

Duties (Pensioner Duty Deferral Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–281

made under the

Duties Act 1999, s 75AG (Duty deferral schemes—determination)

EXPLANATORY STATEMENT

Background

Duty is ordinarily payable at the times tabled in section 16 of the *Duties Act 1999* (the Duties Act). For example, duty becomes payable on a transfer of dutiable property when the transfer is registered with the Registrar-General under the *Land Titles Act 1925*.

Under Division 2.6A.2 of the Duties Act, the Minister may determine a scheme for deferring duty.

Pensioner Duty Deferral Scheme

The *Duties (Pensioner Duty Deferral Scheme) Determination 2023* (the Determination) continues the Pensioner Duty Deferral Scheme which provides the opportunity to defer the payment of duty to all pensioners acquiring a property as a principal place of residence.

Updates

This Determination commences on 27 November 2023 and replaces the *Duties (Pensioner Duty Deferral Scheme) Determination 2023*, DI2023-167. The instrument provides minor amendments consequential to the commencement of the *Planning Act 2023*. There are no changes to the operation of the Pensioner Duty Deferral Scheme.

Eligible properties

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

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

To be eligible for a duty deferral under the Determination, a transferee must be a prescribed pensioner which, for the purposes of the Determination, means a person who, on the transaction date:

- (a) was in receipt of an Australian Centrelink age pension or Department of Veterans' Affairs age pension equivalent; or
- (b) was in receipt of an Australian Centrelink disability support pension and was 50 years of age or older; or
- (c) has held a Department of Veterans' Affairs Gold Card for a period of at least one year immediately prior to the transaction.

- Residence requirements

At least one of the transferees of the eligible property (being a pensioner or their domestic partner) 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 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.

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.

The Determination 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.

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, the duty deferred will become payable.

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* (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.

Conditions of Duty Deferral

A duty deferral arrangement determined under Division 2.6A.2 of the Duties Act may be subject to conditions—refer to section 75AG (3) and section 75AJ of the Duties Act.

The Determination sets conditions on duty deferrals:

- Application

An eligible person must apply to the Commissioner for the deferred payment of duty – refer to section 75AH of the Duties Act. The application must be made at the same time the instrument of transfer for the property is lodged with the Registrar-General under the *Land Titles Act 1925*.

- Interest

Interest at the market rate (determined under section 26 of the TAA) will be payable on the deferred amount of duty for as long as the amount of duty remains unpaid.

- Payment of deferred amount

The deferred duty and any interest that accrues must be paid when:

- (a) the property is transferred to any other person;
- (b) the interest in the property held by the ‘pensioner’ for the purposes of the transaction, is transferred to:
 - (i) another transferee;
 - (ii) an administrator or executor of the estate of the pensioner (includes a transfer by transmission application); or
 - (iii) any other person.

Any duty payable is a debt owing to the Territory and is a first charge on the interest held by an owner that takes priority over other interests – see section 5 of the Duties Act and section 56H of the TAA.

Operation

Duty deferrals approved under the Determination (and its conditions of approval) will continue to apply should the Determination cease until the duty amount deferred and any accrued interest is paid in full. Similarly, the Determination does not affect the operation of deferrals granted under previous instruments for the operation of the Pensioner Duty Deferral Scheme.