Queensland Government

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Public Ruling
Duties Act:

CONCESSIONS FOR HOMES AND AFAD EXEMPTION FOR SPECIFIED FOREIGN RETIREES—DISPOSAL AND PARTIAL RENTING BETWEEN 10 SEPTEMBER AND 5 DECEMBER 2024

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. This public ruling sets out the terms of an administrative arrangement that allows for the benefit of the following concessions and exemption to be kept even though the recipient does not satisfy one of their requirements:

   (a) a transfer duty concession for a home, first home or vacant land on which a first home is to be constructed (the home concessions)

   (b) an additional foreign acquirer duty (AFAD) exemption for specified foreign retirees (the AFAD exemption).

2. Under the *Duties Act 2001* (Duties Act), to retain the full benefit of the home concessions or the AFAD exemption, the recipient is not able to lease or otherwise grant exclusive possession of all or part of the property within 1 year after the recipient moves into the property.

3. Where this requirement is not met, the Duties Act provides for a reassessment of duty to disallow the home concessions or AFAD exemption, in full or in part.

4. Pursuant to the administrative arrangement, the Commissioner will not reassess the home concessions or the AFAD exemption solely because the recipient disposes of the property by leasing or granting exclusive possession of part of the property to another person (a disposal) within 1 year after the recipient moves into the property.

5. The administrative arrangement applies to a disposal that occurs between 10 September 2024 and 5 December 2024 (both dates inclusive).[1]

Overview of the home concessions

6. The Duties Act imposes transfer duty on the dutiable value of dutiable transactions.

7. Chapter 2, part 9 of the Duties Act provides concessions for transfer duty for a dutiable transaction that is one of the following (each a relevant transaction):

   (a) the transfer, or agreement for the transfer, of a home, first home or vacant land on which a first home is to be constructed

   (b) the acquisition—on its creation, grant or issue—of a new right that is a lease

      (i) of residential land on which a home or first home is constructed or of vacant land on which a first home is to be constructed

      and

      (ii) for which a premium, fine or other consideration is payable (a home or vacant land lease)

   (c) the vesting, under section 9(1)(d) of the Duties Act, of a home, first home or of vacant land on which a first home is to be constructed.[2]

8. A residence is a person's home if the person's occupation date for the residence is within 1 year after the person's transfer date for the residential land.[3]

9. A home is a person's first home if, before acquiring the home:

   (a) the person did not hold, and never before held, an interest in other residential land[4] in Queensland or elsewhere other than

      (i) as trustee for another person

      (ii) as lessee

      (iii) as the holder of a security interest

      and

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1 Section 153(1C) of the Duties Act provides details on when the Commissioner will not reassess the home concessions on a disposal that occurs on or after 6 December 2024.
2 Section 85 of the Duties Act
3 Section 86(1) of the Duties Act
4 Section 86A of the Duties Act defines 'residential land' to be land, or the part of land, on which a residence is constructed, and includes the curtilage attributable to the residence if the curtilage is used for residential purposes.

(b) the person was not, and had never been, a vacant land concession beneficiary[5] in relation to land other than the residential land on which the residence is constructed.[6]

10. A residence that is to be constructed on vacant land[7] is a person's first home if both the following apply.

(a) The person's occupation date for the residence is within 2 years after the person's transfer date for the vacant land.

(b) Before acquiring the vacant land:

(i) the person did not hold, and never before held, an interest in residential land in Queensland or elsewhere other than

(A) as trustee for another person

(B) as lessee

(C) as the holder of a security interest

and

(ii) the person was not, and had never been, a vacant land concession beneficiary in relation to land other than the vacant land on which the residence is to be constructed.[8]

11. A person's occupation date for a residence is the date the person, as owner of the residence[9], starts occupying it as the person's principal place of residence.[10] For a transferee who acquired an accommodation unit in a retirement village and is required to enter into a retirement village leasing arrangement[11], a reference to a person occupying a residence as owner of the residence includes a transferee occupying the unit under the sublease.[12]

12. A person's transfer date for residential land or vacant land is the date the person is entitled to possession of the land under the dutiable transaction that is the relevant transaction.[13]

13. Sections 91–94A of the Duties Act outline how the concessional duty will be calculated.

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5 Defined in section 86D of the Duties Act

6 Section 86(2) of the Duties Act. Paragraph 9(a)(ii) does not apply to the interest in land of a lessee of a lease of residential land on which a home or first home is constructed and for which a premium, fine or other consideration is payable.

