

Australian Capital Territory

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2026

Disallowable instrument DI2026–159

made under the

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

EXPLANATORY STATEMENT

Background

The *Taxation Administration Act 1999* (the TA Act) governs 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 the amount of tax, duty, or licence fee payable, and the method by which an amount is to be calculated.

One of the specified tax laws is the *Duties Act 1999* (the Duties Act). Chapter 2 of the Duties 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 Duties Act provides that the duty is ordinarily payable by the transferee, and section 5 of the Duties Act establishes that the duty liability is a debt due to the Territory.

The Pensioner Duty Concession Scheme (the PDCS) assists eligible pensioners to move accommodation by exempting the duty payable on their new purchase of a residential home, or residential vacant land.

Pensioner Duty Concession Scheme

The *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2026* (the Determination) commences on 1 July 2026. The Determination prescribes for the PDCS the eligibility requirements, including property type, pensioner status, residency and property ownership.

Updates

Property threshold

The instrument has been updated to remove the property threshold for the PDCS. As a result, if the criterion for an ‘eligible transaction’ has been met there is no duty payable in respect of the transaction, irrespective of the dutiable value of the property.

DVA Gold Card and Service Pensions

The eligibility criteria have been expanded to include service pensions being an aged service pension, invalidity service pensions or partner service pension under the *Veterans’ Entitlements Act 1986* (Cwlth) (‘VE Act’); noting Part III of the VE Act explores the eligibility criteria for these service pensions.

The general eligibility criteria are outlined below:

(1) age service pension:

- a. a person must be a veteran;
- b. have rendered qualifying service; and
- c. reached the pension age of 60 years old.

(2) invalidity service pension

- a. a person must be a veteran;
- b. has rendered qualifying service; and
- c. is permanently incapacitated for work in accordance with a determination under section 37AA of the VE Act.

The eligibility for the partner service pension is much more varied. Generally, the person must be a member of a couple, and their partner is a veteran receiving (or would receive if not for a disqualifying provision) the age service pension or the invalidity service pension. But the pension is also available in other circumstances if the veteran has passed away – refer to the Department of Veteran Affairs website for further details.

The requirement for an eligible home buyer to have held a Veterans’ Affairs Gold Card for a continuous period of at least one year has been removed. In this instrument, it is sufficient that one eligible home buyer held a Veterans’ Affairs Gold Card on the transaction date.

Property relinquished

An update has been made to improve the clarity of an *allowed interest* for prior property when an interest in property is relinquished. An eligible home buyers prior property interests are only excluded if they have been relinquished, or they are required to relinquish that interest, under either a sealed court order, financial agreement or relationship agreement or termination agreement. The sealed court orders or agreements must be made before the transaction date. A court order is sealed if it bears the seal of the court, which may be a stamp or other impression. A sealed

court order provides evidence that the document was issued by the court. The operation of the provision is considered unchanged.

Eligible home buyer

A specific definition of eligible home buyer has been included to remove any ambiguity that the concession 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 concession 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 concession.

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.

Application

The Determination applies to grants, transfers or agreements for sale or transfer of eligible property 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; 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 types of eligible property for the PDCS are homes and vacant land. Homes may be new (including off the plan residential units) or established.

Duty rates and capped benefit

From 1 July 2026, the benefit from the PDCS is uncapped. There is no requirement that the dutiable value of the property to be purchased is less than a certain amount. An eligible transaction by an eligible home buyer will be subject to nil duty.

From 1 July 2025 to 30 June 2026, the benefit for the PDCS was capped at \$1,020,000 with a duty concession capped at \$35,238.

Eligible transactions

A transaction is deemed an eligible transaction if the eligibility requirements specified in the Determination are met. These eligibility requirements are:

Pensioner requirement

The concession is only available to a person who is in receipt of an Australian age pension (Services Australia or Department of Veterans' Affairs equivalent); or a disability support pension and is 50 years of age or more; or holds a Department of Veterans' Affairs Gold Card; or received a service pension on the date of the grant, transfer, or agreement.

