



## Exploration for Farm-in Transactions

1. This ruling provides guidance on the Commissioner's interpretation of *exploration* for the purposes of farm-in transactions and farm-in agreements.<sup>1</sup>

### Background

2. The *Duties Act 2008* (Duties Act) contains specific provisions for assessing *farm-in transactions* in Chapter 2 Part 5 Division 9.
3. A *farmor* is a person who holds a mining tenement, an interest in a mining tenement, or a derivative mining right over a mining tenement.
4. A *farmee* is a person who enters into an agreement with the farmor (a *farm-in transaction*<sup>2</sup>) to fulfil an exploration requirement on the tenement in exchange for an interest in the tenement, or a derivative mining right that relates to the tenement, or an interest in the farmor's derivative mining right.
5. A *farm-in agreement*<sup>3</sup> is an agreement between a farmor and farmee that contains at least one farm-in transaction. It may also contain other types of transactions such as an agreement to transfer an interest in a mining tenement, or the grant of an option to acquire an interest in a mining tenement.
6. An *exploration requirement*<sup>4</sup> is a requirement to:
  - (a) expend, on exploration carried out by the farmee, an amount specified in, or determined in accordance with, the farm-in transaction and/or
  - (b) carry out exploration as specified in, or determined in accordance with, the farm-in transactionafter the farm-in transaction is made.
7. For the purposes of a farm-in transaction or agreement, *exploration*<sup>5</sup> includes development carried out solely:
  - (a) for the purpose of facilitating exploration or
  - (b) otherwise incidentally to explorationbut not capital expenditure for the development of a mining infrastructure or mining operations.

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<sup>1</sup> The definition of exploration in this ruling applies to a farm-in agreement entered into on or after 28 November 2018. Duties Act Schedule 3, Paragraph 67.

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

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

<sup>4</sup> Duties Act s 91N.

<sup>5</sup> Duties Act s 91K as inserted by the *Duties Amendment (Farm-in Agreements) Act 2022*.

8. The Commissioner may allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration to be treated as if it were spent on exploration, subject to any limits or other conditions imposed by the Commissioner.<sup>6</sup> See Commissioner's Practice DA 54 for information on these limits and conditions.

## Ruling

### *Meaning of 'exploration'*

9. The term 'exploration' is not defined in the Duties Act (other than to include some development expenses as noted in the definition provided in paragraph 7). It takes on its ordinary meaning.
10. The Macquarie Dictionary defines *explore* as
- (a) 'to traverse or range over (a region, etc.) for the purpose of discovery'
  - (b) 'to look into closely, scrutinise, examine'.
11. In the context of a mining tenement, exploration must involve activities that have a purpose of discovering mineral bodies or, if a mineral body has been identified, scrutinising or examining the mineral body to better define the extent of the body, the degree of mineralisation, or to determine other factors relevant to the feasibility of mining.
12. Instructions in 'Form 5 Operations Report – Expenditure on mining tenement'<sup>7</sup> include a distinction between Mineral Exploration Activities and Mining Activities (Development and Production) and the activities that would fall into each of these categories.
13. The Commissioner considers each of the activities described under Mineral Exploration Activities to be exploration for the purposes of the Duties Act.
14. The Commissioner considers the activities listed under Mining Activities (Development and Production) are unlikely to be exploration. Activities of this type will only be accepted as exploration if compelling evidence is provided. These activities may also be development to facilitate exploration if they meet the requirements described in paragraphs 20 to 25.
15. A full list of Mineral Exploration Activities and Mining Activities (Development and Production) as described in the *Mining Regulations 1981* is contained in Annexure 1.
16. Other expenses that are necessary prerequisites to exploration will be accepted as exploration costs. These include expenses relating to Aboriginal Heritage Surveys, Land Access and Native Title Costs and Annual Tenement Rent and Rates provided these relate to exploration, and not to mine development or mining operations.

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

<sup>7</sup> As prescribed in the *Mining Regulations 1981*; available from <https://www.dmp.wa.gov.au/Minerals-Mining-16304.aspx>

### ***Development for the purposes of facilitating exploration***

17. The definition of exploration includes development that is solely for the purposes of facilitating exploration.
18. *Facilitate* is defined<sup>8</sup> as ‘to make easier or less difficult; help forward (an action, a process, etc.).’
19. For development to be solely to facilitate exploration, it must make the exploration easier, or less difficult, and have no other purpose. Examples may include:
  - (a) building roads or other access ways that allow people or equipment used for exploration to access the tenement more easily
  - (b) installing generators or power transmission lines to power equipment used for exploration
  - (c) installing bores or pipes to provide water necessary for exploration of the tenement or
  - (d) establishing an exploration base camp.
20. For development of a kind described in paragraph 19 to be *solely* to facilitate development, it must be of a suitable scale to apply to the exploration stage of the mining process, and not for development of an operating mine. If the scale of development is greater than would be necessary for the exploration stage of mining, the development costs will not be accepted as being solely to facilitate exploration.

#### ***Example 1***

A farm-in transaction allows for some of the exploration amount to be spent on power generating facilities on the tenement. The farmee installs a generator to provide basic power to the tenement area and to operate lights and some powered equipment. This development would be considered solely to facilitate exploration.