7 Section 86C of the Duties Act defines that a person's land is 'vacant land' if a residence is to be constructed on the land, and when the person acquired the land, there was no building or part of a building on the land.

8 Section 86B of the Duties Act. Paragraph 10(b)(i)(B) does not apply to the interest in land of a lessee of a lease of residential land on which a home or first home is constructed and for which a premium, fine or other consideration is payable.

9 'Owner' of a residence or vacant land includes the lessee of a lease, mentioned in paragraph 7(b), of the land on which the residence is constructed or is to be constructed (Schedule 6 of the Duties Act).

10 Section 88 of the Duties Act

11 Defined in the Dictionary in Schedule 6 of the Duties Act

12 Sections 88 and 95A of the Duties Act

13 Section 89 of the Duties Act

14. In circumstances where the occupancy requirements are not met, chapter 2, part 14 of the Duties Act (ss.153–155) provides for a reassessment of duty to remove the concession, in full or in part.

15. Relevantly, under s.153, the Commissioner must make a reassessment if a transferee, lessee or vested person for the land, within the year after their occupation date for the residence, disposes of the land, other than because of an intervening event[14], by:

    (a) transferring part or all of it

    (b) leasing or otherwise granting exclusive possession of part or all of it to another person

    or

    (c) surrendering the lease—for a lease of residential land on which a home or first home is constructed or of vacant land on which a first home is to be constructed and for which a premium, fine or other consideration is payable.

Overview of the AFAD exemption

16. Chapter 4 of the Duties Act provides for the imposition of AFAD on direct or indirect acquisitions in land that are liable to transfer duty, landholder duty and corporate trustee duty where the land is 'AFAD residential land'[15] and the acquirer under the transaction is a foreign person.[16]

17. Section 246 of the Duties Act provides an exemption from AFAD for a transaction for which AFAD applies to the extent of the relevant acquirer's[17] interest in dutiable property under the transaction if:

    (a) the transaction is the transfer, or agreement for the transfer, of the property

    (b) at the time the liability for transfer duty on the transaction arises

        (i) the relevant acquirer is a specified foreign retiree[18]

        (ii) the property is AFAD residential land

        (iii) the relevant acquirer's interest in the property is not held on trust

        and

    (c) the relevant acquirer will occupy the residence on the land as the acquirer's principal place of residence

        (i) for a residence on the land at the time liability for transfer duty on the transaction arises—within 1 year after the day on which the acquirer is entitled to possession of the land under the transaction

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14 Defined in the Dictionary in Schedule 6 of the Duties Act
15 Section 232 of the Duties Act
16 Section 240 of the Duties Act
17 Defined in section 246(2) of the Duties Act
18 Defined in section 246(2) of the Duties Act

or

(ii) otherwise—within 2 years after the day on which the acquirer is entitled to possession of the land under the transaction.

18. Sections 246AG–AK of the Duties Act provide for a reassessment of AFAD to remove the exemption if the occupation requirements are not met.

19. Relevantly, under s.246AI the Commissioner must make a reassessment if the relevant acquirer disposes[19] of their interest in the property within 1 year after the day the acquirer occupies the residence.

20. Section 246AJ of the Duties Act sets out circumstances where the Commissioner is not required to make a reassessment, such as where an occupation requirement is not met because of an intervening event.[20]

Ruling and explanation

21. The following paragraphs apply for the purposes of administering the Duties Act in relation to a disposal that occurs between 10 September 2024 and 5 December 2024 (both dates inclusive).

Reassessments for home concessions

22. Despite s.153 of the Duties Act, the Commissioner will not make a reassessment of any of the home concessions under that section solely if a transferee, lessee or vested person for the land disposes of the land between 10 September 2024 and 5 December 2024 (both dates inclusive) by leasing or otherwise granting exclusive possession of part of it within 1 year after their occupation date for the residence.

