

Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Bill 2023

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Duties Amendment (Off-the-Plan Concession
and Foreign Persons Exemptions) Bill 2023**

A Bill for

An Act to amend the *Duties Act 2008*.

The Parliament of Western Australia enacts as follows:

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1 **1. Short title**

2 This is the *Duties Amendment (Off-the-Plan Concession and*
3 *Foreign Persons Exemptions) Act 2023.*

4 **2. Commencement**

5 This Act comes into operation as follows —

6 (a) sections 1 and 2 — on the day on which this Act
7 receives the Royal Assent;

8 (b) the rest of the Act — on the day after that day.

9 **3. Act amended**

10 This Act amends the *Duties Act 2008*.

11 **4. Section 205ZA amended**

12 (1) Before section 205ZA(1) insert:

13

14 (1A) In this section —

15 *substantial refurbishment* does not include minor
16 works to a building or part of a building.

17

18 (2) Delete section 205ZA(2)(a) and (b) and insert:

19

20 (a) the person liable to pay foreign transfer duty on
21 the transaction or an associate of the person
22 intends to —

23 (i) construct or complete the construction
24 of 10 or more dwellings on the parcel of
25 land; or

1 (ii) provide 10 or more dwellings on the
2 parcel of land by carrying out, or
3 completing the carrying out of,
4 substantial refurbishment of a building,
5 or part of a building, that is not capable
6 of being used solely or dominantly as a
7 place of residence;

8 and

9
10 (3) In section 205ZA(3):

11 (a) in paragraph (a) delete “construct,” and insert:

12
13 construct —

14
15 (b) delete paragraphs (b) and (c) and insert:

16
17 (b) a dwelling the person or associate intends to
18 provide by carrying out substantial
19 refurbishment of a building, or part of a
20 building — if all licences, approvals,
21 registrations, exemptions and other kinds of
22 authorisation necessary to carry out the
23 refurbishment for that dwelling or another
24 dwelling on the parcel of land are issued,
25 granted or obtained; or

26 (c) a dwelling the person or associate intends to
27 complete the construction of — if that dwelling
28 or another dwelling on the parcel of land,
29 construction of which is completed by the
30 person or associate, is ready for occupation as a
31 place of residence; or

32 (d) a dwelling the person or associate intends to
33 provide by completing the carrying out of
34 substantial refurbishment of a building, or part

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1 of a building — if that dwelling, or another
2 dwelling on the parcel of land for which
3 substantial refurbishment is completed by the
4 person or associate, is ready for occupation as a
5 place of residence.
6

7 **5. Section 205ZB amended**

8 Delete section 205ZB(2)(a).

9 **6. Section 205ZO amended**

10 (1) Before section 205ZO(1) insert:
11

12 (1A) In this section —
13 *substantial refurbishment* does not include minor
14 works to a building or part of a building.
15

16 (2) Delete section 205ZO(1)(a) and (b) and insert:
17

- 18 (a) when the acquisition occurs the residential
19 landholder or a linked entity in respect of the
20 landholder is entitled to a parcel of land and the
21 landholder, linked entity or an associate of the
22 landholder intends to —
- 23 (i) construct or complete the construction
24 of 10 or more dwellings on the parcel of
25 land; or
- 26 (ii) provide 10 or more dwellings on the
27 parcel of land by carrying out, or
28 completing the carrying out of,
29 substantial refurbishment of a building,
30 or part of a building, that is not capable

1 of being used solely or dominantly as a
2 place of residence;

3 and
4

5 (3) In section 205ZO(2):

6 (a) in paragraph (a) delete “construct,” and insert:

7

8 construct —

9

10 (b) delete paragraphs (b) and (c) and insert:

11

12 (b) a dwelling the landholder, linked entity or
13 associate intends to provide by carrying out
14 substantial refurbishment of a building, or part
15 of a building — if all licences, approvals,
16 registrations, exemptions and other kinds of
17 authorisation necessary to carry out the
18 refurbishment for that dwelling or another
19 dwelling on the parcel of land are issued,
20 granted or obtained; or

21 (c) a dwelling the landholder, linked entity or
22 associate intends to complete the construction
23 of — if that dwelling or another dwelling on the
24 parcel of land, construction of which is
25 completed by the landholder, linked entity or
26 associate, is ready for occupation as a place of
27 residence; or

