

# Changes announced to the duty treatment of prospecting and exploration permits and authorities

Duty currently applies to the transfer of mining and petroleum rights subject to certain exceptions. However, the transfer of a prospecting or exploration permit or authority (exploration permits) is not dutiable and exploration permits are not treated as land for landholder duty.

The *2011–12 Mid Year Fiscal and Economic Review* (the Mid Year Review) released at 10.30am on 13 January 2012 (the start time) included an announcement that from the start time, transfer duty will apply to the direct and indirect transfer of exploration permits and authorities to prospect (which are capable of transfer).

The change will apply from the start time pending enactment of legislation which will have retrospective effect to the start time.

Pending enactment of the legislation, the *Duties Act 2001* will be administered on the basis that the following are included in the definitions of land and statutory licence.

- Prospecting and exploration permits under the *Mineral Resources Act 1989*
- Authorities to prospect under the *Petroleum and Gas (Production and Safety) Act 2004* (including those under the previous *Petroleum Act 1923*)
- Geothermal exploration permits under the *Geothermal Exploration Act 2004*
- GHG exploration permits under the *Greenhouse Gas Storage Act 2009*

Transfer duty will apply to agreements for transfer and transfers made or entered into at or after the start time. However, if an agreement for transfer of an exploration permit is entered into before the start time, a transfer of the permit made after the start time pursuant to the agreement will not be liable for transfer duty.

Transfer duty will also apply to other dutiable transactions relating to exploration permits such as the creation or termination of a trust, a trust acquisition or surrender or a partnership acquisition. Duty will apply where liability for duty determined under section 16 of the *Duties Act 2001* arises at or after the start time.

Exploration permits held by a corporation or listed unit trust will be included as landholdings of the entity and be taken into account for landholder duty purposes where a relevant acquisition in the landholder occurs at or after the start time. The time of a relevant acquisition will be determined under section 163 of the *Duties Act 2001* as follows:

- if there is an agreement to acquire the interest in the landholder, whether conditional or not, and the next subparagraph does not apply—when the agreement is made; or
- if there is an agreement to acquire the interest, whether conditional or not, and the landholder is not a landholder when the agreement is made but is a landholder when the agreement is completed—when the agreement is completed; or
- otherwise—when the interest is acquired.

However, where there is an agreement to acquire an interest in a landholder entered into prior to the start time and completed after the start time which, under section 163(2)(b) of the *Duties Act 2001*, gives rise to a relevant acquisition in the landholder when the agreement is completed, exploration permits will not be included as landholdings of the entity.

As the *Duties Act 2001* has not yet been amended to give effect to the announcement, duty in relation to transactions affected by the announcement will only be collected where a taxpayer opts to lodge the relevant documents with the Office of State Revenue for assessment and to pay the duty assessed. However, following commencement of the amending legislation, parties to these types of transactions will be under an obligation to lodge the relevant documents with the Office of State Revenue and to pay the duty assessed.

For further information contact the Office of State Revenue on 1300 300 734.