

Taxation Administration (Amounts Payable— Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2015 (No 3)

Disallowable instrument DI2015-93

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—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2015 (No 3)*.

2 Commencement

This instrument commences on the day after its notification day.

3 Application

This instrument applies to:

- (1) a Crown lease that is granted on or after 18 February 2014; or
- (2) a transfer of a Crown lease first executed on or after 18 February 2014; or
- (3) an agreement for the transfer of a Crown lease, if—
 - (a) the agreement precedes the transfer of the Crown lease; and
 - (b) the agreement is completed after 18 February 2014.

4 Definitions

In this instrument:

- (1) ***The Act*** means the *Duties Act 1999*.
- (2) ***Affected lease*** means a Crown lease which is, or on which there is, affected residential premises.
- (3) ***Affected residential premises*** means residential premises that contain, or have contained, loose-fill asbestos insulation.
- (4) ***Buyback concession amount***—see clause 6.
- (5) ***Buyback scheme*** means the scheme—
 - (a) involving the acquisition of affected leases; and

- (b) for which funding is appropriated under the *Appropriation (Loose-fill Asbestos Insulation Eradication) Act 2014-2015*.
- (6) **Crown lease** includes a unit under the *Unit Titles Act 2001*.
- (7) **Loose-fill asbestos insulation**—see the *Dangerous Substances (General) Regulation 2004*, section 338.
- (8) **Commissioner** means the Commissioner for ACT Revenue.
- (9) **Deed of surrender** means the deed entered into between the Territory and the lessee to surrender an affected lease.
- (10) **Dutiable value**—see the *Duties Act 1999*, section 20.
- (11) **Dutiable transaction**—see the *Duties Act 1999*, section 7 (2).
- (12) **Eligible applicant**—see clause 5.
- (13) **Head of Taskforce** means the Head (however described) of the Asbestos Response Taskforce established by the ACT Government in June 2014.
- (14) **Notional duty** means the amount of duty that, but for this instrument, would be payable on a dutiable transaction.
- (15) **Subject property** means the dutiable residential property in relation to which an application for concessional duty under this instrument is made.
- (16) **Surrendered** includes acquired by the Territory under the buyback scheme under a contract for sale.
- (17) **Surrender sum** means:
 - (a) in the case of a Crown lease surrendered to the Territory under the buyback scheme—the amount paid to the lessee for an affected lease under a deed of surrender less \$1000; and
 - (b) in the case of a unit sold to the Territory under the buyback scheme—the consideration paid to the lessee under the contract for sale less \$1000.

5 Eligible applicant

- (1) A person is an **eligible applicant** if the person—
 - (a) is or was—
 - (i) the Crown lessee of an affected lease surrendered to the Territory under the buyback scheme; or
 - (ii) the registered proprietor of a unit under the *Unit Titles Act 2001* being affected residential premises sold to the Territory under the buyback scheme; and
 - (b) acquired the affected lease—
 - (i) on or before 18 February 2014; or
 - (ii) after 18 February 2014 but before 28 October 2014 as a result of a contract for sale to purchase the affected lease entered into before 18 February 2014; or
 - (iii) after 18 February 2014 as a beneficiary of a deceased estate; or

- (iv) after 18 February 2014 as a result of—
 - (A) a binding financial agreement or orders made under the *Family Law Act 1975*; or
 - (B) a written domestic relationship agreement or a termination agreement under the *Domestic Relationships Act 1994* as a consequence of the termination of a relationship between domestic partners;
- (v) after 18 February 2014—
 - (A) other than in the circumstances mentioned in paragraph (b) (ii), (iii) or (iv); and
 - (B) the person has made a submission to the Head of the Taskforce about the extent of their knowledge of the presence and implications of the presence of loose-fill asbestos in premises on the lease; and
 - (C) the Head of the Taskforce is satisfied that person was an innocent purchaser for value of the lease.

6 Buyback concession amount

The *buyback concession amount* is an amount equal to the duty that would have been payable on the transfer of the affected lease as if—

- (a) the transfer was a dutiable transaction; and
- (b) the dutiable value of the affected lease was equal to the surrender sum; and
- (c) the transfer occurred on 28 October 2014.

7 Determined amount

The determined amount of duty that is payable on a dutiable transaction to which this instrument applies under section 31 of the Act is—

- (a) if the notional duty is less than the buyback concession amount—\$0; or
- (b) if the notional duty is more than the buyback concession amount—the difference between the buyback concession amount and the notional duty.

8 Other criteria

- (1) Ownership of the subject property must be in the same name or names as the affected lease surrendered to the Territory.
- (2) However, a subject property need not be acquired in all of the same names as the affected lease if the applicant—
 - (a) is one of the joint tenants or tenants in common of the affected lease; and
 - (b) satisfies the Commissioner that the applicant has the consent of the other joint tenants or tenants in common of the affected lease.

- (3) Only one buyback concession amount may be granted under the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme in relation to each affected lease surrendered.
- (4) The Commissioner—
 - (a) may approve an application for a concession under the Loose-fill Asbestos Eradication Buyback Concession Scheme on being satisfied the deed of surrender or contract for sale (as applicable) for the affected lease has been entered into; and
 - (b) must withdraw the approval and reassess the dutiable transaction if the affected lease is not subsequently surrendered.
- (5) An eligible applicant cannot receive a concession under both the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme and any of the following schemes for the purchase of the subject property:
 - (a) Over 60s Home Bonus
 - (b) Pensioner Duty Concession
 - (c) Home Buyer Concession

9 Time limit for applications

- (1) An application for concessional duty under this instrument must be received by the Commissioner —
 - (a) in respect of a grant, transfer, or agreement to transfer a Crown lease other than a Crown lease referred to in paragraph (b), within 90 days of the first of—
 - (i) the date of the grant of the Crown lease; or
 - (ii) the date of the transfer of the Crown lease; or
 - (iii) the date of the agreement to transfer the Crown lease.
 - (b) in respect of a grant, transfer, or agreement to transfer a Crown lease for an ‘off the plan’ purchase agreement as defined under section 16A(4)(a) of the Act, within 14 days of the occurrence of the first of any of the events mentioned in section 16A(1) of the Act.
- (2) The Commissioner may accept a late application for concessional duty under this instrument submitted after the relevant time limit provided in section 9 (1), if the Commissioner considers it fair and reasonable to do so. The Commissioner may reassess the duty liability under section 9 of the *Taxation Administration Act 1999* for an eligible applicant that has submitted a late application for concessional duty under this instrument.

10 Application of instrument

This instrument (as in force on the day this subsection commences) applies to an application for concessional duty under the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme made on or after 19 December 2014.

11 Revocation

DI2015-39 is revoked.

Treasurer
Andrew Barr MLA
21 May 2015