



Duties Amendment (Farm-in Agreements) Act 2022

Duties Act 2008

The *Duties Amendment (Farm-in Agreements) Act 2022* amends the *Duties Act 2008* to address issues with the transfer duty concession for farm-in agreements. A summary of the key amendments is provided below.

The information provided in this circular is not an exhaustive explanation of the amendments. For full details, please refer to the Bill and Explanatory Memorandum available on the [Western Australia Parliament website](#).

The Act received the Royal Assent on 1 November 2022 and the amendments commence from 2 November 2022. Transitional validation provisions have the effect of applying some amendments to transactions entered into prior to commencement day.

Background

On 28 November 2018, the [Minister for Finance announced](#) amendments to the transfer duty concession for farm-in agreements involving mining tenements. The amendments 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 farm-in agreement is an agreement between a holder of a mining tenement or a derivative mining right (the farmor) and another person (the farmee), which entitles the farmee to acquire an interest in the tenement or right after spending an amount on exploration.

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 or derivative mining right 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.

Issues identified with the interpretation of the current legislation result in duty outcomes inconsistent with the Commissioner of State Revenue's longstanding assessment practices. If not addressed, the concession will not be available for some agreements that have always been eligible. Duty relief will also apply in circumstances never intended, for example, to agreements where the exploration amount is capital expenditure on mining operations or mining infrastructure.

The amendments support the long-standing administration of the concession. Where possible, they also accommodate the different ways farm-in arrangements may be structured. This, together with the historically broad application of the concession, has resulted in more complex legislation than the current provisions.

RevenueWA is working through industry feedback on customer guidance materials about how the new provisions operate. The guidance materials will be published soon.

Restoring the concession for eligible agreements

The amendments ensure the concession applies to:

- multi-stage farm-in agreements
- farm-in agreements where the exploration amount includes some administration costs
- farm-in agreements where the exploration amount involves achieving an outcome rather than specifying an exploration amount or refers only to a minimum amount required to be expended
- farm-in agreements involving applications for mining tenements
- when a farmee earns an interest in a derivative mining right from the holder of the right or earns a derivative mining right from the tenement holder
- farm-in agreements where a farmee earns the right to an interest in the mining tenement or derivative mining right, but is not obligated to take the transfer of the interest and
- farm-in agreements where the farmor is the beneficial owner of a mining tenement because they have purchased the interest under an agreement or earned an interest under an earlier farm-in agreement but their interest in the tenement is not yet registered.

Other amendments ensure duty does not apply to the transfer of an interest in a replacement mining tenement under a farm-in agreement where the tenement has been converted between the making of the agreement and the transfer. This also applies to replacement derivative mining rights.

The amendments provide that liability for all stages in a multi-stage farm-in agreement arises when the agreement is made.

Transitional and validation provisions have the effect of applying these amendments to farm-in agreements entered into from 1 July 2008 to give support to concessions previously applied and to allow the concession for transactions entered into before the new legislation is enacted.

Agreements involving capital expenditure

Agreements involving capital expenditure on mining operations or mining infrastructure have never benefited from the farm-in concession. The amendments clarify that the concession does not apply where the exploration amount involves capital expenditure on mining operations or mining infrastructure. This supports the appropriate administration of the concession and protects the integrity of the revenue base by ensuring an agreement to purchase an interest in an operating mine cannot be structured to access the concession.

Transitional and validation provisions have the effect of applying these amendments to farm-in agreements entered into on or after 28 November 2018.

Other amendments

Other amendments allow:

- duty to be assessed on all consideration provided under a farm-in agreement other than the exploration amount, including any further consideration provided to take the transfer of an interest in the mining tenement or derivative mining right under the farm-in transaction and
- a reassessment and refund of duty when contingent consideration under a farm-in agreement is not paid.

Transitional and validation provisions have the effect of applying these amendments to agreements entered into on or after 28 November 2018.

The following amendments apply from the day after Royal Assent.

- A cancelled transaction exemption does not apply to a farm-in agreement if the exploration requirement has been fulfilled, that is, if the farmee has earned the right to acquire an interest in the mining tenement or derivative mining right.
- Duty applies to any signing fee provided for entering into the farm-in agreement to prevent the shifting of consideration for a farm-in transaction to a non-dutiable event.
- Clarification of how the concession applies to variations to farm-in agreements, for example, to add another stage to the agreement, add another mining tenement or increase an interest in the tenement.
- A farm-in transaction involving only prospecting licences or derivative mining rights in relation to prospecting licences is not a dutiable transaction. However, the transaction will become a dutiable transaction if:
 - another type of tenement (such as an exploration licence or mining lease), or a derivative mining in relation to another type of tenement, is added to the farm-in transaction or
 - the prospecting licence is converted into another type of tenement, or the derivative mining right in relation to the prospecting licence is replaced with a derivative mining right in relation to another type of tenement, before the interest in the tenement or derivative mining right is transferred to the farmee.

This Circular replaces the previous versions published 28 November 2018 and 17 August 2022.