



## Calculation of First Home Owner Concession involving Excluded Persons under the First Home Owner Grant Act

This Commissioner's practice details how the Commissioner will calculate the first home owner concessional rate of duty ('FHOR') under the *Duties Act 2008* ('Duties Act') in circumstances where:

- the dutiable transaction is the purchase or acquisition of vacant land;
  - the parties to the transaction are:
    - a person or persons eligible to receive the first home owner grant ('grant') under the provisions of the *First Home Owner Grant Act 2000* ('FHOG Act'); and
    - a person or persons who are excluded from the requirement to be an eligible grant applicant under regulation 7(2a) of the *First Home Owner Grant Regulations 2000* ('FHOG Regulations');
- and
- the parties to the transaction intend to subdivide and partition the land resulting in one lot being owned solely by the party or parties eligible to receive the first home owner grant.

### Background

Upon application, the grant may be payable on an eligible transaction<sup>1</sup> that will result in an eligible person acquiring a relevant interest<sup>2</sup> in, and becoming an owner<sup>3</sup> of, land on which a home<sup>4</sup> is or is to be built.

The FHOR applies to a transfer or agreement for the transfer of dutiable property if:

- the unencumbered value of the land, or the land and home, does not exceed:
    - \$400,000 for vacant land; or
    - \$530,000 for the land and home;<sup>5</sup>
- and
- each transferee<sup>6</sup> or substituted transferee receives the grant in relation to the property; or
  - each transferee or substituted transferee would have received the grant if they had purchased an established home or did not pay consideration for the transfer of the property.<sup>7</sup>

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<sup>1</sup> FHOG Act s 14.

<sup>2</sup> FHOG Act s 6.

<sup>3</sup> FHOG Act s 5.

<sup>4</sup> FHOG Act s 4.

<sup>5</sup> A person who is not entitled to the first home owner concessional rate of duty due to the value of the home or vacant land exceeding the specified thresholds may be eligible for the residential rate of transfer duty.

<sup>6</sup> Other than a person who is not required to join in making an application for a grant as per section 141(1)(c) of the Duties Act.

If the eligible transaction<sup>8</sup> relates to acquiring a relevant interest in land on which a home will be built under a comprehensive home building contract or by construction as an owner builder, the application of duty will differ from a transaction to purchase an existing home with regard to:

- the commencement<sup>9</sup> and completion<sup>10</sup> dates of the transaction;
- the date on which duty is assessed and, if required, reassessed; and
- the date on which the first home owner receives or becomes eligible to receive the grant.

Under section 8 of the FHOG Act, a grant is payable if each applicant complies with the eligibility criteria and the eligible transaction has been completed. If the acquisition is land on which it is intended that a home be built:

- liability for duty arises when the instrument effecting the transaction is executed;<sup>11</sup> and
- duty is chargeable at the general rate on the dutiable value provided for in the instrument effecting the transaction.<sup>12</sup>

A reassessment at the concessional rate of duty will be made under section 143(1) of the Duties Act, and a refund of duty may be provided to the first home owner if and when:

- all applicants receive or become eligible to receive the grant;
- the transaction is deemed to be a grant concessional transaction under section 142(1) of the Duties Act; and
- application for reassessment is made within the required timeframe.<sup>13</sup>

While most transactions of this nature are reasonably straightforward, difficulties arise where a transaction involves the purchase of vacant land that is to be subdivided and partitioned after construction is complete, and the parties to the transaction are the grant applicant and another person who is an excluded person.<sup>14</sup>

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<sup>7</sup> Duties Act s 142A(1)(b).

<sup>8</sup> FHOG Act s 14.

<sup>9</sup> Under section 14AA(1) of the FHOG Act, the commencement of a comprehensive home building contract is the date when the contract is made, and the commencement of a home built by an owner builder is the date when laying the foundations for the home begins.

<sup>10</sup> Under section 14AA(2) of the FHOG Act, the eligible transaction is considered to have been completed when the building is ready for occupation as a place of residence.

<sup>11</sup> Duties Act s 19(1)(b).

<sup>12</sup> Duties Act s 26(1).

