

Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023

Disallowable instrument DI2023–164

made under the

Taxation Administration Act 1999, s 137E (Exemption scheme)

EXPLANATORY STATEMENT

The *Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023* (the Determination) replaces *Taxation Administration (Off the Plan Unit Duty Concession Scheme) Determination 2022*.

The Determination continues to provide for the operation of a duty concession for certain off the plan units but with an increased property value threshold. From 1 July 2023, off the plan residential unit purchases (including apartments and townhouses) valued at less than or equal to \$700,000 are exempt from duty. This compares to a threshold value of \$600,000 under the previous determination.

Making the determination under section 137E of the *Taxation Administration 1999* improves the clarity of the operation of the scheme.

Off the Plan Unit Duty Exemption

The OTP Unit Duty Exemption operates, 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 home buyers thousands of dollars, whether they are entering the housing market for the first time or looking to move.

The Determination sets out, for the purposes of the exemption:

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

Updates

From 1 July 2023, 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 \$700,000.

The Commissioner for ACT Revenue's discretion in relation to 'residence period' and 'residence start date' for eligible transactions is clarified through technical amendments, to align with similar tax law instruments.

Exempt Transferees

A transferee will be exempt from duty if the transfer meets the eligibility requirements in the Determination.

The concession applies to transfers involving the entry into off the plan agreements for units with a transaction date on or after 1 July 2023.

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

This instrument 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 is issued following completion of the construction of a home for vacant land.

Failure to comply with requirements

If the transferee ceases to be eligible for the exemption—for example, because a person failed to comply with the residence requirements—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, 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 2023.

Revocation

This instrument revokes *Taxation Administration (Off the Plan Unit Duty Concession Scheme) Determination 2022*, DI2022-31.

Human Rights Act 2004

This instrument provides an exemption to duty and does not limit, and is consistent with, human rights. The exemption promotes affordable housing and in doing so the freedom to choose a residence (section 13 of the *Human Rights Act 2004*).

In accordance with the legislation, the Determination includes a statement about whether the scheme is consistent with human rights.

The ACT Human Rights Commission has been consulted on the updates to the Determination.

Authorised by the Treasurer
Andrew Barr MLA