



Legislative Instrument

A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Supply or Acquisition Made Under a Contract Subject to Preconditions) Determination 2011

I, [insert name], 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). I make the following determination, being satisfied under paragraph 29-25(2)(f) of the GST Act that it is necessary to prevent the provisions of Division 29 and Chapter 4 applying in a way that is inappropriate in circumstances involving a supply made under a contract that is subject to preconditions.

[INSERT E-SIGNATURE HERE]

[insert name]
Deputy Commissioner of Taxation

Dated:

1. Name of Determination

This Determination is the *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Supply or Acquisition Made Under A Contract Subject To Preconditions) Determination 2011*.

2. Commencement

This Determination commences on 24 August 2011.

3. Application

This Determination applies to a **deferred transfer farm-out arrangement** if the arrangement is entered into under an agreement dated on or after the commencement date of this Determination and the deferred transfer farm-out arrangement is an arrangement to which draft Miscellaneous Tax Ruling MT 2011/D2: Miscellaneous taxes: application of the income tax and GST laws to deferred transfer farm-out arrangements applies.

4. Determination (Who is covered by this Determination)

This Determination applies if:

- (a) a **farmor** and a **farmee** have entered into an agreement for a deferred transfer farm-out arrangement; and
- (b) under the agreement, the transfer of a percentage interest in the mining tenement from the farmor to the farmee is to occur only after the farmee has:
 - (i) satisfied, within the required time, the exploration expenditure commitments to earn that percentage interest; and
 - (ii) exercised a right to acquire the interest in the mining tenement; and
- (c) under the agreement, meeting at least some (if not all) of the exploration expenditure commitments to earn that percentage interest in the mining tenement is at the discretion of the farmee; and
- (d) there is a provision of **exploration benefits** by the farmee to the farmor.

5. Attribution rules for a farmor

- (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 **exploration benefits**.
Note: if it is cash received the basic attribution rules 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), respectively.
- (d) To avoid any doubt the basic attribution rules under Division 29 otherwise apply to the farmor.

6. Attribution rules for a farmee

- (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), respectively.

- (d) To avoid any doubt the basic attribution rules under Division 29 otherwise apply to the farmee.

7. For the purposes of this Determination

- (a) **Deferred transfer farm-out arrangement** means an arrangement where the transfer of the interest in the mining tenement from the farmor to the farmee occurs only if the farmee meets all of its exploration expenditure and payment (if any) commitments for the transfer of that interest, and the arrangement is one to which MT 2011/D2 applies.
- (b) **Exploration benefits** mean the benefits that flow to the farmor from the farmee's exploration expenditure commitments, which are treated as consideration (or part of the consideration) under MT 2011/D2 for the supply by the farmor of an interest in the mining tenement.
- (c) **Farmor** means the owner of an interest in a mining tenement who enters into a deferred transfer farm-out arrangement with the characteristics as set out in paragraph 14 of MT 2011/D2.
- (d) **Farmee** means the other party who enters into a deferred transfer farm-out arrangement with the characteristics as set out in paragraph 14 of MT 2011/D2 and who undertakes exploration expenditure and payment (if any) commitments under that arrangement to earn an interest in the mining tenement.
- (e) Other expressions in this Determination have the same meaning as in the GST Act.

Your comments

You are invited to comment on this draft Determination, which is explained in the explanatory statement. Please forward your comments to the contact officer by the due date.

In particular comments are sought on whether, in the context of a deferred transfer farm-out arrangement as set out in MT 2011/D2:

- the rules as drafted in the proposed legislative instrument result in appropriate outcomes for the farmor and the farmee and if not why not;
- the basic attribution rules otherwise result in appropriate outcomes for the farmor and the farmee and if not why not.

Compendium of comments

A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the ATO website at www.ato.gov.au.

Please advise if you do not want your comments included in the edited version of the compendium.

Due date: 7 October 2011
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