



CIRCULAR 19

DUTIES ACT 2008
AMENDMENTS TO FARM-IN CONCESSION

On 28 November 2018, the Minister for Finance announced proposed amendments to the transfer duty concession for farm-in agreements involving tenements. The amendments will ensure eligible farm-in agreements continue to receive relief from transfer duty, preserve the integrity of the concession, and ensure equitable outcomes for taxpayers.

A summary of the key issues to be addressed by the amendments is provided below. Specific details about the changes will be available when the amending Bill is introduced into the Parliament in 2019. Information about the progress of the legislation will be available from the Parliament website (www.parliament.wa.gov.au).

Background

A farm-in agreement is an agreement between a holder of a mining tenement (farminor) and another person which entitles the other person to acquire an interest in the tenement (or a derivative mining right) after spending an amount on exploration and development of the tenement.

Broadly, the conditions that must be met for an agreement to qualify for the concession are:

- the person must spend the specified exploration amount after the agreement is made;
- the person can only have a right to acquire an interest in the tenement after the specified exploration amount has been spent (that is, the person cannot acquire an upfront interest); and
- the mining tenement must be held with the farminor (in other words, the person cannot earn a 100 per cent interest in the tenement).

Exploration amount is defined to mean an amount to be spent, after the agreement is made, on exploration or development of the mining tenement carried out after the agreement is made.

Nominal duty of \$20 applies to an eligible farm-in agreement if there is no consideration for the transaction other than the exploration amount. Duty does not apply to the transfer of an interest in a tenement under a farm-in agreement if the specified exploration amount has been spent.

A duty concession has applied to eligible farm-in agreements for over 25 years. However, recent issues identified with the legislation will result in duty outcomes inconsistent with the Commissioner of State Revenue's longstanding assessment practices and the inequitable treatment of taxpayers. If not addressed by amendment, the concession will not be available for agreements that have always been eligible, and duty relief will be granted in circumstances in which it was never meant to apply.

Restoring the concession for eligible agreements

Amendments will ensure the concession applies to:

- multi-stage farm-in agreements – where the person who has earned an interest in a mining tenement can spend a further exploration amount to earn an additional interest in that tenement;
- agreements where the specified exploration amount includes costs prescribed in section 96C of the *Mining Regulations Act 1981* that may be used in calculating expenditure on the tenement;
- agreements where the exploration amount involves funding expenditure to achieve a specific outcome, such as drilling to a certain depth;
- agreements where the exploration amount refers only to a minimum amount required to be expended;
- agreements involving mining applications (either with or without mining tenements); and
- agreements where the farm-inor is entitled to be the registered holder because they have paid the consideration for the purchase of an interest in the tenement or have earned an interest under an earlier farm-in transaction.

Other amendments mean the concession will operate correctly where the person farms in to earn an interest in an existing derivative mining right, or farms in to earn the right to acquire a new derivative right. Relief from duty will also be extended to the transfer of an interest in a mining tenement under a farm-in agreement where the tenement has been converted between the making of the agreement and the transfer.

These amendments will be backdated to 1 July 2008 to give support to concessions previously applied and to allow the concessions for transactions entered into before the new legislation is enacted.

Agreements involving capital expenditure

Amendments will exclude agreements from accessing the concession where the exploration amount involves expenditure in connection with mining operations as defined in the *Mining Act 1978* or capital costs associated with the construction of mining infrastructure.

Agreements involving capital expenditure on mining operations or mining infrastructure have never benefited from the farm-in concession. The amendments will support the longstanding administration of the concession and ensure duty relief is not available for the purchase of an interest in an operating mine.

These amendments will apply to agreements entered into on or after 28 November 2018.

Other amendments

Amendments will allow duty to be assessed on all consideration that is or may be paid under a farm-in agreement other than the exploration amount. This includes where additional consideration is agreed to be paid after the agreement is made and before the interest is transferred. Other amendments will allow a refund of duty where contingent consideration under a farm-in agreement is ultimately not paid.

These amendments will apply to agreements entered into on or after 28 November 2018.