

Australian Capital Territory

Taxation Administration (Amounts payable – Home Buyer Concession Scheme) Determination 2004 (No 5)

Disallowable instrument DI2004—262

made under the

***Taxation Administration Act 1999*, s139 Determination of amounts payable
under tax laws**

I revoke Disallowable Instrument DI2004-76 notified on the ACT
Legislation Register dated 31 May 2004, and I determine, for the purposes
of Chapter 2 of the *Duties Act 1999*, the following:

COMMENCEMENT

This determination applies to:

- a) a grant, where granted on or after 1 January 2005; and
- b) a transfer, or if the transfer is preceded by an agreement for transfer -
that agreement – first executed or entered into on or after
1 January 2005;
of a Crown lease.

DEFINITIONS

In this determination:

- a) “the Act” means the *Duties Act 1999*.
- b) “Certificate of Occupancy and Use” means the certificate issued under
section 28 of the *Building Act 2004* to advise that the dwelling is fit for
occupation and use.
- c) “date the duty must be paid” is either 90 days after the liability to pay
the duty arises (section 16 of the Act) or a period up to 12 months,
(section 16A of the Act) for an ‘off the plan’ purchase agreement.
- d) “dependent child” has the same meaning as in the *Social Security
Act 1991* (Cwlth).
- e) a reference to a “domestic partner” is a reference to someone who lives
with the person in a domestic partnership, and includes a reference to a
spouse of the person.
- f) “domestic partnership” is the relationship between 2 people, whether of
a different or the same sex, living together as a couple on a genuine

domestic basis. Section 169 of the *Legislation Act 2001* gives examples of indicators of a domestic partnership.

- g) “dutiabale value” has the same meaning as in section 20 of the Act.
- h) “eligible property” means an estate in fee simple or a Crown lease with a dwelling upon it and having a dutiable value less than the determined upper threshold for property value other than an eligible vacant block.
- i) “eligible vacant block” means an estate in fee simple or a Crown lease without a dwelling upon it and having a dutiable value less than the determined upper threshold for land value.
- j) “leave” includes maternity leave, leave without pay, leave on half pay and leave while receiving workers compensation payments.
- k) “lower threshold” means the determined threshold for the property value threshold or land value threshold. It is the highest sale price in the lowest 25% of all sale prices for residential property or land as applicable, in the previous 2 quarters.
- l) “relevant income threshold” means the income threshold amount with reference to the number of dependent children the applicants and domestic partner/s have as specified below:

<u>Number of dependent children</u>	<u>Income threshold</u>
0	\$100,000
1	\$103,330
2	\$106,660
3	\$109,990
4	\$113,320
5 or more	\$116,650

- m) “total income” means the income of all persons named in the grant, transfer or agreement for transfer of the subject property and their domestic partner/s. It includes income from all sources including benefits from a salary packaging arrangement and income classified as “exempt income” under the *Income Tax Assessment Act 1997*. It excludes eligible termination payments (such as those made for years of service under a bona fide redundancy payment) that are not assessable for income tax under the *Income Tax Assessment Act 1936* (Cwlth), Part 3, Division 2, Subdivision AA.
- n) “upper threshold” means the determined threshold for the property value threshold or land value threshold. It is the highest sale price in the lowest 65% of all sale prices for residential property or land as applicable, in the previous 2 quarters.

ELIGIBLE HOME BUYER

“Eligible home buyer” means a person who provides written evidence to the Commissioner for ACT Revenue regarding all persons named in the grant, transfer or agreement for transfer of the **eligible property** or **eligible vacant block** as the grantee or transferee that:

- a) on the date of the grant, transfer or agreement for transfer (whichever comes first) they together and their **domestic partners** had a combined **total income** over the previous 12 months (from the day of the grant, transfer or agreement for transfer, whichever comes first) less than or

equal to the **relevant income threshold** and that the details provided reflect their usual income; and

- b) at least one applicant named in the grant, transfer or agreement for transfer of the subject property as the grantee or transferee must:
- reside in the home for a continuous period of 6 months; and
 - such period is to commence within 12 months of:
 - o completion of the transfer for an eligible property; or
 - o the date of the Certificate of Occupancy and Use following completion of construction of the residence on the eligible vacant block.

