



## 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* with effect from 2 November 2022, 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 on or after 2 November 2022.

### 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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> Duties Act s 91P.

<sup>3</sup> Duties Act s 91R.

In general, for the concession to apply to a farm-in transaction, the farmee must not have any interest<sup>4</sup> 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.

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<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

### ***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 agreement<sup>8</sup> 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.

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<sup>5</sup> Duties Act Schedule 3, paragraph 64.

<sup>6</sup> Duties Act Schedule 3 paragraph 67.

<sup>7</sup> Duties Act s 91N(6).

<sup>8</sup> 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:<sup>9</sup>

- 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.<sup>10</sup>

## **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.
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 no more than 20 per cent of the exploration amount, the Commissioner

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<sup>9</sup> Duties Act s 91T.

<sup>10</sup> Duties Act s 91T.

will consider the exploration requirement to be met and will assess the transfer or grant as being in accordance with the farm-in transaction.<sup>11</sup>

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 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.

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<sup>11</sup> 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.

### ***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 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 tenement<sup>12</sup> 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.<sup>13</sup>
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 2 November 2022.

Chris McMahon  
COMMISSIONER OF STATE REVENUE

15 November 2022

## Commissioner's Practice history

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 54.0	15 November 2022	2 November 2022	Current

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<sup>12</sup> Duties Act s 91L(4).

<sup>13</sup> Duties Act s 91S (4).