

MINERAL ROYALTY ACT

Overview

Purpose

1. This Overview outlines the administrative arrangements relating to the establishment, calculation and collection of mining royalties under the *Mineral Royalty Act 1982* (NT) (the MRA).
2. This Overview is for general guidance purposes only.

Introduction

3. The Department of Mines and Energy issues titles under Northern Territory mining legislation for the right to enter land, mine and dispose of minerals. When titleholders (commonly known as tenement holders) obtain a title they undertake to pay royalties. This Overview outlines the royalty requirements and sets out the obligations of the tenement holders and responsible persons in this regard.
4. Royalties are payments made to the Northern Territory Government (the Territory), as the owner of the minerals, in consideration of a right granted to extract and remove minerals and are calculated in respect of the profit derived from minerals taken or produced. They are not a tax.
5. Royalties are collected under the MRA or Agreement Ratification Acts or Agreement Acts which are negotiated for individual projects. In some cases, the Agreement Ratification Acts and Agreement Acts contain specific royalty clauses while in other cases they refer to the MRA with or without modification.
6. The Territory's royalty regime encourages present and future exploration and development of mineral resources. At the same time, it compensates the Northern Territory community for allowing the private extraction of the Northern Territory's non-renewable resources.
7. Payment of royalties is a condition of a mining tenement and failure to pay royalties is a breach of the lease which can result in cancellation of a mining tenement forming part of the production unit.
8. The royalty return required to be lodged under section 12 of the MRA provides the Secretary with information to enable calculation of the royalty, including the value of the saleable mineral commodity, the basis for valuation of the saleable mineral commodity and any related expenditure.

Minerals subject to the MRA

9. Subject to the terms of sections 3 and 52 of the MRA, royalties are payable on all minerals except for uranium, petroleum and extractive minerals of a specified kind.
10. Extractive minerals that are authorised to be recovered under the terms of an extractive mineral permit, an extractive mineral lease or an authorisation to occupy an extractive mineral lease (or a mineral authority that corresponds to an extractive permit or an extractive mineral lease) that has been granted under the relevant Northern Territory mining legislation, are not subject to the MRA. Extractive minerals that are authorised to be recovered under the terms of a mineral lease or mineral claim (prior to conversion to a new mining title under the *Mineral Titles Act 2010* (NT)) that has been granted under the relevant Northern Territory mining legislation are subject to royalties.

11. By virtue of a high level executive arrangement under section 7 of the *Uranium Royalty (Northern Territory) Act 2009* (Cth), the *Uranium Royalty (Northern Territory) Act* applies the profit-based mineral royalty regime under the MRA to new mining operations or any expansion to existing mining operations as in force immediately before the commencement of section 4 of the *Uranium Royalty (Northern Territory) Act* containing designated or prescribed substances including uranium, on Aboriginal land, as defined by the *Aboriginal Land Rights Northern Territory Act 1976* (Cth), and non-Aboriginal land within the geographical area or jurisdiction of the Northern Territory. The *Uranium Royalty (Northern Territory) Act* provides for the Territory to administer the royalty regime on behalf of the Commonwealth, to retain the royalties collected, and to repay any overpayment of royalties.

Royalties

12. Royalties on minerals within the scope of the MRA are charged on a proportional profit basis.
13. Under the MRA, royalty applies to profits derived from the production of a saleable mineral commodity within the boundaries of a production unit. The objective is that, generally, only those expenditures essential to produce that commodity are allowable as deductions against gross revenue from the sale or value of the saleable mineral commodity.
14. In other words, ring-fencing principles apply and each of the royalty payer's operations are treated independently, for royalty purposes, from all of the royalty payer's other operations. Accordingly, the accounts from the individual production unit may not be mixed with the accounts for activities outside the production unit. There is no ability to aggregate income or revenue and expenses from all operations carried on by the royalty payer within the Northern Territory.
15. The tenement holder(s), including the responsible person for a production unit, is the royalty payer for the purposes of the MRA. Accordingly, they are responsible for the lodgement of royalty returns and payment of royalties under the MRA.

