to move.

The Owner Occupier Duty Exemption Determination sets out, for the purposes of the exemption:

- the types of eligible property;
- the eligibility requirements, including transaction type and residency; and
- the exemption amounts.

## **Application**

### **Eligible properties**

The exemption is limited to two types of eligible property:

- vacant land for single residential development – the land must be vacant when purchasing, and the lease must only allow for one home/dwelling to be built on the land. The land must not have been owned by a transferee under a land rent lease; and
- units in unit plan subdivisions (for example, apartments and townhouses).

### **Eligible transactions**

A transaction is deemed eligible for the exemption if the eligibility requirements specified in the Owner Occupier Duty Exemption Determination are met.

The exemption applies to grants, transfers or agreements for sale or transfer of eligible property comprising vacant land with a transaction date between 4 June 2020 and 30 June 2021, inclusive.

For units, the exemption applies to transfers comprising entry into off the plan agreements with a transaction date between 4 June 2020 and 30 June 2021, inclusive.

The transaction date is the date that liability for duty arises under section 11 of the *Duties Act 1999*; that is, when the transaction is first executed.

### **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.

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, an occupation that is transient, temporary or of a passing nature, is not sufficient to establish occupation as a principal place of residence.

### **Failure to comply with requirements**

If a transaction ceases to be eligible for the exemption—for example, because a person failed to comply with a residence requirement—the Owner Occupier Duty Exemption 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 exemption.

If a transferee fails to give notice to the Commissioner or fails to take steps to rectify the tax liability, under the *Taxation Administration Act 1999* the transferee may be subject to penalty tax and payment of interest in addition to the primary duty. That Act also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

## **Extension**

This instrument 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).

The Commissioner can exercise discretion in relation to residence requirements only 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.

## **Expiry**

This instrument expires on 30 June 2021.

## **Human Rights Act 2004**

This instrument provides a concession to conveyance duty and does not limit, and is consistent with, human rights. By providing exemption to purchases of properties that require construction work, it promotes the right to work (section 27B of the *Human Rights Act 2004*) by supporting jobs for the property and construction industry.

In accordance with the legislation, the Owner Occupier Duty Exemption Determination includes a statement about whether, in my opinion as the Minister, the scheme is consistent with human rights.

In addition, the ACT Human Rights Commission has been consulted to ensure the Owner Occupier Duty Exemption Determination is consistent with human rights.

The Owner Occupier Duty Exemption Determination is to commence retrospectively on 4 June 2020, to align with the announcement of the initiative and ensure that there is no incentive to delay property purchase decisions.

Authorised by the Treasurer  
Andrew Barr MLA