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Public Ruling

First Home Owner Grant Act: MEANING OF 'HOME', 'NEW HOME' AND 'RESIDENTIAL PROPERTY'

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. The *First Home Owner Grant Act 2000* (the FHOG Act) provides that the first home owner grant (the grant) is payable on an application if the applicant (or if there are two or more applicants, each of the applicants) complies with the eligibility criteria and the transaction for which the grant is sought is an eligible transaction and has been completed.¹
2. Subject to paragraph 3, an 'eligible transaction' is one of the following:
 - (a) a contract made on or after 1 July 2000 for the purchase of a new home in Queensland
 - (b) a comprehensive home building contract made by the owner of land in Queensland, or a person who will on completion of the contract be the owner of land in Queensland, to have a new home built on the land, if the contract is made on or after 1 July 2000
 - (c) the building of a new home in Queensland by an owner builder if the building work starts on or after 1 July 2000
 - (d) a contract made on or after 1 July 2000 but before 11 October 2012 for the purchase of a home, other than a new home, in Queensland
 - (e) a comprehensive home building contract made by the owner of land in Queensland, or a person who will on completion of the contract be the owner of land in Queensland, to have a home, other than a new home, built on the land, if the contract is made on or after 1 July 2000 but before 11 October 2012
 - (f) the building of a home, other than a new home, in Queensland by an owner builder if the building work starts on or after 1 July 2000 but before 11 October 2012.²

¹ Section 10(1) of the FHOG Act

² Sections 5(1) and 5(2) of the FHOG Act

FHOGA000.1.5

3. A transaction is not an eligible transaction if:
- (a) the Commissioner is satisfied it forms part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to the grant³
 - (b) the consideration for the transaction is \$750,000 or more⁴
 - (c) in relation to a contract mentioned in paragraphs 2(a) and 2(d), the total of the unencumbered value of the new home or other home and the unencumbered value of the relevant interest in the land on which the new home or other home is built or to be built at the commencement date for the contract is \$750,000 or more⁵
 - (d) in relation to a comprehensive home building contract mentioned in paragraphs 2(b) and 2(e), the total of the consideration for the transaction and the unencumbered value of the land at the commencement date for the contract is \$750,000 or more⁶
 - (e) in relation to a building of a new home or other home mentioned in paragraphs 2(c) and 2(f), the total of the consideration for the transaction and the unencumbered value of the land at the commencement date for the transaction is \$750,000 or more.⁷
4. A 'home' is a building, fixed to land that:
- (a) may lawfully be used as a place of residence and
 - (b) is a suitable building for use as a place of residence.⁸
5. A 'new home' is a home that:
- (a) has not been previously occupied or sold as a place of residence or
 - (b) is a substantially renovated home.⁹
6. The eligibility criteria that must be satisfied before the grant is payable include that neither an applicant nor that applicant's spouse can have held a relevant interest¹⁰ in residential property in Australia:
- (a) prior to 1 July 2000¹¹ or
 - (b) on or after 1 July 2000 (other than the property to which the application for the grant relates), where that property was used on or after 1 July 2000 as the residence of the applicant or the applicant's spouse.¹²

³ Section 5(4) of the FHOG Act

⁴ Section 5(6) of the FHOG Act

⁵ Section 5(7) of the FHOG Act

⁶ Section 5(8) of the FHOG Act

⁷ Section 5(9) of the FHOG Act

⁸ Section 6(1) of the FHOG Act

⁹ Section 6(2) of the FHOG Act. 'Substantially renovated home' is defined in section 6(3) of the FHOG Act.

¹⁰ As defined in s.8 of the FHOG Act

¹¹ Section 14(1) of the FHOG Act

¹² Section 14(4) of the FHOG Act. However, in respect of eligible transactions entered into on or after 1 January 2004, there is a limited exception in s.14(5) of the FHOG Act covering cases where an earlier grant was paid but then repaid because of a failure to satisfy the residence requirement.

7. 'Residential property' is land in Australia that, at a particular time, has a building on it that is lawfully occupied as a place of residence or is suitable for occupation as a place of residence.¹³
8. In this Public Ruling, a reference to a 'qualifying dwelling' is a reference to a building that is either:
 - (a) a Class 1a dwelling as defined in the Building Code of Australia¹⁴ (the Code) or
 - (b) a sole-occupancy unit that is a dwelling for the purposes of the Code.
9. This Public Ruling clarifies the practice of the Commissioner in relation to determining, for the purposes of the FHOG Act:
 - (a) whether a particular building is a home
 - (b) whether a house that has been moved from one site to another site is a new home
 - (c) if particular property is residential property.