Profit-based royalty

16. The imposition and assessment of royalty on minerals recovered in the Northern Territory is governed by sections 9 and 10 of the MRA.
17. Under section 9, royalty is payable to the Territory and liability for royalty is a joint and several liability of the mining tenement holder(s).
18. Under section 10, the royalty rate is 20 per cent. A \$50 000 royalty free threshold is allowed whereby no royalty is payable where the net value of a saleable mineral commodity sold or removed without sale from a production unit in the royalty year is \$50 000 or less. Where the net value is more than \$50 000, the royalty otherwise payable is reduced by \$10 000 effectively maintaining the position that the first \$50 000 in net value is royalty free.
19. To establish the net value of saleable mineral commodities sold or removed without sale, the MRA prescribes the following formula:

$$GR - (OC + CRD + EEE + AD)$$

where -

- GR is the gross realization from the production unit in the royalty year;
- OC is the operating costs of the production unit for the royalty year;
- CRD is the capital recognition deduction;
- EEE is the eligible exploration expenditure, if any; and
- AD is any additional deduction.

20. Royalty is to be paid on the net value of a saleable mineral commodity sold or removed without sale from a production unit (whichever triggering event first occurs).

21. Where an amount expended in respect of a production unit is capable of falling under more than one deduction category (for example, certain capital equipment can be an operating cost or qualify for a capital recognition deduction) the royalty payer needs to decide how the expenditure is treated as only one deduction is allowed.
22. The royalty payer should claim the expenditure under the most appropriate deduction category. For example, any expenditure relating to activities in the nature of production (where the expenditure is more appropriately to be treated as an operating cost) should be claimed as an operating cost.
23. The Secretary has issued legally binding Guidelines regarding the meaning, operation and application of the components of the formula set out above (see Guidelines RG-MRA-004: *Gross Realization*, RG-MRA-005: *Operating Costs*, RG-MRA-006: *Capital Recognition Deduction* and RG-MRA-008: *Eligible Exploration Expenditure*).

Accumulated losses

24. Application of the above formula can result in a negative value, which is commonly known as a negative net value. In some circumstances and with the Secretary's approval, a royalty payer can carry a negative net value forward into a subsequent royalty year, reducing the royalty payable in that subsequent year. Guideline RG-MRA-003: *Negative Net Value* provides further information.

Rehabilitation costs

25. Rehabilitation costs of a mining tenement which fall into either of two categories outlined in paragraphs 26 and 27 below are allowable as deductions.
26. Rehabilitation expenditure that is directly attributable to maintenance actually undertaken for the purpose of production of minerals is generally deductible as an operating cost in the year it is incurred.
27. Where the rehabilitation expenditure relates to rehabilitation of one or more tenements forming the production unit after production has ceased, the costs may be apportioned on a pro-rated basis over the preceding five years or mine life (whichever is shorter). The royalty payable in each of the years is recalculated to take account of the actual rehabilitation expenditure incurred.
28. To claim the rehabilitation expenditure incurred subsequent to the cessation of mining (refer to paragraph 27 above), the royalty payer is required to submit a statement of all amounts actually expended along with supporting documentation which independently corroborates and verifies the amount of expenditure.
29. Once the costs incurred subsequent to the cessation of mining are agreed and accepted, amended royalty assessments are issued for the relevant royalty years, recognising the apportioned costs of the rehabilitation expenditure.
30. Guideline RG-MRA-005: *Operating Costs* provides further information on ongoing rehabilitation costs.

Responsible person and information requirements

Responsible person

31. The tenement holder(s) of a production unit are required to appoint a responsible person, at or before active operation of the production unit commences. Active operation is defined in section 4 of the MRA and means, in effect, the commencement of development activities of the production unit such as when eligible capital assets expenditure is first incurred, including set-up expenses such as site clearing or mine design.
32. Generally the Secretary will, in conformity with current administrative practice, accept the tenement holder(s) of a production unit appointing a responsible person at or before the date

on which the decision is made to commence production of a commercial quantity of a saleable mineral commodity from the production unit.

