

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2017 (No 1)

Disallowable instrument DI2017–82

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—Pensioner Duty Concession Scheme) Determination 2017 (No 1)*.

2 Commencement

This instrument commences on 7 June 2017.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

concessional duty means the amount of duty that would be payable on an approved eligible transaction under this instrument.

Crown lease—see the *Land Titles Act 1925*, dictionary.

declared land sublease—see the *Planning and Development Act 2007*, section 312C.

dutiable value—see the Act, section 20.

eligible home means land in the ACT, a Crown lease or a declared land sublease that has a home built on it.

eligible property, subject to an eligible transaction, means—

- (a) an eligible home; or
- (b) vacant land.

eligible transaction—see section 4.

first executed, for an instrument (including a contract)—see the Act, section 243.

home means a building (affixed to land) that—

- (a) may lawfully be used as a place of residence; and
- (b) is, in the Commissioner’s opinion, a suitable building for use as a place of residence.

former property, of an applicant, means land in Australia that the applicant occupied as the applicant’s principal place of residence—

- (a) immediately before the transaction date; or
- (b) immediately before the land was sold within a 1 year period ending on the transaction date.

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 eligible 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 eligible property.

The applicant meets the eligibility requirement under section 10 (3) because the applicant sold the former property within 1 year of purchasing the eligible property.

interest—see the Act, dictionary.

non-concessional duty means the amount of duty that would be payable on an eligible transaction but for this instrument.

residence period means—

- (a) a continuous period of at least 1 year; or
- (b) if the Commissioner has determined a shorter period for an applicant—that period.

residence start date means—

- (a) for an eligible home—the date of completion of the eligible transaction; or
- (b) for vacant land—the date that a certificate of occupancy has been issued under the *Building Act 2004* for the home that will be an applicant’s place of residence, after the home has been built on the land.

transaction date, of an eligible transaction, means the date that liability for duty arises under the Act, section 11.

vacant land means land in the ACT, a Crown lease or a declared land sublease that does not have a home built on it.

4 Eligible transactions

This instrument applies to the following transactions or instruments (**eligible transactions**):

- (a) a transfer of eligible property first executed on or after 7 June 2017;

- (b) an agreement for the sale or transfer of eligible property first executed on or after 7 June 2017;
- (c) a grant of eligible property on or after 7 June 2017.

5 Application

- (1) A person may apply in writing to the Commissioner for the Pensioner Duty Concession Scheme in relation to an eligible transaction if the person—
 - (a) will hold an interest in eligible property on completion of the eligible transaction; or
 - (b) is the domestic partner of a person mentioned in paragraph (a), whether or not the domestic partner will hold an interest in the eligible property on completion of the eligible transaction.
- (2) The Commissioner must receive the application—
 - (a) for an ‘off the plan’ purchase agreement under the Act, section 16A (4)—
 - (i) within 14 days after the first of the events in the Act, section 16A (1) (a) to (d) happens; or
 - (i) before any of those events happens; or
 - (b) for any other eligible transaction—within 90 days after the transaction date.
- (3) The Commissioner may accept a late application if satisfied it is fair and reasonable to do so.

Example

The application was late because of a serious illness affecting the applicant.

6 Approval

- (1) The Commissioner must approve the eligible transaction for the Pensioner Duty Concession Scheme if satisfied that—
 - (a) the Commissioner has received an application from each person, and the domestic partner of each person, who will hold an interest in the eligible property on completion of the eligible transaction; and
 - (b) each applicant meets or will meet the eligibility requirements under sections 8 to 13; and
 - (c) the dutiable value of the eligible property is—
 - (i) for an eligible home—less than \$895 000; or
 - (ii) for vacant land—less than \$434 500.
- (2) Despite subsection (1) (b), an applicant need not comply with the eligibility requirements to the extent that the Commissioner has exempted the applicant from compliance under this instrument.

7 Determination

- (1) The determined rate of duty payable on an approved eligible transaction for the Pensioner Duty Concession Scheme, subject to section 12 (3), is—
- (a) for an eligible home—the rate of concessional duty listed in column 2 of table 1 opposite the dutiable value of the eligible home under column 1; or
 - (b) for vacant land—the rate of concessional duty listed in column 2 of table 2 opposite the dutiable value of the vacant land under table 1.

