



Farm-in Agreements

This Commissioner's practice outlines the Commissioner's treatment of certain issues when assessing farm-in agreements and farm-in transactions.

Significant changes were made to the farm-in provisions of the *Duties Act 2008* on (Royal Assent Date), some of which apply to agreements dated on or after 28 November 2018 or 1 July 2008. Except where specified, this practice provides guidance on how the Commissioner will apply the provisions for transactions dated after (Royal assent date).

Background

Farm-in transactions

A farm-in transaction is an agreement between a person who holds a mining tenement, an interest in a mining tenement, or a derivative mining right over a mining tenement (the *farmor*), and another person (the *farmee*). The agreement must provide that if the farmee conducts particular exploration on that mining tenement,¹ they will be entitled to an interest in that tenement, or a derivative mining right over the tenement, or an interest in a derivative mining right. Following the farm-in transaction, the farmor must retain an interest in the tenement or the derivative mining right they originally held.

Division 9 of Chapter 2 Part 5 of the *Duties Act 2008* (Duties Act) provides for a duty concession for a farm-in transaction if certain conditions are met. Duty will generally apply to the amount or value of any consideration provided directly from the farmee to the farmor but will not apply to any amounts spent by the farmee on exploration of the tenements.² Nominal duty will be charged if there is no consideration other than the exploration obligation.

If further consideration is to be paid at the time an interest in the tenement is transferred, or when a derivative mining right is granted or transferred, duty will generally apply to the transfer or grant based on that consideration.³ If there is no further consideration, the transfer or grant will be exempt from duty.

Farm-in agreements

A farm-in agreement is an agreement that contains at least one farm-in transaction and may include other dutiable transactions such as an agreement to transfer an interest in a mining tenement, the acquisition of a derivative mining right or the grant of an option to acquire an interest in a mining tenement or a derivative mining right.

Other transactions that form part of a farm-in agreement are separately assessed for duty if they are dutiable transactions. Liability for all the dutiable transactions in the farm-in agreements arises when the agreement is made.

¹ The required exploration must be to a specified value or outcome, for example spending \$500,000 on exploration, or drilling 50 holes to a depth of at least 100 metres.

² Duties Act s 91P.

³ Duties Act s 91R.

In general, for the concession to apply to a farm-in transaction, the farmee must not have any interest⁴ in the tenements or derivative mining right the subject of the agreement when it is made.

Example 1

Mr A holds a group of exploration licences. He enters into an agreement with B Exploration Ltd as follows:

1. B Exploration agrees to purchase a 20 per cent interest in the tenements for \$50,000.
2. If B Exploration spends at least \$200,000 on exploration in the 12 months following the agreement (the first exploration period) they will be entitled to an additional 31 per cent interest in the tenements.
3. If B Exploration spends a further \$500,000 within two years following the first exploration period (the second exploration period) they will be entitled to an additional 29 per cent interest in the tenements.
4. If B Exploration completes both exploration requirements they have the option to acquire Mr A's remaining 20 per cent interest in the tenements for \$500,000.

The agreement contains four transactions. The first transaction is an agreement to transfer an interest in a mining tenement. The second and third transactions are farm-in transactions. The fourth transaction is the grant of an option to acquire an interest in a mining tenement.

As the agreement contains at least one farm-in transaction, it is a farm-in agreement. As B Exploration doesn't hold any interest in the tenements before entering into the agreement, the farm-in concession will apply to the two farm-in transactions.

Replacement mining tenements and derivative mining rights

Due to the length of time between a farm-in agreement being entered into and completed, some of the mining tenements or derivative mining rights in the agreement may be replaced before an interest is transferred or a derivative mining right is granted.

A *replacement mining tenement* is a mining tenement that is granted after the farm-in agreement is made and is over the same land, or part of the same land, as other tenements that were in the original agreement. The most common example of this is where a mining lease is granted over land that formed part of one or more exploration or prospecting licences that were included in the agreement.

A *replacement derivative mining right* is a derivative mining right that is granted after the farm-in agreement is made. It must relate to the same land or part of the same land, and must not authorise any mining that was not authorised under the original right other than as a result of the conversion. The most common example is where a derivative mining right relates to an exploration licence, part of the exploration licence is converted to a mining lease, and a new derivative mining right is granted over that mining lease that relates to the same minerals.

In general the transfer of an interest in a replacement mining tenement or replacement derivative mining right, or the grant of a replacement derivative mining right, will be treated the same as the grant or transfer of the interest it replaced.

⁴ The farmee must not hold any interest in any of the tenements, and must not be the holder of a derivative mining right that authorises exploitation of land the subject of any of the tenements.

Example 2

C Mining Pty Ltd holds two adjacent exploration licences. C Mining enters into a farm-in agreement with D Mining Pty Ltd, so that if D Mining spends \$500,000 on exploration it will be entitled to a 30 per cent interest in the licences.