33. Where no appointment of a responsible person is made, the manager of the production unit is deemed to have been appointed as the responsible person.
34. The responsible person acts on behalf of the tenement holder(s) to accept service of a document or process, furnish a statement or return, and make a payment pursuant to the MRA.

Requirement to provide certain information

35. Section 11 of the MRA requires the responsible person to:
 - (1) within 30 days after the decision is made to commence production of a commercial quantity of a saleable mineral commodity, provide written notification to the Secretary of the following administrative matters (see RF-MRA-002):
 - (a) name, address and designation of the responsible person;
 - (b) location(s) of the production unit, a description of the nature, operations and processes of the production unit, the minerals and mineral commodities being recovered, and the work program and mining schedule;
 - (c) names and addresses of the relevant tenement holders;
 - (d) name and address of the manager of the production unit;
 - (e) the day in each year on which the royalty year will commence for the production unit; and
 - (f) the accounting basis on which royalty returns will be prepared (cash or accrual); and
 - (2) provide written notification to the Secretary within 30 days of any of the following events occurring:
 - (a) any change in the name and/or address of the responsible person and manager of the production unit;
 - (b) any change in the ownership of the production unit or of a mining tenement that forms part of the production unit;
 - (c) any significant change in the level of production of a mineral commodity by the production unit; and
 - (d) any discontinuance of commercial production of a mineral commodity or any recommencement of production following a discontinuance.
36. Section 12 of the MRA requires the royalty payer, including the responsible person, to lodge a royalty return in respect of the royalty year within the timeframe set out in paragraph 37 below.

Lodgement of royalty returns

37. Annual royalty returns are required to be lodged in circumstances where the production of a commercial quantity of a saleable mineral commodity has commenced. The returns are to be lodged within three months after the expiration of a royalty year or such longer period as the Secretary permits.
38. The royalty payer must ensure that:
 - (1) information relating to their production unit is accurate and up-to-date; and
 - (2) completed and signed returns are lodged with the Secretary covering all details set out in section 12 of the MRA.

39. For convenience, a template royalty return spreadsheet RF-MRA-001 is available from Territory Revenue Office (TRO).

Records required when royalty return lodged

40. To facilitate the audit and assessment process, the following is a list of some of the additional information required to be submitted with the annual royalty return:
- (1) financial statements (audited or unaudited, whichever are available);
 - (2) end of year management reports (which contain information such as production volumes and values or KPIs);
 - (3) trial balance or relevant cost centre reports;
 - (4) a list of related party sales transactions, along with copies of the relevant sales contracts or an explanation of the terms of the sales arrangements;
 - (5) an electronic copy of the taxation depreciation schedule or fixed asset register for the production unit, along with a separate schedule of additions and disposals for the relevant year;
 - (6) a transaction list supporting any eligible exploration expenditure incurred on a mining tenement that forms part of the production unit (and not on an exploration licence);
 - (7) a description of any material operational or reporting changes affecting the royalty calculation;
 - (8) explanations for significant fluctuations in the royalty calculation in comparison to previous years (such as exchange rate impacts, changes to contract values or a material increase in operating cost items); and
 - (9) other relevant information which may facilitate the audit of the royalty return.

Audit and assessment of royalty

41. Subject to section 40, the MRA depends upon the issuance and delivery of an assessment by the Secretary stating the amount of royalty payable by the royalty payer.
42. Pursuant to sections 18 or 19 of the MRA, an assessment is made of the royalty payable. A royalty payer's liability for royalty is not determined until an assessment has been issued.
43. To make an assessment, an audit may be conducted to verify information disclosed in the royalty return.
44. The audit may be carried out on the royalty payer's premises or the royalty payer may be requested to provide further information to substantiate the royalty return. To facilitate the audit process, royalty payers need to ensure that all records requested by an authorised officer are submitted and available for examination in a timely manner.
45. Once the audit is completed, an assessment is issued, incorporating any necessary adjustments arising from the audit.
46. The Secretary has the ability to issue amended assessments in certain circumstances, pursuant to section 20 of the MRA.

