

Contents	Page
What this Ruling is about	1
Ruling and explanation	3
Date of effect	9
References	9
Attachment 1	10
Attachment 2	13

Royalty Ruling General:

REMISSION OF ROYALTY PENALTY

A *Royalty Ruling*, when issued, is the published view of the Commissioner, Office of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, guidelines, memoranda, manuals, advice or similar statements in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a *Royalty Ruling*, the change in the law overrides the *Royalty Ruling*—that is, the Commissioner will determine the royalty liability in accordance with the changed law.

What this Ruling is about

1. The *Mineral Resources Act 1989* (the MR Act) requires a person to pay royalty as prescribed in respect of that mineral, if the person is:
 - (a) the holder of a mining claim, mining lease or other authority (authority) who mines or allows to be mined mineral from the area of that authority¹
 - (b) a person who mines mineral from land other than under an authority.²
2. The *Petroleum and Gas (Production and Safety) Act 2004* (the PG Act) requires a petroleum producer³ to pay petroleum royalty for petroleum that the petroleum producer:
 - (a) produces
 - (b) accepts from an overlapping mining lease holder under section 318CN of the MR Act.⁴
3. In this Ruling:
 - (a) *producer* means a person liable to pay royalty under the royalty laws
 - (b) except where used in paragraphs 1 and 3(b)(i), *royalty* means:
 - (i) royalty imposed under the MR Act
 - (ii) petroleum royalty imposed under the PG Act
 - (c) *return period* means:
 - (i) a return period for the MR Act⁵

¹ Section 320(1) of the MR Act

² Section 320(7) of the MR Act

³ See Schedule 2 of the PG Act, definition of 'petroleum producer'.

⁴ Section 590(1) of the PG Act

⁵ See Schedule 6 of the Mineral Resources Regulation 2013 (the MR Regulation), definition of 'return period'.

(ii) a royalty return period or annual return period for the PG Act⁶

(d) *royalty laws* mean the MR Act and the PG Act.

4. The royalty laws automatically impose royalty penalty at the rate of 75% in the circumstances, and based on the amounts (the shortfall amounts), shown in the third column of the following table.⁷

Circumstance	Description	Amount to which royalty penalty rate of 75% is applied (the shortfall amount)
1	The Minister ⁸ makes a default assessment ⁹ because the Minister is reasonably satisfied a royalty-related amount ¹⁰ is payable by the producer for a return period but the producer has not lodged a return for the return period.	Royalty assessed
2	The Minister makes a reassessment where the original assessment was a default assessment as outlined in circumstance 1.	Reassessed royalty
3	The royalty payable by the producer on a reassessment, other than a reassessment mentioned in circumstance 2, is more than the royalty assessed on the original assessment or an earlier reassessment.	Where the royalty liability on the reassessment is: <ul style="list-style-type: none"> • more than the royalty liability on the original assessment—the difference between the two amounts • less than the royalty liability on the original assessment, but more than the royalty assessed on an earlier reassessment—the difference between the reassessed royalty and the lowest royalty assessed on an earlier reassessment.

5. The royalty penalty so imposed (royalty penalty amount) is payable by the producer.

⁶ See section 599(1) (definition of 'annual return period') and Schedule 2 (definition of 'royalty return period') of the PG Act.

⁷ Sections 331E(1) of the MR Act and 601(1) of the PG Act

⁸ As at the date of this Royalty Ruling, the Minister is the Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport: *Administrative Arrangements Order (No. 3) 2015*.

⁹ Sections 331A(2) of the MR Act and 599B(2) of the PG Act

¹⁰ 'Royalty-related amount' is defined in sections 331 of the MR Act and 592 of the PG Act.

6. Royalty penalty applies to all default assessments and reassessments increasing royalty liability made on or after 1 July 2014, irrespective of the return period to which the assessment or reassessment relates.
7. Royalty penalty applies in addition to any unpaid royalty interest imposed under the royalty laws¹¹ and is an administrative sanction for certain conduct by producers. This sanction acts as an incentive for compliance with royalty obligations and ensures equitable treatment of all producers.
8. The Minister may increase the royalty penalty amount by not more than 20% of the royalty penalty amount assessed if reasonably satisfied the producer has hindered or prevented the Minister from becoming aware of the nature and extent of the producer's liability to pay royalty.¹²
9. The Minister may remit the whole or part of a royalty penalty amount.¹³
10. The purpose of this Royalty Ruling is to provide guidance about how the Minister will decide whether or not to remit a royalty penalty amount and the extent of any remission.