Before D Mining completes its exploration, C Mining applies for a mining lease over an area covering part of both exploration licences. The mining lease granted to C Mining will be a *replacement mining tenement* in respect of the exploration licences.

Example 3

Iron Exploration Pty Ltd holds an exploration licence. Iron Exploration enters into a farm-in agreement with Lithium Exploration Pty Ltd, so that if Lithium Exploration spends \$200,000 on exploration it will be granted a 100 per cent interest in lithium rights over the licence.

Before Lithium Exploration completes the exploration requirement, Iron Exploration applies for a mining lease over part of the exploration licence. If Lithium Exploration completes its exploration and is granted rights to lithium over the new mining lease, this will be a *replacement derivative mining right* in respect of the right that was originally contemplated over the exploration licence.

While the new right will authorise mining beyond the originally contemplated right, this is only because of the conversion of the mining tenement to a mining lease. If the derivative mining right also granted rights to another mineral then it would not be a replacement derivative mining right.

Exploration

All farm-in transactions require the farmee to engage in exploration of mining tenements. For a farm-in agreement dated before 28 November 2018, exploration can include development of a mining tenement, such as capital works.⁵ For farm-in agreements dated on or after 28 November 2018, exploration only includes development carried out solely for the purpose of facilitating exploration or otherwise incidentally to exploration.⁶ See Revenue Ruling DA 16 for guidance on the Commissioner's interpretation of exploration for the purposes of a farm-in transaction.

A farm-in transaction may allow the farmee to spend money on administrative costs when completing the exploration requirement. This may count as exploration expenditure, subject to any conditions imposed by the Commissioner.⁷

Adding new farm-in transactions to a farm-in agreement

The concession may apply to a new farm-in transaction that is added to an existing farm-in agreement. It will apply if the transaction applies to mining tenements or derivative mining rights that were part of the original agreement⁸ and the farmee does not hold any interest in the relevant mining tenements or the Commissioner is satisfied the farmee does not hold any interest in the relevant derivative mining rights.

⁵ Duties Act Schedule 3, paragraph 64.

⁶ Duties Act Schedule 3 paragraph 67.

⁷ Duties Act s 91N(6).

⁸ The additional farm-in transaction may also include a replacement tenement or derivative mining right that applies to the same land as the original tenement or right.

Variations to farm-in transactions

The concession may continue to apply when the transaction is varied to add an extra mining tenement or derivative mining right if:⁹

- the added tenement is a prospecting licence or exploration licence, or the added derivative mining right relates to a prospecting licence or exploration licence and
- the relevant tenement or derivative mining right was granted after the farm-in transaction was made and
- the variation occurs within three months after the relevant mining tenement or derivative mining right was granted, or within a longer period allowed by the Commissioner.

The concession may also continue to apply when there is a variation to the transaction that allows the farmee to earn a greater interest in the relevant tenement or derivative mining right. The farmee must not hold an interest in the relevant mining tenement, or an interest in the relevant derivative mining right when the variation is made.¹⁰

Commissioner's Practice

Exploration requirements and administrative expenses

1. To qualify as a farm-in transaction, the farmee must obtain the interest in the relevant mining tenement or derivative mining right after they have met the *exploration requirement* in the agreement. An exploration requirement can be a requirement to spend a particular amount on exploration (the *exploration amount*), to meet a particular outcome, or a combination of both.
2. If an exploration requirement involves spending a particular amount of money on exploration, the Commissioner may allow expenditure on administrative costs to be counted as exploration expenditure, subject to any limits or other conditions imposed by the Commissioner.
3. Where possible, the Commissioner will align the operation of exploration requirements under farm-in agreements with those contained in the *Mining Act 1978* and the *Mining Regulations 1981*. On that basis the Commissioner will generally consider that administrative expenses will qualify as amounts spent on exploration if they do not exceed 20 per cent of the exploration requirement.

Administrative costs not specified in original agreement

4. When the exploration requirement in a farm-in agreement allows for amounts to be spent on administrative costs, but does not limit the amount the farmee may spend on these costs, the Commissioner will accept that the administrative costs form part of the exploration amount for the purposes of assessing the farm-in transaction.
5. If the farmee completes the exploration requirement and the parties seek to transfer an interest in the tenement or a derivative mining right, or grant a derivative mining right, to the farmee, the Commissioner will verify the exploration requirement has been met and confirm how much was spent on administrative expenses.

⁹ Duties Act s 91T.

¹⁰ Duties Act s 91T.

