Queensland Government

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Public Ruling
Duties Act:

TRANSFER DUTY—EXEMPTION FOR FARM-IN TRANSACTIONS IN THE RESOURCES SECTOR

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* (Duties Act), duty applies to the direct and indirect transfer of mining tenements and certain petroleum authorities.

2. Dealings in relation to an exploration authority were previously exempt from duty. The *Fiscal Repair Amendment Act 2012* implemented the announcement in the State Budget 2012–13 that duty will apply to the direct and indirect transfer of an exploration authority from the start time.

3. The Budget also announced that exploration and development expenditure occurring under a farm-in agreement will be exempt from duty.

4. Pending amendment of the Duties Act, the exemption will be administered under an administrative arrangement in the terms set out in this Public Ruling.

Ruling and explanation

Definitions

5. The following terms are used in this Public Ruling.

   (a) *Commissioner* means the Commissioner of State Revenue.

   (b) *Deferred farm-in agreement* means an agreement between the farmor and another person (*the farmee*) which provides the farmee, after expending the exploration amount specified in the agreement, with a right to acquire an interest in the exploration authority that is:

      (i) specified in the agreement; and

      (ii) to be held jointly with the farmor.

   (c) *Exploration amount* means an amount specified in a farm-in agreement to be expended after the agreement is made on either or both exploration and development of the exploration authority to be carried out after the agreement is made and within the period of time specified in the agreement.

   (d) *Exploration authority* means:

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

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

      (iii) a geothermal exploration permit under the *Geothermal Energy Act 2010*; and

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

   (e) A *farm-in agreement* means:

      (i) a deferred farm-in agreement; and

      (ii) an upfront farm-in agreement.

   (f) *Farmor* means the person who is the registered holder of an exploration authority or a person who has lodged with the Department of Natural Resources and Mines an application to be a registered holder of an exploration authority that has been approved.

   (g) *Other consideration* means any consideration paid or payable to the farmor or a related person[1] in relation to a farm-in agreement that is not an exploration amount.

   (h) *Start time* means 10.30am on 13 January 2012.

   (i) *Transfer event* means the exercise by a farmee of a right under an upfront farm-in agreement or otherwise to retain an interest in an exploration authority.

[1] As defined in s.61 of the *Duties Act 2001*

(j) *Upfront farm-in agreement* means an agreement between the farmor and another person (also the farmee) which provides for the immediate transfer of an interest in the exploration authority and, subject to expending the exploration amount by the date specified in the agreement (the expenditure completion date), entitles the farmee to retain the interest in the authority that is:

(i) specified in the agreement; and

(ii) to be held jointly with the farmor.

Transfer duty exemptions

Farm-in agreement

6. Transfer duty will not apply to a farm-in agreement where the only consideration for the agreement is an exploration amount.

7. If other consideration is paid or payable in relation to a farm-in agreement, transfer duty will apply to the agreement as an agreement for transfer. However, transfer duty imposed on the agreement will be assessed initially on any other consideration paid or payable for the grant of the agreement.[2] Transfer duty on any other consideration not for the grant of the agreement will be reassessed on the agreement only at the time of any transfer or transfers under the agreement in accordance with the following paragraphs.

Transfer of an interest in an exploration authority under a farm-in agreement

Deferred farm-in agreement

8. For a transfer under a deferred farm-in agreement, transfer duty will not apply to consideration for the agreement comprising an exploration amount that has been expended in accordance with the farm-in agreement if the interest being transferred is the interest specified in the farm-in agreement.

9. Where any other consideration in relation to a transfer is paid or payable, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement and any other consideration in relation to the transfer. A credit will apply to duty already paid on the agreement.

10. Where a transfer occurs under a deferred farm-in agreement that provides for the acquisition of interests in an exploration authority in stages, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement, any other consideration in relation to the transfer for the relevant stage and any other consideration in relation to transfers under a previous stage. A credit will apply to duty already paid on the agreement.