28 (d) a dwelling the landholder, linked entity or
29 associate intends to provide by completing the
30 carrying out of substantial refurbishment of a
31 building, or part of a building — if that
32 dwelling, or another dwelling on the parcel of
33 land for which substantial refurbishment is
34 completed by the landholder, linked entity or

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1 associate, is ready for occupation as a place of
2 residence.
3

4 **7. Section 205ZP amended**

5 Delete section 205ZP(1)(a) and (b) and insert:
6

- 7 (a) when the acquisition occurs, the residential
8 landholder or a linked entity in respect of the
9 landholder is entitled to a parcel of land and the
10 landholder, linked entity or an associate of the
11 landholder intends to subdivide or complete
12 subdividing the parcel of land for the purpose
13 of a person constructing 10 or more dwellings
14 on the land; and
15

16 **8. Chapter 6A inserted**

17 After section 266D insert:
18

19 **Chapter 6A — Off-the-plan concession for**
20 **transfer duty and foreign transfer duty**

21 **266E. Terms used**

22 In this Chapter —

23 *cancelled transaction* has the meaning given in
24 section 107(1);

25 *community titles (building) scheme* has the meaning
26 given in the *Community Titles Act 2018* section 11(7);

27 *concessional off-the-plan agreement* means —

- 28 (a) a concessional pre-construction agreement; or
29 (b) a concessional under construction agreement;

- 1 **concessional pre-construction agreement** has the
2 meaning given in section 266F;
- 3 **concessional under construction agreement** has the
4 meaning given in section 266FA;
- 5 **concession amount**, for a concessional off-the-plan
6 agreement, means the concession amount for the
7 agreement determined under sections 266L to 266N;
- 8 **concession day**, in relation to a concessional
9 off-the-plan agreement, has the meaning given in
10 section 266H;
- 11 **dutiable value** has the meaning given in section 9;
- 12 **lot** —
- 13 (a) in relation to a strata scheme — means a lot in a
14 strata scheme as defined in the *Strata Titles*
15 *Act 1985* section 3(1); or
- 16 (b) in relation to a community titles (building)
17 scheme — has the meaning given in the
18 *Community Titles Act 2018* section 3(1);
- 19 **multi-tiered scheme** means a strata scheme or a
20 community titles (building) scheme, other than a strata
21 scheme or community titles (building scheme) in which
22 no part of a floor of a lot or part of a lot in a building
23 forms or joins the ceiling of another lot or part of a lot
24 in a building;
- 25 **new residential unit or apartment** has the meaning
26 given in section 266G(1) and (2);
- 27 **Off-the-Plan Duty Rebate Scheme** means the
28 administrative scheme for the payment of rebates on
29 duty known as the Off-the-Plan Duty Rebate Scheme;
- 30 **replacement transaction**, in relation to a cancelled
31 transaction, has the meaning given in section 107(1);
- 32 **strata scheme** has the meaning given in the *Strata*
33 *Titles Act 1985* section 9;

1 *subsale transaction*, in relation to a cancelled
2 transaction, has the meaning given in section 107(1);
3 *unadjusted duty amount*, in relation to a concessional
4 off-the-plan agreement, has the meaning given in
5 section 266I.

6 **266F. Concessional pre-construction agreement**

- 7 (1) An agreement for the transfer of dutiable property is a
8 *concessional pre-construction agreement* if the
9 agreement is —
- 10 (a) an agreement for the purchase, from the owner
11 of land to be subdivided by the registration of a
12 multi-tiered scheme or an amendment of a
13 multi-tiered scheme, of a lot in the scheme on
14 which there will be a new residential unit or
15 apartment; and
- 16 (b) entered into before development for the
17 subdivision commences; and
- 18 (c) entered into in the period beginning on
19 23 October 2019 and ending on 30 June 2025.
- 20 (2) An agreement (the *new agreement*) for the transfer of
21 dutiable property is also a *concessional*
22 *pre-construction agreement* if the new agreement is —
- 23 (a) an agreement for the purchase, from the owner
24 of land to be subdivided by the registration of a
25 multi-tiered scheme or an amendment of a
26 multi-tiered scheme, of a lot in the scheme on
27 which there will be a new residential unit or
28 apartment; and
- 29 (b) substantially similar in effect to an earlier
30 cancelled transaction that —
- 31 (i) was a concessional pre-construction
32 agreement under subsection (1); and

