

Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2008 (No 2)

Disallowable instrument DI2008—286

made under the

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

1 Name of instrument

This Disallowable Instrument is the *Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2008 (No 2)*.

2 Commencement

This Disallowable Instrument commences on 1 January 2009.

3 Application

This Disallowable Instrument applies to:

- (1) a grant of a crown lease granted on or after 1 January 2009; and
- (2) a transfer of a crown lease or, if the transfer is preceded by an agreement for transfer, that agreement, first executed or entered into on or after 1 January 2009.

4 Definitions

In this instrument:

- (1) *The Act* means the *Duties Act 1999*.
- (2) *Certificate of Occupancy* means the certificate issued under the *Building Act 2004* that the dwelling is fit for occupation.
- (3) *Commissioner* means the Commissioner for ACT Revenue.
- (4) *Date the duty must be paid* is within:
 - (a) a period of 90 days after the liability to pay the duty arises (section 16 of the Act); or
 - (b) for an Off the Plan Purchase Agreement—a period of up to 1 year plus 14 days; or

- (c) for a Declared Affordable House and Land Package (section 16A of the Act)—a period of up to 2 years plus 14 days.
- (5) **Dependent child** has the same meaning as in the *Social Security Act 1991* (Cth).
- (6) **Determined** in the definitions of **lower threshold** and **upper threshold** means determined by the Minister by instrument under section 139 of the *Taxation Administration Act 1999*.
- (7) 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.
- (8) **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.
- (9) **Dutiable value** has the same meaning as in section 20 of the Act.
- (10) **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.
- (11) **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.
- (12) **Leave** includes maternity leave, leave without pay, leave on half pay and leave while receiving workers' compensation payments.
- (13) **Lower threshold** means the determined lower threshold for the property value threshold or land value threshold.
- (14) **Relevant income threshold** means the income threshold amount with reference to a **dependant child**, or dependent children, of an applicant and his or her **domestic partner** as specified below.

Number of dependent children	Income threshold
0	\$120,000
1	\$123,330
2	\$126,660
3	\$129,990
4	\$133,320
5 or more	\$136,650

- (15) **Total income** means the income of a person or persons named in the grant, transfer or agreement for transfer of the subject property and their **domestic partner**. **Total income**:
- (a) includes income from all sources including benefits from a salary packaging arrangement, maintenance payments, and income classified as **exempt income** under the *Income Tax Assessment Act 1997*; and
- (b) 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* (Cth), Part 3, Division 2, Subdivision AA; and

- (c) for self-employed persons—is the profit or gain made in the ordinary course of carrying on business. In this case, the net trading profit (and not turnover) is taken to be the equivalent of salary and wages.
- (16) **Upper threshold** means the **determined upper threshold** for the property value threshold or land value threshold.

5 Eligible Home Buyer

- (1) In this instrument, **eligible home buyer** means a person who provides written evidence to the Commissioner 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:
 - (i) reside in the home for a continuous period of 6 months; and
 - (ii) start that residency period within 12 months of:
 - A. completion of the transfer for an eligible property; or
 - B. the date of the **Certificate of Occupancy** following completion of construction of the residence on the eligible vacant block; and
 - (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:
 - (i) where a person is required to relinquish an interest in land by:
 - A. an order of a court; or

- B. a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* (Cth) that is binding on the parties and the relationship has ended; or
 - C. 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; or
- (ii) when performing their duties as an Executor or Trustee of a deceased estate; and
- (e) under the transfer or grant they together are acquiring both the legal and equitable 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.
- (2) In spite of subsection 5 (1) of this instrument, the Commissioner may, if satisfied that there are good reasons to do so:
- (a) approve a residency period shorter than the 6 months specified in subparagraph 5 (1) (b) (i);
 - (b) exempt the applicant from the requirement to reside in the home for the continuous period of 6 months specified in subparagraph 5 (1) (b) (i);
 - (c) extend the period of time specified in subparagraph 5 (1) (b) (ii) for an applicant to meet the residency requirements; or
 - (d) exempt the applicant from the requirement in paragraph 5 (1) (f) to be at least 18 years old.
- (3) The Commissioner's discretions set out in paragraphs 5 (2) (a), (b) and (c) are exerciseable only:
- (a) 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
 - (b) when the request for approval or for an exemption from the requirement or for an extension of time or is lodged **before** the period of time for compliance with the residency requirements has elapsed.

6 Determined Amount

- (1) 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 is as follows.
- (a) For an eligible property:

(i) \$20 where the dutiable value of the eligible property does not exceed the ***lower threshold***; or

(ii) the greater of:

A. \$20; or

B. 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 rounded down to the nearest multiple of 5 cents:

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

Where:

F = duty payable on ***upper threshold***

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

(b) For an eligible vacant block:

(i) \$20 where the dutiable value of the eligible vacant block does not exceed the ***lower threshold***; or

(ii) the greater of:

A. \$20; or

B. the concessional duty rate for each \$100 or part thereof by which the dutiable value of the eligible vacant block exceeds the ***lower threshold***. The concessional duty rate is calculated using the following formula rounded down to the nearest multiple of 5 cents:

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

Where:

F = duty payable on ***upper threshold***

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

(c) For one or more than one undivided share in the eligible property or eligible vacant block—the greater of:

(i) \$20; or

(ii) 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.

- (2) Under the Act, the duty is payable by the transferee to the Territory.

7 Time Limit for Application

- (1) An application for concessional duty under the Home Buyer Concession Scheme must be received by the Commissioner by the *date the duty must be paid* or within 1 year, whichever is earlier.
- (2) An application must be received by the Commissioner within 90 days of the grant, transfer or agreement for transfer of a lease, whichever is earlier.
- (3) Subject to subsection 7 (4) of this Disallowable Instrument, for an Off the Plan Purchase including a Declared Affordable House and Land Package, the duty is payable and the concession application must be received by the Commissioner within 14 days if one of the events happen under section 16A of the Act.
- (4) An application for concessional duty must be received by the Commissioner within 1 year for:
- (a) an Off the Plan Purchase where the maximum period to pay duty is 1 year and 14 days; and
 - (b) a Declared Affordable House and Land Package where the maximum period to pay duty is 2 years and 14 days.

8 Revocation

DI2008-76 is revoked.

9 Transitional Provisions

DI 2008-76 will continue to apply to a grant, transfer, or agreement to transfer a lease, between 6 May 2008 and 31 December 2008 inclusive.

Treasurer
Katy Gallagher MLA

9 December 2008