

Australian Capital Territory

Taxation Administration (Amounts Payable—Duty) Determination 2026

Disallowable instrument DI2026–155

made under the

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

EXPLANATORY STATEMENT

This instrument commences on 1 July 2026.

Under section 139 of the *Taxation Administration Act 1999*, the Minister may determine by disallowable instrument the rate or differential rates, or the method by which an amount of duty payable under the *Duties Act 1999* (Duties Act) is to be calculated.

This instrument determines for the purposes of the Duties Act differential rates of duty, or the method by which an amount of duty is payable for different types of dutiable transactions is calculated. Part 2 of this instrument determines the transfer rates of duty for the purposes of section 31 of the Duties Act. Part 3 determines commercial transfer rates of duty for the purposes of sections 31 and 90, 90A, 90B and 90D of the Duties Act. Part 4 determines the rate of duty for the purposes of section 33 of the Duties Act.

Updates

The instrument updates the commercial threshold, increasing it by \$100,000 to \$2,100,000.

The residential marginal rates remain unchanged from 2025-26.

Unforeseen circumstance

A specific definition of ‘unforeseen circumstance’ provides further guidance on how the residence start date may be extended or the residence period may be reduced. The definition of unforeseen circumstance introduces an objective test (reasonable person) to examine ‘a circumstance’ or circumstances with reference to the knowledge of the transferee on the transaction date. A circumstance is unforeseen if it is a circumstance that could not have been foreseen by a reasonable person with the knowledge of the

transferee on the transaction date. If a circumstance could be foreseen by a reasonable person on the transaction date, then it is not an unforeseen circumstance.

The transaction date is the relevant point in time for the assessment of whether the circumstance is unforeseen because it is the date the transferee has incurred the duty liability. Frequently, the transaction date is the date when an agreement for the sale or transfer of land is entered (exchange of contract).

The definition of knowledge includes both actual knowledge and constructive knowledge. Actual knowledge refers to the existence of knowledge subjectively in the mind of the transferee on the facts they knew related to the circumstances in issue. The inclusion of constructive knowledge is to ensure that a person cannot be wilfully blind or ignorant to circumstances to avoid something falling into the realm of their actual knowledge to make that circumstance ‘unforeseen’.

The definition of constructive knowledge is based on the definition in section 297 of the *Personal Properties Securities Act 2009* (Cwlth). The definition of constructive knowledge includes in paragraph (a) includes general knowledge that an honest and prudent transferee would ordinarily have when purchasing a property, whilst paragraph (b) includes the specific inquiries that ordinarily would have been made by an honest and prudent person with the specific actual knowledge of transferee.

For example, if a transferee has unique circumstances or requirements that would cause an honest and prudent person to conduct certain or additional inquiries to be satisfied in that situation, then those inquiries are assumed to have occurred. The transferee is deemed to constructively to have actual knowledge of the circumstance or circumstances from those inquiries.

Transfer rate (part 2)

Part 2 applies to a dutiable transaction of dutiable property used, or that will be used, wholly for purposes other than a commercial purpose. For example, for a residential purpose (such as a house, a unit, or a block of apartments), a primary production purpose (such as farmland or grazing land) or a home business (such as a bookkeeping business or florist working from home). This is irrespective of the permitted uses of the property as may be specified in a Crown lease.

For residential land, transfer rates under part 2 differentiate between eligible owner occupier transactions and transactions that are not eligible owner occupier transactions. The meaning of an eligible owner occupier transaction and relevant eligibility criteria are set out in Schedule 1 of this instrument.

The table sets out the differential rates of duty, and the method by which the duty payable for a dutiable transaction that is not for a commercial purpose is calculated. Column 4 outlines the duty rates applicable on an owner occupier transaction in 2026-27. Column 5 outlines the duty rates for transactions that are not eligible owner occupier transactions in 2026-27.

Example

For a residential property transaction valued at \$580,000, the applicable rate of duty is \$4.32 for every \$100, or part of \$100, for the dutiable amount that is more than

\$500,000 plus either \$8,408 for an eligible owner occupier transaction or \$11,400 for a non-owner occupier. The duty payable for an eligible owner occupier transaction is \$11,128 compared to \$14,856 for a non-owner occupier.