- 1 (ii) was between all of the same parties as
2 the parties to the new agreement, except
3 that the seller was different;
4 and
5 (c) entered into after development for the
6 subdivision commences, but before
7 development for the subdivision is completed.
- 8 (3) Despite subsections (1) and (2), an agreement (the
9 **relevant agreement**) to which either of those
10 subsections applies is not a **concessional**
11 **pre-construction agreement** —
- 12 (a) if a rebate has been paid in relation to the
13 relevant agreement under the Off-the-Plan Duty
14 Rebate Scheme; or
15 (b) if —
16 (i) development for the subdivision of the
17 land by the registration of the
18 multi-tiered scheme, or the amendment
19 of the multi-tiered scheme, is completed
20 before 31 August 2023; and
21 (ii) the eligibility criteria for payment of a
22 rebate under the Off-the-Plan Duty
23 Rebate Scheme are not satisfied in
24 relation to the relevant agreement;
25 or
26 (c) if the relevant agreement is a replacement
27 transaction in relation to a cancelled
28 transaction; or
29 (d) if the relevant agreement is a subsale
30 transaction in relation to a cancelled transaction
31 that was a concessional pre-construction
32 agreement; or

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- 1 (e) if —
- 2 (i) the relevant agreement is between all of
- 3 the same parties as the parties to, and is
- 4 substantially similar in effect to, an
- 5 earlier cancelled transaction; and
- 6 (ii) in the opinion of the Commissioner, the
- 7 sole or dominant purpose of any party in
- 8 entering into the relevant agreement is
- 9 to obtain a rebate, or a higher amount of
- 10 rebate, under the Off-the-Plan Duty
- 11 Rebate Scheme;
- 12 or
- 13 (f) if the relevant agreement is substantially similar
- 14 in effect to an earlier cancelled transaction
- 15 that —
- 16 (i) was between all of the same parties as
- 17 the parties to the relevant agreement,
- 18 except that the seller was different; and
- 19 (ii) was entered into before
- 20 23 October 2019.
- 21 (4) For the purposes of subsection (3)(b)(ii), the eligibility
- 22 criteria for payment of a rebate under the Off-the-Plan
- 23 Duty Rebate Scheme are taken to be the criteria set out
- 24 in the application form entitled “Form FDA49 —
- 25 Off-the-Plan Rebate: Pre-construction Contract” as
- 26 published on the Commissioner’s website on
- 27 31 August 2023.
- 28 (5) The Commissioner must ensure that the form referred
- 29 to in subsection (4) remains published on the
- 30 Commissioner’s website.

1 **266FA. Concessional under construction agreement**

- 2 (1) An agreement for the transfer of dutiable property is a
3 *concessional under construction agreement* if the
4 agreement is —
- 5 (a) an agreement for the purchase, from the owner
6 of land to be subdivided by the registration of a
7 multi-tiered scheme or an amendment of a
8 multi-tiered scheme, of a lot in the scheme on
9 which there will be a new residential unit or
10 apartment; and
- 11 (b) entered into after development for the
12 subdivision commences, but before
13 development for the subdivision is completed;
14 and
- 15 (c) entered into in the period beginning on
16 31 August 2023 and ending on 30 June 2025.
- 17 (2) An agreement (the *new agreement*) for the transfer of
18 dutiable property is also a *concessional under*
19 *construction agreement* if —
- 20 (a) subsection (1)(a) and (b) apply to the new
21 agreement; and
- 22 (b) the new agreement is substantially similar in
23 effect to an earlier cancelled transaction that —
- 24 (i) was a concessional under construction
25 agreement under subsection (1); and
- 26 (ii) was between all of the same parties as
27 the parties to the new agreement, except
28 that the seller was different.
- 29 (3) Despite subsections (1) and (2), an agreement (the
30 *relevant agreement*) to which either of those
31 subsections applies is not a *concessional under*
32 *construction agreement* if the relevant agreement is —

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- 1 (a) a concessional pre-construction agreement to
2 which section 266F(2) applies; or
3 (b) a replacement transaction in relation to a
4 cancelled transaction; or
5 (c) a subsale transaction in relation to a cancelled
6 transaction that was a concessional off-the-plan
7 agreement; or
8 (d) substantially similar in effect to an earlier
9 cancelled transaction that —
10 (i) was between all of the same parties as
11 the parties to the relevant agreement,
12 except that the seller was different; and
13 (ii) was entered into before 31 August 2023.

