

Australian Capital Territory

Taxation Administration (Amounts Payable—Loose-Fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2023

Disallowable instrument DI2023–283

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 27 November 2023.

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 affected leases 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 (the Scheme).

Eligible homeowners who surrender an affected lease 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 affected lease under the buyback program.

This instrument determines, for the purposes of the Scheme:

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

Updates

The instrument provides minor amendments consequential to the commencement of the *Planning Act 2023*. There have been no changes to the Scheme eligibility requirements.

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 15 December 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 residential 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 to whom one of the following applies:

- The person was the owner of an affected lease before 18 February 2014 (including joint tenants and tenants in common).
- The person was the owner of an affected lease after 18 February 2014 as a result of a contract of sale exchanged before 18 February 2014. This takes

account of sale agreements entered before 18 February 2014 but not settled until after that date.

- The person became the owner of an affected lease after 18 February 2014 as a beneficiary of a deceased estate.
- The person became the owner of an affected lease after 18 February 2014 as a result of a binding financial agreement or orders made under the *Family Law Act 1975* (Cwlth) or the *Domestic Relationships Act 1994*.
- The person became the owner of an affected lease after 18 February 2014 if the Asbestos (Coordinator General), on considering submissions by the person, is satisfied that the person was an innocent person for value. This submission process is intended to take account of circumstances that mean that the person had limited knowledge of the presence and implications of the presence of loose-fill asbestos on the premises.
 - People in this group include owners of affected properties identified after the announcement of the Buyback Program and subsequently added to the Affected Residential Premises Register under the *Dangerous Substances Act 2004*.

Ownership requirements

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

Other concessions

The concession under this Scheme cannot be used with any other identified 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 have been changed in this instrument for certain properties.

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 affected lease under the buyback program.

The duty rates used to calculate the concession amount depend on when the lease was first identified as an affected lease.

For leases identified as affected on or before 28 October 2014, the concession is calculated using the duty rates applicable on 28 October 2014.

For leases identified at a later date, the concession is calculated using the duty rates applicable on the date that the property was added to the Affected Residential Premises Register under the *Dangerous Substances Act 2004*.

If the value of the eligible property being purchased exceeds the assessed value of the affected lease, the person will be liable to pay the duty on the dutiable value of the new property, less the amount available under the concession.

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

The surrender sum is defined in a provision of this instrument as the amount paid to the lessee less \$1,000. The reason for this is that the amount paid to the lessee as part of the buyback includes \$1,000 in addition to the valuation of the affected lease to assist the lessee in meeting their legal costs.

The following examples are provided to explain how this works:

Example 1

Denise has an affected block identified before 28 October 2014 which she surrenders under the buyback program. The agreed surrender sum for the block is \$600,000.

The buyback concession amount is the amount of duty that would have been payable on a transfer of that value, which is \$20,800, using the duty rates applicable as at 28 October 2014.

Denise buys a new home on 15 December 2017 for a purchase price of \$600,000. The notional duty payable on the purchase is \$17,580.

If Denise claims her concession on this purchase, Denise will pay no duty on the transaction. The notional duty of \$17,580 is less than the concession amount of \$20,800. Denise is not entitled to a credit or refund of the unused part of the concession.

Example 2

Dennis has an affected block identified after 28 October 2014 which was added to the Affected Residential Premises Register on 1 December 2016 and later surrendered under the buyback program. The agreed surrender sum for the block is \$500,000.

Dennis's buyback concession amount is \$13,460, using the duty rates applicable as at 1 December 2016.

Dennis buys a new home on 15 December 2017 for \$650,000. The notional duty payable on this purchase is \$20,960.

Dennis may claim his concession to the value of \$13,460 and pay the additional \$7,500.

Revocation

Section 9 of this instrument revokes DI2017-289. DI2017-289 continues to apply to a grant, transfer, or an agreement to transfer a lease, in the period 16 December 2017 to 26 November 2023, inclusive.