

REVENUE CIRCULAR

RC-SD-002:

EXPLORATION LICENCES TRANSITIONAL ARRANGEMENTS

Purpose

This Circular provides information on the transitional arrangements that apply to the conveyance of exploration licences and other rights to explore for resources.

From 1 July 2008, the definition of 'land' in the *Stamp Duty Act* was extended to cover rights to explore for resources, including exploration licences and exploration retention licences under the *Mining Act*. This results in a conveyance, which includes an agreement to make a conveyance, of these rights being treated in the same way as a conveyance of land. It also ensures that these rights are treated consistently with most other mining rights, which were already included in the definition of 'land'.

Similarly, an acquisition of a significant or further interest in a land-holding corporation or unit trust on or after 1 July 2008 is to take into account the value of any exploration rights in determining the unencumbered value of the land to which the corporation or trust is entitled.

Transitional arrangements

A transitional provision¹ was inserted into the *Stamp Duty Act* to ensure that the stamp duty treatment of exploration rights that applied before 1 July 2008 continues to operate for conveyances of exploration rights first executed before 1 July 2008. The transitional provision also provides that the pre-1 July 2008 rules apply to conveyances made before 1 July 2009 if made pursuant to an agreement (including a farm-in agreement) entered into before 1 July 2008.

A similar position applies to a relevant acquisition in a land-holding corporation or unit trust. As an example, an acquisition of an interest may be evidenced by a transfer of shares or units made before 1 July 2009. If the acquisition is made pursuant to an agreement entered into before 1 July 2008, stamp duty will not be payable on the land-holdings of the corporation or unit trust that comprise rights to explore for resources.

This approach recognises that an agreement to convey exploration rights, or to acquire an interest in an entity holding such rights, may have been made prior to this measure commencing and that it would be inappropriate to impose conveyance stamp duty on exploration rights transferred directly, or acquired indirectly, pursuant to such an agreement.

Extension of sunset period to conveyances made before 1 July 2013

Concerns have been raised that a number of long-term agreements to acquire exploration rights made before 1 July 2008, particularly under farm-in agreements, would fall outside of the transitional arrangements in the *Stamp Duty Act*.

¹ Section 97B of the *Stamp Duty Act*.

As a result, the Treasurer has agreed to waive the stamp duty otherwise payable to have the effect that the pre-1 July 2008 rules apply to conveyances, including the transfer of shares or units in a land-holding corporation or unit trust, made before **1 July 2013** if made pursuant to an agreement entered into before 1 July 2008.

This includes conveyances made before 1 July 2013 if made pursuant to:

- a farm-in agreement entered into before 1 July 2008; or
- the exercise of an option to purchase that was granted under a written option agreement entered into before 1 July 2008.

However, this treatment does not apply in the following circumstances:

- to a direct conveyance or an acquisition of shares or units in a land-holding corporation or unit trust, if made pursuant to the exercise of a right of pre-emption or a right of first refusal, even where such rights existed before 1 July 2008; or
- where an acquisition is made in a corporation or unit trust pursuant to an agreement entered into on or after 1 July 2008, and that entity is a party to an agreement for the sale or purchase of exploration rights, those exploration rights will be treated as 'land'.

For further information about this and other revenue measure included in the 2008-09 Budget, refer to Revenue Circular RC-GEN-008: *2008-09 Budget Measures*.

Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular. All Circulars and Guidelines are available from TRO's website.



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Date of issue: 23 September 2008

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