

Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2024

Disallowable instrument DI2024–177

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 TA Act) 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 TA Act. Section 139 of the TA Act 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 liability is a debt due 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.

Pensioner Duty Concession Scheme

The *Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2024* (the Determination) prescribes for the PDCS:

- 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.

Updates

Under the Determination, from 1 July 2024, the PDCS provides that duty is not payable on eligible transactions up to a property value threshold of \$1 million. The PDCS will also provide a partial concession for eligible transactions over \$1 million with benefits capped at the duty otherwise payable on a \$1 million residential owner-occupied property.

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 2024. 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

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

Duty rates and capped benefit

From 1 July 2024, the benefit available from the PDCS is capped at an amount equal to the amount of duty payable for property with a dutiable value of \$1 million. The cap amount is derived from the owner occupier base rate of duty under the applicable disallowable instrument for duty rates—from 1 July 2024, the *Taxation Administration (Amounts Payable—Duty) Determination 2024*.

The previous upper and lower thresholds on dutiable value for both homes and vacant land from 2023-24 at which partial and full duty concessions had operated under the PDCS are replaced with a single threshold at which the PDCS benefit is capped. The values for 2023-24 are provided below for comparison.

Table 1: Dutiable value thresholds

	2023-24		2024-25
	Lower threshold*	Upper threshold**	Property threshold
Home	\$500,000	\$765,000	\$1 million (with benefits capped at \$34,270)
Vacant land	\$423,000	\$500,000	

* 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 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 year to date.

The rate of duty payable on an eligible transaction by an eligible home buyer is a nil rate for dutiable value of less than or equal to \$1,000,000.

For dutiable value over \$1,000,000, the rate of duty of \$6.40 for every \$100, or part thereof, applies to the dutiable value that is more than \$1,000,000 but not more than \$1,455,000. As this rate of duty only applies to that part of the dutiable value above \$1 million the taxpayer retains the benefit of nil duty on that part of the dutiable value equal to or less than \$1 million.

For dutiable value over \$1,455,000, a flat rate of duty of \$4.54 for every \$100 applies to the total dutiable value consistent with conveyance duty for residential properties transfers generally. The capped PDCS benefit is then applied by subtracting an amount of duty of \$34,270 – this is equivalent to that applying to a property with a dutiable value of \$1 million (at the owner occupier base rate from 1 July 2024 given the application of residency requirements).

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 (Services Australia 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.

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.

- **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.

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

- **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 the transferee ceases to be eligible for PDCS the transferee will be liable for duty at the non-concessional rate. A transferee is liable for duty from the transaction date. A requirement to pay the duty arises from 14 days after the transfer is registered with the registrar-general under section 16 (1) 'Table 16 Items 1 and 3' of the Act. A tax default arises if the tax is not paid within 14 days and penalty tax applies under sections 31 (1), (2) or (4) of the TA Act, unless the Commissioner is satisfied that section 31 (5) applies, such as taking reasonable care to comply with a tax law. Interest also applies to a tax default and is calculated daily under section 25 (1) of the TA Act. Interest therefore is imposed from the 15th day after the transfer is registered with the registrar-general until the purchaser pays the unpaid tax. The unpaid tax can include penalty tax if a purchaser failed to meet the criteria for an 'eligible transaction' under section 4 of the Determination and by definition includes the residence period requirements.

If a transferee gives notice to the Commissioner within 14 days of either the end any period for compliance with a requirement (such as residency periods) or the date the transferee first becomes aware the transaction is not eligible, the Commissioner may remit penalty tax and interest associated with the tax default.

The TA Act also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

Commencement

The Determination commences on 1 July 2024.

Revocation

Section 7 of the Determination revokes DI2023-287.