The Commissioner for ACT Revenue has the discretion to extend the time for an applicant to meet the residency requirement where applicants genuinely need an extension of time to reside in the property.

The discretion is:

- limited to where an applicant is unable to reside in the property because of a compulsory or unforeseen circumstance e.g. work or health related issues; and
 - exercisable only where the request for an extension of time is made when the period of time for compliance with the residency requirement has not elapsed.
- c) they together and their **domestic partners** do not, either alone or jointly with another person or persons, hold a legal or equitable interest in land other than the subject property; and
- d) they together and their **domestic partners** have not, either alone or jointly with another person or persons, held a legal or equitable interest in land other than the subject property in the 2 years preceding the date of the grant, transfer or agreement for transfer, except where a person is required to relinquish an interest in land by:
- an order of a court; or
 - a financial agreement made under the *Family Law Act 1975* (Cwth), section 90B, 90C or 90D that is binding on the parties under that Act and the relationship has ended; or
 - by a domestic relationship agreement or a termination agreement under the *Domestic Relationships Act 1994* as a consequence of a termination of a relationship between domestic partners; and
- e) under the transfer or grant they together are acquiring both the legal and beneficial interest in the property; and
- f) on the date of the grant, transfer or agreement for transfer they had attained the age of 18 years. However, if the Commissioner for ACT Revenue is satisfied there are good reasons to do so, the Commissioner for ACT Revenue may exempt the applicant from the requirement to be at least 18 years old.

DETERMINED AMOUNT

The determined amount of duty that is payable on the purchase of an **eligible property** or **eligible vacant block** (or an undivided share of either) by an eligible home buyer for the purpose of section 31 of **the Act** shall be:

For an eligible property:

- a) \$20 where the **dutiable value** of the **eligible property** does not exceed the **lower threshold**; or
- b) the greater of:
- \$20; or
 - the concessional duty rate for each \$100 or part thereof by which the dutiable value of the eligible property exceeds the lower threshold. The concessional duty rate is calculated using the following formula:

$$\frac{F}{G} \times 100$$

Where:

F = Duty payable on **upper threshold**

G = **upper threshold** less **lower threshold**

For an eligible vacant block:

- a) \$20 where the **dutiable value** of the **eligible vacant block** does not exceed the **lower threshold**; or
- b) the greater of:
- \$20; or
 - the concession duty rate for each \$100 or part thereof by which the dutiable value of the eligible vacant block exceeds the lower threshold. The concession duty rate is calculated using the following formula:

$$\frac{F}{G} \times 100$$

Where:

F = Duty payable on **upper threshold**

G = **upper threshold** less **lower threshold**.

For one or more than one undivided share in the eligible property or eligible vacant block – the greater of \$20 or the duty calculated using the following formula:

$$\frac{C \times E}{D}$$

Where:

C = the concessional duty payable upon a grant, transfer or agreement for transfer of the **whole** of the **eligible property** or **eligible vacant block**.

D = the duty payable upon a grant, transfer or agreement for transfer of the **whole** of the **eligible property** or **eligible vacant block**.

E = the duty payable upon a grant, transfer or agreement for transfer of the **relevant share** of the **eligible property** or **eligible vacant block**.

TIME LIMIT FOR APPLICATION

- For a grant, transfer or agreement for transfer made after 31 December 2004, an application for concessional duty under the Scheme must be received by the Commissioner for ACT Revenue before the **date the duty must be paid**.
- For a grant, transfer or agreement for transfer made up to 31 December 2004, an application for concessional duty must be received by the Commissioner for ACT Revenue by 31 December 2005.

DATE OF EFFECT

This determination takes effect on and from 1 January 2005.

Ted Quinlan
Treasurer
14 December 2004