6. If the Commissioner is satisfied the total amount spent on exploration including administrative costs is at least the required exploration amount, and the amount spent on administration was less than 20 per cent of the exploration amount, the Commissioner will consider the exploration requirement to be met and will assess the transfer or grant as being in accordance with the farm-in transaction.¹¹
7. If the amount spent on administrative costs is greater than 20 per cent of the total expenditure, but the amount spent excluding administrative costs is at least 80 per cent of the exploration amount, the Commissioner will accept that the exploration requirement has been met. The Commissioner may investigate whether the administrative costs were legitimately incurred by the farmee in the course of exploration. Duty may be charged on any amounts not legitimately incurred by the farmee as they may be consideration for the transfer of an interest in the tenement, or the grant or transfer of a derivative mining right.

Example 4

A farm-in transaction includes an exploration requirement for the farmee to spend \$500,000 on exploration to earn a 30 per cent interest in an exploration licence. The agreement defines various exploration activities that qualify under the agreement, including administrative costs.

The Commissioner accepts that the agreement meets the requirements for a concessional farm-in transaction, and assesses the transaction with nominal duty of \$20.

Twelve months later the farmee provides a notice to the farmor showing they have spent \$600,000 on exploration, including \$150,000 on administrative costs. The parties execute a transfer of a 30 per cent interest in the tenement and lodge it with the Commissioner, providing the notice as evidence the exploration requirement has been met.

Even though the amount spent on administration is more than 20 per cent of the exploration amount, the farmee has spent \$450,000 on exploration excluding administration, which is more than 80 per cent of the exploration amount. The Commissioner will accept that the exploration requirement has been met, and the transfer is in accordance with the farm-in transaction.

As the amount spent on administrative costs is more than 20 per cent of the total expenditure, the Commissioner will request details of the administrative costs and may include some or all of these amounts as consideration for the transfer of an interest in the mining tenement if they are not genuine expenses incurred by the farmee during exploration.

Evidence of completing the exploration requirement

8. To assess a transfer of a mining tenement or derivative mining right, or a grant of a derivative mining right, as in conformity with a farm-in transaction, the Commissioner must be satisfied the exploration requirement has been fulfilled.
9. The Commissioner will usually be satisfied by correspondence from the farmee to the farmor which includes details of amounts spent or activities completed as evidence of exploration expenditure.
10. The Commissioner may ask for additional evidence that the farmee met the exploration requirement if the correspondence is unclear or does not provide a breakdown of the exploration amount (if relevant), or if the Commissioner is otherwise not satisfied with the evidence. The additional evidence may be in the form of tenement reports provided to the

¹¹ If there is no consideration at the time of the transfer or grant, it will be assessed as no double duty. Duty will be charged on the consideration at the time of the transfer or grant.

Department of Mines, Industry Regulation and Safety, or other evidence of expenditure such as receipts from the farmee hiring equipment or personnel to explore the tenement.

Right to exploit a mining tenement or derivative mining right

11. A farm-in transaction will not be entitled to the concession if the farmee holds a derivative mining right that authorises exploitation of the land the subject of a relevant mining tenement.
12. Generally, a derivative mining right will authorise exploitation of the land if it allows the holder to conduct mining operations on the mining tenement, or contemplates mining operations on a replacement tenement. Examples include:
 - 12.1 rights to a particular mineral or minerals, or to a percentage interest in a mineral or minerals or
 - 12.2 rights to conduct mining operations in exchange for a royalty or other payment.
13. Examples of derivative mining rights that do not authorise exploitation of land the subject of a relevant mining tenement include:
 - 13.1 rights granted to conduct due diligence over a project before entering into a binding agreement (including a farm-in agreement)
 - 13.2 rights granted to a farmee under a farm-in agreement to conduct exploration required under that agreement or
 - 13.3 rights relating to access over a tenement.

Variations to farm-in transactions

14. The farm-in concession will continue to apply to a farm-in transaction if a new prospecting licence or exploration licence, or a derivative mining right in relation to a prospecting licence or exploration licence, is granted after the farm-in transaction is made and added to the transaction within three months after the tenement or right is granted, or another period allowed by the Commissioner.
15. The Commissioner will generally extend the time up to 12 months after a new tenement or derivative mining right is granted if there is a reasonable explanation for the delay. The circumstances must have been a significant factor in why the tenement or right was not added within three months of granting. Examples include:
 - 15.1 the mining tenement includes private land, and the parties do not wish to add the tenement to the farm-in transaction until negotiations with the landowner for access or compensation are complete
 - 15.2 an unrelated party disputes the grant of the tenement and the farmee does not want the tenement included until the dispute is resolved by the Warden's Court or
 - 15.3 in the case of a derivative mining right, the grant of the right to the farmor does not include provisions for including the right in a farm-in transaction, and the delay is due to the farmor negotiating for those provisions to be added.
16. The Commissioner will only allow the concession to apply to an exploration or prospecting licence that is added to a farm-in transaction more than 12 months after it is granted if there are genuinely exceptional circumstances not in control of the parties to the farm-in transaction that caused the delay.