23. 'Lease' is defined in the Dictionary in Schedule 6 of the Duties Act as:

(a) a lease, or agreement for lease, of land in Queensland

or

(b) an offer for the grant of exclusive possession of land in Queensland.

24. Despite s.155 of the Duties Act, a transferee, lessee or vested person is not required to give a notice and lodge instruments under that section solely because they lease or otherwise grant exclusive possession of part of the land within 1 year after their occupation date for the residence on the land.

25. To remove doubt, the administrative arrangement does not affect any other requirements in the Duties Act for the home concessions.

26. It is only a condition of the administrative arrangement that the disposal occurs between 10 September 2024 and 5 December 2024 (both dates inclusive). The terms of the administrative arrangement can therefore apply even where the transfer duty liability for the

[19] Defined in section 246AG of the Duties Act
[20] Defined in the Dictionary in Schedule 6 of the Duties Act

relevant dutiable transaction arose before 10 September 2024 or the lease ends after 5 December 2024.

Example 1—part of the property leased where liability arose before 1 September 2024 and lease ends after 5 December 2024

Anthony and Antonia received a first home concession for a home purchased on 1 February 2024 (the date liability for transfer duty arose). They began to occupy the home as their principal place of residence on 1 June 2024. They then leased 1 of the bedrooms in the home on 1 October 2024, for a period of 10 months, ending 1 August 2025.

Assuming they complied with all other requirements for the concession, Anthony and Antonia will be entitled to retain the benefit of the concession because they disposed of part of the property by way of a lease after 10 September 2024 and before 5 December 2024, even though liability for transfer duty arose before that date and the term of the lease ends after 5 December 2024.

27. Because 'lease' is defined broadly in the Duties Act, it can include any type of leasing arrangement, such as short-term and holiday letting.

Example 2—holiday letting

Jasmine received a home concession for a home she purchased and occupied during July 2024. After 10 September 2024 and before 5 December 2024, she began to use 1 of the bedrooms in the home for holiday letting via an online platform.

Assuming she has complied with all other requirements of the concession, Jasmine will be entitled to retain the benefit of the concession because the disposal by way of lease only relates to part of the property.

28. Even where disposal may be by way of multiple leases of a property, the terms of the administrative arrangement will continue to apply provided the total of the areas under those leases does not relate to the whole of the property.

Example 3—multiple leases

Kathryn and Sophie received a home concession for a 3-bedroom home they purchased and occupied after 10 September 2024. Within 1 year after the day they began to occupy the property, and before 5 December 2024, they leased 2 of the bedrooms to 2 separate people under separate lease agreements.

Assuming they complied with all other requirements of the concession, Kathryn and Sophie will be entitled to retain the benefit of the concession because the disposal by way of the multiple leases only relates to part of the property.

29. Further, under the Duties Act, there is no requirement for leases to be in writing.

Example 4—no formal lease agreement

Amelia received a home concession for a home she purchased and occupied after 10 September 2024. Within 1 year after the day she began to occupy the property, and before 5 December 2024, she rented a bedroom in the home to her friend. There is no formal lease agreement in place.

Assuming she has complied with all other requirements of the concession, Amelia will be entitled to retain the benefit of the concession because the disposal by way of lease only relates to part of the property.

Further disposal and reassessments for home concessions

30. Section 153(2) of the Duties Act sets out a formula that the Commissioner must use when making a reassessment to impose further transfer duty if a disposal occurs under s.153. The formula allows for the retention of a partial concession, based on the proportion of the year between the occupation date and the date of disposal.

31. If a transferee, lessee or vested person makes a disposal to which the administrative arrangement does not apply, the reassessment provisions under s.153 of the Duties Act will apply as usual.

32. To remove doubt, a disposal under the usual operation of s.153 of the Duties Act can still occur even if the administrative arrangement has applied to a prior disposal.[21] Paragraph 33 clarifies how the formula under s.153(2) operates, where:

    (a) a transferee, lessee or vested person disposes the land under paragraph 22 to which the Commissioner does not make a reassessment of transfer duty

    and

    (b) the transferee, lessee or vested person subsequently disposes of the land in circumstances to which the administrative arrangement does not apply.

