

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 3)

Disallowable instrument DI2019–271

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—Home Buyer Concession Scheme) Determination 2019 (No 3)*.

2 Commencement

This instrument commences on 16 December 2019.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

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.

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.

Note *Commissioner* means the Commissioner for ACT Revenue.

new home means land in the ACT, a Crown lease or a declared land sublease that has a home built on it, if the home has not previously been occupied or sold as a place of residence.

occupy, in relation to a new home, includes occupation on a short-term basis, regardless of the length of occupation or the intended length of occupation.

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

transfer means—

- (a) a transfer of eligible property; or
- (b) an agreement for the sale or transfer of eligible property; or
- (c) a grant of eligible property.

4 Meaning of *eligible property*

- (1) In this instrument:

eligible property means—

- (a) a home, whether a new home or otherwise; or
- (b) vacant land.

5 Meaning of *eligible home buyer*

- (1) In this instrument:

eligible home buyer means a transferee in relation to an eligible transaction.

- (2) In this section:

transferee—see the Act, dictionary.

6 Meaning of *eligible transaction*

- (1) In this instrument:

eligible transaction means a transfer with a transaction date on or after 1 July 2019 that meets the following requirements:

- (a) all eligible home buyers acquire both a legal and an equitable interest in eligible property on completion of the transaction;
- (b) on the transaction date, all eligible home buyers and their domestic partners (if any) have not held a legal or equitable interest in land within the previous 2 years, other than an interest—
 - (i) in the eligible property; or
 - (ii) that a person is required to relinquish 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 person; 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 person; or

- (D) a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994* to which the person is a party; or
 - (iii) that a person acquires—
 - (A) as an executor or trustee (but not a beneficiary) under a will; or
 - (B) under an agreement for the sale or transfer of the interest within the 2-year period that was subsequently cancelled under the Act, sections 50 or 50A, or under the relevant provisions of a corresponding Act;
 - (c) the total gross income of all eligible home buyers and their domestic partners (if any) in the previous financial year—
 - (i) is less than or equal to the income threshold; and
 - (ii) reflects the usual income of each person;
 - (d) at least 1 eligible home buyer will occupy the eligible property as the eligible home buyer's principal place of residence—
 - (i) beginning within 1 year after the residence start date; and
 - (ii) for the duration of the residence period;
 - (e) all eligible home buyers are at least the required age on the transaction date.
- (2) If it becomes apparent that a transaction is not an eligible transaction, an eligible home buyer must give the Commissioner written notice of that fact within 14 days after the first of the following events:
- (a) the end of any period allowed for compliance with a requirement of the transaction;
 - (b) the date that it first becomes apparent that the transaction is not eligible.

(3) In this section:

corresponding Act—see the Act, dictionary.

dependent child—see the *Social Security Act 1991* (Cwlth), section 5.

income means income from all sources—

- (a) other than employment termination payments under the *Income Tax Assessment Act 1997* (Cwlth), section 82-130, if the payments are made for years of service under a genuine redundancy payment; and
- (b) for a self-employed person—including the net trading profit or gain made in the ordinary course of carrying on the person's business, but not including the business's turnover.

Examples—sources of income

- benefits from a salary packaging arrangement
- exempt income under the *Income Tax Assessment Act 1997* (Cwlth), section 6-20
- maintenance payments
- short-term higher duty payments
- short-term second job payments

income threshold means the amount listed in column 2 of table 1 opposite the total number of dependent children of all eligible home buyers and their domestic partners (if any) listed in column 1.

Table 1 Income thresholds

column 1 total dependent children	column 2 income threshold
0	\$160 000
1	\$163 330
2	\$166 660
3	\$169 990
4	\$173 320
5 or more	\$176 650

occupy, in relation to a principal place of residence, does not include occupation—

- (a) of a transient, temporary or passing nature; or
- (b) for a purpose other than as a place of residence.

previous financial year means the financial year ending immediately before the financial year of the eligible transaction's transaction date.

Example

If the transaction date is 1 August 2019, the previous financial year is 2018-19 (the period 1 July 2018 to 30 June 2019).

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.

required age means—

- (a) 18 years of age; or
- (b) a younger age determined by the Commissioner, if—
 - (i) the younger age is requested for an eligible home buyer; and
 - (ii) the Commissioner is satisfied that it is fair and reasonable in the circumstances to make the determination.

residence start date means—

- (a) for a 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 a home on the land that will be a person’s place of residence; or
- (c) a later date determined by the Commissioner, if—
 - (i) the later date is requested for an eligible home buyer not later than 18 months after the residence start date; and
 - (ii) the Commissioner is satisfied that the home buyer is unable to begin occupying the eligible property because of an unforeseen circumstance.

residence period means—

- (a) a continuous period of 1 year; or
- (b) a shorter period (including no period) determined by the Commissioner, if—
 - (i) the shorter period is requested for a eligible home buyer not later than 18 months after the residence start date; and
 - (ii) the Commissioner is satisfied that the home buyer is unable to occupy the eligible property for the full residence period because of an unforeseen circumstance.

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

7 Duty concession

- (1) For the purposes of section 31 of the Act, I determine that the rate of duty to be used to calculate the duty payable by an eligible home buyer on an eligible transaction under this instrument is—
 - (a) for a home—a nil rate of duty; or
 - (b) for vacant land— a nil rate of duty.

- (2) If the eligible transaction is in relation to an undivided share of the eligible property, the amount of duty payable is the amount worked out as follows:

$$C \times \frac{S}{W}$$

- (3) In this section:

C means the amount of duty that would be payable for the eligible transaction under this instrument if it had been for the whole of the eligible property.

S means the amount of duty that would be payable for the eligible transaction but for this instrument in relation to the undivided share in the eligible property.

W means the amount of duty that would be payable for the eligible transaction but for this instrument if it had been for the whole of the eligible property.

8 Application for Duty concession

- (1) An eligible home buyer may apply to the Commissioner for the duty concession under this instrument on the registration of the transfer of the eligible property with the Registrar-General.
- (2) If an application is not made at the time specified in sub-section (1), an eligible home buyer may apply to the Commissioner to extend the time by which an application for the duty concession may be lodged.
- (3) An application to extend the time must—
 - (a) be in writing addressed to the Commissioner; and
 - (b) specify—
 - (i) the name and address of the applicant; and
 - (ii) the grounds on which the extension is sought; and
 - (c) be made within 12 months of the date of registration of the transfer of the eligible property with the Registrar-General.
- (4) The Commissioner may accept an application to extend the application time specified in sub-section (1) if satisfied that the applicant was not able to apply for the duty concession because of an unforeseen circumstance.

Example

An application for the Home Buyer Concession was made late due to a serious illness affecting the applicant.

- (5) In this section:

Registrar-General means the registrar-general under the *Land Titles Act 1925*.

9 Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 2)*, DI2019-137.

10 Transitional provision

DI2019-137 continues to apply for the period 1 July 2019 to 15 December 2019, inclusive.

Andrew Barr MLA
Treasurer

11 December 2019