Holding an interest in a derivative mining right

17. Some provisions relating to farm-in agreements and transactions do not apply if the farmee holds an interest in a specific derivative mining right, or an interest in a derivative mining right that relates to a tenement in the agreement. Examples include:
- 17.1 a transaction cannot be a concessional farm-in transaction if the farmee holds a derivative mining right that allows exploitation of the relevant mining tenement¹² or
 - 17.2 an additional farm-in transaction can only be a concessional farm-in transaction if the Commissioner is satisfied the farmee is not the holder, or one of the holders, of any relevant derivative mining right for the additional farm-in transaction.¹³
18. As there is no register of derivative mining rights over mining tenements, the Commissioner will consider the instrument that grants the derivative mining right to determine when the farmee becomes a holder of that right.
19. The Commissioner will usually be satisfied the farmee holds a derivative mining right, or an interest in a derivative mining right, when they have done everything required under an instrument that grants or transfers such a right.
20. If a farm-in transaction allows the farmee to earn a derivative mining right, or an interest in a derivative mining right, the Commissioner will consider the farmee to hold the right, or an interest in the right, when they have completed all requirements under the farm-in transaction. Depending on the terms of the farm-in transaction, this may include:
- 20.1 completing the exploration requirement for the farm-in transaction
 - 20.2 paying an amount to the farmor after the exploration requirement is complete
 - 20.3 giving notice to the farmor that the exploration requirement has been met or
 - 20.4 formally exercising a right to be granted a derivative mining right.

Date of Effect

This Commissioner's practice takes effect from DD Month YYYY.

Commissioner's name
COMMISSIONER OF STATE REVENUE
DD Month YYYY

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 54.0			

¹² Duties Act s 91L(4).

¹³ Duties Act s 91S (4).





Exploration for Farm-in Transactions

1. This ruling provides guidance on the Commissioner's interpretation of *exploration* for the purposes of farm-in transactions and farm-in agreements.¹

Background

2. The *Duties Act 2008* (Duties Act) contains specific provisions for assessing *farm-in transactions* in Chapter 2 Part 5 Division 9.
3. A *farmor* is a person who holds a mining tenement, an interest in a mining tenement, or a derivative mining right over a mining tenement.
4. A *farmee* is a person who enters into an agreement with the farmor (a *farm-in transaction*²) to fulfil an exploration requirement on the tenement in exchange for an interest in the tenement, or a derivative mining right that relates to the tenement, or an interest in the farmor's derivative mining right.
5. A *farm-in agreement*³ is an agreement between a farmor and farmee that contains at least one farm-in transaction. It may also contain other types of transactions such as an agreement to transfer an interest in a mining tenement, or the grant of an option to acquire an interest in a mining tenement.
6. An *exploration requirement*⁴ is a requirement to:
 - (a) expend, on exploration carried out by the farmee, an amount specified in, or determined in accordance with, the farm-in transaction and/or
 - (b) carry out exploration as specified in, or determined in accordance with, the farm-in transactionafter the farm-in transaction is made.
7. For the purposes of a farm-in transaction or agreement, *exploration*⁵ includes development carried out solely:
 - (a) for the purpose of facilitating exploration or
 - (b) otherwise incidentally to explorationbut not capital expenditure for the development of a mining infrastructure or mining operations.

1 The definition of exploration in this ruling applies to a farm-in agreement entered into on or after 28 November 2018. Duties Act Schedule 3, Paragraph 67.

2 Duties Act s 91M.

3 Duties Act s 91L.

4 Duties Act s 91N.

5 Duties Act s 91K as inserted by the *Duties Amendment (Farm-in Agreements) Act 2022*.

8. The Commissioner may allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration to be treated as if it were spent on exploration, subject to any limits or other conditions imposed by the Commissioner.⁶ See Commissioner's Practice DA 54 for information on these limits and conditions.

Ruling

Meaning of 'exploration'

9. The term 'exploration' is not defined in the Duties Act (other than to include some development expenses as noted in the definition provided in paragraph 7). It takes on its ordinary meaning.
10. The Macquarie Dictionary defines *explore* as
- (a) 'to traverse or range over (a region, etc.) for the purpose of discovery'
 - (b) 'to look into closely, scrutinise, examine'.
11. In the context of a mining tenement, exploration must involve activities that have a purpose of discovering mineral bodies or, if a mineral body has been identified, scrutinising or examining the mineral body to better define the extent of the body, the degree of mineralisation, or to determine other factors relevant to the feasibility of mining.
12. Instructions in 'Form 5 Operations Report – Expenditure on mining tenement'⁷ include a distinction between Mineral Exploration Activities and Mining Activities (Development and Production) and the activities that would fall into each of these categories.
13. The Commissioner considers each of the activities described under Mineral Exploration Activities to be exploration for the purposes of the Duties Act.
14. The Commissioner considers the activities listed under Mining Activities (Development and Production) are not exploration. They are also not incidental to exploration or to facilitate exploration.
15. A full list of Mineral Exploration Activities and Mining Activities (Development and Production) as described in the *Mining Regulations 1981* is contained in Annexure 1.

