

LI 2022/32 -



Legislative Instrument

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

I, Ben Kelly, Deputy Commissioner of Taxation, make this determination under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

Ben Kelly

Deputy Commissioner of Taxation
Policy, Analysis and Legislation
Law Design and Practice
14 September 2022

1 Name of instrument

This legislative instrument is the *A New Tax System (Goods and Services Tax) Attribution Rules for Deferred Transfer Farm-out Arrangements Determination 2022*.

2 Commencement

This determination commences on the day after it is registered on the Federal Register of Legislation.

3 Application

- (1) This determination applies where a farmor and a farmee have entered into a deferred transfer farm-out arrangement:
- (a) to which the *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.

4 Attribution rules for a deferred farm-out arrangement

- (1) The attribution rules for a farmor that has entered into a deferred transfer farm-out arrangement are as follows:

- (a) If the farmor accounts for GST on a basis other than cash, GST payable on a taxable supply of an interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire the interest.
- (b) If the farmor accounts for GST on a cash basis, GST payable on a taxable supply of an interest in the mining tenement is attributable to the tax period in which the interest is transferred to the extent that the consideration received for that supply is the exploration benefit.

Note: If the farmor accounts for GST on a cash basis and the consideration received is cash, the basic attribution rules in Division 29 of the GST Act apply.

- (c) The tax period determined under paragraph (a) or (b) applies instead of the tax period determined under subsection 29-5(1) or (2) of the GST Act, respectively.
 - (d) To avoid any doubt, the basic attribution rules in Division 29 of the GST Act otherwise apply to the farmor.
- (2) The attribution rules for a farmee that has entered into a deferred transfer farm-out arrangement are as follows:
- (a) If the farmee accounts for GST on a basis other than cash, the input tax credit for a creditable acquisition of an interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire that interest.
 - (b) If the farmee accounts for GST on a cash basis, the input tax credit for a creditable acquisition of an interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire that interest to the extent of any consideration provided in that tax period or an earlier tax period for that acquisition.
 - (c) The tax period determined under paragraph (a) or (b) applies instead of the tax period determined under subsection 29-10(1) or (2) of the GST Act, respectively.
 - (d) To avoid any doubt, the basic attribution rules in Division 29 of the GST Act otherwise apply to the farmee.

5 Definitions

(1) In this determination:

deferred transfer farm-out arrangement means 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.

exploration benefit means the benefit that flows to the farmor from the farmee's exploration commitments, which is consideration (or part of the consideration) for the supply of an interest in the mining tenement by the farmor under a deferred transfer farm-out arrangement.

farmor means the owner of an interest in a mining tenement, who enters into a deferred transfer farm-out arrangement with a farmee.

farmee means the party entering into the deferred transfer farm-out arrangement with the farmor.

(2) Other expressions in this legislative instrument that are defined in the GST Act have the same meaning as in that Act.

6 Repeal

The instrument that is specified in Schedule 1 to this instrument is repealed.

Schedule 1

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).