

Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–288

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 licence fees, and the method by which an amount is to be calculated.

One of the specified tax laws under section 4 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 liability is debt due to the Territory.

Home Buyer Concession Scheme

The Home Buyer Concession Scheme (HBCS) is an ACT Government initiative administered by the ACT Revenue Office to assist people in purchasing a home or vacant land to build a home by charging duty at a concessional rate.

This instrument determines, for the purposes of the HBCS:

- the eligibility requirements, including property ownership and residency; and
- the method of calculation of duty payable under section 31 of the Act.

Updates

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

Application of HBCS

This instrument applies to grants, transfers or agreements for the 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 a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

Eligible properties

The HBCS applies to homes (including off the plan units) and vacant land purchased by eligible home buyers.

The amount of duty concession for an eligible transaction is based on the dutiable value of the eligible property up to the capped amount.

Eligibility requirements

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

Property requirements

A transaction is not eligible for the HBCS if, in the two years preceding the day of the transaction date, a transferee or a transferee's domestic partner held an interest in land (either a legal or equitable interest) other than in 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.

Income requirements

To be eligible for the HBCS, the total gross income of all transferees and their domestic partners (if any) in the previous financial year must be less than or equal to the income threshold. The stated income must reflect the usual income of each transferee or domestic partner.

The income threshold is \$170,000 per year. An additional allowance of \$3,330 per year is provided for each dependent child of a transferee or domestic partner. Each

person's dependent children are added together for this purpose. Dependent child is defined by reference to the *Social Security Act 1991* (Cwlth), namely, a child or young person under the age of 22 years who meets certain income tests and is dependent on the person.

Income means income from all sources, such as benefits from a salary packaging arrangement and income classified as exempt income under the *Income Tax Assessment Act 1997* (Cwlth).

For a transferee or domestic partner who is self-employed, total income includes the net trading profit or gain made in the ordinary course of carrying on business, rather than the total business turnover.

Temporary or short-term increases in income such as income from short-term higher duties, a short-term second job, and back-pay received in the previous financial year to the grant, transfer or agreement are included as income.

Residence requirements

At least one of the transferees 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 a transferee can only fulfil the residence requirements if they are a transferee 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 a transferee to meet the residence requirements, to approve a residence period shorter than one year, or to exempt the transferee from the residence requirements, in the event of unforeseen circumstances (such as, health-related issues).

The Commissioner can exercise discretion in relation to residence requirements only 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.

Required Age

This instrument gives the Commissioner the discretion to accept a transferee under 18 years of age if satisfied that it is fair and reasonable to do so.

Failure to comply with requirements

If a transaction ceases to be eligible for the HBCS—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 transaction, subject to the dutiable value of the eligible property, it will become liable for duty or additional 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 HBCS.

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.

Duty rates and capped benefit

From 1 July 2021, the benefit available from the HBCS is capped at an amount equal to the amount of duty payable for property with a dutiable value of \$1 million. From 1 July 2022, the cap amount is derived from the owner occupier base rate of duty under the applicable disallowable instrument for duty rates, such as the *Taxation Administration (Amounts Payable—Duty) Determination 2022*.

The rate of duty payable on an eligible transaction by an eligible home buyer is a nil rate for dutiable value of less than or equal to \$1,000,000.

For dutiable value over \$1,000,000, the rate of duty of \$6.40 for every \$100, or part thereof, applies to the dutiable value that is more than \$1,000,000 but not more than \$1,455,000. As this rate of duty only applies to that part of the dutiable value above \$1 million the taxpayer retains the benefit of nil duty on that part of the dutiable value equal to or less than \$1 million.

For dutiable value over \$1,455,000, a flat rate of duty of \$4.54 for every \$100 applies to the total dutiable value consistent with conveyance duty for residential properties transfers generally. The capped HBCS benefit is then applied by subtracting an amount of duty of \$34 504 – this is equivalent to that applying to a property with a dutiable value of \$1 million (at the owner occupier base rate from 27 November 2023 given the application of residency requirements).

Undivided shares

Where the eligible transaction is for a share in an eligible property, duty is payable in proportion to the share purchased by the eligible home buyer.

Application for the HBCS

An application under the HBCS may be made at the time the eligible home buyer lodges the transfer of the property with the Registrar-General of Land Titles. In practice, an eligible home buyer would usually make such an application by claiming the HBCS concession code on the transfer instrument at the time of lodgement.

If an application is not made within this timeframe, the eligible home buyer may apply to the Commissioner for an extension of time to submit a late application. In applying to the Commissioner, the home buyer must specify the grounds on which an extension is sought and must submit the application for an extension of time within 12 months of the lodgement of the transfer of the eligible property.

The Commissioner may accept an application to extend the time if satisfied that the applicant was not able to apply for the duty concession at the time of lodgement due to an unforeseen circumstance (such as, serious illness affecting the applicant).

Revocation and Transitional

Section 10 of this instrument revokes DI2023-163. For the avoidance of doubt, DI2023-163 continues to apply in the period 1 July 2023 to 26 November 2023, inclusive.