

Australian Capital Territory

# Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2026

Disallowable instrument DI2026–158

made under the

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

## EXPLANATORY STATEMENT

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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 (Off the Plan Unit Duty Exemption Scheme) Determination 2026* (the Determination) replaces *Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2025*, DI2025-149.

The Determination continues to provide for the operation of a duty exemption for off the plan units. The Determination has been updated to remove the property threshold for the off the plan purchase of the residential unit. As a result, duty is not payable irrespective of the dutiable value of the property, if the criterion for an ‘eligible transaction’ has been met.

### Off the Plan Unit Duty Exemption

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

- the eligible property being a residential unit purchased off the plan;
- the eligibility requirements, including transaction type and residency; and
- the exemption amount.

### Updates

#### Property threshold

The Determination has been updated to remove the property threshold for the Off the Plan Unit Duty Exemption Scheme (OTP). As a result, duty is not payable irrespective of the dutiable value of the property, if the criterion for an ‘eligible transaction’ has been met.

### Eligible home buyer

A specific definition of eligible home buyer has been included to remove any ambiguity that the exemption is intended to benefit only specific individuals. An eligible home buyer must be an individual and does not include a company or any other instance where an individual acquires a property in another capacity, such as a trustee, partner in a partnership or as an agent. The exemption is intended to benefit owner-occupiers. The definition of eligible transaction requires that a transferee is also an eligible home buyer. As a result, if an individual and a company sought to purchase the property as tenants in common, neither will be eligible for the exemption.

An eligible home buyer must be 18 years of age. However, the Determination gives the Commissioner the discretion to accept an eligible home buyer under 18 years of age if satisfied that it is fair and reasonable to do so.

### Unforeseen circumstance

A specific definition of ‘unforeseen circumstance’ provides further guidance on how the residence start date may be extended or the residence period may be reduced. The definition of unforeseen circumstance introduces an objective test (reasonable person) to examine ‘a circumstance’ or circumstances with reference to the knowledge of the eligible home buyer on the transaction date. A circumstance is unforeseen if it is a circumstance that could not have been foreseen by a reasonable person with the knowledge of the eligible home buyer on the transaction date. If a circumstance could be foreseen by a reasonable person on the transaction date, then it is not an unforeseen circumstance.

The transaction date is the relevant point in time for the assessment of whether the circumstance is unforeseen because it is the date the eligible home buyer has incurred the duty liability. Frequently, the transaction date is the date when an agreement for the sale or transfer of land is entered (exchange of contract).

The definition of knowledge includes both actual knowledge and constructive knowledge. Actual knowledge refers to the existence of knowledge subjectively in the mind of the eligible home buyer on the facts they knew related to the circumstances in issue. The inclusion of constructive knowledge is to ensure that a person cannot be wilfully blind or ignorant to circumstances to avoid something falling into the realm of their actual knowledge to make that circumstance ‘unforeseen’. The definition of constructive knowledge is based on the definition in section 297 of the *Personal Properties Securities Act 2009* (Cwlth).

The definition of constructive knowledge includes in paragraph (a) includes general knowledge that an honest and prudent home buyer would ordinarily have when purchasing a property, whilst paragraph (b) includes the specific inquiries that ordinarily would have been made by an honest and prudent person with the specific actual knowledge of the eligible home buyer.

For example, if an eligible home buyer has unique circumstances or requirements that would cause an honest and prudent person to conduct certain or additional inquiries to be satisfied in that situation, then those inquiries are assumed to have occurred. The

eligible home buyer is deemed to constructively to have actual knowledge of the circumstance or circumstances from those inquiries.

## **Exempt transferees**

A transferee will be exempt from duty if the transfer meets the eligibility requirements in the Determination.

The exemption applies to transfers involving the entry into off the plan agreements for a residential unit with a transaction date on or after 1 July 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.

## **Residence requirements**

At least one of the transferees of the residential unit 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 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. However, an occupation that is transient, temporary, unlawful or of a passing nature, is not sufficient to establish occupation as a principal place of residence.

## **Extend or amend the residence period**

The Determination gives the Commissioner the discretion to extend the time for an eligible home buyer to meet the residence requirements, to approve a residence period shorter than one year, or to exempt the eligible home buyer from the residence requirements, in the event of unforeseen circumstances.

The discretion to amend the residence requirements can only be exercised where a written request is made within 18 months of completion of the transfer for an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

Examples of circumstances that do not meet the criteria of being an unforeseen circumstance are below.

***Example 1 – foreseen circumstances (finance and construction delays)***

Bob and Jane sign a contract to purchase a townhouse off the plan. Due to construction delays and interest rate rises Bob and Jane decide they are unable to maintain their mortgage repayments and decided to sell the property and request an exemption from the residency requirement.

A foreseeable circumstance when purchasing a property, and claiming an exemption with residency requirements, extends to the circumstances relevant to the transaction and the purchase of the property. It is foreseeable, when taking out a mortgage, that interest rates and repayments may vary over time. It is also foreseeable that construction may be delayed.

