

Australian Capital Territory

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2021

Disallowable instrument DI2021–174

made under the

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

EXPLANATORY STATEMENT

Background

The *Taxation Administration Act 1999* (**the TAA**) governs 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 the amount of tax, duty, or licence fee payable, and the method by which an amount is to be calculated.

One of the specified tax laws is the *Duties Act 1999* (**the Duties Act**). Chapter 2 of the Duties 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 Duties Act provides that the duty is ordinarily payable by the transferee, and section 5 of the Duties Act establishes that the duty is payable to the Territory.

The Pensioner Duty Concession Scheme (**the PDCS**) assists eligible pensioners to move accommodation by reducing the duty payable on their new purchase of a residential home, or residential vacant land. The PDCS previously operated under the following instruments:

- *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2019 (No 1)*, which expired on 30 June 2020; and
- *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2020*, which expired on 30 June 2021.

The *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2021* (**the Determination**) commences on 1 July 2021 and provides for the ongoing operation of the PDCS.

Pensioner Duty Concession Scheme

The Determination prescribes:

- the eligibility requirements, including property type and value, pensioner status, residency and property ownership; and
- the method of calculation of duty payable under section 31 of the Duties Act.

This instrument updates dutiable value thresholds and makes minor and technical edits to clarify the operation of the instrument, including the eligibility of off the plan units for the concession.

Application

The Determination applies to grants, transfers or agreements for sale or transfer of eligible property 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; that is, when a transfer occurs, or if a transfer is effected by an instrument—the date the instrument is first executed.

Eligible properties

There are two types of eligible property for the PDCS: homes, and vacant land. Homes may be new (including off the plan residential units) or established.

There are upper and lower thresholds on dutiable value for both homes and vacant land:

- For homes, the lower threshold is \$490,000 and the upper threshold is \$642,000.
- For vacant land, the lower threshold is \$360,000 and the upper threshold is \$432,000.

The lower threshold was calculated using the highest sale price of the lowest 25 per cent of all sale prices for ACT residential properties with a contract date in the 2020-21 year to date. The upper threshold was calculated using the highest sale price of the lowest 50 per cent for ACT residential properties for the same year.

Eligible transactions

A transaction is deemed an eligible transaction if the eligibility requirements specified in the Determination are met. These eligibility requirements are:

- Pensioner requirement

The concession is only available to a person who is in receipt of an Australian age pension (Centrelink or Department of Veterans' Affairs equivalent); or a disability support pension and is 50 years of age or more; or holds a

Department of Veterans' Affairs Gold Card for at least one year immediately prior to the grant, transfer, or agreement.

- **Property requirements**

A transaction is not an eligible transaction if, on the transaction date, all transferees and their domestic partners held an interest in land other than in the eligible property and former property (if applicable).

Additionally, the transferee must sell or have sold the property from which the transferee is moving within one year of (before or after) the date the instrument effecting the transaction is registered with the Registrar-General on the land titles register under the *Land Titles Act 1925*. There may be exceptions to this, as set out below.

Ownership of the eligible property being purchased must be in the same name or names as the property being sold. 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.

- **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 that is issued following completion of construction of a home for vacant land. Some exemptions apply to the residence requirements, as set out below.

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.

- **Previous concessions**

A transferee cannot have previously received the Over 60s Home Bonus (which ended on 31 December 2016) or the PDCS.

Failure to comply with requirements

If a transaction ceases to be an eligible transaction—for example, because a person failed to comply with an eligibility requirement—the 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, subject to the dutiable value of the eligible property, it will become liable for duty or additional 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 PDCS.

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

Exemptions

The Determination allows the Commissioner to consider a request in writing from a potential or current transferee to exempt the eligible transaction from compliance with the requirement about ownership in the same names, or the requirement to sell the former property within one year. The Commissioner can grant an exemption if anomalous or unusual circumstances exist.

The Determination also 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 a 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 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:

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

In this formula, *upper threshold duty* means the full amount of duty, that would be payable for a dutiable transaction with a dutiable value equal to the upper threshold. For 2021-22, the duty payable is determined using the ‘owner occupier’ rate under the *Taxation Administration (Amounts Payable—Duty) Determination 2021* given the comparable residency requirements.

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

Home rate

For homes, the upper threshold duty is \$16,494 and the concessional rate is \$10.85 per \$100 (or part thereof) of dutiable value more than \$490,000, worked out as follows:

$$\frac{\$16,494 \times 100}{\$642,000 - \$490,000} = \$10.8513 \text{ (unrounded)} = \$10.85 \text{ (rounded down)}$$

Vacant land rate

For vacant land, the upper threshold duty is \$8,048 and the concessional rate is \$11.17 per \$100 (or part thereof) of dutiable value, worked out as follows:

$$\frac{\$8,048 \times 100}{\$432,000 - \$360,000} = \$11.1778 \text{ (unrounded)} = \$11.15 \text{ (rounded down)}$$

Commencement

The Determination commences on 1 July 2021.

The Determination does not affect the operation of the earlier PDCS determinations.

Authorised by the Treasurer
Andrew Barr MLA