Ruling and explanation

Definitions

11. In this Ruling:
 - (a) *prompt notice* means a notice issued by the Minister to a producer (before an investigation into the producer's royalty liability has commenced):
 - (i) as part of a process where a particular class of producers is invited to conduct a self-review in relation to one or more specific issues identified in the notice
 - (ii) requiring the producer to provide information to the Minister in relation to one or more specific issues identified in the notice, in respect of which the Minister requires additional information to determine whether the producer has appropriately accounted for royalty
 - (iii) advising the producer that the Minister will be commencing an investigation under a royalty law into the producer's royalty liability on or after a nominated future date, and inviting the producer to conduct a self-review before the investigation commences
 - (b) *review notice* means a notice issued by the Minister to a producer:
 - (i) requiring the producer to provide information to the Minister in relation to one or more specific issues identified in the notice, in respect of which the Minister reasonably believes the producer has understated its royalty liability
 - (ii) advising the producer that an investigation under a royalty law into the producer's royalty liability has commenced.

¹¹ Sections 332(1) of the MR Act and 602(1) of the PG Act

¹² Sections 331E(3) of the MR Act and 601(3) of the PG Act

¹³ Sections 331G of the MR Act and 601B of the PG Act

General principles

12. For the Minister to consider a request for royalty penalty remission, the producer must lodge a written request with the Minister, stating the grounds for the request and the general remission category the producer believes its circumstances fall under.¹⁴ However, this requirement does not prevent the Minister from making a decision to remit royalty penalty in whole or in part when making an assessment or reassessment if the Minister already has sufficient information to determine that remission is appropriate (for example, following the conduct of an investigation).
13. The Minister decides whether or not to remit a royalty penalty amount on a case-by-case basis, determining what is reasonable in light of all relevant facts and circumstances including:
 - (a) the nature and extent of the producer's culpability
 - (b) the complexity of the circumstances giving rise to the producer's liability for royalty
 - (c) the reasons for the producer's failure to meet its obligations, including:
 - (i) the nature of attempts made by the producer to comply with its obligations
 - (ii) the processes the producer has in place to ensure compliance with the royalty laws (such as staff training, regular external audits and sampling)
 - (d) the nature and circumstances of any disclosure made by the producer concerning its royalty liability
 - (e) the producer's previous failure (if any) to comply with the royalty laws
 - (f) where an investigation has been or is being conducted, in relation to the producer's liability, the level of cooperation by the producer with the investigation.
14. The Minister is obliged to remit a royalty penalty amount to nil in certain circumstances relating to prosecution of a producer.¹⁵

Remission of royalty penalty—summary of general process

15. The Minister will undertake the following process to determine the appropriate royalty penalty amount payable by a producer:
 - (a) Following the automatic imposition of royalty penalty at the rate of 75% of the shortfall amount (as outlined in the table at paragraph 4), the Minister will determine whether the producer's circumstances fall within any of the general remission categories and will generally remit royalty penalty in accordance with the guidelines for the relevant category.
 - (b) The Minister will then decide whether to increase the royalty penalty amount by not more than 20% of the then applicable royalty penalty where the producer has engaged in the behaviour described in paragraph 8.

¹⁴ See paragraphs 18 to 34 for the general remission categories.

¹⁵ Sections 331F(3) of the MR Act and 601A(3) of the PG Act

- (c) The Minister will then consider whether the producer has made a voluntary disclosure of its failure to comply with a royalty law. In such situations, the Minister will generally make an additional remission of royalty penalty.¹⁶
- 16. Attachment 1 contains examples of circumstances in which each of the general remission categories and voluntary disclosure categories may apply.
- 17. Attachment 2 summarises the net effect of the application of general remission categories and additional remission for voluntary disclosures.

General remission categories

- 18. The following three general remission categories outline how the Minister will generally remit royalty penalty in particular cases. The categories are illustrative only and each producer's circumstances must be considered on their merits.
- 19. The Minister may request the production of evidence establishing that the claimed category applies, such as evidence from third parties.

Category 1—Circumstances beyond the producer's control, or reasonable care taken

- 20. This category will apply where the Minister is satisfied that:
 - (a) the producer's non-compliance with its royalty obligations was due to circumstances beyond its control
 - (b) the producer has taken reasonable care to determine its liability for royalty and meet its obligations under the royalty laws and has not intentionally disregarded or avoided the royalty laws.
- 21. If this category applies, the Minister will generally consider full remission of the royalty penalty.
- 22. A producer's mere financial incapacity to pay its royalty liability does not constitute circumstances beyond its control.
- 23. When determining if a producer took 'reasonable care', the Minister may have regard to whether the producer, in appropriate circumstances:
 - (a) kept complete and accurate records
 - (b) made diligent efforts to understand and comply with the royalty laws
 - (c) sought expert advice on uncertain or complex matters
 - (d) was honest and open in its dealings with the Minister
 - (e) set in place appropriate processes to ensure compliance with the royalty laws.
- 24. The criteria set out in paragraph 23 are indicative only. Meeting one or more of these criteria does not necessarily mean that reasonable care has been taken. All of the circumstances resulting in a shortfall amount will be considered in determining whether reasonable care has been taken.

