TERRITORY REVENUE OFFICE

REVENUE CIRCULAR

RC-GEN-014:

2013-14 Budget Measures

Purpose

1. This Circular provides information on amendments to the *Mineral Royalty Act* and *Payroll Tax Act* that implement the 2013-14 Budget revenue measures administered by the Territory Revenue Office (TRO). These measures were announced by the Treasurer on 14 May 2013.

For Royalty Payers

Gross realization – capping margins claimed under transfer pricing arrangements

1. From 1 July 2013, the *Mineral Royalty Act* will be amended to reduce uncertainty in the treatment of transfer pricing arrangements for royalty purposes. Transfer pricing usually occurs where a corporation, or a group of related corporations, operates in multiple jurisdictions and the allocation of income and costs between jurisdictions needs to be determined for revenue purposes.
2. For royalty purposes, transfer pricing typically arises in (but is not limited to) circumstances where a royalty payer engages a related overseas entity for functions such as the sale and marketing of a saleable mineral commodity.
3. In circumstances involving transfer pricing arrangements, the premium or margin earned by the related entity reflects expenses incurred and risks undertaken by the related entity, for example, for sales and marketing (the ***transfer pricing factor***). While an appropriate transfer pricing factor should be recognised, determining what is appropriate is generally a complicated and costly exercise.
4. Currently, transfer pricing arrangements are broadly provided for in section 4A(3) of the *Mineral Royalty Act*. This provision allows royalty to be calculated on an amount that the royalty payer establishes and substantiates as being the value of the mineral commodity, rather than its open market price. More details are provided in Guideline
[*RG-MRA-004:* *Gross Realization*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/Royalties/RG-MRA-004_050713.pdf).
5. From 1 July 2013, the *Mineral Royalty Act* will provide that where a saleable mineral commodity is removed without sale from a production unit under circumstances involving transfer pricing, unless the open market price is used, the gross value of the commodity must be established and substantiated by the royalty payer and calculated:
	1. if the royalty payer has been audited by the Australian Taxation Office (ATO), using the transfer pricing methodology and figures used by the royalty payer for the purposes of its income tax return and as accepted by the ATO; or
	2. if there is an advance pricing arrangement between the ATO and the royalty payer, using the transfer pricing methodology prescribed in that arrangement; or
	3. otherwise, by applying a transfer pricing factor of up to 5.5 per cent of the final value of the saleable mineral commodity.
6. Importantly, the cap of 5.5 per cent is a maximum percentage which, depending on a royalty payer’s circumstances, can be applied to discount the eventual 3rd party price achieved or achievable for the saleable mineral commodity.
7. Guideline [*RG-MRA-004: Gross Realization*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/Royalties/RG-MRA-004_050713.pdf) will be amended to provide further details of the requirements a royalty payer must meet to establish and substantiate the amount of the transfer pricing factor to be applied.
8. In the interests of minimising red tape and complexity, generally less documentation will be required to substantiate a factor of up to 3 per cent. If a royalty payer seeks to establish a transfer pricing factor of between 3 and 5.5 per cent, however, the evidentiary threshold will be higher.
9. In terms of substantiation and record keeping, the *Mineral Royalty Act* will ensure that where a royalty payer creates, or comes into possession of documents that relate to transfer pricing arrangements, those documents must be retained by the royalty payer.
10. It is expected that the transfer pricing amendments will have minimal impact on most royalty payers. Where TRO has previously confirmed that a royalty payer’s valuation methodology is acceptable, and this continues after 1 July 2013, gross realization should continue to be determined on the current basis.
11. An exception to this is where there are changes to the underlying circumstances upon which the royalty payer’s transfer pricing arrangement is based. If this occurs, a written application should be made to the Secretary setting out the reasons to establish and substantiate the transfer pricing factor claimed. To support such an application, the documentation set out in [*RG-MRA-004: Gross Realization*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/Royalties/RG-MRA-004_050713.pdf) (as amended with effect from 1 July 2013) must also be provided to the Secretary.