Property requirements

A transaction is not an eligible transaction if, on the transaction date, all eligible home buyers and their domestic partners held an interest in land other than the former property (if applicable). The property interests of an eligible home buyer's domestic partner, who is a spouse, is 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.

All eligible home buyers and their domestic partners must acquire a legal and equitable interest in the eligible property that is being purchased using the concession. Earlier determinations referenced that the legal and equitable interest in the eligible property were counted as a property interest to be excluded.

Additionally, the eligible home buyer must sell or have sold the property from which they are moving within one year of (before or after) the date the instrument effecting the transaction is registered with the registrar-general on the land titles register under the *Land Titles Act 1925*. There may be exceptions to this, as set out below.

Ownership of the eligible property being purchased must be in the same name or names as the property being sold. A legal or equitable interest in land is an ‘exempt interest’ if a person has relinquished, or is required to relinquish the interest prior to the transaction date under: a sealed order of a court; a financial agreement under sections 90B-D or 90UB-UD of the *Family Law Act 1975* (Cwlth); or a domestic relationship agreement or termination agreement (‘court orders or agreements’).

The court orders or agreements must be made before the transaction date. A court order must be ‘sealed’, to be an order of a court. A court order is sealed if it bears the seal of the court, which may be a stamp or other impression. A sealed court order provides evidence that the document was issued by the court. If the property subject of the court order is to be sold, it must be sold after the court order is sealed to be ‘relinquished’ under an order of a court.

The following examples are *not* an allowed interest.

- A person enters into a contract to sell a property. A week later they receive a sealed court order that states they must dispose of that property. The disposal of the property was voluntary, and possibly in contemplation of a court order. This is because when the court order was made, the legal and equitable interest in the property had already been relinquished and therefore there was no interest per se for the person to relinquish under a court order.
- A person enters into a contract to purchase a property and claims the HBC before they have received sealed court orders requiring the relinquishment of their prior property interest. On the transaction date, being the date they entered into a contract to purchase the new property, they had a legal and equitable interest in land that was not the eligible property being purchased.

The Determination allows the Commissioner to consider a request in writing from a potential or current eligible home buyer to exempt the eligible transaction from compliance with the requirement about ownership in the same names, or the requirement to sell the former property within one year. The Commissioner can grant an exemption if anomalous or unusual circumstances exist.

Residence requirements

At least one of the eligible home buyers who is a pensioner of the eligible property must own and 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. Some exemptions apply to the residence requirements, as set out below.

The domestic partner of an eligible home buyer who is a pensioner can only fulfil the residence requirements if they are an eligible home buyer 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, when the occupation is transient, temporary, unlawful or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

Extend or amend the residence period

The Determination also 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)

Bob and Jane purchased a vacant block of land in Canberra to build a home. After 12 months their house plans were approved and construction commenced, although there were delays during construction.

Bob and Jane were unable to maintain their mortgage repayments with interest rate rises, increased construction costs and delays. They decided to sell the property and requested an exemption from the residency requirement.

A foreseeable circumstance when purchasing a property, and claiming a concession 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 repayments may vary over time. It is also foreseeable, when constructing a house or

undertaking building works, that construction may be delayed or that construction costs may increase.

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 (medical appointments)

Rachel purchased an eligible property and claimed the concession. 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 a duty concession 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 3 – 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 concession 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 4 – 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.

Previous concessions

An eligible home buyer cannot have previously received the Over 60s Home Bonus (which ended on 31 December 2016) or the PDCS.

Failure to comply with requirements

If a transaction ceases to be an eligible transaction—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 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 PDCS.

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.

Duty rates

From 1 July 2026, the benefit from the PDCS is uncapped. There is no requirement that the dutiable value of the property to be purchased is less than a certain amount. An eligible transaction by an eligible home buyer will be subject to nil duty.

For the period 1 July 2025 to 30 June 2026, the benefit for the PDCS had a property price cap of \$1,020,000, with a duty reduction capped at \$35,238.

Application for the PDCS

An application under the PDCS 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 PDCS concession 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 eligible property.

The Commissioner may 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 (which is explained in the earlier part of this statement).

Revocation

Section 10 of the Determination revokes DI2025-148.