

Taxation Administration (Amounts Payable - Pensioner Duty Concession Scheme) Determination 2015 (No 2)

Disallowable instrument DI2015-109

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 - Pensioner Duty Concession Scheme) Determination 2015 (No 2)*.
2. The instrument commences on 3 June 2015. The Pensioner Duty Concession has been extended for a further year in the 2015-16 Budget, from the original announced end date of 2014-15. The Pensioner Duty Concession Scheme runs in conjunction with the Over 60s Home Bonus (which is available to eligible applicants aged 60 years and over).
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;
 - (b) the determination of amounts;
 - (c) the conditions;
 - (d) the method of calculation of duty payable under section 31 of the Act; and
 - (e) the time limit for applications.

Thresholds and calculation

6. 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) are shown in this instrument, for both vacant land and property.
7. 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.
8. 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.
9. The property value threshold amounts for the calculation of concessional duty for eligible property are as follows:
 - i. the lower threshold is equal to the lowest sale price of the highest 25% of all sale prices for ACT residential properties for the 2 quarters between October 2014 and March 2015. The determined value for the lower threshold is \$625,000 which is an increase of 2.4590% from the previous threshold of \$610,000; and
 - ii. the upper threshold is equal to the lowest sale price of the highest 10% of all sale prices for ACT residential properties for the 2 quarters between October 2014 and March 2015. The determined value for the upper threshold is \$807,000 which is an increase of 3.4615% from the previous threshold of \$780,000.
10. 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 paragraph 9, rounded up to the nearest \$100. They are as follows:
 - i. the lower threshold is determined at \$332,100. It reflects a 2.4590% increase from the previous threshold of \$324,100; and
 - ii. the upper threshold is determined at \$391,700. It reflects a 3.4615% increase from the previous threshold of \$378,500.

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. Ownership of the property being purchased must be in the same name or names as the property being sold (but the Commissioner can take anomalous or unusual circumstances into consideration when assessing this criterion, if considered fair and reasonable to do so).
13. At least one of the applicants, who is also an owner of the existing property is an eligible pensioner. An eligible pensioner is someone who:
 - (a) receives an Australian Centrelink age pension or a Department of Veterans' Affairs age pension equivalent; or
 - (b) receives a Centrelink disability support pension and is 50 years of age or over; or
 - (c) holds a Department of Veterans' Affairs Gold Card and has done so for at least 1 year prior to the first of the—
 - (i) date of the grant; or
 - (ii) date of the transfer; or
 - (iii) date of the agreement for the transfer—
of the subject property.
14. The concession is restricted to a single concession for each applicant. An applicant must not receive this concession more than once.
15. An applicant for the Pensioner Duty Concession Scheme cannot have previously received the Over 60s Home Bonus. An applicant cannot receive both the Pensioner Duty Concession and the Over 60s Home Bonus.
16. 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.
17. The Commissioner has 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.
18. 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.
19. This instrument provides for an exception to the requirement in section 6 (1) (c) 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.
20. A further exception applies if an applicant for the Pensioner Duty 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 Pensioner Duty Concession.

Time limits for applications

21. Section 9 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.
22. Since 1 January 2015, if an application is not received within the relevant time limit required by section 9, 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

23. This instrument revokes DI2015-5.
24. DI2015-5 continues to apply to transactions that took place between 1 January 2015 and 2 June 2015, inclusive.

Authorised by Treasurer
Andrew Barr MLA