

<b>REVENUE CIRCULAR DAA004.17</b>
Home Buyer Concession Scheme – <i>Duties Act 1999</i>
Issue Date: 8 June 2016
Status: Current – Effective 8 June 2016
Previous Circular: DAA004.16

### **Preamble**

1. The purpose of this circular is to provide guidance to potential applicants of the Home Buyer Concession Scheme (the Scheme). Applicants must meet the eligibility criteria set by the disallowable instrument applicable at the date of the eligible transaction.
2. The application period under the Scheme is aligned with the date on which duty for a transaction becomes payable under the *Duties Act 1999*. That is, within:
  - (a) 90 days of the transaction date, which is the date of the grant, transfer, or agreement for transfer (whichever is first); or
  - (b) 14 days of the occurrence of one of the events mentioned in Section 16A (1) of the *Duties Act 1999* for an Off the Plan Agreement.
3. To enable applications to be processed efficiently, all relevant documents must be lodged with the ACT Revenue Office at least ten working days before approval is required.
4. All applications accepted over the Counter or mailed to the ACT Revenue Office are subject to application time limits and may be returned if received out of time.

### **Circular**

#### **Eligible Property or Eligible Vacant Block**

5. The Scheme provides for a concessional rate of duty for the purchase of an eligible property or eligible vacant block by an eligible home buyer. The concession only applies to new or substantially renovated properties and vacant blocks.
6. The Concession ceased for the purchase of an established property on 1 September 2012.

#### **Eligible Home Buyer**

7. All parties (and their domestic partners) who will have an interest in the subject property upon settlement must be listed as an applicant for the Scheme and must be an eligible home buyer.

#### **Thresholds and concessional rates payable**

8. Property thresholds are determined by the Minister and are regularly updated, usually every 6 months, to reflect changes in the market rates for property. If sale prices fall, the thresholds may be reduced.

9. Information on how thresholds are determined can be obtained by contacting the ACT Revenue Office or visit <http://www.revenue.act.gov.au>.
10. If an application applies to a share in the property being purchased, the concession is proportional to that share. However, the dutiable value of the whole property must be less than the upper threshold.
11. In addition, a person acquiring a share of a property is not eligible unless all persons acquiring shares in the property meet the criteria under the Scheme.
12. A person can be eligible for a part concession if they are acquiring an additional share in an eligible property. In all circumstances, the property must be an eligible property.

### **Income test**

13. The total income for all persons named as the grantee or transferee and their domestic partners must not exceed the income threshold that corresponds to the number of dependent children that they have.
14. Income is calculated as a combined total income of all persons and their domestic partners during the 1 year period before the date of grant, transfer, or agreement for transfer (whichever is first).

### **Residency requirements**

15. At least one applicant must:
  - (a) reside in the property as their principal place of residence for a continuous period of 1 year; and
  - (b) the period of residence must start within 1 year of:
    - (i) the date of completion of the transfer of an eligible property; or
    - (ii) the date of the certificate of occupancy following completion of construction of the residence on the eligible vacant block.
16. The Commissioner for ACT Revenue (the Commissioner) may extend the time for an applicant to meet the residency requirements, approve a shorter period of residence, or exempt an applicant from the residency requirements.
17. The Commissioner's discretion in relation to the above paragraph are exercisable only where a written request to exercise the power is lodged with the Commissioner within 18 months of:
  - (a) in relation to an eligible property—the date of the completion of the transfer of the subject property; or
  - (b) in relation to an eligible vacant block—the date of the certificate of occupancy following completion of construction of the residence on the subject property.
18. An application to the Commissioner, as set out above, is limited to circumstances in which the applicant is unable to reside in the property because of an unforeseen or unavoidable event e.g. a health-related issue, or an involuntary job transfer requiring residence outside the ACT. These circumstances do not include an applicant renting the property for investment purposes.
19. Applicants who fail to comply with the residency requirements may be required to pay the duty in full under an amended assessment. Depending on the circumstances, interest and penalty tax may also be applied.

### **Current and previous property ownership**

20. The grantee or transferee of the subject property and their domestic partners must not hold or have held, in the two years preceding the date of the grant, transfer, or agreement for transfer, an interest in land anywhere other than the subject property.

21. The two-year exclusion period does not apply in the following cases where the grantee or transferee and their domestic partners:
- (a) have not, either alone or jointly with another person or persons, held a legal or equitable interest in land other than the subject property in the two years, except where a person is required to relinquish an interest in land:
    - (i) under an order of a court; or
    - (ii) under a written financial agreement under section 90B, 90C, 90D, 90UB, 90UC, or 90UD of the *Family Law Act 1975* (Cth) and the relationship has ended; or
    - (iii) under a written domestic relationship agreement or a termination agreement under the *Domestic Relationships Act 1994* and the relationship has ended; and
    - (iv) The order or agreement must be made before the date the duty on the subject property must be paid.
  - (b) have held an interest in land only for the purpose of performing their duties as an executor or trustee of a deceased estate.
  - (c) entered into an agreement to purchase a property within the preceding 2 year period (prior to the grant, transfer, or agreement for transfer of the subject property) and subsequently rescinded this agreement under section 50 or 50A of the Act, or the relevant law of another jurisdiction.

#### **Legal and equitable ownership**

22. Under the transfer or grant, all persons named as the grantee or transferee must together be acquiring both a legal and an equitable interest in the property.

#### **Age**

23. All persons named in the grant, transfer, or agreement for transfer of the subject property as the grantee or transferee must be 18 years or over on the date of the grant, transfer or agreement for transfer.
24. The Commissioner may exempt the applicant from the requirement to be at least 18 years old if the Commissioner believes there is good reason to do so. Supporting details must be provided with the application.

#### **Refusal of concession and/or payment of full duty, interest, penalty tax**

25. Applicants must ensure the information they provide is accurate. Failure to provide accurate information may result in the concession being denied and/or payment of the duty in full under an amended assessment. Depending on the circumstances, interest and penalty tax may also be applied.

#### **Criminal penalties**

26. Giving false or misleading information is a serious offence. For details of the serious criminal offences of making, giving or producing false or misleading statements, information or documents: see the *Criminal Code 2002*.

SIGNED

Kim Salisbury  
Commissioner for ACT Revenue  
8 June 2016