

# Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 2)

## Disallowable instrument DI2016–304

made under the

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

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### 1 Name of instrument

This instrument is the *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 2)*.

### 2 Commencement

This instrument commences on 1 January 2017.

### 3 Application

This instrument applies to—

- (a) a Crown lease that is granted on or after 1 January 2017; or
- (b) a transfer of a Crown lease first executed on or after 1 January 2017; or
- (c) an agreement for the transfer of a Crown lease, if—
  - (i) the agreement precedes the transfer of the Crown lease; and
  - (ii) the agreement is first executed on or after 1 January 2017.

### 4 Definitions

In this instrument:

*Act* means the *Duties Act 1999*.

*certificate of occupancy* means a certificate issued under section 69 of the *Building Act 2004*.

*dutiable value*—see the Act, section 20.

*eligibility date*, in relation to a grant, transfer or agreement for the transfer of a Crown lease, means the first of the following dates:

- (a) the date of the grant of the Crown lease;

- (b) the date of the transfer of the Crown lease;
- (c) the date of the agreement to transfer the Crown lease.

**eligible pensioner** means a person applying for the Pensioner Duty Concession Scheme who meets the eligibility requirements for the concession under sections 8 to 11.

**eligible property** means an estate in fee simple or a Crown lease that—

- (a) has a dwelling upon it; and
- (b) has a dutiable value less than the upper threshold.

**eligible vacant block** means an estate in fee simple or a Crown lease that—

- (a) does not have a dwelling upon it; and
- (b) has a dutiable value less than the upper threshold.

**former property** means land located in Australia—

- (a) where a person resided as the person's principal place of residence immediately prior to purchasing the subject property; or
- (b) that was the person's principal place of residence immediately prior to selling it within 1 year of the purchase of the subject property.

**Example—former property**

An applicant sold an ACT principal place of residence on 1 October 2014. After it was sold, the applicant rented another home in the ACT to live in. On 1 July 2015, the applicant purchased the subject property. The home the applicant sold on 1 October 2014 is a **former property** for the purposes of this instrument even though the applicant was not resident immediately before purchasing the subject property. This also satisfies the requirements under section 10 (2), because the former property was sold within 1 year of the applicant buying the subject property.

**ineligibility date** means the earlier of the following:

- (a) the end of the period allowed for compliance with the residency period;
- (b) the date it first becomes apparent that the residency period will not be complied with during the period allowed for compliance.

**lower threshold** means—

- (a) in relation to an eligible property—the lower threshold of the property value thresholds determined in this instrument; or
- (b) in relation to an eligible vacant block—the lower threshold of the land value thresholds determined in this instrument.

**'off the plan' purchase agreement**—see the Act, section 16A (4).

**principal place of residence** means the home a person primarily resides in on an ongoing and permanent basis as the person's settled or usual home, but it is not sufficient to establish occupation—

- (a) if the occupation is transient, temporary or of a passing nature; or
- (b) the occupation is for some other purpose.

**required start date** means—

- (a) in relation to an eligible property—the day the transfer of the subject property is completed; or
- (b) in relation to an eligible vacant block—the day a certificate of occupancy is issued following completion of construction of a dwelling on the subject property.

**residency period** means the period mentioned in section 9 (1).

**subject property** means the eligible property or the eligible vacant block in relation to which an application for concessional duty under this instrument is made.

**upper threshold** means—

- (a) in relation to an eligible property—the upper threshold of the property value thresholds determined in this instrument; or
- (b) in relation to an eligible vacant block—the upper threshold of the land value thresholds determined in this instrument.

## 5 Application for concession

- (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 for an ‘off the plan’ purchase agreement—within 14 days after the first occurrence of any of the events mentioned in section 16A (1) of the Act; or
  - (b) in respect of a grant, transfer, or agreement to transfer a Crown lease—within 90 days of the eligibility date.

*Note* **Commissioner** means the Commissioner for Australian Capital Territory Revenue.

- (2) The Commissioner may accept a late application under this instrument if the Commissioner considers it fair and reasonable to do so.
- (3) The Commissioner may reassess the duty liability under section 9 of the *Taxation Administration Act 1999* for an eligible pensioner that has submitted a late application for concessional duty under this instrument.