Development for the purposes of facilitating exploration

16. The definition of exploration includes development that is solely for the purposes of facilitating exploration.
17. *Facilitate* is defined⁸ as 'to make easier or less difficult; help forward (an action, a process, etc.).

6 Duties Act s 91N(6).

7 As prescribed in the *Mining Regulations 1981*; available from <https://www.dmp.wa.gov.au/Minerals-Mining-16304.aspx>

8 The Macquarie Dictionary.

18. For development to be solely to facilitate exploration, it must make the exploration easier, or less difficult, and have no other purpose. Examples may include:
- (a) building roads or other access ways that allow people or equipment used for exploration to access the tenement more easily
 - (b) installing generators or power transmission lines to power equipment used for exploration
 - (c) installing bores or pipes to provide water necessary for exploration of the tenement or
 - (d) establishing an exploration base camp.
19. For development of a kind described in paragraph 18 to be *solely* to facilitate development, it must be of a suitable scale to apply to the exploration stage of the mining process, and not for development of an operating mine. If the scale of development is greater than would be necessary for the exploration stage of mining, the development costs will not be accepted as being solely to facilitate exploration.

Example 1

A farm-in transaction allows for some of the exploration amount to be spent on power generating facilities on the tenement. The farmee installs a generator to provide basic power to the tenement area and to operate lights and some powered equipment. This development would be considered solely to facilitate exploration.

Example 2

As part of a farm-in transaction over a late-stage exploration licence, the farmee builds a mining camp that can accommodate up to 100 workers. While completing a pre-feasibility study some personnel are stationed at the camp. The farmee claims the amount spent on developing the mining camp is to facilitate exploration.

Unless the farmee can provide evidence that a camp of that size is necessary to conduct exploration of the tenement (rather than to build and operate a mine), amounts spent on building the mining camp will not be accepted as being solely to facilitate exploration.

Example 3

As part of a farm-in transaction, the farmee clears an access track to allow drilling equipment to access the tenement. The farmee chooses a path that is slightly more expensive than other option but will be easier to widen and seal if the tenements are developed to an operating mine.

The Commissioner will accept that this development is to facilitate exploration, and the amount spent on clearing the path can be included as being on exploration.

20. If a farm-in transaction allows for expenditure on development that is not solely incidental to exploration, but there is no indication of how much will be spent, the Commissioner will accept that the transaction qualifies as a farm-in transaction.
21. If the farmee meets the exploration requirement for a farm-in transaction referred to in paragraph 20, and requests a transaction in conformity with the agreement be endorsed for 'no double duty', the Commissioner will determine if there was expenditure on development that does not facilitate exploration. If there was, the Commissioner will treat that amount as consideration for the transaction.⁹

⁹ Duties Act s 91R(4).

Farm-in transactions with multiple farmors

22. It is possible for a farmee to enter into an agreement with more than one farmor, either because the tenements or derivative mining rights in the agreement are held by more than one person, or because there are distinct tenements or rights in the agreement held by each farmor.¹⁰
23. If there are multiple farmors because the tenements or rights in the farm-in are jointly held, and the farmee is earning part of each holder's interest, then it will be a single farm-in agreement and assessed accordingly. Any consideration provided to any of the farmors under any of the farm-in transactions in the agreement will be consideration for the transaction and a single assessment will apply to the entire agreement.
24. If there are multiple farmors, each of which hold an interest in different mining tenements or rights, then the agreement will be a separate farm-in agreement with respect to each farmor, even if a single exploration requirement applies across all the tenements or rights.
25. If a single exploration requirement applies to multiple farm-in agreements in the above scenario, the farmee fulfilling the single exploration requirement will qualify as completing the requirement for each farm-in agreement. This means any transfer of an interest in a mining tenement, or the grant or transfer of a derivative mining right, that is in conformity with the farm-in agreement will not be charged with duty.¹¹

Ruling History

Revenue Ruling	Issued	Effective Dates	
		From	To
DA 16.0			

¹⁰ This will commonly be when the farmors are related.

¹¹ Provided the other requirements for the no double duty provisions are met.