Operating costs – limiting labour, office and management costs to work, services and office solely in the Northern Territory

1. To complement the gross realization measures and to ensure the integrity of the royalty base, some rules in relation to operating costs are being tightened.
2. From 1 July 2013, for a royalty payer to claim office expenses as a deductible operating cost, these expenses must relate to an office that is situated in the Northern Territory. Where the office expenses relate to work or services, the work or services must be performed solely in the Territory in order to be deductible.
3. Labour costs (including salary, wages and other remuneration) will be allowable deductions where, for an employee pay period, the work was performed solely in the Territory and was directly attributable to the operation of the production unit.
4. Similarly, fees for management services will only be deductible as operating costs if the services and work are performed solely in the Territory.
5. Other expenses, such as eligible research and development expenditure and accounting, auditing and legal fees (to the extent that they would ordinarily be classified under these categories), will continue to be deductible even if the work is performed outside the Territory.
6. Where a cost may be classified under more than one head, the geographical limitation of the Territory will apply if the Secretary wouldordinarily classify the cost as either a labour cost, management fee or office expense. Also, to be deductible, the labour costs, management fees and office expenses are still required to be directly attributable to the operation of the production unit.
7. Guideline [*RG-MRA-005: Operating Costs*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/Royalties/RG-MRA-005_050713.pdf) will be amended to provide further details on these changes. A draft of the amended Guideline will soon be released by the Secretary for public comment.

Other minor amendments

1. From 1 July 2013, minor amendments to the *Mineral Royalty Act* will provide that:
	1. the minerals resource rent tax and unit shortfall charges relating to the carbon tax under the *Clean Energy Act 2011* (Cth) are not deductible as operating costs for royalty purposes; and
	2. Territory employees are able to share information with other Territory employees and the Commonwealth in relation to matters governed by the *Uranium Royalty (Northern Territory) Act 2009* (Cth). This Act provides for TRO to administer, on behalf of the Commonwealth, a profit-based royalty on new mining operations and any expansion to existing operations containing substances such as uranium.

Transitional matters

1. The above amendments apply from 1 July 2013 to all royalty payers, whether operating on a calendar year or financial year basis.
2. Where expenditure relates to a period prior to 1 July 2013 and a period on or after that date, e.g. for royalty payers returning royalty on a calendar year basis, the expenditure must be apportioned between those periods when calculating the operating costs for the production unit. This is to be done in a manner agreed between the royalty payer and the Secretary by 31 December 2013 or, in the absence of an agreement, as determined by the Secretary.
3. The Secretary will contact each royalty payer in July 2013 to further explain the process for reaching such an agreement. As most accounting systems are capable of recording and reporting financial transactions on a periodic or monthly basis, it is expected that any transitional issues can be kept to a minimum. TRO’s electronic royalty return package will also be amended to cater for these changes and the revised version is anticipated to be available by July 2013.

For Employers

1. From 1 July 2013, minor amendments will be made to the *Payroll Tax Act* to align the statutory formulae with the intended practice where an employer pays wages for only part of the financial year or changes its payroll tax group status.

Further Information

1. Please refer to the Revenue Legislation Amendment Bill 2013 and explanatory statement for precise details of the amendments. This Revenue Circular only provides general information. More detailed guidance in relation to the mineral royalty changes will be provided in Guidelines [*RG-MRA-004: Gross Realization*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/Royalties/RG-MRA-004_050713.pdf) and [*RG‑MRA‑005: Operating Costs*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/Royalties/RG-MRA-005_050713.pdf), which are being amended by the Secretary.
2. The Secretary will be seeking input from royalty payers shortly to facilitate a smooth transition to the new arrangements. As part of the consultation process, royalty payers will be invited to provide written submissions on the proposed changes to the Royalty Guidelines to help ensure the measures are properly implemented.

Revenue Circulars

1. Commissioner’s Guideline [CG-GEN-001: *Revenue Circulars, Commissioner's Guidelines and Payroll Tax Rulings: explanation and status*](http://www.treasury.nt.gov.au/PMS/Publications/TaxesRoyaltiesGrants/GeneralAdmin/CG-GEN-001.pdf), which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Circular. All Circulars and Guidelines are available from TRO’s website.

Grant Parsons

**Secretary and COMMISSIONER OF TERRITORY REVENUE**

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