

Australian Capital Territory

# Taxation Administration (Amounts Payable—Duty) Determination 2021

## Disallowable instrument DI2021–171

made under the

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

## EXPLANATORY STATEMENT

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This instrument commences on 1 July 2021.

Under section 139 of the *Taxation Administration Act 1999*, the Minister may determine by disallowable instrument the rate or differential rates, or the method by which an amount of duty payable under the *Duties Act 1999* (Duties Act) is to be calculated.

This instrument determines for the purposes of the Duties Act differential rates of duty, or the method by which an amount of duty is payable for different types of dutiable transactions is calculated. Part 2 of this instrument determines the transfer rates of duty for the purposes of section 31 of the Duties Act. Part 3 determines commercial transfer rates of duty for the purposes of sections 31 and 90 of the Duties Act. Part 4 determines the rate of duty for the purposes of section 33 of the Duties Act.

### Updates

The Government is continuing to implement reforms to the Territory's taxation system by reducing conveyance duty rates for transactions of residential properties, targeted at the lowest marginal tax rates for home occupier transactions.

Transfer rates under part 2 differentiate between eligible owner occupier transactions and transactions that are not eligible owner occupier transactions. The meaning of an eligible owner occupier transaction and relevant eligibility criteria are set out in Schedule 1 of this instrument.

For an eligible owner occupier transaction, a reduced rate of duty applies to a transaction with a dutiable amount of less than or equal to \$200,000 and the reduction in the amount of duty is available for transactions up to \$1,455,000.

For transactions that are not eligible owner occupier transactions, the transfer rates are unchanged from the previous instrument.

The duty free threshold for commercial transfers is increased.

## **Transfer rate (part 2)**

Part 2 applies to a dutiable transaction of dutiable property used, or that will be used, wholly for purposes other than a commercial purpose. For example, for a residential purpose (such as a house, a unit, or a block of apartments), a primary production purpose (such as farmland or grazing land) or a home business (such as a bookkeeping business or florist working from home). This is irrespective of the permitted uses of the property as may be specified in a Crown lease.

Table 1 sets out the differential rates of duty, and the method by which the duty payable for a dutiable transaction that is not for a commercial purpose is calculated.

Column 2 of table 1 sets out the rate of duty applicable to an eligible owner occupier transaction, providing a reduced rate of \$0.68 for every \$100, or part thereof, for properties with dutiable amount less than or equal to \$200,000. The benefit of the lower rate of duty for the lowest threshold (of \$1,040) is available for eligible owner occupier transactions with dutiable amounts up to \$1,455,000.

Column 3 of table 1 sets out the rate of duty applicable to a transaction that is not an eligible owner occupier transaction.

For property transactions with a dutiable amount of more than \$1,455,000, the rate of duty used to calculate the duty payable remains as a flat rate of \$4.54 per \$100 on the total dutiable amount (with no difference in duty payable between an eligible owner occupier transaction or a transaction that is not an eligible owner occupier transaction).

### *Example 1*

For a residential property transaction valued at \$195,000, if it is an eligible owner occupier transaction, the applicable rate of duty is \$0.68 for every \$100, or part of \$100, for the dutiable amount that is less than or equal to \$200,000. The duty payable is therefore \$1,326.

If it is not an eligible owner occupier transaction, the applicable rate of duty is \$1.20 for every \$100, or part of \$100, for the dutiable amount that is less than or equal to \$200,000. The duty payable is therefore \$2,340.

### *Example 2*

For a residential property transaction valued at \$350,000, the applicable rate of duty is \$3.40 for every \$100, or part of \$100, for the dutiable amount that is more than \$300,000 plus either \$3,560 for an eligible owner occupier transaction or \$4,600 for a non-owner occupier. The duty payable for an eligible owner occupier transaction is \$5,260 compared to \$6,300 for a non-owner occupier.

The 2020-21 and 2021-22 rates are listed in the table below for comparison.