## 6 Determination—thresholds and rates

- (1) I determine the thresholds and amounts in tables 1 and 2 to be used to calculate duty payable to the Territory under section 31 of the Act by an eligible pensioner buying an eligible property or eligible vacant block under the Pensioner Duty Concession Scheme:

**Table 1—property value thresholds**

Threshold	Amount
Lower threshold (full concession)	\$661 000
Upper threshold (at which concession ceases)	\$860 000

**Table 2—land value thresholds**

Threshold	Amount
Lower threshold (full concession)	\$351 300
Upper threshold (at which concession ceases)	\$417 500

- (2) I determine the concessional duty rates in table 3 calculated in accordance with the criteria under this instrument for the Pensioner Duty Concession Scheme:

**Table 3—concessional duty rates**

Property type	Amount per \$100 (or part thereof) of the dutiable value in excess of the lower threshold
Eligible property	\$16.60
Eligible vacant block	\$15.30

## 7 Determination—calculation of concessional duty

- (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 pensioner for the purposes of section 31 of the Act is—
- (a) in relation to 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, calculated using the following formula and rounded down to the nearest multiple of 5 cents:
- $$\frac{F \times 100}{G}$$

Where:

F = the amount of duty that would otherwise be payable under the Act for an ordinary conveyance of property having a dutiable value

equal to the upper threshold, but for this instrument

G = upper threshold minus lower threshold

- (b) in relation to 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, calculated using the following formula and rounded down to the nearest multiple of 5 cents:

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

Where:

F = the amount of duty that would otherwise be payable under the Act for an ordinary conveyance of land having a dutiable value equal to the upper threshold, but for this instrument

G = upper threshold minus lower threshold

## 8 Eligibility requirement—pensioner

An eligible pensioner must—

- (a) receive an Australian Centrelink age pension or a Department of Veterans' Affairs age pension equivalent; or
- (b) receive a Centrelink disability support pension and be 50 years of age or over; or
- (c) hold a Department of Veterans' Affairs Gold Card, and have done so for at least 1 year prior to the eligibility date.

## 9 Eligibility requirement—residency

- (1) An eligible applicant must occupy the subject property as the applicant's principal place of residence for a continuous period of at least 1 year (the *residency period*).
- (2) The applicant must start the residency period within 1 year after the required start date (that is, settlement).
- (3) An eligible applicant may apply in writing to the Commissioner for an exemption from the requirement to comply with the residency period.

- (4) An application under subsection (3) must be made within 18 months after the required start date.
- (5) On receiving an application under subsection (3), if the Commissioner is satisfied the applicant cannot reside in the subject property because of an unforeseen circumstance, the Commissioner may—
  - (a) approve a shorter residency period; or
  - (b) extend the time in which the applicant must start the residency period; or
  - (c) exempt the applicant from the residency period.

**Example—unforeseen circumstance**

A health-related issue

- (6) If the residency period is not complied with, the applicant must, within 14 days after the ineligibility date—
  - (a) must give written notice of that fact to the Commissioner; and
  - (b) is liable to pay the Territory the amount of duty that would have been payable if the applicant had not been eligible for the Pensioner Duty Concession Scheme.

## 10 Eligibility requirement—property ownership

- (1) The eligible pensioner and the eligible pensioner’s domestic partner must not, at the eligibility date, have held a legal or an equitable interest in land other than the subject property and the former property.

*Note 1* Under section 169 of the *Legislation Act 2001*, a reference to a person’s domestic partner is a reference to someone who lives with the person in a domestic partnership and includes a reference to a spouse, civil union partner or civil partner of the person.

*Note 2* Section 169 of the *Legislation Act 2001* defines a domestic partnership as the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis. The section also provides some examples of indicators used to decide whether or not 2 people are in a domestic partnership.

- (2) The eligible pensioner and the eligible pensioner’s domestic partner must sell or have sold the former property within 1 year, or a longer period approved by the Commissioner, of—
  - (a) the date of the completion of the transfer of the subject property; or
  - (b) the date of the certificate of occupancy following completion of construction of the residence on the subject property.
- (3) Subsection (1) does not apply to an interest in land if the eligible pensioner or the eligible pensioner’s domestic partner acquired the interest as an executor or trustee (but not a beneficiary) under a will.
- (4) The ownership of the subject property must be in the same name or names as the former property.

- (a) The Commissioner may take into account anomalous or unusual circumstances when assessing this criterion, if considered fair and reasonable to do so.

**Example**

An eligible pensioner is selling the former property that has a deceased partner on the title, while the subject property will be purchased only in the name of the surviving partner.

- (5) Under the grant or transfer the eligible pensioner must acquire both a legal and an equitable interest in the subject property.

**11 Eligibility requirement—previous concessions**

- (1) An eligible pensioner must not receive more than one concession under the Pensioner Duty Concession Scheme.
- (2) An eligible pensioner must not have previously received the Over 60s Home Bonus Scheme under the *Taxation Administration Act 1999*.
- (3) An eligible pensioner cannot receive both the Pensioner Duty Concession and the Over 60s Home Bonus.

**12 Revocation**

This instrument revokes *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 1) DI2016-74*.

**13 Transitional effect**

DI2016-74 continues to apply to a grant, transfer, or agreement to transfer a lease for the period 8 June 2016 to 31 December 2016, inclusive.

Andrew Barr MLA  
Treasurer  
15 December 2016