¹⁶ See paragraphs 36 to 42.

25. Where expert advice was sought, the remission under this category will only apply where the Minister is satisfied that all of the following conditions have been met:
- (a) the producer provided satisfactory documentary evidence to the Minister such as the adviser's written confirmation that advice was sought on the matter in question—for example, a general request for advice on issues to be considered in establishing a mining operation will not be specific enough to satisfy the Minister that advice was sought in respect of the producer's royalty obligations
 - (b) the producer provided sufficient information, which was not misleading or incorrect, to the adviser for the adviser to accurately provide royalty advice
 - (c) in the circumstances, it was reasonable for the producer to believe that, in engaging the adviser, the producer had taken all necessary steps to comply with any relevant obligations under the royalty laws
 - (d) the advice or service must not have involved the producer entering into an arrangement to which category 3 applies.
26. Examples of cases that do not involve reasonable care include:
- (a) the producer did not know about the royalty laws
 - (b) the Minister considers that the matter involved the producer entering into an arrangement to which category 3 applies, whether based upon professional advice or not
 - (c) the producer:
 - (i) did not act in a genuine and honest manner
 - (ii) provided false or misleading information to the Minister
 - (iii) did not provide all relevant facts to the Minister
 - (iv) did not determine its royalty liability having regard to relevant published guidelines, such as Royalty Rulings
 - (d) on discovering the failure to comply with an obligation under the royalty laws, the producer did not advise the Minister in writing of the failure in the time specified by the royalty laws.¹⁷

Category 2—Carelessness, recklessness or no reasonable care taken

27. This category will apply where the Minister is satisfied that the producer either:
- (a) failed to comply with its obligations under the royalty laws due to carelessness or recklessness
 - (b) did not take reasonable care to determine its liability for royalty and meet its obligations under the royalty laws.

¹⁷ For example, see sections 333F of the MR Act and 609 of the PG Act.

28. The concept of recklessness has been held to apply where ‘the person’s conduct shows disregard of, or indifference to, consequences foreseeable by a reasonable person’.¹⁸
29. For this category to apply, it is not necessary to establish that the producer acted dishonestly or with intentional disregard of its royalty law obligations, as this is addressed in category 3. Ignorance of the royalty law will suffice.
30. If this category applies, the Minister will generally consider partial remission of the royalty penalty imposed so that the producer is liable only for a royalty penalty amount equal to 25% of the shortfall amount.

Category 3—Deliberate default, intentional disregard of royalty obligations, or avoidance arrangements

31. This category will apply where the Minister is satisfied that the producer has:
 - (a) committed a deliberate default in the form of fraud or evasion of royalty, or by knowingly misleading the Minister, or causing the Minister to be misled about the producer’s liability for royalty
 - (b) intentionally disregarded its obligations under the royalty laws
 - (c) entered into an arrangement to avoid royalty.
32. Without limiting paragraph 31(a), a producer may be considered to knowingly mislead the Minister, or cause the Minister to be misled, by deliberately omitting information when providing information to the Minister or a royalty investigator.
33. The concept of intentional disregard in relation to revenue laws has been held to require, among other things:

...an understanding...of the effect of the relevant legislation or regulations, an appreciation...of how that legislation or regulation applies to the circumstances...and finally, deliberate conduct...so as to flout the [legislation or regulations].¹⁹
34. If this category applies, the Minister will generally not consider remitting any royalty penalty.
35. This category applies to the exclusion of categories 1 and 2. That is, if particular circumstances fall under category 1 or 2 and this category, this category will apply.

Additional remission for voluntary disclosures

36. Voluntary disclosure occurs where a producer informs the Minister in writing that it has failed to comply with a royalty law obligation and provides sufficient information to allow the Minister to correctly determine the producer’s liability for royalty. Voluntary disclosure involves willingness by the producer to admit its liability for royalty, pay all outstanding royalty and comply with all royalty obligations as soon as possible.
37. A producer can make a voluntary disclosure even though it is giving notice to the Minister as required by the royalty laws.²⁰

¹⁸ *Hart v Commissioner of Taxation* (2003) 131 FCR 203, at [43]

¹⁹ *Price Street Professional Centre Pty Ltd v Federal Commissioner of Taxation* 2007 ATC 4320 at [43]

²⁰ For example, see sections 333F of the MR Act and 609 of the PG Act.

