

Australian Capital Territory

Taxation Administration (RZ1 Unit Duty Exemption Scheme) Determination 2024

Disallowable instrument DI2024–179

made under the

Taxation Administration Act 1999, s 137E (Exemption scheme)

EXPLANATORY STATEMENT

Section 137E of the *Taxation Administration Act 1999* (TA Act) allows for the Minister to determine a scheme to exempt a person who is required to pay tax under a tax law from the requirement to pay the tax.

The *Taxation Administration (RZ1 Unit Duty Exemption Scheme) Determination 2024* (the Determination) replaces the *Taxation Administration (RZ1 Unit Duty Exemption Scheme) Determination 2023* to provide for the operation of an exemption from duty under the *Duties Act 1999*.

Following the commencement of the new *Planning Act 2023*, the first transfer of eligible RZ1 units on certain RZ1 Suburban Zoned blocks will be exempt from duty if the property has been subdivided under the *Unit Titles Act 2001* on or after 27 November 2023.

The exemption from duty will be available for a limited period. It applies to the first transfer of an eligible property with a transaction date on or after 27 November 2023 and up to 30 June 2026. The transaction date is the date that liability for duty arises under section 11 of the *Duties Act 1999*; that is, when a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

From 1 July 2024 to 30 June 2025, duty will not apply to the first sale/purchase of a residential unit valued at less than or equal to \$1,000,000. This compares to a threshold value of \$800,000 under the previous determination.

Under the Territory Plan 2023, F1 Subdivision Policy an RZ1 Suburban Zone Block with a minimum size of 800m² and the second dwelling has a maximum dwelling size of 120m² (excluding the garage) can be subdivided under the *Unit Titles Act 2001*. Blocks that are zoned RZ1 Suburban are identified in the Territory Plan Map. Other planning requirements to be met are referenced in the Territory Plan 2023, E01 Residential Zones Policy.

Updates

The Determination updates the duty exemption for eligible transfers of RZ1 units to provide for an increase in the property value threshold to \$1 million (from \$800,000) for the period 1 July 2024 to 30 June 2025.

Details of the instrument

The Determination sets out, for the purposes of the exemption:

- the types of eligible property (section 4);
- the eligible transaction (section 5); and
- the exemption from duty (section 6).

Failure to comply with requirements

If the transferee ceases to be eligible for the exemption—for example, because of a variation to the sale price over the threshold—the Determination 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, 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 eligible transaction if the transaction had not been eligible for the concession.

If the transferee ceases to be eligible for RZ1 Unit Duty Exemption, 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 5 of the Determination 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.

Operation

The Determination commences on 1 July 2024 and expires on 30 June 2025 to align with the limited period for the increase in the property threshold.

Revocation

The Determination revokes *Taxation Administration (RZI Unit Duty Exemption Scheme) Determination 2023*, DI2023-279.

Human Rights Act 2004

In accordance with section 137E (4) of the TA Act, the Determination includes a statement about whether the scheme is consistent with human rights.

The Determination provides an exemption to duty and does not limit, and is consistent with, human rights. The exemption promotes affordable housing and in doing so the freedom to choose a residence (section 13 of the *Human Rights Act 2004*).

The ACT Human Rights Commission has been consulted.