Australian Capital Territory

Taxation Administration (Amounts Payable - Home Buyer Concession Scheme) Determination 2015 (No 1)

Disallowable instrument DI2015-4

made under the

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

EXPLANATORY STATEMENT

Introduction

1. The ACT Government announced in the 2012-13 Budget that it would retarget the Home Buyer Concession Scheme to encourage the building of new housing and support the construction industry in the Territory. The Home Buyer Concession Scheme ceased to be available on the purchase of an existing property for all transactions dated after 31 August 2012.
2. This instrument is the *Taxation Administration (Amounts Payable - Home Buyer Concession Scheme) Determination 2015 (No 1)*.
3. This instrument is taken to have commenced on 1 January 2015.
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 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.
6. This instrument determines, for the purposes of the Home Buyer Concession Scheme:

   (a) the income test and thresholds;

   (b) the eligibility criteria;

   (c) the determination of amounts;

   (d) the conditions;

   (e) the method of calculation of duty payable under section 31 of the Act; and

   (f) the time limit for applications.

Eligible Properties

7. An eligible property under this scheme is limited to new and substantially renovated homes and land only.

8. The definition of substantial renovations in this instrument is identical to the definition in section 11 of the *Land Tax Act 2004*. It should be further emphasised that this instrument applies to purchases under an 'off the plan' purchase agreement as defined in section 16A of the *Duties Act 1999.*

Thresholds and calculation

9. 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.

10. 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.

11. 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.

12. 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.

13. The lower threshold is the highest sale price of the lowest 40 per cent of all sale prices for ACT residential properties for the 2 quarters between April 2014 and September 2014. The determined value for the lower threshold is $446,000 which is a decrease of -0.2906 per cent from the previous threshold of $447,300.

14. The upper threshold is the highest sale price of the lowest 65 per cent for ACT residential properties for the 2 quarters between April 2014 and September 2014. The determined value for the upper threshold is $550,000, which is an increase of 1.8519 per cent from the previous threshold of $540,000.

15. The land value threshold amounts applicable to the calculation of concessional duty for an eligible vacant block have been determined using the same percentage movement in property value threshold amounts from the previous determined amount, and as applying to the property value thresholds for eligible property in paragraphs 13 and 14, rounded to the nearest $100. They are as follows:

    (a) the lower threshold is determined at $266,700. This figure is a decrease of -0.2906 per cent from the previous threshold of $267,400; and

    (b) the upper threshold is determined at $298,300. This figure is an increase of 1.8519 per cent from the previous threshold of $292,800.

The income test

16. The income test determined by this instrument applies an income threshold of $160,000 gross per annum. An additional allowance is provided for each dependent child of $3,330 per annum. The income threshold increases to a maximum of $176,650 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.

17. 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 gross 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.

18. 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.

19. 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

20. All parties who will have an interest in the subject property upon settlement must apply for the Home Buyer Concession and must be eligible home buyers under this scheme. Domestic partners of eligible home buyers must also be party to Home Buyer Concession applications, whether or not they will have an interest in the subject property.

21. 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 1 year. 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. As at 1 September 2013, the residency period was increased from 6 months to 1 year to align with the residency period of the First Home Owner Grant.

22. In this instrument the definition of principal place of residence is provided. A principal place of residence is the home that is primarily resided in, and the person is living in the residence on an ongoing and permanent basis as the

person’s settled or usual home. However, when the occupation is transient, temporary or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

23. This instrument provides information on the written evidence that is required by the Commissioner for ACT Revenue (the Commissioner). This includes, but is not limited to, payslips, full income tax return (not the notice of assessment) and the home loan application (not loan approval, contract, or on-line application pack). The home loan application provided to the Commissioner must be the same as that lodged with the financial institution of the purchaser, and evidence may be requested from the eligible home buyer to substantiate this.

24. This instrument gives the Commissioner a discretion to extend the time for an applicant to meet the residency requirement, or to approve a residency period shorter than 1 year, or to exempt the applicant from the residency requirements, in the event of compulsory or unforeseen circumstances (such as work or health-related issues).

25. 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.

26. 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.

27. This instrument provides for an exception to the requirement in section 6 (2) (d) that an applicant must not have owned property in the 2 previous years. However for the exception to apply, a court order, financial agreement, or domestic relationship agreement requiring the prior property to be relinquished must be made in writing before the date duty for the subject property would otherwise be payable under the Act.

28. From 1 July 2014, a further exception applies if an applicant for the Home Buyer Concession has entered into an agreement to purchase a property within the preceding two year period. If this agreement is rescinded under sections 50 or 50A of the *Duties Act 1999* (or equivalent provisions of another jurisdiction) prior to settlement, and prior to the grant, transfer or agreement to transfer of the subject property, a transferee may still apply for the Home Buyer Concession.

Time limits for applications

29. 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; or

    (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.

30. This instrument revokes DI2014-317, in order to remove the ‘unduly onerous’ provisions in relation to the Commissioner’s acceptance of a late application. The Commissioner is now instead provided with a broader discretion to accept late applications under this instrument, which is of benefit to taxpayers.

31. Under this instrument and from 1 January 2015, if an application is not received within the relevant time limit required by section 8, the Commissioner may accept the late application if it is considered fair and reasonable to do so. Following acceptance of the late application, the Commissioner may reassess the duty liability in accordance with section 9 of the *Taxation Administration Act 1999*.

Revocation

32. This instrument revokes DI2014-175 and DI2014-317.

33. DI2014-175 continues to apply to transactions that took place between 1 July 2014 and 31 December 2014, inclusive.

Authorised by the Treasurer
Andrew Barr MLA