ANNEXURE 1

Mineral Exploration Activities

Geological activities	geological mapping, sampling, drilling supervision, core logging, non-core drill-sample logging, geological data processing and interpretation, petrology, planning of exploration programs, report preparation, general prospecting
Geochemical activities	geochemical sampling, analysis of surface geochemical samples or subsurface drilling samples, geochemical data processing and interpretation
Geophysical activities (surface/subsurface)	ground geophysical surveys, downhole logging, geophysical data processing and interpretation
Airborne geophysical activities	aerial survey costs, geophysical data processing and interpretation
Remote sensing activities	aerial photography, remote sensing images, photo interpretation, image processing and interpretation
Mineralogical activities (exploration for diamonds, heavy mineral sands, etc.)	bulk sampling, mineral separation, mineralogy and analysis of diamond indicator minerals or other minerals
Surveying activities	gridding, line clearing, grid tie-in, tenement boundaries, etc.
Core drilling	diamond drilling (including pre-collar open-hole non-core drilling), access road and drill-site preparation
Non-core drilling	drilling, access road preparation; deep geochemical sampling by auger or air-core drilling
Costeaning	plant and equipment hire for trenching and bulk sampling
Field supplies	exploration equipment, consumables and supplies, plant and equipment hire, fuel, oil, etc., depreciation of direct exploration equipment, wages for non-professional field personnel
Drafting activities	drafting equipment, consumables and supplies, salaries for drafting personnel
Travel	travel directly associated with mineral exploration activities conducted on the tenement
Field camp activities	establishment and maintenance of exploration base camps, food and accommodation, vehicle costs, contractor helicopter support
Environmental	environmental studies
Feasibility study activities	
Rehabilitation activities¹²	

¹² Rehabilitation activities will be considered incidental to exploration if the rehabilitation relates to other exploration activities in this list. Where the rehabilitation relates to mining activities the rehabilitation will not be accepted as exploration.

Mining Activities (Development and Production)

Mine planning, open-cut mining, underground mining, shaft sinking, decline construction, underground drilling, pre-blast bench drilling, ore treatment, construction and maintenance of ore stockpiles, waste dumps, tailings dams and dumps, etc. care and maintenance on an idle mining operation.

DRAFT



Farm-in Agreements

Chapter 2 Part 5 Division 9 of the *Duties Act 2008*

As at Date

This fact sheet provides guidance on how duty will apply to farm-in agreements and farm-in transactions.

Terms used

A *derivative mining right* is an authorisation granted by the holder of a mining tenement to another person to conduct mining on that tenement. It may include rights to specific minerals over the tenement.

For the purposes of the farm-in concession, *exploration* does not include development of mining infrastructure or mining operations, but may include development solely to facilitate, or incidental to, exploration.

A *replacement mining tenement* is granted after a farm-in transaction to replace¹ a tenement that is part of the transaction and relates only to land covered by tenements that were part of the transaction.

A *replacement derivative mining right* is granted after a farm-in transaction to replace a right that is part of the transaction and relates only to land covered by rights that were part of the transaction.

Replacement mining tenements and replacement derivative mining rights commonly apply when a mining lease is granted over land that was part of an exploration licence or prospecting licence.

Farm-in transactions and farm-in agreements

A farm-in transaction is an agreement that allows a person (the *farmee*) to acquire a mining interest from another person (the *farmor*) after they conduct exploration on a mining tenement. There are three types of farm-in transactions:

1. The farmor holds a mining tenement (or is one of the holders), and the farmee will have the right to acquire part of the farmor's interest in the mining tenement.
2. The farmor holds a mining tenement (or is one of the holders), and the farmee will have the right to be granted a derivative mining right over the mining tenement.
3. The farmor holds a derivative mining right over a mining tenement, and the farmee will have the right to acquire part of the farmor's derivative mining right.

¹ Including to substitute, convert or renew.

In the first two cases it is also possible for the agreement to include:

- a mining tenement that is under application (subject to the grant of the tenement) or
- a mining tenement where the farmor is not the holder but is entitled to be registered as the holder because they have purchased the tenement, or an interest in the tenement, or have earned an interest under a previous farm-in agreement.

The *exploration requirement* for a farm-in transaction is an obligation after the agreement is made for the farmee to either spend an amount on exploration that is specified in the agreement, or to carry out exploration to meet a goal specified in the agreement.

Examples: farm-in transaction

- A farmor is the sole owner of an exploration licence. The farmor makes an agreement with a farmee that if the farmee spends \$500,000 on exploring, the farmee will have the right to a 30 per cent interest in the licence.
- A farmor is the sole owner of an exploration licence. The farmor makes an agreement with a farmee that if the farmee conducts exploration to the point of completing a bankable feasibility study, they will have the right to all nickel on the licence.
- A farmor has been granted the rights to iron ore on an exploration licence. The farmor makes an agreement with a farmee that if the farmee spends \$250,000 exploring the exploration licence, the farmee will have the right to a 50 per cent interest in the iron ore rights.

A farm-in agreement is a broader agreement that includes at least one farm-in transaction and may also include other dutiable transactions. It is possible for a farm-in agreement to contain one farm-in transaction and no other transactions.

