

Australian Capital Territory

# **Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme—Eligible Impacted Properties) Determination 2023**

**Disallowable instrument DI2023–284**

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 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 and eligible impacted properties, 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.

Eligible homeowners who surrender a lease with affected residential premises 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 eligible impacted property under the buyback program.

## **Eligible impacted properties**

Government amendments to the Building (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015 extended the legislative architecture in place for ‘Mr Fluffy’ properties relating to acquisition, demolition and re-sale to ‘eligible impacted properties’.

Section 9A of the *Civil Law (Sale of Residential Property) Act 2003* defines **eligible impacted property** and **eligible impacted property buyback program**.

A property becomes an eligible impacted property when the Minister makes a determination that it is eligible. The provisions also set out the factors the Minister may consider in making such a determination.

The ACT Government’s decision on whether a property is an eligible impacted property is guided by the following considerations:

- whether the dwelling is structurally dependent on or shares part of a structure (such as a roof or sub-floor) with the associated affected property (the ‘Mr Fluffy’ property);
- whether there are migration pathways for asbestos fibres identified between the property and the associated affected property;
- whether loose fill asbestos insulation is found in the property;
- whether the structure and/or location of the property poses an obstacle to efficient demolition of the associated affected property.

The program enables the ACT Government to make an offer to purchase a property not affected by asbestos directly, but if purchased will facilitate the safe and efficient demolition of an asbestos affected property.

## **Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme for Eligible Impacted Properties**

This instrument establishes a Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme for Eligible Impacted Properties (the Scheme).

This Scheme is a separate, but complementary duty concession scheme to the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme under the *Taxation Administration Act 1999*.

This instrument determines, for the purposes of the Scheme:

- the eligibility requirements;
- the value of the concession;
- the conditions; and
- the timing for 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 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 who:

- is or was a Crown lessee of an eligible impacted property; and
- has entered into a contract for sale of the property to the Territory under the Eligible Impacted Property Buyback Program (whether or not the contract for sale has been completed).

## **Ownership requirements**

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

The duty rates used to calculate the concession amount depend on when the eligible impacted property was first determined as such.

For eligible impacted properties first identified more than six months after 19 November 2015, the concession is calculated using the duty rates applicable on the date that the Ministerial determination of the eligible impacted property was made under the *Civil Law (Sale of Residential Property) Act 2003*.

For all other properties, the concession is calculated using the duty rates applicable on 19 November 2015.

If the value of the property being purchased exceeds the assessed value of the eligible impacted property, 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 eligible impacted property.

The following examples are provided to explain how this works:

#### Example 1

*Denise has an eligible impacted property identified less than six months after 19 November 2015 which she sells to the Territory under the eligible impacted property buyback program. The agreed sum for the block is \$500,000.*

*The buyback concession amount is the amount of duty that would have been payable on a transfer of that value, which is \$14,600, using the duty rates applicable as at 19 November 2015.*

*Denise buys a new home on 15 December 2017 for a purchase price of \$500,000. The notional duty payable on the purchase is \$12,800.*

*If Denise claims her concession on this purchase, Denise will pay no duty on the transaction. The notional duty of \$12,800 is less than the concession amount of \$14,600. Denise is not entitled to a credit or refund of the unused part of the concession.*

#### Example 2

*Dennis has an eligible impacted property identified more than six months after 19 November 2015, which was determined to be an eligible impacted property on 4 October 2017 and later sold to the Territory under the eligible impacted property buyback program. The agreed sum for the block is \$700,000.*

*Dennis's buyback concession amount is \$22,360, using the duty rates applicable as at 4 October 2017.*

*Dennis buys a new home on 15 December 2017 for \$750,000. The notional duty payable on this purchase is \$24,750.*

*Dennis may claim his concession to the value of \$22,360 and pay the additional \$2,390.*

## **Revocation**

Section 9 of this instrument revokes DI2017-305. DI2017-305 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.