Authorised officer's powers in conducting an audit

47. Under the MRA, for the purposes of the administration and enforcement of the MRA, an authorised officer is permitted to, amongst other things:
- (1) gain access to the production unit or premises where records are kept;
 - (2) inspect, examine, make and retain copies of documents or records;
 - (3) require a person to produce records; and

- (4) require a person to answer questions and provide information.

Your rights in respect of an audit

48. In relation to the audit process you should expect:

- (1) the authorised officer to be professional and courteous;
- (2) to be shown the authorised officer's identification authority;
- (3) the audit to be completed in a timely manner;
- (4) your affairs to be treated with strict confidentiality;
- (5) to be given a receipt for records or other materials the authorised officer removes from your premises;
- (6) to be given an opportunity to discuss any aspect of the findings with the authorised officer;
- (7) to be given the opportunity to explain the reasons for any irregularities and discrepancies; and
- (8) to receive an explanation of the results or findings.

Your obligations in respect of an audit

49. Throughout the audit, you are obliged to:

- (1) disclose any discrepancies, errors and undeclared royalty liabilities;
- (2) provide the authorised officer reasonable assistance and facilities;
- (3) provide complete and honest answers and explanations to questions;
- (4) provide prompt, full and free access to all relevant information, records, documents, data and systems as required; and
- (5) ensure accounting records and books of accounts are properly kept and complete.

Offences and penalties

50. The MRA generally provides for fines for various offences relating to, for example, statements, the provision of information and access to records.
51. Contravention of a offence against the MRA can result in criminal proceedings punishable by a penalty of up to 200 penalty units (defined in the *Penalty Units Act 2009* (NT)) for an individual or 1 000 penalty units for a corporation.

Payment of royalty

52. Royalty payments are generally made twice a year. However, further payments may be made through the year as necessary.
53. **Provisional payments** are made each 6 months. A **residual provisional payment** may be made 3 months after the end of a royalty year. A **shortfall** payment may also be required.
54. Payment of royalty is required to be made:
 - (1) in the case of **provisional payments** (which are to be accompanied by provisional returns), not later than 30 days after the end of each 6 month period in the royalty year;
 - (2) in the case of the **residual provisional payment** for a royalty year, at the same time the royalty return is lodged, which must be within 3 months of the end of the royalty year; and

- (3) in the case of any **shortfall** between royalty assessed in an assessment and the sum of the provisional and residual provisional royalty payments, on the date specified in the notice of assessment.

Example

ABC Mining Pty Ltd's first royalty year commences on 1 January 2011. The diagram below indicates all the relevant dates over which royalty is to be calculated, and when provisional payments and the royalty return are due for the royalty year commencing 1 January 2011.



* Any shortfall between royalty payable following an assessment being issued and the sum of the provisional and residual provisional payments will be due on the date specified in the notice of assessment. Generally, this date will be 30 days after the notice of assessment is issued.

Underpayment of royalty

55. It is in the interests of royalty payers to ensure that a realistic estimate of the provisional payments is established. The MRA imposes a penalty where the combined six monthly provisional payments are less than 80% of the assessment of royalty payable. Royalty payers are (in addition to any shortfall in the balance of royalty actually payable) also liable to pay, by way of **additional royalty**, an amount equal to the royalty shortfall.

Example

Calculation of additional royalty:

Royalty assessed for royalty year	\$500 000
Less provisional payments paid during royalty year	<u>\$350 000</u>
Amount underpaid	\$150 000

The provisional payments represent 70% of the royalty assessed therefore additional royalty is payable. The additional royalty is the difference between 80% of the royalty assessed and the provisional payments.

80% of royalty assessed (\$500 000 x 80%)	\$400 000
Less provisional payments paid during royalty year	<u>\$350 000</u>
Additional royalty	\$ 50 000

Total to be paid:

Royalty assessed for royalty year	\$500 000	
Less provisional payments paid during royalty year	<u>\$350 000</u>	\$150 000
Additional royalty		<u>\$ 50 000</u>
Total payable		\$200 000

56. The additional royalty may be remitted in full or in part if the royalty payer demonstrates that he/she did not deliberately, recklessly or negligently avoid or underestimate their royalty liability.

