Australian Capital Territory

Taxation Administration (Amounts Payable––Eligibility––Home Buyer Concession Scheme) Determination 2011 (No 1)

Disallowable instrument DI2011–162

made under the

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

EXPLANATORY STATEMENT

Introduction

1. This instrument is the *Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2011 (No 1)*.
2. This instrument commences on 1 July 2011.
3. 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.
4. One of the specified tax laws is the *Duties Act 1999* (the Act). Chapter 2 of the Act deals with the imposition of duty on 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.
5. This instrument determines, for the purposes of the Home Buyer Concession Scheme:

   (a) the income test and thresholds; and

   (b) the eligibility criteria; and

   (c) the conditions; and

   (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 transfers entered into during the period 1 January 2011 to 30 June 2011.

Thresholds and calculation

7. 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.

8. 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.

9. 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.

10. Where the purchase is for a share in an eligible property or an eligible vacant block, the concessional duty payable is proportional to the share purchased by the eligible home buyer.

The income test

11. The income test determined by this instrument applies an income threshold of $120,000 per annum with an additional allowance for each dependent child of $3,330 per annum. The income threshold increases to a maximum of $136,650 for an eligible home buyer with 5 or more dependent children. This instrument defines dependent child in the same way as the *Social Security Act 1991* (Cth); namely, a child under the age of 22 who meets certain income tests and who is the responsibility of the applicant.

12. In this instrument, total income is the income of all persons named in the grant, transfer or the agreement for the transfer of the subject property. Total income includes the combined total income of a person and their domestic partner. It includes income from all sources such as benefits from a salary packaging arrangement and income classified as exempt income under the *Income Tax Assessment Act 1997* (Cth). For a self-employed person, total income includes the net trading profit or gain made in the ordinary course of carrying on business, rather than the business' turnover.

13. 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 Australian Government's 'baby bonus', a short term second job, and back pay received in the 12 months prior to the grant, transfer or the agreement for the transfer are included as income.

14. On the date of the grant, transfer, or agreement for the transfer of the subject property (whichever is first), the income test requires the grantee(s) or transferee(s) (together with their domestic partners), to have a total income

over the previous year that is less than or equal to the applicable income threshold. Applicants must state that the details provided reflect their usual income.

Residency and other criteria

15. 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.

16. This instrument gives the Commissioner for ACT Revenue (the Commissioner) a discretion to extend the time for an applicant to meet the residency requirement, or to approve a residency period shorter than 6 months, or to exempt the applicant from the residency requirements, in the event of compulsory or unforeseen circumstances (such as work or health related issues).

17. However, these discretions can only be exercised by the Commissioner where a written request to exercise them is made within 18 months 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.

18. On the date of the grant, transfer, or agreement for the transfer (whichever comes first) applicants must have attained the age of 18 years. However, if the Commissioner is satisfied there are good reasons for doing so, the Commissioner may exempt an applicant from that requirement.

19. This instrument provides for an exception to the 2-year prior ownership of property requirement in section 5(1)(d). However for the exception to apply, the court order, financial agreement, or domestic relationship agreement requiring the property to be relinquished must be made in writing before the date duty would otherwise be payable under the Act for the subject property. Accordingly, a concession will not be available unless an appropriate court order or agreement has been made within this timeframe.

Time limits for applications

20. 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(1) 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

21. This instrument revokes DI2010-310.

22. DI2010-310 continues to apply to transactions which took place on 1 January 2011 to 30 June 2011 inclusive.

23. Otherwise, the operation of the scheme remains unchanged.

Authorised by Treasurer
Katy Gallagher MLA