14 **266G. New residential unit or apartment**

- 15 (1) For the purposes of sections 266F(1)(a) and (2)(a) and
16 266FA(1)(a), a ***new residential unit or apartment*** is a
17 building, or part of a building, that —
18 (a) may lawfully be used as a place of residence;
19 and
20 (b) in the Commissioner's opinion, is suitable to be
21 used as a place of residence; and
22 (c) is intended to be used solely or dominantly as a
23 place of residence; and
24 (d) is not an existing building or part of an existing
25 building.
26 (2) Despite subsection (1), a building or part of a building
27 is not a ***new residential unit or apartment*** if it is —
28 (a) intended to be used as a hotel, motel, hostel,
29 lodging house, boarding house or serviced
30 apartment; or
31 (b) of a prescribed class.

- 1 (3) For the purposes of subsection (1)(d), an *existing*
2 *building* is a building that has already been constructed
3 when development for the subdivision referred to in
4 section 266F(1)(a) or (2)(a) or 266FA(1)(a) (as the case
5 requires) commences, whether or not refurbishment of
6 the building is undertaken as part of that development.

7 **266H. Concession day for agreement**

- 8 (1) The *concession day* for a concessional off-the-plan
9 agreement is —
10 (a) if subsection (2) does not apply — the day on
11 which the agreement is entered into; or
12 (b) if subsection (2) applies — the day on which
13 the cancelled transaction referred to in
14 subsection (2) is entered into.
- 15 (2) This subsection applies to a concessional off-the-plan
16 agreement (the *new agreement*) if the new agreement
17 is substantially similar in effect to an earlier cancelled
18 transaction that —
19 (a) was —
20 (i) if the new agreement is a concessional
21 pre-construction agreement — a
22 concessional pre-construction
23 agreement under section 266F(1); or
24 (ii) if the new agreement is a concessional
25 under construction agreement — a
26 concessional under construction
27 agreement under section 266FA(1);
28 and
29 (b) was between all of the same parties as the
30 parties to the new agreement, except that the
31 seller was different.

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- 1 (3) If there is more than 1 cancelled transaction of the kind
2 referred to in subsection (2) in relation to a
3 concessional off-the-plan agreement, the reference in
4 subsection (1)(b) to the cancelled transaction is a
5 reference to the earliest of those cancelled transactions.

6 **266I. Unadjusted duty amount for agreement**

7 The *unadjusted duty amount* for a concessional
8 off-the-plan agreement is —

- 9 (a) if foreign transfer duty is not payable on the
10 agreement — the amount of transfer duty that
11 would be payable on the agreement if it were
12 not a concessional off-the-plan agreement; or
13 (b) if foreign transfer duty is payable on the
14 agreement — the total amount of transfer duty
15 and foreign transfer duty that would be payable
16 on the agreement if it were not a concessional
17 off-the-plan agreement.

18 **266J. Determining when development for subdivision of
19 land commences and is completed**

- 20 (1) This section applies in determining for the purposes of
21 this Chapter when development for the subdivision of
22 land by the registration of a multi-tiered scheme, or an
23 amendment of a multi-tiered scheme, commences and
24 is completed.
- 25 (2) Development commences when relevant construction
26 works commence on the land.
- 27 (3) In subsection (2) —
28 *relevant construction works* —
- 29 (a) means excavation or works associated with the
30 construction of a building or structure that is
31 necessary for the subdivision; but

-
- 1 (b) does not include excavation or works consisting
2 of —
- 3 (i) demolishing an existing building or
4 structure; or
- 5 (ii) clearing a site for development; or
- 6 (iii) installing temporary fencing or
7 structures, transportable buildings or
8 advertising materials.
- 9 (4) Development is completed when the land is subdivided
10 by registration of the multi-tiered scheme, or the
11 amendment of the multi-tiered scheme, under the
12 *Strata Titles Act 1985* section 11 or the *Community*
13 *Titles Act 2018* section 14 (as the case requires).

