Australian Capital Territory

Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2013 (No 1)

Disallowable instrument DI2013-322

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 2013 (No 1)*.
2. The instrument commences on 1 January 2014. The Pensioner Duty Concession was extended for a further three years from 1 July 2012, as announced in the 2012-13 Budget.
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 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 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.
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 2013 to 31 December 2013.

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.

Residency and other criteria

10. 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).

11. Ownership of the property being purchased must be in the same name or names as the property being sold.

12. At least one of the applicants, who is also an owner of the existing property is an eligible pensioner.

13. The concession is restricted to a single concession for each applicant. An applicant must not receive this concession more than once.

14. 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.

15. 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.

16. 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.

Time limits for applications

17. Section 8 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 first such event. Otherwise, it must be received within 1 year of the grant, transfer, or agreement for the transfer of the lease.

    (c) If an application is not received within the relevant time limit required by section 8, the eligible home buyer is not eligible for concessional duty under this instrument, unless the Commissioner is satisfied that it would have been "unduly onerous" for the application to have been lodged within time – section 40, *Taxation Administration Act 1999*.

Application of this instrument and changes

18. This instrument revokes DI2012-273.

19. DI2012-273 continues to apply to transactions which took place on 1 January 2013 to 31 December 2013 inclusive.

Authorised by Treasurer
Andrew Barr MLA

18 December 2013