

Revenue Circular DAA012.1

Duties Act 1999

Unduly Onerous

Circular history

Circular number	Issued date	Dates of effect		Status
		From	To	
DAA012	6 May 2010	6 May 2010	30 June 2011	Withdrawn
DAA012.1	28 June 2011	6 May 2010	-	Current -

Preamble

- Chapter 2 of the *Duties Act 1999* imposes duty on certain transactions, including a transfer of dutiable property, an agreement for the sale or transfer of dutiable property and the grant of a Crown lease. Dutiable property is defined as, among other things, land in the ACT, a Crown lease, a land use entitlement, and an interest in any such dutiable property. It also includes long term leases; certain franchise arrangements; an interest in a partnership that holds dutiable property; some goods in the ACT if the subject of an arrangement that includes a dutiable transaction over any dutiable property; and an option to purchase land in the ACT or a Crown lease.
- The *Home Buyer Concession Scheme* (HBC) and the *Pensioner Duty Concession Scheme* (PDC) both provide for concessional duty where an applicant is an eligible person who purchases an eligible property. The *Deferred Duty Scheme* allows eligible persons to defer the payment of duty on an eligible property. The conditions and criteria for these schemes are available at www.revenue.act.gov.au.
- The **application period** for these schemes is limited. All applications must be received by the Commissioner for ACT Revenue at the ACT Revenue Office by the date the duty must be paid, that is within:
 - 90 days of the grant, transfer or agreement (whichever is first); or
 - 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.
- As a result of an ACT Civil and Administrative Tribunal (ACAT) decision, *Byrne v Commissioner for ACT Revenue* [2010] ACAT 9 (16 March 2010), HBC applications are now to be considered as **returns** under Part 6 of the *Taxation Administration Act 1999* (Taxation Administration Act).
- Applications for the PDC and the Deferred Duty Scheme will also be considered to be returns.
- Section 40 (3) of the Taxation Administration Act states:

If the commissioner is satisfied that it would be unduly onerous for a person to lodge a return in accordance with a tax law, the commissioner may, by written notice addressed to the applicant, vary the period in relation to which, or the time within which, the applicant is to lodge the return.
- A decision by the Commissioner's refusing to vary a period of time in accordance with a taxpayer's application is only reviewable by the Commissioner and not by ACAT.

Circular

8. This circular describes the circumstances that will be considered in determining whether or not the Commissioner for ACT Revenue will exercise discretion to vary the lodgement of a return that is an application for the HBC, PDC or Deferred Duty Scheme under section 40 (3) of the Taxation Administration Act.
9. Each application will be considered on a case by case basis, and on its individual merits.
10. The test that must be applied in each individual's circumstances when considering whether or not to accept an application that is out of time is whether or not it would have been **unduly onerous** for an applicant to lodge the application within the statutory or required timeframe.
11. The courts and tribunals offer no direct guidance on what is (and what is not) **unduly onerous** for the purposes of the legislation. Accordingly, the ordinary meaning of those words applies when considering them.
12. The Oxford Dictionary defines **undue** as improper, excessive, more or greater than is appropriate; warranted; or natural; and **onerous** as burdensome.
13. The onus rests with the applicant to provide the Commissioner with reasons why his or her particular circumstances made it **unduly onerous** to lodge the application within the statutory or required timeframe. The application must be accompanied by sufficient supporting documentation.
14. The concession will not be allowed unless the applicant meets the criteria and provides evidentiary documentation to show eligibility for the concession. The property must also be an eligible property under the appropriate scheme.
15. The following table is indicative of what circumstances may or may not be considered **unduly onerous** for the taxpayer to meet the statutory or required application period:

May be unduly onerous – must be documented	Not unduly onerous
Exceptional circumstances existed in the time period that the application was required to be lodged; for example circumstances out of the taxpayer's control that prevented the taxpayer from reasonably being able to comply with the application period: – grave personal tragedy (e.g. death in the family) – severe illness, injury or harm to taxpayer or immediate family – severe disaster (personal/natural). Where the taxpayer (or its agent) took all possible measures that it could reasonably be expected to take in the circumstances in order to meet the application period, but it failed to meet the deadline nonetheless (i.e.	The taxpayer (or its agent) – was not aware the application period existed, or didn't understand the law – made no apparent effort or attempt to comply with the application period – provides no reason for not meeting the application period, or doesn't provide sufficient proof of his or her reasons – could have reasonably been expected to comply with the application period – was waiting to obtain supporting documentation (taxpayer must lodge application on time with reasons why required documents are missing, or provide a statutory declaration stating

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there is nothing else that could have been done to meet the deadline).	why documents are not available) – attributes failure to meet application period to someone else, but could reasonably have taken action himself or herself to rectify the failure or – found it inconvenient to lodge in time.

[SIGNED]

David Read
Commissioner for ACT Revenue

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Revenue Office Contact Details

Telephone	(02) 6207 0028
Facsimile	(02) 6207 0026
Street address	Ground floor, Canberra Nara Centre Corner of London Circuit and Constitution Avenue Canberra City
Postal address	PO Box 293 Civic Square ACT 2608
Office hours	9:00 am to 5:00 pm Monday, Tuesday, Thursday and Friday 10:30 am to 5:00 pm Wednesday
Website	www.revenue.act.gov.au