

Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2024

Disallowable instrument DI2024–178

made under the

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

EXPLANATORY STATEMENT

Section 137E of the *Taxation Administration Act 1999* (TA Act) allows for the Minister to determine a scheme to exempt a person who is required to pay tax under a tax law from the requirement to pay the tax.

The *Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2024* (the Determination) replaces *Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023 (No 2)*, DI2023-275.

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 2024 to 30 June 2025, off the plan residential unit purchases (including apartments and townhouses) valued at less than or equal to \$1,000,000 are exempt from duty. This compares to a threshold value of \$800,000 under the previous determination.

Off the plan unit duty exemption

The Off the Plan 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 exemption amount.

Updates

The duty exemption for eligible transfers of units in unit plan subdivisions (for example, apartments and townhouses) is broadened to those units with a dutiable value of less than or equal to \$1 000,000 for the period 1 July 2024 to 30 June 2025.

Exempt transferees

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

The exemption applies to transfers involving the entry into off the plan agreements for units 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 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.

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.

Failure to comply with requirements

If a transaction ceases to be eligible for the Off the Plan Unit Duty Exemption—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 Off the Plan Unit Duty Exemption.

If the transferee ceases to be eligible for Off the Plan Unit Duty Exemption, 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 TAA, 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 5 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.

Extension

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 an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

Operation

The Determination commences on 1 July 2024 and expires on 30 June 2025 to align with the limited period for the increase in the property threshold.

Revocation

Section 9 of the Determination revokes DI2023-275.

Human Rights Act 2004

The Determination 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.