<sup>13</sup> Duties Act s 144(2).

<sup>14</sup> As per FHOG regulation 7(2a).

## **Excluded persons**

Under section 16(1) of the FHOG Act, an application for the grant must be made by all interested persons,<sup>15</sup> unless a person is excluded.

Regulation 7(2a) of the FHOG Regulations excludes a person from the requirement to be an applicant with respect to a new home<sup>16</sup> where that person owns the land to which the application relates and the land is to be subdivided, subject to satisfying the Commissioner that:

- it is proposed at the commencement date of the eligible transaction that the land on which the home is to be built will be the subject of a strata plan or survey-strata plan registered under the *Strata Titles Act 1985*;
- the strata plan or survey-strata plan is, or will be, registered as soon as practicable after the eligible transaction is completed; and
- the person is not, or will not become, as a result of the registration of the strata plan or survey-strata plan, an owner of the home.

A person is unable to be excluded when the land will be subdivided by another freehold plan.

## **Transaction consideration and value**

Section 14AB of the FHOG Act provides that the consideration for a transaction is:

- for a building contract – the total consideration payable for the building work; and
- for a home built by an owner builder – the actual costs to the owner of carrying out the work excluding any allowance for the owner builder's own labour.

When determining the total value of a transaction:

- for a contract to build a home<sup>17</sup> – the total value of the transaction is the amount calculated by adding:
  - the consideration for the transaction; and
  - the value of the relevant interest in the land on which the home is to be built at the commencement date; or
- for a home built by an owner builder<sup>18</sup> – the total value of the transaction is the amount calculated by adding:
  - the unencumbered value of the home at the date the transaction is completed; and
  - the value of the relevant interest in the land on which the home is built at the date the transaction is completed.

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<sup>15</sup> FHOG Act s 16(3): interested person, in relation to an application for a grant, means a person who is, or will be, on completion of the transaction to which the application relates, an owner of the relevant home.

<sup>16</sup> A 'new home' means a home that is built under a comprehensive home building contract or by an owner builder.

<sup>17</sup> FHOG Act s 14AC(1)(b).

<sup>18</sup> FHOG Act s 14AC(1)(c).

The value of the relevant interest is the greater of the consideration paid for the transaction or the unencumbered value of the home at the date the transaction is completed.<sup>19</sup>

### ***Application of Commissioner's Practice***

The example below illustrates how the Commissioner will apportion and calculate the duty in circumstances detailed in this practice. Each case will be considered on its own circumstances and adjusted for different ownership shares or other factors to determine how the duty concession applies.

#### ***Example 1***

A person and his parents enter into a contract to buy a vacant block of land for \$400,000. They intend to subdivide the land and each build a new home. They purchase the land as tenants in common with the relevant interest of the son being 50 per cent and the parents (jointly) as 50 per cent.

Duty of \$14,915 is paid on the purchase at the general rate of duty.

The son meets the eligibility criteria to receive the grant. His parents are not eligible to receive the grant as they have previously owned a home.

The son and his parents begin the process of subdividing the land and have paperwork drawn up for a survey-strata plan which will be registered once construction of the home is complete. The son then enters into a comprehensive building contract to build a home for \$300,000 on the front strata lot, and his parents enter into a contract to build a home for \$450,000 on the rear strata lot.

The transaction is reassessed at the residential rate of duty. Duty of \$13,015 is payable based on the value of the original eligible transaction. The difference between duty assessed at the general rate and duty subsequently reassessed at the residential rate (\$1,900) is refunded to the Son and his Parents.

Following completion of the homes, the parties intend to register the survey-strata plan and have a separate strata title issued for each strata lot. The son will become the sole owner of the front strata lot and his parents will become the joint owners of the rear strata lot.

### **Commissioner's Practice**

1. If vacant land is acquired by an eligible first home owner and an excluded person:
  - 1.1 concessional duty will be calculated and apportioned between the original transferees who purchased the unsubdivided vacant land when the eligible first home owner becomes entitled to the grant; and
  - 1.2 the relevant interest in the land held by the eligible first home owner is the interest that person has at the time of the eligible transaction.

