

# Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2009 (No 1)

Disallowable instrument DI2009–111

made under the

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

## EXPLANATORY STATEMENT

---

### Introduction

1. This instrument is the *Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2009 (No 1)*.
2. The instrument commences on 1 July 2009. It continues a 3 year moratorium on payment of the full amount of duty for eligible pensioners during the period 1 July 2008 to 30 June 2011.
3. Despite the expiry of the moratorium period on 30 June 2011, this instrument applies to eligible transactions entered into during the remainder of the moratorium period.
4. The *Taxation Administration Act 1999* (the TAA) 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 TAA. Section 139 of the TAA empowers the Minister to determine amounts payable for taxes, duties and fees, and the method by which an amount is to be calculated.
5. One of the specified tax laws is the *Duties Act 1999* (the Act). Chapter 2 of the Act deals with the grant of a Crown lease and the transfer or agreement for the transfer of a Crown lease which are subject to duty. Section 12 of the Act states that the duty is payable by the transferee (that is, the eligible home buyer), and section 5 of the Act states that the duty is payable to the Territory.
6. This instrument determines, for the purposes of the Pensioner Duty Concession Scheme:
  - (a) the eligibility criteria; and
  - (b) the conditions; and
  - (c) the method of calculation of duty payable under section 31 of the Act; and
  - (d) the time limit for applications.

7. Transitional provisions have been included to clarify that the previous Disallowable Instrument continues to apply to grants, transfers, or agreements for transfers entered into during the period 1 January 2009 to 30 June 2009.

### **Thresholds and calculation**

8. The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and above the upper dutiable value thresholds. The dutiable value thresholds (i.e. the lower threshold and the upper threshold), and their method of calculation, are determined in a separate Disallowable Instrument.
9. If the dutiable value of the eligible property or eligible vacant block is not higher than the lower threshold, an eligible home buyer is entitled to the maximum duty concession, and minimum duty of \$20 is payable.
10. A partial concession is available for purchases of eligible properties or eligible vacant blocks with a dutiable value more than the lower threshold, but less than the upper threshold. The concessional duty payable is the concessional rate of duty for each \$100 (or part thereof) of the difference between the dutiable value of the eligible property or the eligible vacant block, and the lower threshold. At and above the upper threshold, no concession is available.

### **Residency and other criteria**

11. An applicant is not eligible for the concession if the applicant holds an interest in land other than the subject property and the property from where the applicant is moving. The applicant must sell or have sold the property from where the applicant is moving within 1 year of the date of completion of the transfer or the date of the certificate of occupancy of the subject property, or a longer period approved by the Commissioner for ACT Revenue (the commissioner).
12. At least one of the applicants must reside in the subject property as their principal place of residence continuously for a period of not less than 6 months. That period must commence within 1 year of completion of the transfer for an eligible property, or the date of the certificate of occupancy that is issued following completion of construction of the residence on the eligible vacant block.
13. This instrument gives the commissioner a discretion to extend the time for an applicant to meet the residency requirement in the event of an unforeseen circumstance (such as a health related issue), or to approve a residency period shorter than 6 months, or to exempt the applicant from the residency requirements.
14. However, these discretions can only be exercised by the commissioner where a written request to exercise them is made within the applicable time limit.
15. Where an applicant has started the residency period within 6 months of the date of completion or the date of the certificate of occupancy, the time limit to lodge a written request is 1 year after the applicable date.
16. Where an applicant has started the residency period between 6 months and 1 year after the date of completion or the date of the certificate of occupancy,

the time limit to lodge a written request to shorten the residency period is 18 months after the applicable date.

17. However, where an applicant has not resided in the property within 1 year after the date of completion or the date of the certificate of occupancy, a request to exercise the discretion will not be accepted and the discretions cannot be exercised.

### **Time limits for applications**

18. Section 7 of this instrument clarifies that an application for concessional duty under the scheme must be received by the commissioner:
  - (a) for a grant, transfer or an agreement for the transfer of a lease, within 90 days;
  - (b) for an Off the Plan Purchase, if one of the events in section 16A of the Act happens, the concession application must be received within 14 days of the event. Otherwise, it must be received within 1 year of the grant, transfer, or agreement for the transfer of the lease.

### **Application of this instrument and changes**

19. This instrument revokes DI2008-288.
20. DI2008-288 continues to apply to transactions which took place on 1 January 2009 to 30 June 2009 inclusive.
21. This instrument has been updated in order to clarify some aspects of the operation of the previous instrument. The time period allowed to lodge a written request for the commissioner to exercise the discretion in relation to the residency requirements has been clarified (see paragraphs 15 and 17 above). The only substantive change to the previous instrument is the inclusion of an additional 6 months to request an exercise of the commissioner's discretion under section 5(2)(a) in some circumstances (see paragraph 16 above).
22. This instrument has also been updated to rectify an omission from the previous instrument. It provides a discretion for the commissioner to allow a longer time period than the 1 year in which an eligible pensioner is required to sell their residential property under section 5(1)(b).
23. Apart from the changes mentioned above, the operation of the scheme remains unchanged.

Authorised by the Treasurer  
Katy Gallagher