Example: farm-in agreement

Mr A holds a group of exploration licences. Mr A enters into an agreement with B Exploration Ltd as follows:

1. B Exploration agrees to purchase an immediate 20 per cent interest in the tenements for \$50,000.
2. If B Exploration spends at least \$200,000 on exploration in the 12 months following the agreement (the first exploration period), they will be entitled to an additional 31 per cent interest in the tenements.
3. If B Exploration spends a further \$500,000 within two years following the first exploration period (the second exploration period), they will be entitled to an additional 29 per cent interest in the tenements.
4. If B Exploration completes both exploration requirements, they have the option to acquire Mr A's remaining 20 per cent interest in the tenements for \$500,000.

The agreement contains four transactions. The first is an agreement to transfer an interest in a mining tenement. The second and third are farm-in transactions. The fourth is the grant of an option to acquire an interest in a mining tenement.

A farm-in transaction must be lodged with RevenueWA within two months of the agreement being made. Liability to duty on all dutiable transactions in a farm-in agreement arises when the agreement is made.

Concessional farm-in transactions

For a farm-in transaction to be a concessional farm-in transaction it must meet the following requirements. If not met, the concession will not apply and duty may apply to the transaction based on the consideration for the transaction or the unencumbered value of the dutiable property.

If the farmee earns an interest in one or more mining tenements

When the farm-in agreement is made, the farmee must not hold:

- any interest in a mining tenement that is part of the agreement or
- a derivative mining right that authorises exploitation of land the subject of a mining tenement that is part of the agreement.

If the farmee completes their exploration obligation and earns an interest in the mining tenements, the farmor must still retain some interest in the mining tenements.

If the farmee earns a derivative mining right over one or more mining tenements held by the farmor

When the farm-in agreement is made, the farmee must not hold:

- any interest in a mining tenement over which a derivative mining right is to be granted
- a derivative mining right that authorises exploitation of a mining tenement over which a derivative mining right is granted or
- any interest in the derivative mining right the subject of the farm-in transaction.

The farmee cannot obtain all of the rights held by the farmor, for example, the rights to every mineral over the whole of the land the subject of the tenement.

If the farmee earns an interest in a derivative mining right held by the farmor:

When the farm-in agreement is made, the farmee must not hold:

- any interest in the mining tenement relating to the derivative mining right held by the farmor
- a derivative mining right that allows exploitation of the mining tenement relating to the derivative mining right held by the farmor or
- any interest in the derivative mining right the subject of the agreement.

If the farmee completes their exploration obligation and earns an interest in the derivative mining right, the farmor must still retain some interest in the right.

In each of these cases, the concession will still apply to a farm-in transaction if the farmee ends up holding a 100 per cent interest in the mining tenement or derivative mining right after other transactions that are part of the farm-in agreement as long as they do not hold it after that farm-in transaction.

Example: farmee acquiring a 100 per cent interest

A farmor holds an exploration licence and enters into the following agreement with a farmee:

- The farmee can earn the right to a 30 per cent interest in the licence by spending \$500,000 on exploration (stage 1).
- After stage 1 is complete, the farmee can earn a further 50 per cent interest by spending an additional \$800,000 on exploration (stage 2).
- After stage 2 is complete, the farmee has the option to buy the farmor's remaining 20 per cent interest for \$500,000.

Stage 1 and stage 2 are each a farm-in transaction. When each of these stages is complete the farmor will still retain an interest in the licence. If the option is exercised, the farmor will no longer have any interest in the licence but this will not prevent the concession applying to the two farm-in transactions.

If the option is exercised, it will be a dutiable transaction and duty will be charged based on the consideration to be paid or the value of the 20 per cent interest in the licence.

Application of duty

When determining the duty on a concessional farm-in transaction, the consideration will not include any amounts to be spent on exploration of the relevant mining tenement or derivative mining right.

The consideration for a farm-in transaction will include any payments that are contingent on future events, such as discovering a particular quantity of mineral or making a decision to mine. If these events do not occur and the contingent payments are not made, the farmee can apply for a reassessment of duty, excluding those amounts.² The consideration will also include any signing fee for entering into the agreement.

If there is more than one farm-in transaction in a farm-in agreement (commonly known as a multi-stage farm-in) and there is consideration for at least one stage, duty will be charged based on the sum of the consideration for each farm-in transaction, even if it is not certain the farmee will enter into those later stages.

Nominal duty will apply if there is no consideration for a concessional farm-in transaction or any of the farm-in transactions (once the exploration requirement is excluded).

Changes to consideration

If the consideration for a farm-in transaction changes before the transaction is completed, the transaction will be reassessed on the new consideration.

- If the consideration increases the farmee must lodge the instrument increasing the consideration within two months after the increase.
- If the consideration decreases the farmee can request a reassessment within five years after the original assessment of duty.

