

Taxation Administration (Amounts payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2008 (No 2)

Disallowable instrument DI2008–288

made under the

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

1 Name of instrument

This instrument is the *Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2008 (No 2)*.

2 Commencement

This instrument commences on 1 January 2009.

3 Application

This instrument applies to:

- (1) a grant of a crown lease, where granted on or between 1 January 2009 and 30 June 2011; and
- (2) a transfer of a crown lease (or, if the transfer is preceded by an agreement for transfer, that agreement) that is first executed or entered into on or between 1 January 2009 and 30 June 2011.

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 and use.
- (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) **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*.
- (6) 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.
- (7) **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.
- (8) **Dutiable value** has the same meaning as in section 20 of the Act.
- (9) **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.
- (10) **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.
- (11) **Eligible Pensioner** means a person who:
 - (a) receives an Australian age pension or a Department of Veterans' Affairs age pension equivalent; or
 - (b) receives a disability support pension and is 50 years of age or over; or
 - (c) holds a Department of Veterans' Affairs Gold Card and has done so for at least 1 year at the date of the grant or transfer of a crown lease.
- (12) **Lower threshold** means the determined lower threshold for the property value threshold or land value threshold.
- (13) **Residential Property** means a property located in Australia in which the person resided as the person's principal place of residence immediately prior to purchasing the **eligible property**.
- (14) **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 an **eligible pensioner** 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) 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 as their principal place of residence for a continuous period of 6 months; and
 - (ii) commence this residency period within 1 year 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.
 - (b) they must sell or have sold the *residential property* from which they are moving within 1 year of:
 - (i) completion of the transfer for an eligible property; or
 - (ii) the date of the Certificate of Occupancy following completion of construction of the residence on the eligible vacant block.
 - (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 the *residential property* from which they are moving; and
 - (d) under the transfer or grant they together are acquiring both the legal and beneficial interest in the property.
- (2) In spite of subsection 5 (1), the Commissioner may, if satisfied that there are good reasons to do so:
- (a) approve a residency period shorter than the 6 month period specified in paragraph 5 (1) (a) (i); or
 - (b) exempt the applicant from the requirement to reside in the home for the continuous period of 6 months specified in paragraph 5 (1) (a) (i); or
 - (c) extend the time specified in paragraph 5 (1) (a) (ii) for an applicant to start the residency requirement.
- (3) The Commissioner's discretions are:
- (a) limited to where an applicant is unable to reside in the property because of a compulsory or unforeseen circumstance e.g. health-related issues; and
 - (b) exercisable only where the request for an extension of time or exemption from the requirement is made when the period of time for compliance with the residency requirements has not 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 and then 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 and then 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 *Duties Act 1999*, the duty is payable by the transferee to the Territory.

7 Time Limit for Application

- (1) An application for concessional duty under the Pensioner 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

DI2008-78 is revoked.

9 Transitional Provisions

DI 2008-78 will continue to apply to a grant, transfer, or agreement to transfer a lease, between 1 July 2008 and 31 December 2008 inclusive.

Treasurer
Katy Gallagher MLA
9 December 2008