



REVENUE CIRCULAR DAA018
Barrier Free Model – <i>Duties Act 1999</i>
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Introduction

Conveyance duty

Chapter 2 of the *Duties Act 1999* (Duties Act) imposes conveyance duty on specific dutiable transactions. These transactions include a transfer of dutiable property, an agreement for sale or transfer of dutiable property, a declaration of trust, and a grant of a Crown lease. Dutiable property includes Crown leases and other land in the ACT.

Duty liability arises when a transaction is first executed (section 11) and the duty is payable by the transferee (section 12). Duty is charged on the dutiable value of the dutiable property subject to the transaction (section 18 and part 2.3).

Barrier Free model

The *Revenue Legislation Amendment Act 2017*, effective 18 September 2017, introduces the Barrier Free model for the payment of conveyance duty. Under the Barrier Free model property buyers will no longer pay their duty before the settlement of a property.

The new model will allow property buyers and solicitors to pay duty after registering with the Registrar-General of Land Titles (Access Canberra). The registration will 'trigger' the payment and a Notice of Assessment will be delivered to the email address nominated on registration at Access Canberra.

The purpose of this circular is to explain the Barrier Free model and the typical timeline for transactions.

Overview

The ACT Revenue Office's Revenue Collection Transformation Program has developed a new IT system and transforming its existing business processes to suit a digital environment. The Barrier Free model is a redesigned model for collecting conveyance duty that is well adapted to a digital platform and to the ACT's size and property market.

Legislative overview

The *Revenue Legislation Amendment Act 2017* (effective 18 September 2017) amended a number of pieces of legislation, primarily the Duties Act and the *Land Titles Act 1925* (Land Titles Act), to support the Barrier Free model. The amendments included:

- **Moving the trigger for duty payment** from the execution date of the contract to the point of land titles registration at Access Canberra.
- **Consolidating several exemptions** across the Duties Act without changing their effect. For example, the exemptions for family law agreements were moved to part 11.2 of the Act.
- **Abolition of \$20 and \$200 nominal duty** by converting all nominal concessions to full exemptions.
- **Abolition of stamping requirements.** Instead, dutiable transactions which affect the title register are required to be lodged for registration with Access Canberra within 14 days of settlement. All transactions which do not affect the title register are required to be submitted via SmartForm.
- **Authorising Access Canberra to collect information on behalf of the ACT Revenue Office.** In the Barrier Free model, Access Canberra is required to notify the ACT Revenue Office of each dutiable transaction.
- **Extending the sale of land process to unpaid duty.** This process formerly applied to rates, land tax and land rent only. It allows the Commissioner to obtain a court order to sell property in order to recover tax in arrears. This is a robust option to protect revenue in the absence of stamping requirements (formerly, the stamp guaranteed the payment of duty before registration of a transaction).

Exchange and settlement in the Barrier Free model

Almost all conveyancing transactions executed on or after 18 September 2017 will be registered under the Land Titles Act and so are subject to the Barrier Free model. These include grants of Crown leases, transfers of dutiable property and contracts for sale.

The date that duty liability arises under the Act, section 11, continues to be the date of entry into an agreement to purchase property, the date of grant or the date of transfer – whichever occurs first (not settlement or registration). Duty is calculated using the rates applying as at this date.

This may also be known as the contract date, execution date, exchange date or liability date.

If a concession or exemption applies to the transaction, please be aware that unless otherwise specified, the date of liability is the relevant date for determining whether the transaction is eligible for the concession or exemption.

Buyer Verification Declaration

From 1 July 2017, Access Canberra requires both buyers and sellers to submit a Buyer Verification declaration and Seller Verification Declaration respectively before a transfer can be lodged and registered. These online forms are available on the Access Canberra website at www.accesscanberra.act.gov.au.

The Buyer Verification Declaration is relevant to the Barrier Free model as the buyer of a property is liable for duty under the Duties Act.

When completed, an email with a unique reference number and a submission date will be sent to the nominated email address. The forms requiring these buyer and seller form numbers and dates are marked in the instructions of each form.

Access Canberra requires both a reference number and a submission date from the buyer and seller for a lodgement to be accepted.

'Off the plan' purchase agreements

In the Barrier Free model there is no distinction between 'off the plan' purchase contracts and other contracts. The duty for off the plan property purchases will be handled under the Barrier Free model timeframe of 14 days after title registration.

Rescissions

Under the Barrier Free model duty is not paid before settlement – therefore, contracts for sale that are rescinded do not give rise to refunds of duty. If the agreement is cancelled and does not give effect to a subsale, no further action is required and the contract does not have to be lodged with the ACT Revenue Office.

If a subsale occurs, the purchaser or transferee under the cancelled agreement must lodge the contract via the Subsale SmartForm within 14 days of the cancellation date and pay duty on that transaction.

For more information on lodging subsales outside the Barrier Free model and to access the form, see the information under the 'Barrier Free Conveyancing' tab on www.revenue.act.gov.au.

Why can't I pay before settlement?