Overpayment of royalty

57. Where the sum of the provisional payments exceeds the assessment of royalty payable, a credit is owed to the royalty payer. The credit may be settled in one of two ways:
- (1) an offset of the amount overpaid against the royalty payer's future royalty (or royalty equivalent) liability provided the liability arises within two months of the date on which the overpayment was first identified by the Secretary; or
 - (2) a refund to the royalty payer of the overpayment.

Unpaid royalties and interest charges

58. Royalties not paid by the due date incur an interest charge. The annual interest rate is based on the average monthly yield on ninety day bank accepted bills, published by the Reserve Bank of Australia for the month of May in the financial year immediately preceding the relevant year, plus 7%.
59. Interest charges apply in all cases. The MRA does not confer discretion on the Secretary to remit interest even in exceptional circumstances.

Default assessment and penalty royalty

60. A default assessment may be issued when:
- (1) the Secretary is not satisfied that the royalty return is a full and accurate statement;
 - (2) the royalty payer defaults in delivering its royalty return; or
 - (3) the Secretary considers that the amount stated to be the gross value of a saleable mineral commodity is not reasonable.
61. Where a default assessment is issued, in addition to the amount of royalty payable, the royalty payer will incur:
- (1) an additional amount of penalty royalty equivalent to 75% of the amount of royalty payable on the default assessment; and
 - (2) interest on the outstanding royalty amount, excluding penalty royalty, at the annual interest rate (see paragraph 58 above).
62. In exceptional circumstances, some or all of the penalty royalty may be remitted.

Record keeping requirements

63. Royalty payers are required to maintain proper and accurate records relating to minerals recovered and which substantiate details contained in royalty returns. The records are to be kept at the production unit or at some other place in Australia as agreed between the royalty payer and the Secretary.
64. The Secretary or any authorised officer is to have access to accounts, books, documents and other records relating to the production unit.

Confidentiality

65. Information collected by the Secretary or an authorised officer for the purposes of royalty is used only for the purpose of administering and enforcing the MRA.

66. The confidentiality of this information is strictly maintained and any disclosure will only be made if consistent with the confidentiality requirements in section 50 of the MRA, or when required or authorised by law.

Review and appeal processes

67. The process to be followed by royalty payers who wish to dispute an assessment (including a default assessment) is established in Part 11 of the *Taxation Administration Act 2007* (NT) (the TAA).
68. The process is, as follows:
- (1) first, a royalty payer must lodge a written objection to the assessment within 60 days of the assessment being issued. The objection is determined by a TRO business unit that is organisationally separate to the business unit which issued the royalty assessment;
 - (2) secondly, if the royalty payer is dissatisfied with the objection decision, the royalty payer may under section 115 of the TAA, lodge an appeal to either:
 - (a) the Taxation and Royalty Appeals Tribunal under Division 4 of Part 11 of the TAA by lodging a notice of appeal with the Registrar of the Local Court; or
 - (b) lodge an appeal to the Supreme Court under Division 4 of Part 11 of the TAA by filing a notice of appeal in the Registry of the Supreme Court.
- An appeal must be commenced within 60 days after the date of issue of the objection decision.
69. The Commissioner of Territory Revenue has issued a non-legally binding Guideline regarding the review and appeal processes/procedures under Part 11 of the TAA (Guideline CG-GEN-003 *Objections and Appeals Policy*).
70. Royalty payers should note that the lodgement of an objection or appeal does not affect the liability to pay an outstanding amount of royalty, penalty royalty or interest by the due date.



Grant Parsons
Secretary

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For further information please contact the Territory Revenue Office:

GPO Box 154
Darwin NT 0801
Email: ntrevenue.ntt@nt.gov.au

Phone: 1300 305 353
Fax: 08 8999 5577
Website: www.revenue.nt.gov.au
