

Australian Capital Territory

# Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2016 (No 2)

Disallowable instrument DI2016–304

made under the

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

## EXPLANATORY STATEMENT

---

This instrument commences on 1 January 2017.

The Pensioner Duty Concession Scheme (PDCS) assists eligible pensioners, who own a residential home, to move to accommodation more suited to their needs (e.g. from a house to a townhouse) by reducing the duty payable on their new purchase of a residential home or residential vacant land. As part of the 2016-17 Budget, the Government has extended the PDCS until 30 June 2018.

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.

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 applicant), and section 5 of the Act states that the duty is payable to the Territory.

This instrument determines, for the purposes of the PDCS:

- the time limit for applications;
- the determination of amounts;
- the method of calculation of duty payable under section 31 of the Act; and
- the eligibility requirements, including pensioner status, residency and property ownership.

## **Time limit for applications**

Section 5 of this instrument clarifies that an application for concessional duty under the PDCS must be received by the Commissioner for ACT Revenue (the Commissioner):

- for an ‘off the plan’ purchase, within 14 days of the first occurrence of an event mentioned in section 16A (1) of the Act; or
- for a grant, transfer or an agreement for the transfer of a lease, within 90 days.

If an applicant is not received within the relevant time limit required by section 5, 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 TAA.

## **Thresholds and calculation**

The concessional rates of duty ensure that the amount of the concession progressively reduces to zero at and above the upper dutiable value thresholds.

If the dutiable value of the eligible property or eligible vacant block is not higher than the lower threshold, an eligible applicant is entitled to the maximum duty concession, meaning that \$20 in duty is payable.

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.

The lower property value threshold is the highest sale price of the lowest 75 per cent (or highest 25 per cent) of all sale prices for ACT residential properties for the 2 quarters between April 2016 and October 2016.

- The determined value for the lower threshold is \$661,000 which is an increase of 0.1515 per cent from the previous threshold of \$660,000.

The upper property value threshold is the highest sale price of the lowest 90 per cent (or highest 10 per cent) for ACT residential properties for the 2 quarters between April 2016 and October 2016.

- The determined value for the upper threshold is \$860,000, which is a decrease of -0.5780 per cent from the previous threshold of \$865,000.

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, rounded to the nearest \$100:

- the lower threshold is determined at \$351,300. This figure is an increase of 0.1515 per cent from the previous threshold of \$350,800 (rounded to the nearest \$100); and
- the upper threshold is determined at \$417,500. This figure is a decrease of -0.5780 per cent from the previous threshold of \$419,900 (rounded to the nearest \$100).

## **Eligibility requirements**

### *Pensioner*

The concession is only available to a person who is in receipt of an Australian age pension (Centrelink or Department of Veterans' Affairs equivalent) and who holds a pensioner concession card; or a disability support pension and is 50 years of age or more and who holds a pensioner concession card; or a Department of Veterans' Affairs Gold Card for one year prior to the grant, transfer, or agreement for the transfer (whichever is first) of the subject property.

The use of these criteria ensures that the PDCS is appropriately targeted to those individuals who most benefit from access to the Scheme.

### *Residency*

An individual who is eligible for the PDCS must live in the purchased property as a principal place of residence for a continuous period of at least 1 year. That period must commence within 1 year of completion of the transfer for the subject property—that is, within one year of settlement. For a newly constructed house, the one-year residency must commence from the date the certificate of occupancy was issued following completion of construction of the house on the purchased property.

The Commissioner has a discretion to extend the time for an applicant to meet the residency period in the event of an unforeseen circumstance (such as a health-related issue), or to approve a residency period shorter than 1 year. The Commissioner can also extend the time in which the applicant must start the residency period, or exempt the applicant from the residency requirements. These discretions can only be exercised by the Commissioner if the eligible applicant submits a written request to the Commissioner within 18 months of settlement or the date of the certificate of occupancy.

Section 9 (6) provides that if an applicant fails to comply with the residency requirement, the applicant must provide written notice to the Commissioner regarding that fact and is liable to pay the amount of duty (and any applicable interest and penalty tax, depending on the circumstances) that would have been chargeable if the applicant was not eligible for the PDCS.

The notice must be given to the Commissioner within 14 days after the end of the period allowed for compliance with the residency requirement, or the date it first becomes apparent that the requirement will not be met (whichever comes first).

### *Property ownership*

An applicant is not eligible for the concession if, at the date of grant, transfer, or agreement for transfer (whichever is first) of the subject property, the applicant or the applicant's domestic partner holds an interest in land other than the subject property and the property from which the applicant is moving (i.e. the applicant's former property).

The applicant must sell or have sold the property from which the applicant is moving within 1 year of the date of completion of the transfer or the date of the Certificate of Occupancy and Use for the subject property, or a longer period only if approved by the Commissioner.

This instrument provides for an exception to the requirement in section 10 (1) that an applicant must not have an interest in any land other than the residential property from which they are moving and the subject property. For the exception to apply to the other interest in land, it must have been acquired by virtue of being an executor or trustee (but not a beneficiary) under a will.

Ownership of the property being purchased must be in the same name or names as the property being sold. The Commissioner may take anomalous or unusual circumstances into consideration when assessing this criterion, if considered fair and reasonable to do so.

#### *Previous concession*

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

An applicant for the PDCS cannot have previously received the Over 60s Home Bonus. An applicant cannot receive both the Pensioner Duty Concession and the Over 60s Home Bonus.

### **Revocation**

This instrument revokes DI2016-74.

DI2016-74 continues to apply to a grant, transfer, or an agreement to transfer a lease, in the period 8 June 2016 to 31 December 2016, inclusive.

Authorised by the Treasurer  
Andrew Barr MLA