

Your Ref:

Our Ref: Revenue Law Committee

1 March 2012

Mr Mark Bermingham  
Acting Director-General  
Department of Employment, Economic Development and Innovation  
PO Box 15168  
CITY EAST QLD 4002

Email [REDACTED]

Dear Mr Bermingham

**REGISTRATION OF TRANSFERS OF EXPLORATION PERMITS AND AUTHORITIES TO PROSPECT**

I write to raise the concern of the legal profession about the significant uncertainty which presently exists regarding the registration of transfers of exploration permits and authorities to prospect. Members of the Society have raised this as an issue of pressing concern and I would appreciate your urgent advice on whether the Mines Registry will refuse to register a transfer of an exploration permit or an authority to prospect executed after 13 January 2012 without a duties notation.

The apparent uncertainty arose on 13 January 2012 when, in the Mid-Year Fiscal Economic Review, the Government announced that, with immediate effect, duty would be applied to the transfer of exploration permits and authorities to prospect.

Shortly following that announcement the Office of State Revenue (OSR) released a fact sheet which stated<sup>1</sup>:

*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*

<sup>1</sup> See <http://www.osr.qld.gov.au/home-page-promo/duty-changes-fact-sheet.pdf>

Shortly thereafter a fact sheet appeared on the DEEDI website which largely reproduced the notice from OSR<sup>2</sup>.

The collection of duty was stated to be contingent on legislation being introduced with retrospective effect to legitimise the otherwise improper payment. Legislation to effect this announcement was not introduced into Parliament prior to the Election. Depending on the outcome of the Election, this legislation may never be enacted. If the legislation is introduced into Parliament the Society will be vocal about the lack of respect for the rule of law and the institution of Parliament that structuring matters in this way displays.

The correct current position is that there is no legal force to the statement provided by the OSR on 13 January 2012 and there is no legal compulsion for any person to pay transfer duty on transfers of exploration permits and authorities to prospect. The OSR does not have the power to create new taxes administratively. It follows then that there is no legal justification for a transfer of an exploration permit or an authority to prospect to be refused registration in the Mines Registry for want of a duties notation. In fact, any request or insistence on a duties notation on such a transfer is itself an act which is beyond power.

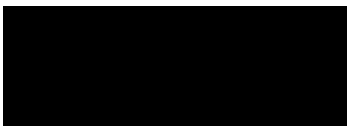
The Society has been in contact with the Office of State Revenue to raise its concerns about their published statements and they have advised us that:

- they are not enforcing the collection of duty on these transfers; and
- they have been in communication with your Department to ensure that registrations can be effected without a duties notation.

I would ask for your urgent confirmation that transfers of exploration permits and authorities to prospect will be registered in the Mines Registry without insistence on a duties notation given the reasons I have outlined. It would provide certainty to the industry if the Registry were to make a public statement to this effect.

For your information, I have provided a copy of this letter to the Commissioner for State Revenue.

Yours faithfully



Dr John de Groot  
**President**

<sup>2</sup> See <http://mines.industry.qld.gov.au/assets/mines-pdf/Changes-to-duty-on-exploration-permits.pdf>