[2] This is consistent with the duty treatment of options. Also, transfer duty is generally assessed on the greater of the consideration for the transaction or the unencumbered value of the property the subject of the transaction. A concessional approach is proposed for farm-in agreements as duty will be assessed by reference only to the consideration under the agreement. The value of the exploration authority will not be relevant.

Example

X enters into a deferred farm-in agreement with Y under which Y agrees to provide the following consideration:

- $10,000 to X for entering into the agreement
- $1 million on exploration activity in the authority area for the right to acquire a 20% interest in an exploration authority held by X (Transfer 1)
- On commencement of exploration activity, $200,000 to X for mining information[3] about the authority
- $300,000 to X if the 20% interest in the authority is transferred to Y
- On acquisition of the 20% interest, a further $2 million on exploration activity in the authority area for the right to acquire a further interest of 30% in the authority area (Transfer 2)
- $400,000 to X if the 30% interest in the authority is transferred to Y.

The consideration for the agreement, including the exploration amount, is $3,910,000. Transfer duty will be initially assessed on the agreement on $10,000, being the amount paid for entering into the agreement. If Transfer 1 occurs, transfer duty will be reassessed on the agreement on $510,000, being the sum of the amount paid for entering into the agreement, the amount paid for mining information and the amount paid for the transfer other than the exploration amount. A credit will apply for duty previously paid on the agreement, and the transfer will be stamped pursuant to the agreement.[4] If Transfer 2 occurs, transfer duty will be reassessed on the agreement on $910,000, being the sum of the amount paid for entering into the agreement, the amount paid for mining information and the amounts paid for Transfer 1 and Transfer 2 other than the exploration amount. A credit will apply for duty previously paid on the agreement, and the transfer will be stamped pursuant to the agreement.

Upfront farm-in agreement

11. For a transfer under an upfront farm-in agreement, transfer duty will not apply to consideration for the agreement comprising an exploration amount that is to be expended in accordance with the agreement if the interest being transferred is the interest specified in the farm-in agreement.

12. Where any other consideration in relation to a transfer is paid or payable, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement and any other consideration in relation to the transfer. A credit will apply to duty already paid on the agreement. Liability for duty will arise on a transfer event. The farmee must lodge the agreement for assessment with the Commissioner within 14 days of the transfer event.

13. Where a farmee exercises a right under the agreement to reassign the interest to the farmor, transfer duty will not apply to the transfer from the farmee to the farmor.

[3] All consideration for a farm-in agreement will be taken into account irrespective of its nature.
[4] See s.22(2) of the *Duties Act 2001*.

14. The following conditions apply where an interest in an exploration authority has been transferred to the farmee under an upfront farm-in agreement, the exploration amount has not been expended and the interest has not been reassigned to the farmor.

    (a) The farmee must notify the Commissioner within 30 days of the expenditure completion date.

    (b) The Commissioner will either:

        (i) if the farmor and farmee have extended the time within which the exploration amount is to be expended and paragraph 16 does not apply: extend the expenditure completion date to the new date agreed for expenditure of the exploration amount by the farmor and the farmee; or

        (ii) reassess duty on the agreement on the basis that the farm-in exemption did not apply.

15. Where a transfer event occurs under an upfront farm-in agreement that provides for the acquisition of interests in an exploration authority in stages, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement, any other consideration in relation to the transfer and any other consideration in relation to transfers under a previous stage.

Arrangement to avoid duty

16. The exemptions will not apply where a farm-in agreement or transactions or arrangements under or in relation to a farm-in agreement form part of an arrangement to avoid duty.

Transitional arrangements

17. Transactions in relation to exploration authorities are only liable for duty on or after the start time. Consequently, the transfer duty exemptions for farm-in transactions will apply to the following:

    (a) A farm-in agreement made or entered into at or after the start time.

    (b) A transfer made at or after the start time under a farm-in agreement entered into at or after the start time.

    (c) A transfer made at or after the start time under a farm-in agreement entered into before the start time.

Date of effect

18. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of issue: 27 June 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.12.1	27 June 2013	27 June 2013	23 June 2015