#### ***Example 2***

As part of a farm-in transaction over a late-stage exploration licence, the farmee builds a mining camp that can accommodate up to 100 workers. While completing a pre-feasibility study some personnel are stationed at the camp. The farmee claims the amount spent on developing the mining camp is to facilitate exploration.

Unless the farmee can provide evidence that a camp of that size is necessary to conduct exploration of the tenement (rather than to build and operate a mine), amounts spent on building the mining camp will not be accepted as being solely to facilitate exploration.

#### ***Example 3***

As part of a farm-in transaction, the farmee clears an access track to allow drilling equipment to access the tenement. The farmee chooses a path that is slightly more expensive than other option but will be easier to widen and seal if the tenements are developed to an operating mine.

The Commissioner will accept that this development is to facilitate exploration, and the amount spent on clearing the path can be included as being on exploration.

21. If a farm-in transaction allows for expenditure on development that is not solely incidental to exploration, but there is no indication of how much will be spent, the Commissioner will accept that the transaction qualifies as a farm-in transaction.

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<sup>8</sup> The Macquarie Dictionary.

22. If the farmee meets the exploration requirement for a farm-in transaction referred to in paragraph 21, and requests a transaction in conformity with the agreement be endorsed for 'no double duty', the Commissioner will determine if there was expenditure on development that does not facilitate exploration. If there was, the Commissioner will treat that amount as consideration for the transaction.<sup>9</sup>

### ***Farm-in transactions with multiple farmors***

23. It is possible for a farmee to enter into an agreement with more than one farmor, either because the tenements or derivative mining rights in the agreement are held by more than one person, or because there are distinct tenements or rights in the agreement held by each farmor.<sup>10</sup>
24. If there are multiple farmors because the tenements or rights in the farm-in are jointly held, and the farmee is earning part of each holder's interest, then it will be a single farm-in agreement and assessed accordingly. Any consideration provided to any of the farmors under any of the farm-in transactions in the agreement will be consideration for the transaction and a single assessment will apply to the entire agreement.
25. If there are multiple farmors, each of which hold an interest in different mining tenements or rights, then the agreement will be a separate farm-in agreement with respect to each farmor, even if a single exploration requirement applies across all the tenements or rights.
26. If a single exploration requirement applies to multiple farm-in agreements in the above scenario, the farmee fulfilling the single exploration requirement will qualify as completing the requirement for each farm-in agreement. This means any transfer of an interest in a mining tenement, or the grant or transfer of a derivative mining right, that is in conformity with the farm-in agreement will not be charged with duty.<sup>11</sup>

### **Ruling history**

Revenue Ruling	Issued	Effective Dates	
		From	To
DA 16.0	15 November 2022	2 November 2022	15 November 2022

<sup>9</sup> Duties Act s 91R(4).

<sup>10</sup> This will commonly be when the farmors are related.

<sup>11</sup> Provided the other requirements for the no double duty provisions are met.

## ANNEXURE 1

### Mineral Exploration Activities

<b>Geological activities</b>	geological mapping, sampling, drilling supervision, core logging, non-core drill-sample logging, geological data processing and interpretation, petrology, planning of exploration programs, report preparation, general prospecting
<b>Geochemical activities</b>	geochemical sampling, analysis of surface geochemical samples or subsurface drilling samples, geochemical data processing and interpretation
<b>Geophysical activities (surface/subsurface)</b>	ground geophysical surveys, downhole logging, geophysical data processing and interpretation
<b>Airborne geophysical activities</b>	aerial survey costs, geophysical data processing and interpretation
<b>Remote sensing activities</b>	aerial photography, remote sensing images, photo interpretation, image processing and interpretation
<b>Mineralogical activities (exploration for diamonds, heavy mineral sands, etc.)</b>	bulk sampling, mineral separation, mineralogy and analysis of diamond indicator minerals or other minerals
<b>Surveying activities</b>	gridding, line clearing, grid tie-in, tenement boundaries, etc.
<b>Core drilling</b>	diamond drilling (including pre-collar open-hole non-core drilling), access road and drill-site preparation
<b>Non-core drilling</b>	drilling, access road preparation; deep geochemical sampling by auger or air-core drilling
<b>Costeaming</b>	plant and equipment hire for trenching and bulk sampling
<b>Field supplies</b>	exploration equipment, consumables and supplies, plant and equipment hire, fuel, oil, etc., depreciation of direct exploration equipment, wages for non-professional field personnel
<b>Drafting activities</b>	drafting equipment, consumables and supplies, salaries for drafting personnel
<b>Travel</b>	travel directly associated with mineral exploration activities conducted on the tenement
<b>Field camp activities</b>	establishment and maintenance of exploration base camps, food and accommodation, vehicle costs, contractor helicopter support
<b>Environmental</b>	environmental studies
<b>Feasibility study activities</b>	
<b>Rehabilitation activities<sup>12</sup></b>	

<sup>12</sup> Rehabilitation activities will be considered incidental to exploration if the rehabilitation relates to other exploration activities in this list. Where the rehabilitation relates to mining activities the rehabilitation will not be accepted as exploration.

## **Mining Activities (Development and Production)**

Mine planning, open-cut mining, underground mining, shaft sinking, decline construction, underground drilling, pre-blast bench drilling, ore treatment, construction and maintenance of ore stockpiles, waste dumps, tailings dams and dumps, etc. care and maintenance on an idle mining operation.