The marginal rating factors remain unchanged from the amounts for 2025-26.

Table: Comparison of marginal rates of duty

Dutiable amount	2025-26 (\$ per \$100)		2026-27 (\$ per \$100)	
	Column 2 Owner occupier	Column 3 Non-owner occupier	Column 4 Owner occupier	Column 5 Non-owner occupier
Less than or equal to \$200,000	0.28	1.20	0.28	1.20
More than \$200,000 but not more than \$260,000	0.28	2.20	0.28	2.20
More than \$260,000 but not more than \$300,000	2.20	2.20	2.20	2.20
More than \$300,000 but not more than \$500,000	3.40	3.40	3.40	3.40
More than \$500,000 but not more than \$750,000	4.32	4.32	4.32	4.32
More than \$750,000 but not more than \$1,000,000	5.90	5.90	5.90	5.90
More than \$1,000,000 but not more than \$1,455,000	6.40	6.40	6.40	6.40
More than \$1,455,000*	4.54	4.54	4.54	4.54

*This rate is a flat rate on the entire value of the transaction.

Commercial transfer rate (part 3)

Part 3 applies to a dutiable transaction of dutiable property used, or that will be used, partly or wholly for a commercial purpose or for a landholder duty transaction.

The threshold for nil duty is \$2,100,000 (increased from \$2,000,000).

The differential rates of duty, and the method by which the duty payable for a dutiable transaction that is for a commercial purpose is calculated are set out in section 7.

‘Commercial purpose’ means a purpose other than a residential purpose, a primary production purpose or a home business. This definition has its basis in section 6 of the Duties Act and (for a home business) section 276 (3) of the *Planning Act 2023*.

For the purposes of this instrument, a property that is used or that will be used, partly or wholly for commercial purposes includes, but is not limited to:

- mixed-use land, or land with mixed-use buildings where part of the land or the building is used or will be used for a commercial purpose and the other part for a residential or primary production purpose, for example:
 - land that is or will be used partly for the owner's bed and breakfast business and partly as a farm; or
 - a building with a shop on the ground floor and a residential apartment on the first floor;
- vacant land on which a building or buildings will be constructed or developed wholly for a commercial purpose, for example:
 - vacant land on which an office building will be constructed; or
 - vacant land on which a hotel will be constructed.
- land with an existing building or buildings that will be wholly or partly developed, refurbished, converted or re-purposed by the transferee for commercial purposes, for example:
 - a row of shops on top of which apartments will be built and the apartments individually on-sold to others;
 - a warehouse conversion into a hotel and shopping complex; or
 - a single shop refurbishment where the ground floor will be used as an office and the first floor will be converted into a residence.

This part also applies to a chapter 3 transaction (landholder provisions of the Duties Act) for which duty is payable at the determined rate in accordance with sections 90, 90A, 90B and 90D of the Duties Act.

Certain business assets (part 4)

Part 4 has not changed. It applies to determine the duty rate for section 33 of the Duties Act. The rate is unchanged from the previous instrument.

Eligible owner occupier transactions (Schedule 1)

Schedule 1 sets out the eligibility requirements for eligible owner occupier transactions and the scope of eligible properties.

Eligible properties

Eligible properties mean homes and vacant land purchased by a transferee.

Eligibility requirements

A transaction is an eligible owner occupier transaction if the eligibility requirements specified in Schedule 1 are met, including that the transferee is an individual.

Residence requirements

At least one of the transferees of the eligible property must own and 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 eligible 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. When the occupation is transient, temporary, unlawful or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

Extend or amend the residence period

This instrument also gives the Commissioner the discretion to extend the time for a transferee to meet the residence requirements, or to approve a residence period shorter than one year, in the event of unforeseen circumstances.

The discretion to amend the residence requirements can only be exercised where a written request 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.

Examples of circumstances that do not meet the criteria of being an unforeseen circumstance are below.

Example 1 – foreseen circumstance (employment – mandatory posting as condition of employment)

The Australian Defence Force may relocate service members at any time, subject to service requirements.