Under the Barrier Free model a client's account will not be created until Access Canberra provides notice of the transaction with all the required information to the ACT Revenue Office, at which time a notice of assessment will be issued.

As the creation of the client account is a technical prerequisite to accepting a payment, it is not possible for the ACT Revenue Office to accept payment pre-settlement or at the time of title registration for a Barrier Free transaction.

Lodgement and registration in the Barrier Free model

After you enter into an agreement to purchase property and settlement has occurred, you have (or your agent has) 14 days after settlement to lodge the relevant transfer instrument for title registration with Access Canberra. The Commissioner may permit a longer period by making a

notifiable instrument.

Access Canberra also requires the submission of a Buyer Verification Declaration through an online Smart Form.

Access Canberra will automatically forward information about the transfer to the ACT Revenue Office upon title registration.

Self-representation

Buyers not using a solicitor or agent also receive the benefits of the Barrier Free model and are able to complete the forms themselves.

Identity requirements

Each customer for a Barrier Free transaction is required to provide details from one primary identification document and one secondary identification document as listed in the following tables.

Copies of the documents are not required when submitting the SmartForm – only the identifying numbers need to be entered – but full copies may be subsequently requested by the ACT Revenue Office.

This information must be collected for each transaction in the Barrier Free model in accordance with the *Land Titles Act 1925* (section 178B) and the *Land Titles Regulation 2015*.

The documents are as listed in the following tables. The required details from the document are listed in the second column.

Table 1 – Primary identification documents

Primary identification document	Required details
Birth certificate (Australian or foreign)	<ul style="list-style-type: none">• Issuing jurisdiction• Date of birth• Birth certificate registration number
Current passport (Australian or foreign)	<ul style="list-style-type: none">• Issuing jurisdiction• Date of birth• Passport number• Expiry date
Australian citizenship certificate	<ul style="list-style-type: none">• Certificate number• Date of issue
ImmiCard (issued by the Commonwealth as evidence of immigration status)	<ul style="list-style-type: none">• Card number• Expiry date

Table 2 – Secondary identification documents

Secondary identification document	Required details
Birth certificate (Australian or foreign)	<ul style="list-style-type: none">• Issuing jurisdiction• Date of birth• Birth certificate registration number
Current passport (Australian or foreign)	<ul style="list-style-type: none">• Issuing jurisdiction• Date of birth• Passport number• Expiry date
Australian citizenship certificate	<ul style="list-style-type: none">• Certificate number
Australian driver licence	<ul style="list-style-type: none">• Issuing jurisdiction• Date of birth• Licence number• Expiry date
Medicare card	<ul style="list-style-type: none">• Medicare card number• Individual Reference Number• Expiry date
Australian visa	<ul style="list-style-type: none">• Visa number• Expiry date
ImmiCard (issued by the Commonwealth as evidence of immigration status)	<ul style="list-style-type: none">• Card number• Expiry date

Privacy

As part of the Barrier Free model, Access Canberra is authorised to collect information from property buyers on behalf of the ACT Revenue Office under the Land Titles Act, section 178B. This information is collected through the lodged land title instrument and the corresponding Buyer Verification Declaration.

Information collected by Access Canberra for this purpose is protected by the *Information Privacy Act 2014* and the confidentiality provisions under the *Taxation Administration Act 1999* (TAA). For further information see the ACT Revenue Office's privacy policy available on www.revenue.act.gov.au.

Self-assessment of exemptions (including home buyer assistance)

In the Barrier Free model, taxpayers can assess your own eligibility for home buyer assistance schemes and a range of other concessions and exemptions. In most cases an application is not required before settlement.

Taxpayers can determine their own eligibility for any concessions or exemptions on the ACT Revenue Office website.

Home buyer assistance

The ACT Revenue Office website has online calculators, tools, questionnaires and information to enable taxpayers to work out the concessions that can be claimed at registration, including home buyer assistance and deferred duty.

When completing a questionnaire, taxpayers will be required to answer a range of questions. Based on the information provided the taxpayer will be advised if they are eligible for the concession or exemption. If deemed to be eligible the questionnaire will provide the taxpayer with a concession or exemption code to record on the transfer instrument and/or in the Buyer Verification Declaration as appropriate.

Please note that the First Home Owner Grant continues to be administered under the existing timeframes and must be applied for via SmartForm on the ACT Revenue Office website.

Other exemptions

Most other Duties Act exemptions can be self-assessed on the ACT Revenue Office website and claimed on the Access Canberra forms using the applicable code.

Compliance

For auditing purposes, the questionnaire answer will list supporting documents that taxpayers are required to keep for a period of five years following registration of the transaction with Access Canberra.

Depending on the nature of the assistance and personal circumstances, the taxpayer may be contacted by the ACT Revenue Office after duty has been paid to verify eligibility. Taxpayers are required to retain supporting documentation for five years from the date of registration for any concession or exemptions claimed for auditing purposes.

Assessment and payment in the Barrier Free model

The data collected by Access Canberra will enable the ACT Revenue Office to calculate the duty payable and apply any concessions or exemptions being claimed.

