Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 1)

Disallowable instrument DI2019–70

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 5 June 2019. This follows the expiry of the *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2018 (No 1)* DI2018-117 on 4 June 2019.

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

Home Buyer Concession Scheme

The Home Buyer Concession Scheme (HBCS) is an ACT Government initiative administered by the ACT Revenue Office to assist people in purchasing a new residential home or residential vacant land by charging duty at a concessional rate.

This instrument determines, for the purposes of the HBCS:

- the eligibility criteria of the eligible 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.

Updates

This instrument replaces the *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2018 (No 1)* DI2018-117 which expires on 4 June 2019. It extends the HBCS for the period from 5 June 2019 to 30 June 2019, inclusive.

There have been no changes to the HBCS eligibility requirements or the thresholds from DI2018-117.

From 1 July 2019, the HBCS will be expanded as announced in the 2018-19 Budget.

Application of HBCS

This instrument applies to grants, transfers or agreements for sale or transfer of eligible property with a transaction date on or after 5 June 2019. The transaction date is the date that liability for duty arises under section 11 of the Act; that is, when the transaction is first executed.

Eligible properties

The HBCS is limited to two types of eligible property: new homes and vacant land.

There are upper and lower thresholds on dutiable value for both new homes and vacant land under the HBCS. There are no changes to thresholds from DI2018-117.

New home thresholds

For new homes, the lower threshold is the highest sale price of the lowest 40 per cent of all sale prices for ACT residential properties (new and established) for the two quarters between October 2016 and March 2017. The upper threshold is the highest sale price of the lowest 65 per cent for ACT residential properties for the same two quarters.

The lower threshold for new homes determined in this instrument is $470,000 and the upper threshold is $607,000.

Vacant land thresholds

The lower threshold for vacant land determined in this instrument is $281,200 and the upper threshold is $329,500.

Eligibility requirements

A transaction is deemed eligible for the HBCS if the eligibility requirements specified in the instrument are met.

Property requirements

A transaction is not eligible for the HBCS if, in the two years preceding the day of the transaction date of the eligible transaction, a transferee or a transferee's domestic partner held an interest in land other than the eligible property.

Exceptions apply if a court order, financial agreement, or domestic relationship agreement required the other property to be relinquished. However, these orders or agreements must be made before the transaction date.

Exceptions also apply if the other property is subject to a will, or if the transferee had entered an agreement to purchase the property and subsequently cancelled (rescinded) the agreement to purchase the other property.

Income requirements

To be eligible for the HBCS, the total gross income of all transferees and their domestic partners (if any) in the previous financial year must be less than or equal to the income threshold. The stated income must reflect the usual income of each transferee or domestic partner.

The income threshold is $160,000 per year. An additional allowance of $3,330 per year is provided for each dependent child of a transferee or domestic partner. Each person's dependent children are added together for this purpose. Dependent child is defined by reference to the *Social Security Act 1991* (Cwlth), namely, a child or young person under the age of 22 who meets certain income tests and is dependent on the person.

Income means income from all sources, such as such as benefits from a salary packaging arrangement and income classified as exempt income under the *Income Tax Assessment Act 1997* (Cwlth).

For a transferee or domestic partner 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.

Temporary or short-term increases in income such as income from short-term higher duties, a short-term second job, and back-pay received in the 12 months prior to the grant, transfer or agreement are included as income.

Residence requirements

At least one of the transferees of the eligible property must occupy the property as their principal place of residence continuously for a period of at least 1 year. That period must commence within 1 year of completion of the transfer for a new home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

The domestic partner of a transferee can only fulfil the residence requirements if they are a transferee themselves; that is, they are named in the grant, transfer or agreement and they hold a relevant interest in the property.

A principal place of residence is defined as the home a person primarily occupies, on an ongoing and permanent basis, as their 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.

While short-term occupation will count as occupation for the purposes of determining whether a home is a new home, short-term occupation is not generally sufficient to establish whether a home has been a transferee’s principal place of residence.

Failure to comply with requirements

If a transaction ceases to be eligible for the HBCS—for example, because a person failed to comply with an eligibility requirement— this instrument requires written notice of that fact to be provided to the Commissioner. The notice should advise about the failure to meet the requirement. Notice must be given within 14 days after the end of the period allowed for compliance with the requirement or the date it first becomes apparent that the requirement will not be complied with (whichever comes first).

If the transaction ceases to be an eligible transaction, it will become liable for non-concessional duty as at the transaction date. In other words, the transferee will become liable to pay the Territory the amount of duty that would have been payable on the eligible transaction if the transaction had not been eligible for the HBCS.

If a transferee fails to give notice to the Commissioner or take steps to rectify the tax liability, the transferee may be subject to penalty tax and payment of interest in addition to the primary duty.

Exemptions

This instrument gives the Commissioner the discretion to exempt a transferee under 18 years of age from the age requirement if satisfied that it is fair and reasonable to do so.

This instrument also gives the Commissioner the discretion to extend the time for an transferee to meet the residence requirement, to approve a residence period shorter than one year, or to exempt the transferee from the residence requirements, in the event of unforeseen circumstances (such as health-related issues).

Discretions in relation to residence 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 a new home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

Concessional rates

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

At or below the lower threshold, an approved transaction is entitled to the maximum duty concession, meaning that no duty is payable ($0).

A partial concession is available for purchases of eligible properties with a dutiable value between the lower and upper thresholds. The partial concession rate is worked out as follows then rounded down to the nearest 5 cents:

$$concessional\ rate\ of\ duty = \frac{upper\ threshold\ duty \times 100}{upper\ threshold - lower\ threshold}$$

In this formula, ***upper threshold duty*** means the non-concessional duty, or full amount of duty, that would be payable for a dutiable transaction with a dutiable value equal to the upper threshold.

At and above the upper threshold, the transaction is not eligible for the HBCS and full duty is payable.

New home rate

For new homes, the upper threshold duty is $16,979.20 and the concessional rate is $12.40, worked out as follows:

$$\frac{\$16{,}979.20 \times 100}{\$607{,}000 - \$470{,}000} = \$12.3936\ (unrounded) = \$12.40\ (rounded)$$

Vacant land rate

For vacant land, the upper threshold duty is $5,962.00 and the concessional rate is $12.30, worked out as follows:

$$\frac{\$5{,}962.00 \times 100}{\$329{,}500 - \$281{,}200} = \$12.3437\ (unrounded) = \$12.30\ (rounded)$$

Undivided shares

Where the eligible transaction is for a share in an eligible property, the concessional duty payable is proportional to the share purchased by the eligible transferee.

Expiry

This instrument expires on 30 June 2019.

Authorised by the Treasurer
Andrew Barr MLA