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Public Ruling First Home Owner Grant Act: INSTALMENT CONTRACTS

A Public Ruling, when issued, is the published view of 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, subsidy 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 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. A contract for the purchase of a home is completed if the purchaser becomes entitled to possession and the purchaser's title to the land is registered.²
3. Instalment contracts for the sale of land are contracts under which the purchaser is bound to make a payment or payments (other than a deposit) without becoming entitled to a transfer of the title.³
4. Usually, a purchaser under an instalment contract is not entitled to a transfer of title until one of the following events occurs:
 - (a) the final instalment is paid
 - (b) one third of the purchase price has been paid and one of the parties to the contract requires a transfer to the purchaser with a mortgage back to the vendor as security for the unpaid purchase price
 - (c) the purchaser pays the balance of the purchase price at some other time (e.g. using funds borrowed from a financial institution).

¹ Section 10(1) of the FHOG Act

² Definition of 'completed' in Schedule to the FHOG Act

³ Section 71 of the *Property Law Act 1974*

5. The Commissioner may authorise payment of the grant before the completion of the eligible transaction if satisfied that it is appropriate in the circumstances.⁴
6. The Commissioner may also attach conditions to the payment of the grant.⁵
7. This Public Ruling clarifies when the grant will be paid to a purchaser prior to completion of an instalment contract, assuming other conditions of payment of the grant are satisfied.

Ruling and explanation

Conditional payment prior to completion

8. The Commissioner will exercise the discretion⁶ to pay the grant to a purchaser under an instalment contract prior to completion of the contract if all of the following circumstances exist:
 - (a) The contract has been in existence for at least one year.
 - (b) The purchaser is not in default under the contract so that the vendor has no right to cancel the contract.
 - (c) The purchaser has occupied the home as their principal place of residence under the contract.
 - (d) The purchaser has paid to the vendor an amount of not less than \$7 000 or an amount which is equal to at least 10% of the purchase price, whichever is the greater. In calculating the amount paid to the vendor, any of the following can be taken into account:
 - (i) any deposit paid by the purchaser to the vendor
 - (ii) any interest paid by the purchaser to the vendor
 - (iii) any other amounts which have been paid and deducted from the balance of the purchase price.

Conditions of payment

9. A grant paid prior to completion of an instalment contract will be paid subject to the following conditions:
 - (a) The contract will be completed and will not be cancelled or terminated.
 - (b) Following payment of the grant, the purchaser will meet the residence conditions:
 - (i) For contracts entered into before 1 January 2004, the residence condition is that the purchaser will remain in possession of the home as their principal place of residence and will continue in possession following completion of the contract.⁷

⁴ Section 19(2) of the FHOG Act

⁵ Section 23 of the FHOG Act

⁶ Section 19(2) of the FHOG Act

⁷ Section 15 of the FHOG Act prior to being amended by the *First Home Owner Grant Amendment Act 2003*

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- (ii) For contracts entered into on or after 1 January 2004, the residence conditions are that the purchaser will remain in possession of the home as their principal place of residence and will continue in possession following completion of the contract for a continuous period of at least 6 months.⁸
- (c) Within 14 days of non-compliance with conditions (a) or (b), the purchaser will notify the Commissioner of non-compliance and will repay the grant.

Procedure

10. Where a purchaser under an instalment contract claims payment of the grant under the terms of this Public Ruling, the application must be supported by a statutory declaration from the purchaser detailing compliance with the matters referred to in paragraph 8. This statutory declaration should also include a statement of the purchaser's intention in relation to the matters referred to in paragraphs 9(a) and (b).
11. Where the Commissioner imposes the conditions in paragraph 9, the purchaser must agree in writing, before payment of the grant, to notify the Commissioner and repay the grant in accordance with paragraph 9(c).
12. It is an offence under the FHOG Act for a person not to comply, without reasonable excuse, with a condition imposed by the Commissioner under the FHOG Act.⁹
13. Where the person fails to repay the grant under the conditions of the grant the Commissioner may as an alternative to prosecution, impose a penalty of up to 100% of the amount of the grant.¹⁰
14. It is also an offence under the FHOG Act for a person to:
 - (a) give to the Commissioner or an authorised officer under the FHOG Act a document containing information or
 - (b) state anything to the Commissioner or an authorised officer under the FHOG Act that the person knows is false or misleading in a material particular.¹¹
15. 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 repaid¹² and
 - (b) as an alternative to prosecution, impose a penalty of up to 100% of the amount of the grant paid in error.¹³

⁸ Section 15 of the FHOG Act after being amended by the *First Home Owner Grant Amendment Act 2003*; the Commissioner may however shorten the period of residence or exempt an applicant from the residence conditions if there are good reasons for doing so.

⁹ Section 23(4) of the FHOG Act

¹⁰ Sections 47(3) and 51 of the FHOG Act

¹¹ Sections 42 and 43 of the FHOG Act

¹² Section 47(1) of the FHOG Act

¹³ Sections 47(2) and 51 of the FHOG Act

Date of effect

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

David Smith
Commissioner of State Revenue
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
FHOGA019.1.1	24 February 2009	24 February 2009	Current
Supersedes Practice Direction FHOG 2.2	18 October 2004	18 October 2004	23 February 2009