

Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2024

Disallowable instrument DI2024–175

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 1 July 2024.

The *Taxation Administration Act 1999* (the TA Act) 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 TA Act. Section 139 of the TA Act 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, income and residency; and
- the method of calculation of duty payable under section 31 of the Act.

Updates

The instrument simplifies the HBCS income requirements and updates income thresholds. In particular, the ‘total gross income’ test is replaced with a more readily understood ‘taxable income’ test. This makes the test more transparent and easier for taxpayers to comply, as they can determine their standing against the thresholds based on information available from their notice of assessment issued by the Australian Tax Office (through the Commissioner of Taxation). If a person does not have a notice of assessment issued in the prior year, then the gross income test will apply, which includes income from all sources.

The income threshold for all eligible home buyers and their domestic partners has increased from \$170,000 to \$250,000. The income threshold amount per dependent child (as defined in the *Social Security Act 1991* (Cwlth)) has increased from \$3,330 to \$4,600 for up to 5 children.

In respect of the definition of an ‘eligible transaction’, the property eligibility criterion has also been adjusted. All eligible home buyers and their domestic partners must not have held a legal or equitable interest in land for the previous 5 years, up from 2 years.

New provisions apply for home buyers or their dependent children who have experienced family violence. Prior legal or equitable interests in land will be deemed as an ‘allowed interest’ and excluded from the eligible transaction test if the eligible home buyer or their dependent child has experienced family violence within the past 5 years. Evidence of family violence is required through either a family violence order or an injunction made under the *Family Law Act 1975* (Cwlth), section 68B or section 114.

The definition of family violence orders includes protection orders (both interim and final), after-hours orders, local FVO, instate FVOs, and foreign orders.

Similarly, an injunction under sections 68B or section 114 of the *Family Law Act 1975* (Cwlth) can include an interim order (sometimes referred to as an interlocutory order).

A domestic partner's income will be excluded from the income requirement if the eligible home buyer or their dependent child has experienced family violence related to the domestic partner within the previous 5 years.

Additionally, the domestic partner referenced in the family violence order or injunction cannot occupy or reside in the eligible property for the duration of the residence period.

Other technical amendments have been made to the format of the instrument. A centralised dictionary for any term used in more than one section or schedule has been included in a dictionary at the end of the instrument but applies to the entire instrument. Specific schedules have also been implemented to segregate key eligibility criteria in the instrument.

Schedule 1 sets out an ‘allowed interest’ in respect of prior legal or equitable interests in land.

Schedule 2 sets out the ‘income requirements’ outlining the taxable income and, if applicable, gross income tests against the income threshold.

Schedule 3 sets out the ongoing requirements for the ‘residence period’ and ‘residence start date’ in respect of the purchased property subject to the concession.

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 1 July 2024. 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 5 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. An interest in land is not limited to a particular geographical location, such as land in the ACT.

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.

Eligible home buyers and their dependent children who have experienced family violence can have their prior property interests excluded for 5 years.

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

Income requirements

To be eligible for the HBCS, the taxable 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. Taxable income is defined under the *Income Tax Assessment Act 1997* (Cwlth) and determined by the notice of assessment issued by the Commissioner of Taxation relating to the previous financial year.

If a person does not have a taxable income assessed for the previous financial year, then their gross income for the previous financial year must be below the income threshold. Gross income is defined as being income from all sources with exception for. Gross income is broadly defined and would include salaried income, fringe benefits, foreign income, reportable superannuation contributions etc. Exempt income is employment termination payments for a genuine redundancy package.

The income for a self-employed person is their business's trading profit not the business's turnover. A person is deemed to be self-employed if they are a sole trader, not if they are a director, shareholder and/or employee of their company.

The income threshold is \$250,000 per year (increased from \$170,000). An additional allowance of \$4,600 per year (increased from \$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).

A domestic partner's income will be excluded from the income requirement if the eligible home buyer or their dependent child has experienced family violence by the domestic partner within the previous 5 years as evidenced by either a family violence order or an injunction made under the *Family Law Act 1975* (Cwlth), sections 68B or 114.

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.

However, if the eligible home buyer has used the exemptions relating to prior property interests or income to meet the criterion of an eligible transaction and the domestic partner is referenced in the family violence order or the injunction, the domestic partner must not occupy or reside in the eligible property during the time of the residence requirement.

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 the transferee ceases to be eligible for HBCS, the transferee will be liable for duty at the non-concessional rate. A transferee is liable for duty from the transaction date. A requirement to pay the duty arises from 14 days after the transfer is registered with the registrar-general under section 16 (1) 'Table 16 Items 1 and 3' of the Act. A tax default arises if the tax is not paid within 14 days and penalty tax applies under sections 31 (1), (2) or (4) of the TA Act, unless the Commissioner is satisfied that section 31 (5) applies, such as taking reasonable care to comply with a tax law. Interest also applies to a tax default and is calculated daily under section 25 (1) of the TA Act. Interest therefore is imposed from the 15th day after the transfer is registered with the registrar-general until the purchaser pays the unpaid tax. The unpaid tax can include penalty tax if a purchaser failed to meet the criteria for an 'eligible transaction' under section 6 of this instrument and by definition includes the residence period requirements.

If a transferee gives notice to the Commissioner within 14 days of either the end any period for compliance with a requirement (such as residency periods) or the date the transferee first becomes aware the transaction is not eligible, the Commissioner may remit penalty tax and interest associated with the tax default.

The TA Act also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

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—from 1 July 2024, the *Taxation Administration (Amounts Payable—Duty) Determination 2024*.

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 property with a 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 \$34 270 – this is equivalent to that applying to a property with a dutiable value of \$1 million (at the owner occupier base rate from 1 July 2024 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

Section 9 of this instrument revokes DI2023-288.