14 **266K. Reduction of duty on concessional off-the-plan**
15 **agreement**

- 16 (1) The amount of transfer duty and (if applicable) foreign
17 transfer duty payable on a concessional off-the-plan
18 agreement is to be reduced by the concession amount
19 for the agreement in accordance with this section.
- 20 (2) If foreign transfer duty is not payable on the
21 agreement, the amount of transfer duty payable on the
22 agreement is to be reduced by the concession amount.
- 23 (3) If foreign transfer duty is payable on the agreement, the
24 duty payable is to be reduced as follows —
- 25 (a) first, the amount of transfer duty payable on the
26 agreement is to be reduced by the concession
27 amount, or by so much of the concession
28 amount as is necessary to reduce the amount of
29 transfer duty payable to zero;
- 30 (b) second, if there is a remainder of the concession
31 amount after the amount of transfer duty
32 payable is reduced to zero — the foreign

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1 transfer duty payable on the agreement is to be
2 reduced by the remainder.

3 **266L. Concession amount**

- 4 (1) Subject to sections 266M(2) and 266N(2)(b), the
5 concession amount for a concessional pre-construction
6 agreement is the lesser of the following —
7 (a) \$50 000;
8 (b) an amount calculated by —
9 (i) determining the applicable concession
10 percentage under the Table according to
11 the concession day of the agreement and
12 the dutiable value of the agreement; and
13 (ii) multiplying that percentage by the
14 unadjusted duty amount for the
15 agreement.

16

Table

Item	Concession day	Dutiable value	Concession percentage (%)
1.	23 October 2019 to 23 October 2021	Any dutiable value	75
2.	24 October 2021 to 31 May 2022	Any dutiable value	50
3.	1 June 2022 to 10 May 2023	\$500 000 or less	100
4.	1 June 2022 to 10 May 2023	More than \$500 000 but less than \$600 000	X calculated under subsection (2)

Item	Concession day	Dutiable value	Concession percentage (%)
5.	1 June 2022 to 10 May 2023	\$600 000 or more	50
6.	11 May 2023 to 30 June 2025	\$650 000 or less	100
7.	11 May 2023 to 30 June 2025	More than \$650 000 but less than \$750 000	Y calculated under subsection (3)
8.	11 May 2023 to 30 June 2025	\$750 000 or more	50

1 (2) The calculation for the purposes of item 4 in the Table
2 to subsection (1) is as follows —

3
$$X = 100 - \left(\frac{V - 500\,000}{100} \times 0.05 \right)$$

4 where —

5 V is the dutiable value of the concessional
6 pre-construction agreement.

7 (3) The calculation for the purposes of item 7 in the Table
8 to subsection (1) is as follows —

9
$$Y = 100 - \left(\frac{V - 650\,000}{100} \times 0.05 \right)$$

10 where —

11 V is the dutiable value of the concessional
12 pre-construction agreement.

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- 1 (4) Subject to sections 266M(2) and 266N(2)(b), the
2 concession amount for a concessional under
3 construction agreement is the lesser of the following —
4 (a) \$50 000;
5 (b) an amount calculated by —
6 (i) determining the applicable concession
7 percentage under the Table according to
8 the dutiable value of the agreement; and
9 (ii) multiplying that percentage by the
10 unadjusted duty amount for the
11 agreement.

Table

Item	Dutiable value	Concession percentage (%)
1.	\$650 000 or less	75
2.	More than \$650 000 but less than \$750 000	Z calculated under subsection (5)
3.	\$750 000 or more	37.5

- 13 (5) The calculation for the purposes of item 2 in the Table
14 to subsection (4) is as follows —

15
$$Z = 75 - \left(\frac{V - 650\,000}{100} \times 0.0375 \right)$$

16 where —

17 V is the dutiable value of the concessional under
18 construction agreement.

1 **266M. Concession amount for concessional off-the-plan**
2 **agreement relating to 2 or more properties**

3 (1) This section applies to a concessional off-the-plan
4 agreement that is an agreement for the purchase of 2 or
5 more lots (the *relevant properties*) in a multi-tiered
6 scheme, on each of which there will be a new
7 residential unit or apartment.

8 (2) The concession amount for the concessional
9 off-the-plan agreement is the total of the concession
10 amounts for each of the relevant properties determined
11 under subsection (3).

