

# Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 1)

## Disallowable instrument DI2016–74

made under the

*Taxation Administration Act 1999*, section 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 1)*.

### 2 Commencement

This instrument commences on 8 June 2016.

### 3 Application

This instrument applies to:

- (1) a Crown lease that is granted on or after 8 June 2016; or
- (2) a transfer of a Crown lease first executed on or after 8 June 2016; 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 first executed on or after 8 June 2016.

### 4 Definitions

In this instrument:

- (1) ***The Act*** means the *Duties Act 1999*.
- (2) ***Certificate of Occupancy*** means a certificate issued under section 69 of the *Building Act 2004*.
- (3) ***Commissioner*** means the Commissioner for ACT Revenue.
- (4) ***Dutiable value***—see the *Duties Act 1999*, section 20.
- (5) ***Eligible applicant*** means a person who is a pensioner applying for the Pensioner Duty Concession Scheme, and who meets the eligibility requirements for the Concession as detailed in section 8 to 11.
- (6) ***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.

- (7) ***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.
- (8) ***Lower threshold*** means—
- (a) in relation to an eligible property—the lower threshold of the property value thresholds determined by the Minister in this instrument; or
  - (b) in relation to an eligible vacant block—the lower threshold of the land value thresholds determined by the Minister in this instrument.
- (9) ***Residential property*** means land located in Australia:
- (a) in which the 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**

An applicant sold their 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 April 2014 is a residential 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 residential property was sold within 1 year of the applicant buying the subject property.

- (10) ***Subject property*** means the eligible property or the eligible vacant block in respect of which an application for concessional duty under this instrument is made.
- (11) ***Upper threshold*** means—
- (a) in relation to an eligible property—the upper threshold of the property value thresholds determined by the Minister in this instrument; or
  - (b) in relation to an eligible vacant block—the upper threshold of the land value thresholds determined by the Minister 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 of the events in section 16A (1) (a) to (d) of the Act happens; or
  - (b) in respect of a grant, transfer, or agreement to transfer a Crown lease—within 90 days of the first of the following to happen:
    - (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.
- (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 home buyer that has submitted a late application for concessional duty under this instrument.
- (4) In this section:  
*‘off the plan’ purchase agreement*—see the Act, section 16A (4).

## 6 Determination of Amounts

- (1) I determine the following thresholds and amounts to be used to calculate duty under section 31 of the Act as payable to the Territory by an eligible home buyer under the Pensioner Duty Concession Scheme:

<i>Property Value Thresholds</i>	<i>Threshold Amount</i>
Lower Threshold (Full Concession)	\$660,000
Upper Threshold (at which Concession ceases)	\$865,000

<i>Land Value Thresholds</i>	<i>Threshold Amount</i>
Lower Threshold (Full Concession)	\$350,800
Upper Threshold (at which Concession ceases)	\$419,900

- (2) The following are the concessional duty rates calculated in accordance with the criteria determined under this Disallowable Instrument for the Pensioner Duty Concession Scheme:

<i>Concessional Duty Rates</i>	<i>Amount per \$100 (or part thereof) of the dutiable value in excess of the lower threshold</i>
Eligible Property	\$ 16.30
Eligible Vacant Block	\$ 14.80

## 7 Determined amount

- (1) The determined amount of duty that is payable on the purchase of an eligible property or eligible vacant block 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, that is 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 on an ordinary conveyance of property having a dutiable value equal to the upper threshold but for this instrument.

G = upper threshold less 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, that is 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 on an ordinary conveyance of land having a dutiable value equal to the upper threshold but for this instrument.

G = upper threshold less lower threshold.

## 8 Eligibility requirement—pensioner

- (1) An eligible applicant 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 first of the—
    - (i) date of the grant; or
    - (ii) date of the transfer; or
    - (iii) date of the agreement for the transfer—of the subject property.

## 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) give written notice of that fact to the Commissioner; and
  - (b) pay the Territory the amount of duty that would have been chargeable if the applicant had not been eligible for the Pensioner Duty Concession Scheme.

- (7) In this section:

***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.

***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 under section 69 of the *Building Act 2004* following completion of construction of a dwelling on the subject property.

## 10 Eligibility requirement—property ownership

- (1) The eligible applicant and the eligible applicant's domestic partner must not, at the date of grant, transfer, or agreement for transfer of the subject property (whichever is first), have had a legal or an equitable interest in land, other than the subject property and the residential property.

- (2) The eligible applicant and the eligible applicant's domestic partner must sell or have sold the residential 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.

*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.

- (3) Subsection (1) does not apply to an interest in land if the eligible applicant or the eligible applicant'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 should be in the same name or names as the residential 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 applicant is selling the residential 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 applicant is acquiring both a legal and an equitable interest in the subject property.

## **11 Eligibility requirement—previous concessions**

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

## **12 Revocation**

DI2015-334 is revoked.

## **13 Transitional Provisions**

DI2015-334 continues to apply to a grant, transfer, or an agreement to transfer a lease, between 1 January 2016 and 7 June 2016, inclusive.

Treasurer  
Andrew Barr MLA  
3 June 2016