² A request must be made within the later of five years after the transaction, or 12 months after the day when the requirements can no longer be met.

A farm-in transaction will be completed when the farmee has fulfilled the exploration requirement and:

- acquires an interest in the tenement
- is granted a derivative mining right or
- acquires an interest in a derivative mining right.

Transactions following a farm-in transaction

If duty is paid on a concessional farm-in transaction, and the farmee has met the exploration requirement:

- the transfer of an interest in a mining tenement or replacement mining tenement
 - the grant of a derivative mining right or replacement derivative mining right or
 - the transfer of an interest in a derivative mining right or replacement derivative mining right
- will not be chargeable with duty if they are under the farm-in transaction and there is no extra consideration.

If there is consideration for one of these transactions, duty will apply at the general rate based on that consideration.

Purchase agreements

A farm-in transaction may allow for the farmee to pay an amount to the farmor rather than completing part (but not all) of the exploration requirement under a farm-in transaction. Consideration of this nature will be consideration for the farm-in transaction, and not for the transfer of an interest in a tenement or for the grant or transfer of a derivative mining right.

Variations to farm-in transactions and agreements

Adding an extra farm-in transaction

After a farm-in agreement is made, the farmor and farmee may add an extra farm-in transaction (the *additional farm-in transaction*) to the agreement. This would generally occur after the existing stages are complete.

The farm-in concession will apply to the additional farm-in transaction if:

- the mining tenements or derivative mining rights in the new transaction were contained in the original farm-in agreement and
- when the additional farm-in transaction is added to the farm-in agreement the farmee does not hold any interest in a mining tenement or derivative mining right that is part of the additional farm-in transaction.

Example

A farmor and farmee enter into a farm-in agreement over mining tenements with the following conditions:

- The farmee can spend \$100,000 on exploring the tenements to earn a 30 per cent interest in the tenements (stage 1).
- After stage 1 is complete the farmee can spend a further \$200,000 to earn an extra 21 per cent interest in the tenements (stage 2).

Before stage 1 is completed, the farmor and farmee agree to add an extra stage to the agreement:

- After stage 2 is complete the farmee can spend a further \$500,000 to earn an extra 29 per cent interest in the tenements (stage 3).

As the additional farm-in transaction relates to the same tenements, and is agreed before the farmee is a holder of any of the tenements, it will be a concessional farm-in transaction.

If stage 1 had been completed and the interest earned under stage 1 had been transferred to the farmee before stage 3 was agreed, the concession would not apply to stage 3.

Adding an extra tenement or derivative right

A farm-in agreement or transaction may allow for additional mining tenements or derivative mining rights to be added after the agreement is made.

The concession will apply to an added mining tenement or derivative mining right if:

- the added tenement is, or right relates to, a prospecting licence or exploration licence
- the tenement or right was granted after the farm-in transaction was made and
- the new tenement or right is added within three months after it is granted, or a longer period allowed by the Commissioner.³

If these conditions are not met, the transaction involving the added mining tenement or derivative mining right will be separately assessed for duty and will not receive the concession.

Increasing the interest to be earned under a farm-in transaction

The parties to a farm-in transaction may agree to increase the interest in a mining tenement or derivative mining right that will be earned under that transaction.

The concession will apply to the increased interest if the farmee does not hold an interest in the relevant mining tenement or derivative mining right at the time the interest to be earned is increased.

The concession will not apply to the increase in interest if the farmee already holds an interest in the tenement or right.

³ See Commissioner's Practice DA 54 'Farm-in Agreements'.

Cancelled farm-in transactions

The general provisions for cancelled transactions apply to farm-in transactions, so that an exemption applies to a farm-in transaction that is not carried into effect.

A concessional farm-in transaction cannot be cancelled if the farmee has fulfilled the exploration requirement for that transaction, even if they have not been transferred an interest or granted a right under the transaction.

Prospecting licences

A farm-in transaction that only relates to prospecting licences, or to derivative mining rights over prospecting licences, or both, is not a dutiable transaction and does not need to be lodged with RevenueWA.

If a farm-in transaction only relates to prospecting licences, but the interest earned by the farmee is:

- a replacement mining tenement that is not a prospecting licence or
- a replacement derivative mining right that does not relate to a prospecting licence,

the transaction will become a concessional farm-in transaction at the time the replacement tenement or right is transferred or granted. An example would be a mining lease that is granted over the area of one of the prospecting licences before the farmee earns an interest.

In this case the farm-in transaction must be lodged with RevenueWA for assessment, and will be assessed for duty based on the original terms of the agreement.

Contact RevenueWA			
Web Enquiry	www.osr.wa.gov.au/DutiesEnquiry	Website	WA.gov.au
Office	200 St Georges Terrace Perth WA 6000	Phone	(08) 9262 1100 1300 368 364 (WA country landline callers)
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Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.

