TERRITORY REVENUE OFFICE

COMMISSIONER’S GUIDELINE

CG-HI-010: Purchasing a home subject to an existing lease

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| 6 | 24 May 2016 | 24 May 2016 | Current |

Purpose

1. This Guideline explains a person’s eligibility for the first home owner grant (FHOG) and the stamp duty first home owner discount (FHOD) and senior, pensioner and carer concession (SPCC) (collectively ‘the home incentive schemes’) when purchasing a home subject to an existing lease.
2. Of note is that from 4 December 2012, the stamp duty principal place of residence rebate (PPRR) is not available for the purchase of a ‘new home’ or vacant land on which a ‘new home’ will be built if that home has been occupied by a person other than the purchaser. Accordingly, if the home has been leased then the PPRR will not be available. Refer to Commissioner’s Guideline [CG-HI-011](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/HomeOwnerIncent/CG-HI-011.pdf): *What is a new home* for further information.

What is a lease?

1. A lease is an agreement under which the owner gives up possession and use of their property for valuable consideration for a definite period. At the end of the term, the owner has an absolute right to take control and occupation of the property.

Objective of the home incentive schemes

1. The object of the home incentive schemes is to encourage home ownership by providing assistance in the form of a grant for the purchase or construction of a home or a reduction of the stamp duty payable on the purchase of land on which there is or will be a home. For this purpose, it is a requirement that the home be occupied as the person’s principal place of residence within a reasonable period after the purchase or construction of the home is completed.

Eligibility for the home incentive schemes

1. For the purchase of a home, applicants must:
	1. have a right to take possession of the home within 12 months after the settlement date (i.e. the date the purchasers became the owner of the property); and
	2. at least one applicant must commence occupation of the home as their principal place of residence for a continuous period of at least six months within 12 months after that date (for the SPCC, the occupying applicant must be at least 60 years old or the holder of a Northern Territory Pensioner and Carer Concession card).[[1]](#footnote-1)
2. The Commissioner may extend the period for taking possession of the home or land, extend the period for commencing occupation of the home, shorten the period for continuous occupation of the home or exempt all applicant from the occupancy requirements.*[[2]](#footnote-2)*
For further details, refer to Commissioner’s Guideline [CG-HI-003](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/HomeOwnerIncent/CG-HI-003.pdf): *Commissioner’s discretion to exempt or vary compliance with the eligibility criteria*.

Implications of acquiring a home subject to an existing lease

1. The purchase of a home subject to an existing lease can affect the eligibility of the purchaser for the home incentive schemes and the time for commencing occupation of the home as follows.

Lease for 12 months or more

1. If a home is purchased subject to an existing lease with an unexpired term of 12 months or more, the purchaser is not eligible under the home incentive schemes. This is because the purchaserdoes not have a right to take occupation of the home within the required 12 month period after the settlement date unless the lease is terminated earlier or the Commissioner extends the period for commencing occupation.
2. As the home incentive schemes contemplate purchasers occupying the home as their principal place of residence within a reasonable period after purchasing it, an extension to take possession of the home would only be granted in very limited circumstances where it is purchased subject to a lease of 12 months or more.

Bill and Mary entered into a contract on 1 April 2011, to purchase a home that was subject to an existing lease that expires on 1 December 2012. Settlement (the date that Bill and Mary became the owners of the home) occurred on 1 July 2011.

Bill and Mary are not eligible for the home incentive schemes as they cannot commence occupation within the required 12 month period after the settlement date unless the lease is terminated earlier or the Commissioner extends the period for taking possession of the home.

Lease for less than 12 months

1. Where a home is purchased subject to an existing lease, with an unexpired term of lessthan 12 months after the settlement date, the purchaser must commence occupation of the home within 12 months after the date the lease expires or is terminated. This is unless the period for commencing occupation is extended by the Commissioner.

Bill and Mary entered into a contract on 1 May 2011, to purchase a home that was subject to an existing lease that expires on 30 September 2011. Settlement occurred on 1 June 2011.

Bill and Mary are eligible for one of the home incentive schemes provided they commence occupation of the home within 12 months after the expiry of the lease on 30 September 2011. They have a right to take possession of the home on 1 October 2011 and must commence occupation of the home as their principal place of residence before 1 October 2012 unless that date is extended by the Commissioner.

Home purchased with vacant possession

1. For completeness, if a home is purchased with vacant possession (i.e. not subject to a lease), the purchaser has until 12 months after the settlement date to commence occupation of the home.

Bill and Mary entered into a contract on 1 May 2011, to purchase a home. Settlement occurred with vacant possession on 1 June 2011. Bill or Mary must commence occupation of the home as their principal place of residence before 1 June 2012, unless that date is extended by the Commissioner.

Commissioner’s Guidelines

1. Commissioner’s Guideline [CG-GEN-001](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/GeneralAdmin/CG-GEN-001.pdf), which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from the TRO website.

Date of effect

1. This version of the Guideline takes effect from 24 May 2016.



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**COMMISSIONER OF TERRITORY REVENUE**

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1. Sections 5(3), 12 and 13(6) of the *First Home Owner Grant Act* (FHOGA)*;* sections 89A(1)(g) and (i) of the *Stamp Duty Act* (SDA) and ‘period of occupancy’ and ‘prescribed period’ at section 88(1) of the SDA. [↑](#footnote-ref-1)
2. See sections 5(3) and 12 of the FHOGA and sections 89A(11) and (11A) of the SDA. [↑](#footnote-ref-2)