

Australian Capital Territory

Taxation Administration (Off the Plan Unit Duty Concession Scheme) Determination 2021

Disallowable instrument DI2021–173

made under the

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

EXPLANATORY STATEMENT

The *Taxation Administration (Off the Plan Unit Duty Concession Scheme) Determination 2021* (the OTP Unit Duty Concession Scheme Determination) provides for the operation of a duty concession for certain off the plan units. For off the plan residential unit purchases (including apartments and townhouses) valued at less than or equal to \$500,000, the rate of duty payable is nil.

Off the Plan Unit Duty Concession

The OTP Unit Duty Concession will operate, on an ongoing basis, to:

- improve housing affordability;
- give certainty to the construction industry and provide a pipeline for further multi-unit residential construction work, keeping Canberrans in jobs; and
- save eligible new home buyers thousands of dollars, whether they are entering the housing market for the first time or looking to move.

The OTP Unit Duty Concession Scheme Determination sets out, for the purposes of the concession:

- the types of eligible property;
- the eligibility requirements, including transaction type and residency; and
- the concession amounts.

Eligible properties

The concession is limited to units in unit plan subdivisions (for example, apartments and townhouses) with a dutiable value of less than or equal to \$500 000.

Eligible transactions

A transaction is deemed eligible for the concession if the eligibility requirements specified in the OTP Unit Duty Concession Scheme Determination are met.

The concession applies to transfers involving the entry into off the plan agreements for units with a transaction date on or after 1 July 2021.

The transaction date is the date that liability for duty arises under section 11 of the *Duties Act 1999*; that is, when a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

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 an eligible property.

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, an occupation that is transient, temporary or of a passing nature, is not sufficient to establish occupation as a principal place of residence.

Failure to comply with requirements

If a transaction ceases to be eligible for the concession—for example, because a person failed to comply with the residence requirements—the OTP Unit Duty Concession Scheme Determination 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 the transferee first becomes aware 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 concession.

If a transferee fails to give notice to the Commissioner or fails to take steps to rectify the tax liability, under the *Taxation Administration Act 1999* the transferee may be subject to penalty tax and payment of interest in addition to the primary duty. That Act also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

Extension

This instrument gives the Commissioner the discretion to extend the time for a transferee to meet the residence requirements, 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).

The Commissioner can exercise discretion in relation to residence requirements only where a written request to exercise them is made within 18 months of completion of the transfer for an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

Commencement

This instrument commences on 1 July 2021.

Authorised by the Treasurer
Andrew Barr MLA