12 (3) The concession amounts for the relevant properties are
13 determined as follows —

14 (a) first, apportion the dutiable value of the
15 concessional off-the-plan agreement between
16 each of the relevant properties as decided by
17 the Commissioner;

18 (b) second, apportion the unadjusted duty amount
19 for the agreement between each of the relevant
20 properties according to the proportion that the
21 dutiable value apportioned to that relevant
22 property under paragraph (a) bears to the
23 dutiable value of the agreement;

24 (c) third, determine a concession amount for each
25 of the relevant properties under section 266L as
26 if —

27 (i) that relevant property were the subject
28 of a separate concessional
29 pre-construction agreement or
30 concessional under construction
31 agreement (whichever is relevant); and

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- 1 (ii) the dutiable value of that agreement
2 were the amount apportioned to that
3 relevant property under paragraph (a);
4 and
5 (iii) the unadjusted duty amount for that
6 agreement were the amount apportioned
7 to that relevant property under
8 paragraph (b).

9 **266N. Aggregation of transactions**

- 10 (1) Subsection (2) applies if under section 37 —
11 (a) 2 or more concessional off-the-plan agreements
12 are aggregated and treated as a single dutiable
13 transaction; or
14 (b) 1 or more concessional off-the-plan agreements
15 and 1 or more other dutiable transactions are
16 aggregated and treated as a single dutiable
17 transaction.
- 18 (2) In determining the duty payable on the aggregated
19 transactions —
20 (a) first, under section 37, determine and apportion
21 between the aggregated transactions the amount
22 of transfer duty that would be payable on the
23 aggregated transactions if none of the
24 transactions were a concessional off-the-plan
25 agreement;
26 (b) second, determine a concession amount under
27 section 266L (or, if applicable, sections 266L
28 and 266M) for each of the concessional
29 off-the-plan agreements, treated as a separate
30 transaction, as if the unadjusted duty amount
31 for the agreement were —
32 (i) if foreign transfer duty is not payable on
33 the agreement — the amount (the

- 1 ***apportioned transfer duty amount***) of
2 transfer duty apportioned to the
3 agreement as referred to in
4 paragraph (a); or
- 5 (ii) if foreign transfer duty is payable on the
6 agreement — the total of the
7 apportioned transfer duty amount and
8 the amount of foreign transfer duty that
9 would be payable on the agreement if it
10 were not a concessional off-the-plan
11 agreement;
- 12 (c) third, for each of the concessional off-the-plan
13 agreements, reduce in accordance with
14 section 266K the amount of transfer duty and
15 (if applicable) foreign transfer duty payable by
16 the concession amount for that agreement
17 determined under paragraph (b), as if the
18 amount of transfer duty payable on the
19 agreement were the apportioned transfer duty
20 amount.
- 21 (3) A concessional off-the-plan agreement is not an
22 exempt transaction for the purposes of section 37(3)(c)
23 solely because the transfer duty payable on the
24 agreement is reduced to zero under this Chapter.

25 **266O. Application for off-the-plan concession**

- 26 (1) An application for assessment or reassessment of the
27 liability to duty of a concessional off-the-plan
28 agreement under this Chapter must be made in the
29 approved form no later than 12 months after the day on
30 which the agreement is completed.

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- 1 (2) For the purposes of this Chapter, the Taxation
2 Administration Act section 17 applies as if —
- 3 (a) despite subsection (1) of that section, a
4 taxpayer is not entitled to apply for a
5 reassessment of the liability to duty of a
6 concessional off-the-plan agreement under this
7 Chapter more than 12 months after the day on
8 which the agreement is completed; and
- 9 (b) despite subsection (4) of that section, the
10 Commissioner can make a reassessment of the
11 liability to duty of a concessional off-the-plan
12 agreement under this Chapter on an application
13 by a taxpayer only if the application was made
14 within that time.
15

16 **9. Schedule 3 Division 12 inserted**

17 At the end of Schedule 3 insert:

18

19 **Division 12 — Provisions for *Duties Amendment***
20 ***(Off-the-Plan Concession and Foreign Persons Exemptions)***
21 ***Act 2023***

22 **75. Terms used**

23 In this Division —

24 *commencement day* means the day on which the *Duties*
25 *Amendment (Off-the-Plan Concession and Foreign Persons*
26 *Exemptions) Act 2023* section 3 comes into operation.

