Farm-in Agreements

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

As at 15 November 2022

This fact sheet provides guidance on how duty will apply to farm-in agreements and farm-in transactions. This fact sheet deals with the amendments to the farm-in concession that commenced on 2 November 2022.

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 replace[1] 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 concession to apply to a 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). Liability to duty for a farm-in transaction arises at the time the transaction is agreed.

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 agreement 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, no further duty will be charged in respect of the

- transfer of an interest in a mining tenement or replacement mining tenement
- grant of a derivative mining right or replacement derivative mining right or
- transfer of an interest in a derivative mining right or replacement derivative mining right.

If there is consideration for one of these transactions, duty will apply at the general rate based on that consideration. This duty will be assessed at the time the interest or right is transferred or granted.

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)
Postal	GPO Box T1600 Perth WA 6845		

Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.