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<sup>19</sup> FHOG Act s 14AC(2).

*Example 2 - Total value, relevant interest and eligibility for the grant*

Following registration of the survey-strata plan, the land will be subdivided and the title registered so that the son will be the only owner of the front strata lot and the only owner of the home built on that lot.

The relevant interest the son held in the land at the time of signing the comprehensive building contract (the commencement of the eligible transaction) is 50 per cent of the original lot. The value of the son's interest is \$200,000 (assuming the value did not increase between the time the land was purchased and the time the building contract was signed).

The total value of the transaction for the purposes of determining the FHOG cap is \$500,000, which is the value of the contract to build the home (\$300,000) plus the value of the son's 50 per cent interest in the lot on which the home is to be built at the time the contract is made (\$200,000). As the total value of the transaction is within the FHOG cap amount of \$750,000, the son is eligible to receive a grant.

If the subdivision had been completed before the home building contract was signed, the total value would comprise the consideration for the construction of the home together with the value of the strata titled lot on which the home is to be built. This would require the entire strata titled lot to be valued without reference to the relevant interest.

2. When duty is reassessed to apply the first home owner concessional rate,<sup>20</sup> the Commissioner will only consider the part of the transaction that constitutes the first home owner's interest in the land.
3. While the value of the land and home determines the total transaction value for the purposes of the FHOG cap, the duties concessional value threshold only takes into account the unencumbered value of the land prior to construction of the home. When duty is reassessed to apply the first home owner concessional rate, the value of land is the first home owner's relevant interest in the land at the time of the dutiable transaction.

*Example 3 - Relevant interest and eligibility for concessional rate of duty*

The dutiable transaction is the agreement for the transfer of dutiable property. In this instance, the dutiable transaction occurred when the son and his parents purchased the block of land.

When calculating the value of the total transaction for the purposes of the first home owner concessional rate of duty, only the son's relevant interest in the land at the time of the dutiable transaction is taken into account.

The value of the son's relevant interest (50 per cent) in the land at the date on which the dutiable transaction was entered into is \$200,000, which is below the \$400,000 first home owner concessional rate of duty threshold.

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<sup>20</sup> Duties Act s 142.

### **Calculation of concessional duty**

4. As an excluded person is not eligible for the grant, their interest in an eligible transaction is not subject to the first home owner concessional rate of duty. However, it may be subject to the residential rate of duty.
5. In these circumstances, duty is calculated as follows:
  - 5.1 Duty applies at the general rate on the value of the original dutiable transaction for the purchase of vacant land.
  - 5.2 Upon entering into a contract for the construction of a residence on the land or beginning construction as an owner builder, the duty will be reassessed at the residential rate on the value of the original dutiable transaction.<sup>21</sup>
  - 5.3 Upon applying for and meeting the eligibility requirements for the first home owner grant, the duty payable by the eligible first home owner will be reassessed at the first home owner concessional rate on their percentage interest in the property.<sup>22</sup>

#### ***Example 4 - Reassessment of duty***

Duty of \$14,915 is assessed at the general rate of duty and paid on the dutiable transaction.

When reassessed as \$13,015 under the residential rate of duty, the son and his parents receive a refund of \$1,900.

When the son's percentage interest in the land (\$200,000) is then reassessed at the first home owner concessional rate of duty, his duty liability is reduced to nil. The son receives a refund of \$6,507.50 (50 per cent of the residential rate assessment).

### **Date of Effect**

This Commissioner's practice takes effect from 17 June 2019.

Nicki Godecke  
COMMISSIONER OF STATE REVENUE

17 June 2019

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<sup>21</sup> The amount by which duty has been reduced will be refunded and apportioned to the parties according to their percentage interest in the property.

<sup>22</sup> As above.

**Commissioner’s Practice History**

Commissioner’s Practice	Issued	Dates of effect	
		From	To
DA 30.0	11 June 2013	11 June 2013	2 July 2014
DA 30.1	22 July 2014	3 July 2014	16 June 2019
DA 30.2	17 June 2019	17 June 2019	30 June 2022

**SUPERSEDED**