Australian Capital Territory

Taxation Administration (Amounts payable – Eligibility - Home Buyer Concession Scheme) Determination 2008 (No 2)

Disallowable instrument DI2008–286

made under the

***Taxation Administration Act 1999*, s139 (Determination of amounts payable under tax laws)**

EXPLANATORY STATEMENT

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1. This Disallowable Instrument is the *Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2008 (No 2)*.
2. The Disallowable Instrument commences on 1 January 2009.
3. The *Taxation Administration Act 1999* deals with the administration of various tax laws relating to the imposition of certain taxes, duties and fees. These tax laws are specified in section 4 of the *Taxation Administration Act 1999* and section 139 empowers the Minister to determine amounts payable for taxes, duties and fees, and the method by which an amount is to be calculated.
4. One of the specified tax laws is the *Duties Act 1999* (the Act), Chapter 2 of which deals with the grant of a Crown lease and the transfer or agreement for the transfer of a crown lease which is subject to duty. Section 12 of the Act states that the duty is payable by the transferee (that is, the eligible homebuyer), and section 5 of the Act requires that the amount is payable to the Territory.
5. The Disallowable Instrument determines, for the purposes of the Home Buyer Concession Scheme:
   (a) the income test and thresholds;
   (b) the eligibility criteria;
   (c) the conditions;
   (d) the method of calculation of duty payable under section 31 of the Act; and
   (e) the time limit for applications.
6. Transitional provisions have been included to clarify that the previous Disallowable Instrument continues to apply to grants, transfers or agreements for transfer entered into during the period 6 May 2008 to 31 December 2008.

8. The operation of the scheme is otherwise unchanged. The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and beyond the upper dutiable value thresholds. The dutiable value thresholds (the lower threshold and the upper threshold), and their method of calculation, are determined in a separate Disallowable Instrument.

9. The Disallowable Instrument determines the dutiable value of an eligible property that does not exceed the ***lower threshold***. In this case, an eligible home buyer is entitled to the maximum duty concession and a minimum duty of $20 applies.

10. A part concession is available for purchases of eligible homes more than the ***lower threshold*** but less than the ***upper threshold***. The part concession is the concessional rate of duty for each $100 or part thereof exceeding the lower threshold up to the upper threshold. At this point and beyond, no concession is available.

11. If the dutiable value of an eligible vacant block does not exceed the lower threshold, an eligible home buyer is entitled to the maximum duty concession and a minimum duty of $20 applies.

12. A part concession is available for purchases of vacant blocks greater than the lower threshold. The part concession is the concessional rate of duty for each $100 or part thereof exceeding the lower threshold up to the upper threshold at which point and beyond no concession is available.

13. Where the purchase is for a share in an eligible property or an eligible vacant block, the concession is proportional to the share purchased by the eligible home buyer.

14. The instrument also provides for an Income Threshold of $120,000 per annum with an allowance for each dependent child of $3,330 per annum up to a maximum of $136,650 for an eligible home buyer with 5 or more dependent children as shown in the table. A ***dependent child*** has the same meaning as in the *Social Security Act 1991* (Cth), namely, a child under the age of 22 who meets certain income tests and is the responsibility of the applicant.

15. ***Total Income*** is the income of all persons named in the grant, transfer or agreement for transfer of the subject property, and their domestic partners and includes income from all sources including benefits from a salary packaging arrangement and income classified as ***exempt income*** under the *Income Tax Assessment Act 1997* (Cth).

16. The instrument excludes eligible termination payments such as those made for years of service under a *bona fide* redundancy payment that are not assessable for income tax under Part 3, Division 2, Subdivision AA of the *Income Tax Assessment Act 1936* (Cth). ***Income*** for a self-employed person is the profit or gain made in the ordinary course of carrying on business.

17. The income test is applied as an annual test. Temporary or short term increases in income such as income from short term higher duties, the Commonwealth ‘baby bonus’, short term second job, and back pay received in the 12 months prior to the grant, transfer or agreement for transfer are included as income.

18. The income test is, on the date of the grant, transfer or agreement for transfer (whichever comes first), the grantee/s or transferee/s, together with their domestic partners, a combined total income over the previous 12 months (from the day of the grant, transfer, or agreement for transfer—whichever comes first) less than or equal to the relevant income threshold. Applicants must to state that the details provided reflect their usual income.

19. Applicants must reside in the home as their principal place of residence continuously for a period of not less than 6 months and such period is to commence within 1 year of completion of the transfer for an eligible property, or the date of the Certificate of Occupancy following completion of construction of the residence on the eligible vacant block.

20. The Commissioner for ACT Revenue (the Commissioner) has the discretion to extend the time for an applicant to meet this requirement for compulsory or unforeseen circumstance such as work or health related issues, or to approve a residency period shorter than 6 months or to exempt the applicant from this requirement.

21. On the date of the grant, transfer or agreement for transfer (whichever comes first) the applicant must have attained the age of 18 years. However, if the Commissioner is satisfied there are good reasons to do so, the Commissioner may exempt the applicant from the requirement to be at least 18 years old.

22. Section 7 of the Disallowable Instrument has been amended to clarify that an application for concessional duty under the Scheme must be received by the Commissioner by the date the duty must be paid or within 1 year, whichever is earlier. For example:

    (a) for a grant, transfer or agreement for transfer of a lease, the duty is payable and the concession application must be received within 90 days;

    (b) for an Off the Plan Purchase, including a Declared Affordable House and Land Package, if one of the events in section 16A of the Act happens, the duty is payable and the concession application must be received, within 14 days of the event; and

    (c) where the maximum period to pay duty is 2 years plus 14 days for a Declared Affordable House and Land Package or 1 year plus 14 days for any other Off the Plan Purchase, the concession application must be received within 1 year regardless of when the duty must be paid.

23. DI2008-76 is revoked.

24. DI2008-76 continues to apply in respect of transfers of interests in land which took place on 6 May 2008 to 31 December 2008 inclusive.

Authorised by the Treasurer
Katy Gallagher