27 **76. Provisions relating to amendments to Chapter 3A**

28 (1) In this clause —

29 *amended exemption provisions* means sections 205ZA,
30 205ZB, 205ZO and 205ZP, as amended by the *Duties*
31 *Amendment (Off-the-Plan Concession and Foreign Persons*
32 *Exemptions) Act 2023* sections 4 to 7;

- 1 ***relevant exempt transaction or acquisition*** means a foreign
2 dutiable transaction or an acquisition that meets the
3 requirements for an exemption under an amended
4 exemption provision if the transaction or acquisition
5 occurs —
- 6 (a) on or after 1 January 2023; or
- 7 (b) before 1 January 2023 if —
- 8 (i) in the case of a transaction to which
9 section 205ZA applies — the requirement
10 in section 205ZA(2)(c) becomes satisfied
11 on or after that day; or
- 12 (ii) in the case of a transaction to which
13 section 205ZB applies — the requirement in
14 section 205ZB(2)(c) becomes satisfied on
15 or after that day; or
- 16 (iii) in the case of an acquisition to which
17 section 205ZO applies — the requirement
18 in section 205ZO(1)(c) becomes satisfied
19 on or after that day; or
- 20 (iv) in the case of an acquisition to which
21 section 205ZP applies — the requirement in
22 section 205ZP(1)(c) becomes satisfied on or
23 after that day.
- 24 (2) The amended exemption provisions apply to the imposition
25 of duty on a relevant exempt transaction or acquisition, even
26 if the transaction or acquisition occurred before
27 commencement day.
- 28 (3) If an assessment of duty payable on a relevant transaction or
29 acquisition was made before commencement day, the
30 Commissioner may, on application or on the
31 Commissioner’s own initiative, reassess the duty payable on
32 the transaction or acquisition in accordance with the
33 amended exemption provisions.

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- 1 (4) Despite whichever of sections 205ZA(5), 205ZB(3),
2 205ZO(4) and 205ZP(2) is applicable, an application for
3 reassessment referred to in subclause (3) may be made in the
4 approved form on or before the later of the following —
5 (a) the day on or before which the application would,
6 but for this subclause, be required to be made under
7 section 205ZA(5), 205ZB(3), 205ZO(4) or
8 205ZP(2) (whichever is applicable);
9 (b) the last day of the period of 12 months beginning on
10 commencement day.
- 11 (5) Subclauses (3) and (4) apply despite the Taxation
12 Administration Act section 17.
- 13 (6) For the purposes of this clause, when an acquisition occurs
14 is to be determined under section 176 as applied by
15 section 205ZE(1).

16 **77. Provisions relating to Chapter 6A**

- 17 (1) If a term used in this clause is given a meaning in
18 section 266E, it has the same meaning in this clause.
- 19 (2) Chapter 6A applies to the imposition of duty on a
20 concessional pre-construction agreement even if the
21 agreement was entered into in the period beginning on
22 23 October 2019 and ending immediately before
23 commencement day.
- 24 Notes for this subclause:
- 25 1. An agreement entered into before 23 October 2019 is not a
26 concessional pre-construction agreement under
27 section 266F.
- 28 2. Under section 266F(3), certain agreements are excluded
29 from being concessional pre-construction agreements,
30 including —
31 (a) agreements in relation to which a rebate has been
32 paid under the Off-the-Plan Duty Rebate Scheme
33 (see section 266F(3)(a)); and

- 1 (b) agreements that were not eligible for a rebate under
2 the Off-the-Plan Duty Rebate Scheme where
3 development for the relevant subdivision of land is
4 completed before 31 August 2023 (see
5 section 266F(3)(b)).
- 6 (3) Chapter 6A applies to the imposition of duty on a
7 concessional under construction agreement even if the
8 agreement was entered into in the period beginning on
9 31 August 2023 and ending immediately before
10 commencement day.
- 11 Note for this subclause:
12 An agreement entered into before 31 August 2023 is not a
13 concessional under construction agreement under
14 section 266FA.
- 15 (4) If an assessment of duty payable on a concessional
16 off-the-plan agreement was made before commencement
17 day, the Commissioner may, on application or on the
18 Commissioner's own initiative, reassess the duty payable on
19 the agreement in accordance with Chapter 6A.
- 20 (5) Despite section 266O, an application for reassessment
21 referred to in subclause (4) may be made in the approved
22 form on or before the later of the following —
- 23 (a) the last day of the period that applies under
24 section 266O(1);
- 25 (b) the last day of the period of 12 months beginning on
26 commencement day.
- 27 (6) Subclauses (4) and (5) apply despite the Taxation
28 Administration Act section 17.
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