A Notice of Assessment will be generated and emailed to the primary taxpayer (being the first client named on the transfer instrument) and to the client's authorised agent, if applicable.

The notice of assessment will list all liable parties to the transaction, including details of the property being purchased, the duty amount payable, any concessions granted and the unique payment reference number. Payment is limited to BPAY or EFT and must be made within 14 days of title registration.

The taxpayer or authorised agent must make payment using their online payment facility. The taxpayer can retain the receipt of payment from this process as evidence of duty having been paid.

If a concession or exemption has been claimed, the ACT Revenue Office will generate the Notice of Assessment with a nil amount or a reduced amount of duty, taking into account the relevant concession or exemption.

Any other conditions of the associated concession or exemption, such as residency requirements, will be stated in the notice of assessment.

Compliance

Late lodgement for registration

A failure to lodge for registration of title to a Barrier Free transaction in the required period after settlement is treated as a breach of the Land Titles Act (section 47C) and a tax default under the TAA.

The ACT Revenue Office reserves the right to impose penalties on the late registration of a dutiable transaction.

Late payments

Interest is charged on late payments of stamp duty. This process does not change with the Barrier Free model. If payment is received late and interest has been imposed, the taxpayer will be contacted by the ACT Revenue Office's Debt Management Unit regarding the interest payable. If payment is made on time no further interaction will be required with the ACT Revenue Office for this transaction.

Penalty tax may be imposed in addition to interest if the taxpayer has failed to meet obligations required by the law.

Verification of transactions

The ACT Revenue Office will verify and review transactions registered at Access Canberra for any anomalies, and may contact the taxpayer after payment as part of this review. The ACT Revenue Office may also review the taxpayer's eligibility after payment if they have claimed a concession.

Taxpayers are required to keep proper records of the transaction for 5 years under the TAA, as with other ACT taxes.

Unregistered transactions

Holders of unregistered title may be exposed to financial risk if legal title to the property is recorded in the previous owner's name. It is in everyone's interest to lodge an interest for registration as soon as possible.

If a transaction is intentionally not registered to avoid payment of duty, the Commissioner will regard the act as a tax default in making an assessment of the duty owed. Penalties may be applied in these circumstances.

Non-Barrier Free transactions

Dutiable transactions which do not affect the register under the Land Titles Act, or do not cause a change to the register in every case, are treated as being outside the Barrier Free model.

These transactions include:

- Chapter 3 Transactions (landholder duty acquisitions)
- Corporate Reconstruction Transactions
- Declarations of Trust
- Grants of Commercial Leases with a Premium
- Land Use Entitlements
- Options to Purchase Land
- Partnership Interests
- Subsals

In general, these transactions must be lodged directly with the ACT Revenue Office in order to be assessed with duty in compliance with the legislation.

The duty liability for these transactions will continue to be payable 90 days from the grant, transfer or agreement being executed, whichever is earlier. Payment is limited to BPAY or Electronic Funds Transfer.

Lodgement of transactions outside the Barrier Free model must be by SmartForm. All SmartForms are available on the ACT Revenue Office website at www.revenue.act.gov.au. The SmartForm must attach all required supporting documentation for a duty assessment to be raised.

A Notice of Assessment will be generated and emailed to the primary taxpayer and agent, if applicable. The Notice of Assessment will list all liable parties to the transaction, including details of the dutiable transaction, the duty amount payable and the unique payment reference number.

For more information, see the information under the 'Barrier Free Conveyancing' tab on www.revenue.act.gov.au.

Transactions before 18 September 2017

Any dutiable transaction for which the contract or instrument was executed before 18 September 2017, and for which duty was not paid by that date, is subject to special transitional rules.

Under the Barrier Free amendments, the old conveyancing rules continue to apply to such 'in-flight' transactions. That is, duty must be paid within 90 days and stamping of the dutiable instrument is required.

For more information, see the latest version of Revenue Circular *Barrier Free Model – Transactions before 18 September 2017* (DAA019).

Other applications outside Barrier Free model

In addition to the above dutiable transactions that are outside the Barrier Free model, SmartForms will also be used for clients to lodge documents and information for a range of other matters under the *Duties Act 1999*, *First Home Owner Grant Act 2000* and TAA.

These will include:

- Application for Charitable Status and Beneficial Organisation Determinations
- Applications for Corporate Reconstruction Exemption
- Late applications for home buyer assistance schemes
- Requests for extensions and exemptions relating to home buyer assistance schemes
- First Home Owner Grant applications
- Motor Vehicle Duty requests for refund or exemption from duty
- Loose-Fill Asbestos Insulation Eradication Buyback Concession Scheme applications (including Eligible Impacted Properties)
- Partitions – approvals
- Land Rent pre-approval and annual review

For more information, see the information under the 'Barrier Free Conveyancing' tab on www.revenue.act.gov.au.

Signed

Kim Salisbury
Commissioner for ACT Revenue
18 September 2017