

LI 2022/32 - Explanatory statement -



Explanatory Statement

A New Tax System (Goods and Services Tax) Attribution Rules for Deferred Transfer Farm-out Arrangements Determination 2022

General outline of instrument

1. This determination is made under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).
2. This determination sets out specific attribution rules for **deferred transfer farm-out arrangements** (defined in section 5 of the determination). The determination is necessary to prevent Division 29 and Chapter 4 of the GST Act applying inappropriately to these arrangements.
3. This determination replaces *A New Tax System (Goods and Services Tax) Particular Attribution Rules for Deferred Transfer Farm-out Arrangement Determination 2012* (F2012L00866).
4. This determination is a legislative instrument for the purposes of the *Legislation Act 2003*.
5. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any determination of a legislative instrument or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such determination.

Date of effect

6. This Determination commences on the day after it is registered on the Federal Register of Legislation. It applies where a farmor and a farmee have entered into a deferred transfer farm-out arrangement:
 - (a) to which the previous determination – *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Supply or Acquisition Made Under a Contract Subject to Preconditions) Determination 2012* (F2012L00866) – applied; or
 - (b) on or after the date of commencement of this determination.

What the determination is about

7. This determination sets out attribution rules for certain deferred transfer farm-out arrangements that override the basic attribution rules (outlined in section 29-5 of the GST Act) to attribute GST payable if a farmor receives an exploration benefit as consideration (or part consideration) for the supply of an interest in a mining tenement, before the farmee exercises the right to acquire that interest.

8. The determination also sets out the attribution rules that apply instead of the basic attribution rules (under section 29-10) to attribute input tax credits if the farmee exercises the right to acquire the interest in the mining tenement and this is a creditable acquisition for the farmee.
9. The attribution rules in the determination apply to a deferred transfer farm-out arrangement. In this determination, a deferred transfer farm-out arrangement is defined to mean an arrangement for the transfer of a percentage interest in a mining tenement from a farmor to a farmee, under which:
 - (a) the farmor provides the farmee with a right to acquire the interest in the mining tenement if the farmee meets all of its exploration commitments and any payment requirements to earn that interest (the earn-in requirements) within a specified period of time (the earn-in period);
 - (b) most or all of the exploration commitments to earn that interest are at the discretion of the farmee;
 - (c) the farmor grants to the farmee a right to exclusive use and access of the mining tenement to carry out the exploration commitments;
 - (d) there is a provision of an exploration benefit by the farmee to the farmor;
 - (e) the farmor will transfer the interest to the farmee at the end of the earn-in period if:
 - i) the farmee satisfies the earn-in requirements in the earn-in period;
 - ii) the farmee exercises the right to acquire the interest; and
 - iii) all necessary government approvals are granted.
10. The attribution rules set out in this determination only override the basic attribution rules and the special rules in Chapter 4 of the GST Act to the extent of any inconsistency and only to the extent provided for in this determination.

What is the effect of this determination?

Farmor

11. If the farmor accounts for GST on a basis other than cash (a 'non-cash basis'), the determination ensures that the GST payable on the taxable supply of the interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire the interest in the mining tenement. Effectively, a non-cash basis farmor and farmee can exchange tax invoices upon the farmee exercising the right to acquire the interest in the mining tenement and account for GST payable and claim any input tax credits in that tax period. To the extent that it is a barter transaction and the acquisitions are fully creditable, it is a wash transaction for the farmor and for the farmee (that is, the GST payable will equal the input tax credit for each party).
12. The determination ensures that if the farmor accounts for GST on a cash basis, the GST payable on the taxable supply of the interest in the mining tenement is attributable to the tax period in which the interest is transferred. This aligns with when a cash basis farmor can claim an input tax credit for the acquisition of the exploration benefit (assuming the farmee has issued a tax invoice to the farmor for the exploration benefit by this time). If any of the consideration received is cash, the basic attribution rules apply.

Farmee

13. The determination ensures that if the farmee accounts for GST on either a cash or a non-cash basis, the input tax credit for a creditable acquisition of the interest in the mining tenement is attributed to a tax period no earlier than the first tax period in which the farmor could issue the farmee with a tax invoice and the farmee could claim an input tax credit. Once a farmee that operates on a cash basis exercises their right to acquire the interest in the mining tenement, the farmee may claim input tax credits to the extent of any consideration already provided. If they provide further consideration after they have exercised their right, the input tax credit with respect to that further consideration is attributable according to the basic attribution rules.

Compliance cost assessment

14. The regulatory impact is minor or machinery in nature and the instrument helps to ensure that the GST law operates as intended, OBPR ID22-01683.

Background

15. In the mining sector, exploration activities are sometimes undertaken using farm-out arrangements. This is where an entity (farmor) transfers an interest in a mining, quarrying or prospecting right, to an entity (farmee) that provides exploration benefits to the first entity. These transfers may be immediate or deferred (that is, after some conditions have been met).
16. Under a typical deferred transfer farm-out arrangement, the owner of an interest in a mining tenement (farmor) transfers a percentage of that interest to the farmee if the farmee meets specified exploration commitments or makes monetary payments. Often the commercial driver for such an arrangement from the farmor's perspective is funding. For the farmee, these arrangements provide an opportunity to acquire an interest in a mining tenement.
17. It is the nature of deferred transfer farm-out arrangements that the farmee might cease exploration before the conditions are met, in which case the farmee cannot exercise the right to acquire the percentage interest in the mining tenement.
18. These arrangements are subject to the existing GST law. However, there are certain circumstances when deferred arrangements cause uncertainty in how the GST requirements operate to attribute GST payable to the correct tax period, causing an outcome that is not intended by the GST law.
19. Miscellaneous Taxation Ruling MT 2012/2 sets out the Commissioner's view on how GST and income tax laws should apply to these arrangements.

Consultation

20. Subsection 17(1) of the *Legislation Act 2003* requires the Commissioner to be satisfied that appropriate and reasonably practicable consultation has been undertaken before he makes a determination.
21. Public consultation was undertaken on this instrument for a period of 2 weeks.
22. The draft instrument and draft explanatory statement were published on the ATO Legal database, which is publicly available. Publication was advertised via the 'What's new' page on that website, and via the 'Open Consultation'

page on ato.gov.au. Major tax and superannuation publishers and associations monitor these pages and include the details in the daily and weekly alerts and newsletters that they provide to their subscribers and members.

23. No comments were received as part of the consultation process.

Legislative references:

Acts Interpretation Act 1901

A New Tax System (Goods and Services) Tax Act 1999

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Statement of Compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

A New Tax System (Goods and Services Tax) Attribution Rules for Deferred Transfer Farm-out Arrangements Determination 2022

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

This determination sets out special attribution rules that override the basic attribution rules under section 29-5, section 29-10, and the special rules in Chapter 4 of the *A New Tax System (Goods and Services) Act 1999* (GST Act), which apply to deferred transfer farm-out arrangements that meet the requirements set out in this determination. These attribution rules only override the basic attribution rules and the special rules in Chapter 4 of the GST Act to the extent there is any inconsistency. It prevents circumstances from arising for deferred farm-out arrangements that are not intended by the GST law.

The deferred transfer farm-out arrangements referred to in this determination are generally used in the mining sector where an entity (farmor) transfers and interest in a mining, quarrying or prospecting right, to any entity (farmee) that provides exploration benefits in return.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because it merely provides farmors and farmees with practical and suitable methods to ensure they attribute GST for deferred transfer arrangements to the correct GST period to prevent unintended outcomes in the GST law.

Conclusion

The legislative instrument is compatible with human rights as it does not raise any human rights issues.