

Australian Capital Territory

Taxation Administration (RZ1 Unit Duty Exemption Scheme) Determination 2023

Disallowable instrument DI2023–279

made under the

Taxation Administration Act 1999, s 137E (Exemption scheme)

EXPLANATORY STATEMENT

Section 137E of the *Taxation Administration Act 1999* (TA Act) allows for the Minister to determine a scheme to exempt a person who is required to pay tax under a tax law from the requirement to pay the tax.

The *Taxation Administration (RZ1 Unit Duty Exemption Scheme) Determination 2023* (the Determination) provides for the operation of an exemption from duty under the *Duties Act 1999*.

Following the commencement of the new *Planning Act 2023*, the first transfer of eligible RZ1 units on certain RZ1 Suburban Zoned blocks will be exempt from duty if the property has been subdivided under the *Unit Titles Act 2001* on or after 27 November 2023. Duty will not apply to the first sale/purchase of a residential unit valued at less than or equal to \$800,000.

Commencement and operation

The Determination commences on 27 November 2023. The commencement coincides with the commencement of the *Planning Act 2023* and the Territory Plan 2023, which allows for the development and unit titling of a second dwelling on certain RZ1 zoned blocks.

The exemption from duty operates for a limited period. It applies to transfers with a transaction date on or after 27 November 2023 and up to on or before 30 June 2026. The transaction date is the date that liability for duty arises under section 11 of the *Duties Act 1999*; that is, when a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

Under the Territory Plan 2023, F1 Subdivision Policy an RZ1 Suburban Zone Block with a minimum size of 800m² and the second dwelling has a maximum dwelling size of 120m² (excluding the garage) can be subdivided under the *Unit Titles Act 2001*. Blocks that are zoned RZ1 Suburban are identified in the Territory Plan Map. Other

planning requirements to be met are referenced in the Territory Plan 2023, E01 Residential Zones Policy.

Details of the instrument

The Determination sets out, for the purposes of the exemption:

- the types of eligible property (section 4);
- the eligible transaction (section 5); and
- the exemption from duty (section 6).

Failure to comply with requirements

If the transferee ceases to be eligible for the exemption—for example, because of a variation to the sale price over the threshold—the 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 the transferee first becomes aware 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 concession.

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

Human Rights Act 2004

In accordance with section 137E (4) of the TA Act, the Determination includes a statement about whether the scheme is consistent with human rights.

This instrument provides an exemption to duty and does not limit, and is consistent with, human rights. The exemption promotes affordable housing and in doing so the freedom to choose a residence (section 13 of the *Human Rights Act 2004*).

The ACT Human Rights Commission has been consulted.