**Table Comparison of rates of duty**

Dutiable amount	2020-21 (\$ per \$100)	2021-22 (\$ per \$100)	
		Owner occupier	Non-owner occupier
Less than or equal to \$200,000	1.20	0.68	1.20
More than \$200,000 but not more than \$300,000	2.20	2.20	2.20
More than \$300,000 but not more than \$500,000	3.40	3.40	3.40
More than \$500,000 but not more than \$750,000	4.32	4.32	4.32
More than \$750,000 but not more than \$1,000,000	5.90	5.90	5.90
More than \$1,000,000 but not more than \$1,455,000	6.40	6.40	6.40
More than \$1,455,000*	4.54	4.54	4.54

\*This rate is a flat rate on the entire value of the transaction.

### **Commercial transfer rate (part 3)**

This Part applies to a dutiable transaction of dutiable property used, or that will be used, partly or wholly for a commercial purpose.

The threshold for nil duty has increased from \$1,500,000 to \$1,600,000.

The differential rates of duty, and the method by which the duty payable for a dutiable transaction that is for a commercial purpose is calculated are set out in section 7.

‘Commercial purpose’ means a purpose other than a residential purpose, a primary production purpose or a home business. This definition has its basis in section 6 of the Duties Act and (for a home business) section 247 (3) of the *Planning and Development Act 2007*.

For the purposes of this instrument, a property that is used or that will be used, partly or wholly for commercial purposes includes, but is not limited to:

- mixed-use land, or land with mixed-use buildings where part of the land or the building is used or will be used for a commercial purpose and the other part for a residential or primary production purpose, for example:

- land that is or will be used partly for the owner’s bed and breakfast business and partly as a farm; or
- a building with a shop on the ground floor and a residential apartment on the first floor;
- vacant land on which a building or buildings will be constructed or developed wholly for a commercial purpose, for example:
  - vacant land on which an office building will be constructed; or
  - vacant land on which a hotel will be constructed.
- land with an existing building or buildings that will be wholly or partly developed, refurbished, converted or re-purposed by the transferee for commercial purposes, for example:
  - a row of shops on top of which apartments will be built and the apartments individually on-sold to others;
  - a warehouse conversion into a hotel and shopping complex; or
  - a single shop refurbishment where the ground floor will be used as an office and the first floor will be converted into a residence.

This part also applies to a chapter 3 transaction (landholder provisions of the Duties Act) for which duty is payable at the determined rate in accordance with section 90 of the Duties Act.

The differential rates of duty, and the method by which, an amount of duty is payable for a dutiable transaction that is for a commercial purpose are unchanged from the previous instrument.

### **Certain business assets (part 4)**

This Part has not changed. It applies to determine the duty rate for section 33 of the Duties Act. The rate is unchanged from the previous instrument.

### **Eligible owner occupier transactions (Schedule 1)**

Schedule 1 sets out the eligibility requirements for eligible owner occupier transactions and the scope of eligible properties.

#### Eligible properties

Eligible properties mean homes and vacant land purchased by eligible owner buyers.

#### Eligibility requirements

A transaction is an eligible owner occupier transaction if the eligibility requirements specified in Schedule 1 are met.

### Residence requirements

At least one of the eligible owner buyers 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 a home, or the date that the certificate of occupancy is issued following completion of the construction of a home for vacant land.

The domestic partner of an eligible owner buyer can only fulfil the residence requirements if they are an eligible owner buyer themselves; that is, they are named in the grant, transfer or agreement and they hold a relevant interest in the eligible 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. When the occupation is transient, temporary or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

This instrument also gives the Commissioner the discretion to extend the time for an eligible owner buyer to meet the residence requirements, or to approve a residence period shorter than one year, 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 home, or the date that the certificate of occupancy is issued following completion of the construction of a home for vacant land.

### Failure to comply with requirements

If a transaction ceases to be an eligible owner occupier transaction—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 the transferee first becomes aware that the requirement will not be complied with (whichever comes first).

If the transaction ceases to be an eligible owner occupier 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 transaction if the transaction had not been an eligible owner occupier transaction.

If an eligible owner buyer 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.

## **Revocation**

Section 10 of this instrument revokes the *Taxation Administration (Amounts Payable—Duty) Determination 2019 (No 2)*, DI2019-141.

For the avoidance of doubt, DI2019-141 continues to apply to a transaction in the period 1 July 2019 to 30 June 2021, inclusive.

Authorised by the Treasurer  
Andrew Barr MLA