

Australian Capital Territory

Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–285

made under the

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

EXPLANATORY STATEMENT

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 a liability for duty is a debt due to the Territory.

Disability Duty Concession Scheme

The Disability Duty Concession Scheme (DDCS) provides a full exemption from conveyance duty for any entity, including individuals, purchasing a home to be used as the principal place of residence for a person with disability.

The DDCS will encourage adults with disability to obtain long term private accommodation arrangements, suitable for their needs. The DDCS is open to ACT residents who have qualified for an individualised funding package under the National Disability Insurance Scheme (NDIS).

Individuals with long term and permanent intellectual, physical, sensory, or psychiatric disabilities that significantly reduce their level of function. NDIS participants the target of this scheme.

The DDCS has been modelled around other conveyance duty concession schemes made under this legislation, with amendments to the eligibility criteria.

An exemption from conveyance duty is available under the Act for the transfer of property into a Special Disability Trust, where the property is to be used as the principal place of residence for the beneficiary of the trust. However, the use of these trusts is uncommon in the ACT and there is no duty exemption for purchases for people with disability made through other means.

The DDCS provides an alternative duty exemption which can apply even if the property is not transferred into a Special Disability Trust, provided that all relevant criteria set out in this instrument are met.

This instrument replaces the *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2023*, DI2023-166, commencing on 27 November 2023.

This instrument determines, for the purposes of the DDCS:

- the types of eligible property;
- the determination of amounts;
- the eligibility requirements, including NDIS participation, property ownership and residency.

Updates

The instrument provides minor amendments consequential to the commencement of the *Planning Act 2023*. There are no changes to the operation of the DDCS.

Application of DDCS

This instrument applies to grants, transfers or agreements for sale or transfer of eligible property with a transaction date on or after 27 November 2023. 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 DDCS is available for ACT property including new homes, established homes and vacant land. The dutiable value of the eligible property must not exceed a maximum of \$1,000,000.

Eligible transactions

A transaction is deemed eligible for the DDCS if the eligibility requirements specified in the instrument are met.

NDIS participation

The concession is only available to ACT residents who are in receipt of a NDIS Individualised Funding Package (individuals with intellectual, physical, sensory, or psychiatric disabilities that have significantly reduced level of function).

The use of the NDIS criteria ensures that the DDCS is appropriately targeted to those individuals who most benefit from access to the Scheme.

The ACT Revenue Office administers the DDCS, utilising relevant information held by the applicant on their NDIS participation. Proof of a transferee's NDIS participation level and funding package may be requested by the ACT Revenue Office after registration of the transaction. This information will be handled appropriately under the secrecy provisions of the TAA as well as with any relevant requirements in the *Information Privacy Act 2014* and the *Health Records (Privacy and Access) Act 1997*.

Property requirements

A transaction is not eligible for the DDCS if, in the 2 years preceding the transaction date of the eligible transaction, the transferee or the transferee's domestic partner held an interest in land other than the eligible property.

Exceptions apply if a court order, financial agreement, or domestic relationship agreement required the other property to be relinquished. However, these orders or agreements must be made before the transaction date.

Exceptions also apply if the other property is subject to a will, or if the transferee had entered an agreement to purchase the property and subsequently cancelled (rescinded) the agreement to purchase the other property.

51 per cent requirement

The transferee's name must be included on the land title with a legal and beneficial interest of 51 per cent or more. The DDCS will not be available if the applicant obtains an interest of less than 51 per cent. This ensures that the NDIS participant is the majority owner of the property, and reduces the chance of exploitation of the DDCS, or of the person with disability.

It is irrelevant for the purposes of DDCS how finance for the property purchase was obtained. It is, however, a requirement that regardless of the funding arrangements, the person with disability must own at least 51 per cent of the property.

Residence requirements

The eligible NDIS participant 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 that is issued following completion of construction of a home for vacant land.

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, 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 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).

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 that is issued following completion of construction of a home for vacant land.

Previous concessions

An applicant for the DDCS cannot have previously received a concession under the DDCS, the Home Buyer Concession Scheme, the Over 60s Home Bonus Scheme (which ended on 31 December 2016) or the Pensioner Duty Concession Scheme.

Failure to comply with requirements

If a transaction ceases to be eligible for the DDCS—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 DDCS.

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

At or below the \$1,000,000 threshold, an approved transaction is entitled to a full duty concession, meaning that no duty is payable (\$0).

Above the \$1,000,000 threshold, the transaction is not eligible for the DDCS and full duty is payable.

Revocation

Section 9 of this instrument revokes DI2023-166. For the avoidance of doubt, DI2023-166 continues to apply in the period 1 July 2023 to 26 November 2023, inclusive.