Ruling and explanation

Home

10. In most cases, the Commissioner may be satisfied that a building to which an application for the grant relates is, or will be, a home as defined in the FHOG Act based on the information provided in the application and the supporting evidence.

Example 1

A contract to purchase a house, home unit or town house will usually be presumed to be a contract to purchase a home.

Example 2

A building contract for a four-bedroom dwelling that is to comply with all the usual building and local authority regulations will usually be presumed to be a contract for the construction of a home.

11. In other cases, however, it will not be clear from the application or supporting evidence that the building is, or will be, a home. In these cases, the applicant must produce to the Commissioner evidence establishing that the building is a home. That evidence must establish that both conditions of the definition of 'home' set out in paragraph 4 are satisfied.
12. In order to establish that the building may lawfully be used as a place of residence, the applicant must provide the Commissioner with a statement in writing from the local authority or a building certifier¹⁵ that the building is (or, for an application for the grant lodged through

¹³ Definition of 'residential property' in the Dictionary in the Schedule to the FHOG Act

¹⁴ The Building Code of Australia is produced and maintained by the Australian Building Codes Board.

¹⁵ As defined in s.8 of the *Building Act 1975*: 'an individual who, under chapter 6, part 3 [of the *Building Act 1975*], is licensed as a building certifier'.

an approved agent in relation to a building to be constructed¹⁶, that the building will be on completion) a qualifying dwelling.

Example 3

B constructed a shed on vacant land and, shortly thereafter, resided in the shed while his home was constructed on the same parcel of land. The home will not be attached to the shed. B applied for the grant in respect of the construction of the shed but was unable to obtain a statement referred to in paragraph 12 of this Public Ruling. As a result, the shed was not lawfully used as a place of residence and B's application was declined.

B may, however, be eligible for the grant in respect of the subsequent construction of the home, provided that the eligibility criteria in the FHOG Act are satisfied.

13. In order to establish that the building is suitable for use as a place of residence, the applicant must provide the Commissioner with a statutory declaration (giving reasons) by an architect¹⁷ or a builder¹⁸ that the building is, in its current state, a qualifying dwelling.

Example 4

X constructed a building on vacant land and, upon completion of the building's construction, resided in the building. X applied for the grant in respect of the construction of the building. The Commissioner was satisfied that the building was lawfully used as a place of residence. However, the Commissioner was in doubt that the building was suitable for use as a place of residence.

X therefore obtained, and produced to the Commissioner, a statutory declaration referred to in paragraph 13 of this Public Ruling. The Commissioner was subsequently satisfied that the building constituted a 'home'. X may therefore be eligible for the grant in respect of the building, provided that the eligibility criteria in the FHOG Act are satisfied.

New home

14. A new home under s.6(2)(a) of the FHOG Act includes a house that has been moved from one site, and fixed as a home to a different site, so long as it has not been occupied or sold as a place of residence since being fixed to the new site.¹⁹

Example 5

D owns vacant land on which a home is to be built. D acquires a house from another location and subsequently undertakes construction (whether under a contract with a builder or otherwise) to build the home. Once the building work is completed, D obtains a final inspection certificate under the *Building Act 1975* for the home.

D is the first occupier of the home in its completed state on D's land. It is considered a new home in accordance with s.6(2)(a). It is immaterial whether the house had been used previously as a residence at its original location.

¹⁶ If an application for the grant in relation to a building to be constructed is lodged directly with the Commissioner, the grant will not be paid until after completion of the eligible transaction. Accordingly, evidence will be required as to the state of the building as at completion.

¹⁷ The architect must be registered as an architect under the *Architects Act 2002*.

¹⁸ The builder must be the holder of an appropriate licence under the *Queensland Building and Construction Commission Act 1991*.

¹⁹ *Commissioner of State Revenue v Bielefeld* [2016] QCATA 46

Residential property

15. Property containing a building designed as a residence, or previously used as a residence, will be presumed to be residential property as defined in the FHOG Act, unless evidence is produced to the Commissioner by the applicant establishing that it is not residential property.

