

Australian Capital Territory

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

Disallowable instrument DI2023–286

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.

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 (and sections 90A and 90B of the Duties Act, after the commencement of the *Revenue Legislation Amendment Act 2023*). Part 4 determines the rate of duty for the purposes of section 33 of the Duties Act.

Updates

The instrument provides minor amendments consequential to the commencement of the *Planning Act 2023* (and the *Revenue Legislation Amendment Act 2023*). Rates of duty are unchanged from *Taxation Administration (Amounts Payable—Duty) Determination 2023*, DI2023-162.

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.

For residential land, 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.

Tables 1 and 2 set 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.

Table 2 sets out the rate of duty applicable to transactions that are not eligible owner occupier transactions.

Example

For a residential property transaction valued at \$580,000, the applicable rate of duty is \$4.32 for every \$100, or part of \$100, for the dutiable amount that is more than \$500,000 plus either \$8,954 for an eligible owner occupier transaction or \$11,400 for a non-owner occupier. The duty payable for an eligible owner occupier transaction is \$12,410 compared to \$14,856 for a non-owner occupier.

The 2022-23 and 2023-24 marginal rating factors are compared in the table below.

Table: Comparison of marginal rates of duty

Dutiable amount	2022-23 (\$ per \$100)		2023-24 (\$ per \$100)	
	Owner occupier	Non-owner occupier	Owner occupier	Non-owner occupier
Less than or equal to \$200,000	0.60	1.20	0.49	1.20
More than \$200,000 but not more than \$260,000	0.60	2.20	0.49	2.20
More than \$260,000 but not more than \$300,000	2.20	2.20	2.20	2.20
More than \$300,000 but not more than \$500,000	3.40	3.40	3.40	3.40
More than \$500,000 but not more than \$750,000	4.32	4.32	4.32	4.32
More than \$750,000 but not more than \$1,000,000	5.90	5.90	5.90	5.90
More than \$1,000,000 but not more than \$1,455,000	6.40	6.40	6.40	6.40
More than \$1,455,000*	4.54	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 is \$1,800,000.

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 276 (3) of the *Planning Act 2023*.

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 sections 90, 90A and 90B 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 DI2023-162. For the avoidance of doubt, DI2023-162 continues to apply to a transaction in the period 1 July 2023 to 26 November 2023, inclusive.