The fact that Bob and Jane experienced more than one foreseeable circumstance does not alter the character of those circumstances so as to make them unforeseen

The Commissioner would decline Bob and Jane’s request for an exemption from the residence period.

**Example 2 – foreseen circumstance (employment – mandatory posting as condition of employment)**

The Australian Defence Force may relocate service members at any time, subject to service requirements.

Henry was employed by the Australian Defence Force and was posted to another location shortly after purchasing a home and claiming an exemption.

Henry requested a shorter residence period, or an exemption from the residence requirement, due to his mandatory relocation. Henry submitted it was an unforeseen circumstance because he had expected his posting in Canberra for a longer period. At the time that Henry claimed the exemption with a residency requirement, he had actual or constructive knowledge that, as a condition of his employment he could be relocated at any time, subject to the operational needs of his employer.

The Commissioner would decline Henry’s application on the basis that relocation was a foreseeable circumstance of his employment. The timing of the relocation may have been unexpected, but that does not make it an unforeseen circumstance.

**Example 3 – foreseen circumstance (employment – expression of interest)**

Olivia was an employee of the Department of Foreign Affairs and Trade (DFAT) and had submitted an expression of interest for an overseas posting.

After renting for some time Olivia decided to purchase a property and claim the exemption. After signing the contract to purchase a townhouse, DFAT offered Olivia a three year overseas posting which she accepted.

Olivia requested either a delay to the commencement of her residence period or, alternatively, an exemption from the residence period due to an unforeseen circumstance.

The posting was a foreseeable outcome of having submitted an expression of interest for a posting.

The Commissioner would decline Olivia's application for an exemption from, or delay in commencing, the residence period on the basis that is not unforeseen.

#### **Example 4 – foreseen circumstance (medical appointments)**

Rachel purchased an eligible property and claimed the exemption. However, Rachel had a pre-existing medical condition that required travel to Sydney from time to time for medical treatment.

Rachel was aware of the requirement to travel for treatment. It is a circumstance that a reasonable person should consider when deciding to purchase a property and claim an exemption with residency requirements attached.

If Rachel applied to vary the residence period or the residence start date due to her medical condition or treatment, the Commissioner would decline Rachel's application.

#### **Example 5 – foreseen circumstance (caring responsibilities)**

Charlotte's father had a medical condition, and it was likely that he would require full time care in the future.

After relocating to Canberra for work Charlotte purchased an eligible property, claimed the exemption and commenced living in the property from settlement. During Charlotte's 12-month residence period her father requires full time care. Charlotte returns to the family home in NSW to provide full time care for father. While this decision may be reasonable and appropriate for Charlotte's personal and family circumstances, it does not make it an unforeseen circumstance that prevents Charlotte from occupying her property in Canberra.

If Charlotte were to request a reduction in, or an exemption from, the residence period or requirement due to her father's health decline, claiming that it was sudden and unexpected, the Commissioner would decline Charlotte's application.

#### ***Example 6 – constructive knowledge***

Liam was interstate when he signed a contract to purchase an eligible property as his new family home and did not undertake an in-person inspection of the property.

Shortly after settlement, Liam moved into the property and formed the view that it did not fit the needs of his family and decided to sell the property. Liam submitted a written request that the residence period be shortened to five months, the period he occupied the property, on the basis that the property was not suitable for his family.

Liam had the opportunity to inspect the eligible property in person, or conduct due diligence by other means, to determine whether it was suitable for his circumstances. A reasonable person would have inspected the property, made enquiries or other arrangements to determine whether it was suitable before entering into a contract to purchase it. These are inquiries that ordinarily would be made by an honest and prudent person in that situation. Liam is taken to have constructive knowledge of the

relevant circumstances, because a person cannot rely on wilful blindness to create a circumstance that is unforeseen to them personally merely because it is not within their actual knowledge.

Liam has constructive knowledge of the size of the property, and a reasonable person would have considered whether the property was suitable. It was therefore a foreseeable circumstance.

The Commissioner would decline an application to shorten the residence period to five months.

## **Failure to comply with requirements**

If a transaction ceases to be eligible for the OTP—for example, because an eligible home buyer failed to meet the residence period—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 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 OTP.

If the transferee ceases to be eligible for OTP, the transferee will be liable for duty on 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 TAA, 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 15<sup>th</sup> 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.

## **Application for the Off the Plan Unit Duty Exemption**

An application under the OTP may be made at the time the transferee lodges the transfer of the property with the registrar-general of Land Titles. In practice, a transferee would usually declare their eligibility and claim the OTP exemption code on the transfer instrument at the time of lodgement.

If an application is not made within this timeframe, the transferee may apply to the Commissioner for an extension of time to submit a late application. In applying to the Commissioner, the transferee 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 residential unit.

### **Operation**

The Determination commences on 1 July 2026.

### **Revocation**

Section 10 of the Determination revokes DI2025-149.

### **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 unreasonably limit, and is consistent with, human rights. The exemption promotes affordable housing and in doing so the right to adequate housing (section 27D of the *Human Rights Act 2004*, which will take effect on 1 January 2027). It may also promote the freedom to choose a residence (section 13 of the *Human Rights Act 2004*).