Example 6

A home unit, house or town house will be presumed to be residential property.

16. Where an applicant contends that property previously or currently owned by the applicant or the applicant's spouse is not residential property, the applicant must provide the Commissioner with evidence that the building on the property was not a qualifying dwelling, for example:
- (a) a statement in writing from the local authority or a building certifier²⁰ or
 - (b) a statutory declaration (giving reasons) by an architect²¹ or a builder²².

Example 7

Y purchased a block of land on which a large shed was situated. Y lived in the shed for some time before purchasing a home on other land. Y has not owned any other properties. Y applies for the first home owner grant for the home being purchased. The property being purchased will not be regarded as a first home because the property on which the shed is constructed was used for residential purposes and will be presumed to be residential property.

However, if Y proves that the shed was not a Class 1a dwelling or sole-occupancy unit that is a dwelling for the purposes of the Building Code of Australia, by producing a statement or statutory declaration referred to in paragraph 16 of this Public Ruling, the shed will not be regarded as residential property and Y may qualify for the grant on the home being purchased.

Example 8

Z purchases a home and applies for the first home owner grant in respect of the contract for the purchase of the home. However, before deciding Z's application, the Commissioner becomes aware that Z had been living in a building on another property acquired by Z after 1 July 2000. Z claims that the building on the other property was a warehouse and, as such, does not constitute residential property.

The Commissioner would require the production of a statement or statutory declaration referred to in paragraph 16 of this Public Ruling to establish that the warehouse was not residential property.

17. Despite the production to the Commissioner of a statement or statutory declaration referred to in paragraph 16 in relation to a particular property, the Commissioner will nonetheless consider that property to be residential property if the building on the property was either:
- (a) the subject of an approval, certificate or other document issued by a building certifier stating that the building is a qualifying dwelling
 - (b) actually a qualifying dwelling.

²⁰ See footnote 15.

²¹ See footnote 17.

²² See footnote 18.

Example 9

A three-bedroom brick home was constructed in a metropolitan area two years ago by X, an owner builder.²³ The home is not the subject of an approval, certificate or document referred to in paragraph 16 of this Public Ruling.

However, the building is a Class 1a dwelling or sole-occupancy unit that is a dwelling for the purposes of the Building Code of Australia. The home is suitable for occupation as a place of residence and therefore the land on which it is situated constitutes residential property.

Provision of false or misleading information

18. It is an offence under the FHOG Act for a person to:
- (a) give to the Commissioner or an authorised officer under the Act a document containing information that the person knows is false or misleading in a material particular
 - (b) state anything to the Commissioner or an authorised officer under the Act that the person knows is false or misleading in a material particular.²⁴
19. Where the grant is paid in error because of the provision of such false or misleading information in relation to the application for the grant, the Commissioner may:
- (a) require the grant to be repaid²⁵ and
 - (b) as an alternative to prosecution, impose a penalty of up to 100% of the amount of the grant paid in error.²⁶

Date of effect

20. This Public Ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 26 October 2016

²³ 'Owner builder' is defined in the Dictionary in the Schedule to the FHOG Act as 'an owner of land who builds a home, or has a home built, on the land without entering into a comprehensive home building contract'.

²⁴ Sections 42 and 43 of the FHOG Act

²⁵ Section 47(1) of the FHOG Act

²⁶ Sections 47(2) and 51 of the FHOG Act

References

| Public Ruling | Issued | Dates of effect | |
|--|------------------|------------------|------------------|
| | | From | To |
| FHOGA000.1.5 | 26 October 2016 | 26 October 2016 | 2 November 2020 |
| FHOGA000.1.4 | 11 October 2012 | 11 October 2012 | 25 October 2016 |
| FHOGA000.1.3 | 30 March 2010 | 31 March 2010 | 10 October 2012 |
| FHOGA000.1.2 | 21 December 2009 | 1 January 2010 | 30 March 2010 |
| FHOGA000.1.1 | 24 February 2009 | 24 February 2009 | 31 December 2009 |
| Supersedes Practice Direction FHOG 4.2 | 18 October 2004 | 18 October 2004 | 23 February 2009 |
| Supersedes Practice Direction FHOG 7.1 | 4 August 2003 | 4 August 2003 | 23 February 2009 |