

Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2016 (No 2)

Disallowable instrument DI2016–305

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 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 Scheme ceased to be available on the purchase of an existing property for all transactions dated after 31 August 2012.

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 Home Buyer Concession Scheme:

- the income test and thresholds;
- the time limit for applications;
- the eligibility criteria of the subject property;
- the determination of amounts;
- the method of calculation of duty payable under section 31 of the Act; and
- the eligibility requirements, including property ownership and residency.

Time limit for applications

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

- 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; or
- for a grant, transfer or an agreement for the transfer of a lease, within 90 days.

If an application 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.

Eligible properties

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

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 Act.

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.

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 applicant.

The lower property value 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 2016 and October 2016.

- The determined value for the lower threshold is \$468,000 which is an increase of 2.82571 per cent from the previous threshold of \$455,000.

The upper property value threshold is the highest sale price of the lowest 65 per cent for ACT residential properties for the 2 quarters between April 2016 and October 2016.

- The determined value for the upper threshold is \$590,000, which is an increase of 0.8547 per cent from the previous threshold of \$585,000.

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 \$280,000. This figure is an increase of 2.8571 per cent from the previous threshold of \$272,200 (rounded to the nearest \$100); and
- the upper threshold is determined at \$320,300. This figure is an increase of 0.8547 per cent from the previous threshold of \$317,600 (rounded to the nearest \$100).

Income test

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 applicant with 5 or more dependent children. This instrument defines dependent child in the same way as the *Social Security Act 1991* (Cwlth); namely, a child under the age of 22 who meets certain income tests and who is the responsibility of the applicant.

In this instrument, total income is the income of all applicants named in the grant, transfer or the agreement for the transfer of the subject property. Total income includes the combined total gross income of an applicant and the applicant's 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* (Cwlth). For an applicant that is self employed, total income includes the net trading profit or gain made in the ordinary course of carrying on business, rather than the total business turnover.

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.

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.

Eligibility requirements

Property ownership

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

An applicant is not eligible for the concession if, in the 2 years preceding the day of the grant, transfer, or agreement for transfer (whichever is first) of the subject property, the applicant and/or the applicant's domestic partner hold an interest in land other than the subject property.

This instrument provides for exceptions to the requirement in section 8 (3) 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.

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 Act (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.

Residency

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.

A principal place of residence is defined as 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.

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).

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.

Section 9 (4) of this instrument advises that if an applicant fails to comply with the residency requirement, the applicant must, 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 residency requirement will not be complied with during the period allowed for compliance (whichever comes first), provide written notice of this to the Commissioner.

The notice should advise about the failure to meet the residency requirement. The applicant is also liable to pay the amount of duty that would have been chargeable on the grant, transfer or agreement should the applicant had not been eligible for the Home Buyer Concession Scheme.

If an applicant fails to take the actions advised in section 9 (4) of this instrument, the applicant may be subject to penalty tax and payment of interest.

Other

This instrument provides information on the written evidence that is required by 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.

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.

Revocation

This instrument revokes DI2016-77.

DI2016-77 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