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Public Ruling Duties Act:

TRANSFER DUTY—CONCESSIONS FOR FARM-IN AGREEMENTS—WHAT CONSTITUTES AN ‘EXPLORATION AMOUNT’

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. Under the *Duties Act 2001* (the Duties Act), a farm-in agreement is a dutiable transaction.¹
2. Chapter 2 Part 8A of the Duties Act provides for concessions for certain types of eligible farm-in agreements defined as ‘deferred farm-in agreements’² and ‘upfront farm-in agreements’³, subject to specified conditions.
3. Sections 11(6A) and 84J of the Duties Act state that the dutiable value of a farm-in agreement is the consideration paid or payable to the farmor⁴, or a related person of the farmor, for the farmor entering into the agreement, other than an exploration amount.⁵
4. An eligible farm-in agreement must, among other things, be a written agreement entered into by a farmor and a farnee⁶ in relation to an exploration authority.⁷

¹ Sections 9(1)(b) and 84G of the Duties Act

² Section 84C(1) of the Duties Act

³ Section 84B(1) of the Duties Act

⁴ Section 84A of the Duties Act

⁵ Section 84B(1)(b) for ‘upfront farm-in agreements’ and section 84C(1)(b) for ‘deferred farm-in agreements’

⁶ Sections 84B(1) and 84C(1) of the Duties Act

⁷ Schedule 6 of the Duties Act states that an ‘exploration authority’ means a following authority:

(a) an authority to prospect under the *Petroleum Act 1923* or *Petroleum and Gas (Production and Safety) Act 2004*

(b) an exploration permit or prospecting permit under the *Mineral Resources Act 1989*

(c) a geothermal exploration permit under the *Geothermal Energy Act 2010*

(d) a GHG exploration permit under the *Greenhouse Gas Storage Act 2009*.

5. Another requirement is that the farmee must, under the written agreement, spend a stated amount, called an 'exploration amount', on relevant exploration or development.⁸ The transfer of an interest in an exploration authority must be conditional on spending an exploration amount.⁹
6. The purpose of this public ruling is to clarify:
 - (a) when a stated amount is considered to have been specified under an agreement for the purposes of identifying an exploration amount for application of the concession¹⁰
 - (b) what constitutes relevant exploration or development for the purpose of the concession.

Ruling and explanation

Stated amount

7. A stated amount will be considered to have been specified under an agreement for the purpose of identifying an exploration amount within the meaning of ss.84B(1)(b) and 84C(1)(b) where the agreement:
 - (a) expressly specifies a monetary amount for relevant exploration or developmentor
 - (b) specifies exploration or development activity for which an amount that will be spent on completing the activity can be calculated by reference to objective and ascertainable evidence; for example, 200 metres of reverse circulation drilling.
8. An agreement will not be an eligible farm-in agreement that qualifies for the concession if it is **solely a milestone or outcome-based agreement**; for example, completion of a preliminary engineering design for mine and infrastructure.¹¹ However, an agreement is not precluded if it stipulates milestones or tasks in addition to stated amounts.
9. An agreement that states a minimum amount to be spent may qualify for the concession. The Commissioner will regard a minimum amount as a stated amount for the purposes of Chapter 2 Part 8A of the Duties Act.

⁸ Section 84F of the Duties Act

⁹ Section 84B(1)(b) for upfront farm-in agreements and s.84C(1)(b) for deferred farm-in agreements

¹⁰ Section 84B(1)(b) for upfront farm-in agreements and s.84C(1)(b) for deferred farm-in agreements

¹¹ An agreement to transfer an interest in an exploration authority that is not an eligible farm-in agreement is a dutiable transaction under s.9(1)(b) of the Duties Act, the dutiable value of which is to be calculated in accordance with s.11(7).

Relevant exploration or development

10. Section 84F of the Duties Act states what is relevant exploration or development:

Exploration or development is **relevant exploration or development** for an exploration amount relating to an interest in an exploration authority the subject of a farm-in agreement if:

- (a) the exploration or development is comprised of, or associated with, the carrying out of an activity under the exploration authority; and
- (b) all of the exploration or development is carried out after the farm-in agreement is entered into.

11. Exploration amount is considered to be money spent 'in ground' on actual exploration activities.

12. Activities that may be considered to be comprised of, or associated with, the carrying out of an activity under an exploration authority include:

- (a) drilling
- (b) sampling
- (c) geological surveys
- (d) geological evaluations and assessments for the exploration authority
- (e) desktop scoping study for the purpose of identifying the existence, quantity or location of the resource
- (f) travelling to and from tenements, accommodation and field supplies when in connection with activities that are considered to be comprised of, or associated with, the carrying out of an activity under an exploration authority.

13. Activities that will generally not be considered to be comprised of, or associated with, the carrying out of an activity under an exploration authority include:

- (a) administration costs such as tenement rentals, rates and fees, and general office work
- (b) legal costs
- (c) management costs
- (d) native title and environmental compliance
- (e) feasibility study for project financing purposes.

Date of effect

14. This public ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 13 March 2017

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.13.1	13 March 2017	13 March 2017	Current