33. For the purposes of reassessing transfer duty using the formula under s.153(2) of the Duties Act, the reference to 'the date of disposal of the land' is the date the land is subsequently disposed of under paragraph 32(b).

34. Therefore, the benefit of the administrative arrangement will cease to apply, and the Commissioner will make a reassessment of the home concessions, whenever there is a subsequent sale of all or part of—or a subsequent lease of all of—the property.

Example 5—leasing part of the property followed by leasing the entire property

> Ethan received a first home concession for a home he purchased and occupied after 10 September 2024. Before 5 December 2024, he leased 1 of the bedrooms in the home under a 3-month lease. At the end of this lease, Ethan leased the entire home and he moved out. This all occurred within 1 year after the day he began to occupy the property.
>
> Ethan will be entitled to retain the benefit of the concession in relation to the first lease because this disposal only relates to part of the property (and assuming he has complied with all other requirements of the concession up to this point). However, transfer duty will be reassessed in relation to the second lease because Ethan has disposed of all of the property.

Reassessment of AFAD exemption

35. Despite s.246AI of the Duties Act, the Commissioner will not make a reassessment of an exemption under that section solely if the relevant acquirer disposes of their interest in the property between 10 September 2024 and 5 December 2024 (both dates inclusive) by leasing or otherwise granting exclusive possession of part of it within 1 year after the day they occupy the residence on the land.

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[21] See Example 5

36. ‘Lease’ is defined in the Dictionary in Schedule 6 of the Duties Act as:

    (a) a lease, or agreement for lease, of land in Queensland

    or

    (b) an offer for the grant of exclusive possession of land in Queensland.

37. Despite s.246AK of the Duties Act, a relevant acquirer is not required to give a notice and lodge instruments under that section solely because they dispose of their interest in the property by leasing or otherwise granting exclusive possession of part of it within 1 year after the day they occupy the residence on the land.

38. To remove doubt, the administrative arrangement does not affect any other requirements for the AFAD exemption in the Duties Act.

39. It is only a condition of the administrative arrangement that the disposal occurs between 10 September 2024 and 5 December 2024 (both dates inclusive). The terms of the administrative arrangement can therefore apply even where the AFAD liability for the transaction arose before 10 September 2024 or the lease ends after 5 December 2024.

Further disposal and reassessment of AFAD exemption

40. Section 246AI(2) of the Duties Act sets out a formula the Commissioner must use when making a reassessment to impose AFAD if a disposal occurs under s.246AI. The formula allows for the retention of a partial exemption, based on the proportion of the year between the day the relevant acquirer occupied the residence and the date of disposal.

41. If a relevant acquirer makes a disposal to which the administrative arrangement does not apply, the reassessment provisions under s.246AI of the Duties Act will apply as usual.

42. To remove doubt, a disposal under the usual operation of s.246AI of the Duties Act can still occur even if the administrative arrangement has applied to a prior disposal. Paragraph 43 clarifies how the formula under s.246AI(2) operates, where:

    (a) a relevant acquirer disposes of their interest in the property under paragraph 35 to which the Commissioner does not make a reassessment of transfer duty

    and

    (b) the relevant acquirer subsequently disposes of their interest in the property in circumstances to which the administrative arrangement does not apply.

43. For the purposes of reassessing AFAD using the formula under s.246AI(2) of the Duties Act, the reference to ‘the day of disposal of the acquirer’s interest’ is the day the interest is subsequently disposed of under paragraph 42(b).

44. The principles demonstrated in examples 1–5 of this ruling relating to the home concessions are also relevant for a disposal relating to the AFAD exemption.

Date of effect

45. This public ruling takes effect from 6 December 2024.

Simon McKee
Commissioner of State Revenue
Date of issue: 3 March 2025

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.18.4	Date of issue	6 December 2024	Current
DA000.18.3	20 December 2024	6 December 2024	27 February 2025
DA000.18.2	6 December 2024	6 December 2024	18 December 2024
DA000.18.1	19 September 2024	10 September 2024	5 December 2024

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