

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2025 (No 2)

Disallowable instrument DI2025–146

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 1 July 2025.

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 (HBC) 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 HBC:

- 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 concession will be indexed using the most recent Consumer Price Index (CPI) for Canberra rounded down to the nearest \$5,000. The most recent CPI is from March 2025 at 2.2 per cent for Canberra, which is \$22,000. The value of the dutiable amount increased from \$1 million to \$1,020,000.

The family violence provision has been expanded to enable a competent person declaration to be provided as evidence supporting the eligible home buyer's application for a HBC on the basis that the eligible home buyer, or their dependent child, has experienced family violence within the previous 5 years. The concept of 'competent person' and 'competent person declaration' has been based on the material in the *Residential Tenancies Act 1997* and the *Residential Tenancies Regulation 1998* but repurposed for a taxation context and defined in the instrument.

To ensure the supporting evidence is credible and reliable for the purpose of eligibility for the concession – the new provisions enable a range of specific (competent) people to make a non-specific declaration/statement about the eligible home buyer or their dependent child for the purposes of HBC for family violence.

The declaration will be based on the competent person's professional capacity and knowledge about the circumstances of the eligible home buyer and/or their dependent child from their previous consultation/s. The people intended to be captured as a competent person are professionals who provide actual substantive professional service in their area of employ (e.g. doctors, social workers, nurses, psychologists and other professionals who work with vulnerable people experiencing domestic violence). The term 'professional' is used to exclude or limit people who are employed in an administrative capacity, an administrative staff or people in other non-professional roles (e.g. reception staff working at a medical practice).

Where a competent person has been requested by an eligible home buyer to make a competent person declaration for the purposes of supporting the eligible home buyer's HBC application – the competent person must have, in their professional capacity previously attended to, or consulted with, the eligible home buyer or their dependent child in the previous 5 years (the previous consultation requirement). The competent person declaration must be completed by the competent person before the eligible home buyer has entered into a contract to purchase the property (exchanged contracts). This approach of aligning the exemption evidence with the transaction date is consistent with the rest of the exemption provisions for allowed interests, such as court orders that must be sealed prior to the transaction date.

The competent person's declaration about the family violence experienced by the eligible home buyer, or their dependent child, must be based on their substantive professional knowledge and understanding about the eligible home buyer, or their

dependent child's circumstances (the statement and reasonable belief requirement in the declaration).

The competent person declaration at no point seeks any detail (specific or general) about the family violence or for the details about the family violence to be substantiated or outlined by the competent person.

A competent person may refuse to complete a competent person declaration. It is an optional declaration to be completed by the competent person. An eligible home buyer who has experienced family violence may have consulted with many professionals who met the definition of competent person. Only one competent person declaration is required as evidence.

All other elements of the instrument remain unchanged.

- The income threshold for all eligible home buyers and their domestic partners is \$250,000. The income threshold amount per dependent child (as defined in the *Social Security Act 1991* (Cwlth)) is \$4,600 for up to 5 children.
- All eligible home buyers and their domestic partners must not have held a legal or equitable interest in land for the previous 5 years.
- For people who have experienced family violence, prior legal or equitable interests in land is 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.
- 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.
- 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.
- 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 HBC

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 2025. 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 HBC 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 HBC if the eligibility requirements specified in the instrument are met.

Property requirements

A transaction is not eligible for the HBC 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.

The property interests of an eligible home buyer's domestic partner, who is a spouse, is also excluded where there has been a dissolution, annulment or irretrievable breakdown of the domestic relationship. This only applies if the eligible home buyer is not cohabitating with the spouse and there is no likelihood of cohabitation being resumed.

Eligible home buyers who have experienced family violence, or whose dependent child has 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 HBC, 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 employment termination payments for a genuine redundancy package. 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. An additional allowance of \$4,600 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 is 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: a family violence order; an injunction made under the *Family Law Act 1975* (Cwlth), sections 68B or 114; or a competent person declaration made by a competent person.

The income of an eligible home buyer's domestic partner, who is a spouse, is also excluded where there has been a dissolution, annulment or irretrievable breakdown of the domestic relationship. This only applies if the eligible home buyer is not cohabitating with the spouse and there is no likelihood of cohabitation being resumed.

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 HBC—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 HBC.

If the transferee ceases to be eligible for HBC, 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 HBC 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 2025, the *Taxation Administration (Amounts Payable—Duty) Determination 2025*.

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 \$1,020,000.

For property with a dutiable value over \$1,020,000 the rate of duty of \$6.40 for every \$100, or part thereof, applies to the dutiable value that is more than \$1,020,000 but not more than \$1,455,000. As this rate of duty only applies to that part of the dutiable value above \$1,020,000 the taxpayer retains the benefit of nil duty on that part of the dutiable value equal to or less than \$1,020,000.

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 HBC benefit is then applied by subtracting an amount of duty of \$35,238 – this is equivalent to that applying to a property with a dutiable value of \$1,020,000 (at the owner occupier base rate from 1 July 2025 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 HBC

An application under the HBC 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 HBC 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 the instrument revokes DI2025-68.