

Australian Capital Territory

Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 2)

Disallowable instrument DI2019–137

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 1 July 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 licence fees, and the method by which an amount is to be calculated.

One of the specified tax laws under section 4 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 home or vacant land to build a home 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 2019 (No 1) DI2019-70*. It expands the HBCS by:

- establishing that no duty will be payable on a transfer of a home or vacant land acquired by an eligible home buyer;
- extending the HBCS to include all types of property whether they are new homes or established, or vacant land; and
- removing previous property value thresholds.

These changes are made in line with those announced in the 2018-19 Budget.

A section is inserted to provide for the way an eligible home buyer may apply for the home buyer duty concession, and to outline the process by which an eligible home buyer may make a late application for the HBCS.

Application of HBCS

This instrument applies to grants, transfers or agreements for the sale or transfer of eligible property with a transaction date on or after 1 July 2019. The transaction date is the date that liability for duty arises under section 11 of the Act that is, when a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

Eligible properties

The HBCS applies to homes and vacant land purchased by eligible home buyers.

From 1 July 2019, there are no longer upper and lower monetary thresholds on the dutiable value of eligible properties for the purposes of the HBCS.

Upper monetary threshold—duty deferral only

An upper monetary threshold for eligible property of \$750,000 is retained only for the purposes of deferred duty payments under the Act, Part 2.6A.

Part 2.6A states that an eligible person may apply to the commissioner to defer payment of duty payable on a dutiable transaction that is the transfer of an eligible property, or an agreement for the sale or transfer of an eligible property.

‘Eligible property’ is defined at section 75AA of the Act as meaning a residential lease the value of which is not more than the upper property value threshold under the HBCS. ‘Home buyer concession scheme’ is defined as “a home buyer concession scheme determined under the *Taxation Administration Act 1999*, section 139”, thus referring to this instrument.

‘Eligible person’ is defined in section 75AA as a person who is an eligible home buyer under the HBCS, or is eligible for the first home owner grant under the *First Home Owner Grant Act 2000* (FHOG), or would be eligible for the FHOG apart from the person’s home not being a new home under that Act.

From 1 July 2019, persons eligible for the HBCS will not have to pay duty and will not need to apply to defer a duty payment. However, persons eligible for the FHOG may still apply for a deferral of duty if the value of the property acquired is not more than the upper property value threshold of \$750,000, as set under this instrument.

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 years who meets certain income tests and is dependent on the person.

Income means 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 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 one year. That period must commence within one year of completion of the transfer for a home, or the date that the certificate of occupancy is issued following completion of the 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. 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.

This instrument also gives the Commissioner the discretion to extend the time for a transferee to meet the residence requirement, or to approve a residence period shorter than one year, 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 home, or the date that the certificate of occupancy is issued following completion of the construction of a home for vacant land.

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 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.

Required Age

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

Duty rates

From 1 July 2019, the rate of duty payable on an eligible transaction by an eligible home buyer is a nil rate. This reflects the Government's intention to abolish duty for eligible home buyers from 1 July 2019 as announced in the 2018-19 Budget.

Undivided shares

Where the eligible transaction is for a share in an eligible property, duty is payable in proportion to the share purchased by the eligible home buyer.

Application for the HBCS

An application under the HBCS may be made at the time the home buyer registers the transfer of the property with the Registrar-General of Land Titles. In practice, a home buyer would usually make such an application by claiming the HBCS concession code on the transfer instrument when they lodge it for registration at Access Canberra, Dickson.

If an application is not made within this timeframe, the home buyer may apply to the Commissioner for an extension of time to submit a late application. In applying to the Commissioner, the home buyer must specify the grounds on which an extension is sought, and must submit the application for an extension of time within 12 months of the registration of the transfer of the eligible property.

The Commissioner may accept an application to extend the time if satisfied that the applicant was not able to apply for the duty concession at the time of registration due to an unforeseen circumstance (such as, serious illness affecting the applicant).

Revocation

This instrument revokes *Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2019 (No 1)* DI2019-70.

DI2019-70 continues to apply to a grant, transfer, or an agreement to transfer a lease, in the period 5 June 2019 to 30 June 2019, inclusive.

Authorised by the Treasurer
Andrew Barr MLA