Table 1 Eligible homes

column 1 dutiable value	column 2 rate of duty
less than or equal to \$680 500	\$20
more than \$680 500 but less than \$895 000	the greater of— <ul style="list-style-type: none">(a) \$20; or(b) \$15.75 for every \$100, or part of \$100, by which the dutiable value is greater than \$680 500

Table 2 Vacant land

column 1 dutiable value	column 2 rate of duty
less than or equal to \$361 700	\$20
more than \$361 700 but less than \$434 500	the greater of— <ul style="list-style-type: none">(a) \$20; or(b) \$14.15 for every \$100, or part of \$100, by which the dutiable value is greater than \$361 700

8 Eligibility requirement—pensioner

At least 1 applicant who will hold an interest in the eligible property on completion of the eligible transaction 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 transaction date.

9 Eligibility requirement—legal and equitable interest

An applicant who will hold an interest in the eligible property on completion of the eligible transaction must acquire both a legal and an equitable interest in the eligible property.

10 Eligibility requirement—other property

- (1) An applicant must not, as at the transaction date, have held a legal or equitable interest in land other than the former property and the eligible property.
- (2) The ownership of the eligible property must be in the same name or names as the former property.
- (3) The applicant must sell or have sold the former property within 1 year after the residence start date.
- (4) Subsection (1) does not apply to an interest in land if the applicant acquired the interest as an executor or trustee (but not a beneficiary) under a will.
- (5) Subsection (2) does not apply to an interest in land if the applicant is required to relinquish the interest under—
 - (a) an order of a court; or
 - (b) a financial agreement made under section 90B, section 90C, or section 90D of the *Family Law Act 1975* (Cwlth) that is binding on the applicant, if the applicant's marriage has ended; or
 - (c) a part VIIIAB financial agreement made under section 90UB, section 90UC, or section 90UD of the *Family Law Act 1975* (Cwlth) that is binding on the applicant, if the applicant's de facto relationship has ended; or
 - (d) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994* to which the applicant is a party, if the applicant's domestic relationship has ended.

11 Eligibility requirement—previous concessions

- (1) An applicant must not have previously received—
 - (a) a concession under the Over 60s Home Bonus Scheme; or
 - (b) a previous concession under the Pensioner Duty Concession Scheme.
- (2) In this section:

Over 60s Home Bonus Scheme means the scheme of that name for concessional duty under the *Taxation Administration Act 1999*.

Pensioner Duty Concession Scheme means the scheme of that name for concessional duty under the *Taxation Administration Act 1999*.

12 Eligibility requirement—residence

- (1) At least 1 applicant who will hold an interest in the eligible property on completion of the eligible transaction must occupy the eligible property as the applicant's principal place of residence for the duration of the residence period.
- (2) The applicant must begin the residence period within 1 year after the residence start date.

- (3) If the applicant cannot comply with subsections (1) or (2)—
 - (a) the applicant must give written notice of that fact to the Commissioner; and
 - (b) the determined rate of duty payable on the eligible transaction is non-concessional duty.
- (4) The applicant must give written notice under subsection (3) (a) within 14 days after the first of the following events:
 - (a) the end of the period allowed for compliance with subsections (1) or (2);
 - (b) the date that it first becomes apparent that subsections (1) or (2) will not be complied with during the period allowed for compliance.
- (5) In this section:

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

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

13 Exemption—former property

- (1) A person may apply in writing to the Commissioner to—
 - (a) exempt the eligible transaction from compliance with the ownership requirement under section 10 (2); or
 - (b) exempt the applicant from the requirement to sell the former property within 1 year under section 10 (3), and extend the time in which the applicant must sell the former property.
- (2) If the Commissioner receives an application under subsection (1), the Commissioner may exempt the applicant or eligible transaction if satisfied that it is fair and reasonable to do so, taking into account anomalous or unusual circumstances.

Example—anomalous or unusual circumstances

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

14 Exemption—residence

- (1) An applicant in relation to an approved eligible transaction may apply in writing to the Commissioner to—
 - (a) exempt the applicant from compliance with the residence period under section 12 (1); or
 - (b) exempt the applicant from the full residence period, and determine a shorter residence period for the applicant; or

- (c) exempt the applicant from the requirement to begin the residence period within 1 year under section 12 (2), and extend the time in which the applicant can begin the residence period.
- (2) The Commissioner must receive the application—
 - (a) before the residence start date; or
 - (b) within 18 months after the residence start date.
- (3) If the Commissioner receives an application under subsection (1), the Commissioner may exempt the applicant if satisfied that the applicant is unable to occupy the eligible property because of an unforeseen circumstance.

Example—unforeseen circumstance

A health-related issue

15 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 2)* DI2016-304.

16 Transitional

DI2016-304 continues to apply for the period 1 January 2017 to 6 June 2017, inclusive.

17 Expiry

This instrument expires on 30 June 2018.

Andrew Barr MLA
Treasurer
31 May 2017