

Australian Capital Territory

Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2024

Disallowable instrument DI2024–176

made under the

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

EXPLANATORY STATEMENT

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 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*, DI2023–285, commencing on 1 July 2024.

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

Under this instrument, from 1 July 2024, the DDCS provides that duty is not payable on eligible transactions up to a property value threshold of \$1 million. The DDCS will also provide a partial concession for eligible transactions over \$1 million with benefits capped at the duty otherwise payable on a \$1 million residential owner-occupied property.

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 1 July 2024. 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.

Duty rates and capped benefit

From 1 July 2024, the benefit available from the DDCS is capped at an amount equal to the amount of duty payable for property with a dutiable value of \$1 million. 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 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 DDCS 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).

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 TA Act 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 the transferee ceases to be eligible for DDCS, 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 the 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.

Revocation

Section 9 of this instrument revokes DI2023–285.