Henry was employed by the Australian Defence Force and was posted to another location shortly after purchasing a home and claiming the concession.

Henry requested a shorter residence period, or an exemption from the residence requirement, due to his mandatory relocation. Henry submitted it was an unforeseen circumstance because he had expected his posting in Canberra for a longer period.

At the time that Henry claimed the duty concession with a residency requirement, he had actual or constructive knowledge that, as a condition of his employment he could be relocated at any time, subject to the operational needs of his employer.

The Commissioner would decline Henry's application on the basis that relocation was a foreseeable circumstance of his employment. The timing of the relocation may have been unexpected, but that does not make it an unforeseen circumstance.

Example 2 – foreseen circumstance (employment – expression of interest)

Olivia was an employee of the Department of Foreign Affairs and Trade (DFAT) and had submitted an expression of interest for an overseas posting.

After renting for some time Olivia decided to purchase a property and claim the concession. After signing the contract to purchase a townhouse, DFAT offered Olivia a three year overseas posting which she accepted.

Olivia requested either a delay to the commencement of her residence period or, alternatively, an exemption from the residence period due to an unforeseen circumstance.

The posting was a foreseeable outcome of having submitted an expression of interest for a posting.

The Commissioner would decline Olivia’s application for an exemption from, or delay in commencing, the residence period on the basis that is not unforeseen.

Example 3 – foreseen circumstance (medical appointments)

Rachel purchased an eligible property and claimed the concession. However, Rachel had a pre-existing medical condition that required travel to Sydney from time to time for medical treatment.

Rachel was aware of the requirement to travel for treatment. It is a circumstance that a reasonable person should consider when deciding to purchase a property and claim a duty concession with residency requirements attached.

If Rachel applied to vary the residence period or the residence start date due to her medical condition or treatment, the Commissioner would decline Rachel’s application.

Example 4 – foreseen circumstance (caring responsibilities)

Charlotte’s father had a medical condition, and it was likely that he would require full time care in the future.

After relocating to Canberra for work Charlotte purchased an eligible property, claimed the concession and commenced living in the property from settlement. During Charlotte’s 12-month residence period her father requires full time care. Charlotte returns to the family home in NSW to provide full time care for father. While this decision may be reasonable and appropriate for Charlotte’s personal and family circumstances, it does not make it an unforeseen circumstance that prevents Charlotte from occupying her property in Canberra.

If Charlotte were to request a reduction in, or an exemption from, the residence period or requirement due to her father’s health decline, claiming that it was sudden and unexpected, the Commissioner would decline Charlotte’s application.

Example 5 – constructive knowledge

Liam was interstate when he signed a contract to purchase an eligible property as his new family home and did not undertake an in-person inspection of the property. Shortly after settlement, Liam moved into the property and formed the view that it did not fit the needs of his family and decided to sell the property.

Liam submitted a written request that the residence period be shortened to five months, the period he occupied the property, on the basis that the property was not suitable for his family.

Liam had the opportunity to inspect the eligible property in person, or conduct due diligence by other means, to determine whether it was suitable for his circumstances. A reasonable person would have inspected the property, made enquiries or other arrangements to determine whether it was suitable before entering into a contract to purchase it. These are inquiries that ordinarily would be made by an honest and prudent person in that situation. Liam is taken to have constructive knowledge of the relevant circumstances, because a person cannot rely on wilful blindness to create a circumstance that is unforeseen to them personally merely because it is not within their actual knowledge.

Liam has constructive knowledge of the size of the property, and a reasonable person would have considered whether the property was suitable. It was therefore a foreseeable circumstance.

The Commissioner would decline an application to shorten the residence period to five months.

Failure to comply with requirements

If a transaction ceases to be an eligible owner occupier transaction—for example, because a transferee fails to meet the residence period—this instrument 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 not an eligible owner occupier transaction, it will become liable for duty as at the transaction date under Table 2 for a transaction that is not an eligible owner occupier transaction.

If a transferee fails to give notice to the Commissioner or take steps to rectify the tax liability, the transferee may be subject to penalty tax and payment of interest in addition to the primary duty.

Revocation

Section 10 of this instrument revokes DI2025-145.