38. A voluntary disclosure does not include a disclosure of information that is false, misleading or incomplete, or conduct involving delay, resistance or the hindrance of an investigation or other review by the Minister. It also does not include a disclosure where the Minister has formed the view that the producer has understated its royalty liability and either the producer has been notified of that view or it is reasonable to conclude in the circumstances that the producer is aware of that view.
39. Voluntary disclosures assist the Minister to identify outstanding royalty law liabilities. Accordingly, to encourage voluntary disclosures, royalty penalty will generally be remitted to a greater extent in these cases than in cases where no voluntary disclosure has been made. However, the extent of this additional remission will depend on the circumstances and the nature and extent of disclosure in any given case.
40. Subject to paragraphs 41 and 42, the Minister will generally adopt the following approach in considering additional remission of royalty penalty due to a voluntary disclosure being made.

Time of voluntary disclosure	Percentage of calculated royalty penalty amount²¹ to be remitted on account of voluntary disclosure
Before prompt notice or review notice is issued in relation to issues the subject of the disclosure	100%
Prompt notice has been issued, and disclosure in relation to issues covered by the notice is made on or before the date nominated in the notice	100%
Prompt notice has been issued, and disclosure in relation to issues covered by the notice is made after the date nominated in the notice but before: <ul style="list-style-type: none"> • a review notice is issued • the Minister issues, or notifies an intention to issue, a default assessment or reassessment in relation to the specific issues 	80%
Review notice is issued, and disclosure in relation to issues covered by the notice is made on or before the date nominated in the notice	20%
A prompt notice or review notice has been issued, and no disclosure is made before the Minister issues, or notifies an intention to issue, a default assessment or reassessment in relation to the issues covered by the notice	0%

41. Where a producer makes a voluntary disclosure in relation to a number of issues, only some of which have been the subject of a prompt notice or review notice issued to the producer, the Minister may take into account such additional voluntary disclosures in determining the overall percentage of the calculated royalty penalty amount to be remitted.

²¹ The calculated royalty penalty amount is the amount of royalty penalty worked out after applying the steps in paragraphs 15(a) and 15(b).

42. The Minister may make a lesser remission, or no further remission, for the voluntary disclosure if on balance the producer's behaviour concerning its failure to meet its royalty obligations, and in the course of all its dealings with the Minister in general, makes remission pursuant to those paragraphs inappropriate in the Minister's view.

Date of effect

43. This Royalty Ruling reflects the Commissioner's existing interpretation and practices as at the date of issue.

Elizabeth Goli
 Commissioner, Office of State Revenue
 Date of issue: 12 July 2016

References

Royalty Ruling	Issued	Dates of effect	
		From	To
Royalty Ruling ROY003.1	12 July 2016	12 July 2016	30 September 2020

Attachment 1

Examples of application of general remission categories and additional remission for voluntary disclosures

Category 1—Circumstances beyond producer's control, or reasonable care taken

Circumstances beyond producer's control

Example 1

A producer's records are destroyed by a natural disaster, and the producer is therefore unable to meet its royalty obligations.

Reasonable care taken

Example 2

A producer takes reasonable care to establish computer systems that assist in calculating royalty but, due to a system programming error, the royalty payable for an operation is calculated incorrectly.

Example 3

A petroleum producer seeks advice from its solicitor on the royalty implications for a particular return period arising from the producer's operation. The producer provides complete and accurate information regarding the operation to the solicitor for this purpose. The advice received by the producer was that the operation would have a nil royalty liability for the return period. Subsequently, a royalty liability for the return period is discovered during an investigation by the Minister. On the Minister's request, the producer provides a letter of engagement from the solicitor and other documentary evidence to support the producer's claim that relevant advice was received. Based on the evidence provided, the Minister is satisfied that it was reasonable, in the circumstances, for the producer to rely on the advice received.

Example 4

A producer engages a new staff member to prepare the producer's royalty returns. The staff member is given extensive training by the person who previously prepared the producer's royalty returns, and the producer implements an internal review process that requires the new staff member's supervisor to review the returns before lodgement. Contrary to his training, the new staff member converts foreign currency amounts into Australian dollars using an incorrect exchange rate when preparing the royalty return, and this is not identified during the supervisor's review. Based on the evidence provided, the Minister is satisfied that the training and review process should have prevented the error occurring.

Category 2—Carelessness, recklessness, or no reasonable care taken

Example 5

A coal producer sells mineral to a related party marketing entity and does not seek a gross value royalty decision as required legislatively. The failure to apply for a gross value royalty decision was subsequently discovered during an investigation, with the Minister being satisfied the failure was not deliberate but due to the producer not properly informing itself of its obligations.

Example 6

During an investigation, the Minister discovers that a producer underpaid royalty in relation to a particular return period. The producer claims that, before commencing mining activity, it sought professional advice from a solicitor on the royalty implications of the mining. However, when requested to do so by the Minister, the producer was unable to produce evidence of advice having been sought.

Example 7

As for example 3; however, during the investigation, the Minister discovers that the advice received by the petroleum producer was based on incomplete information provided by the producer to the solicitor. The producer's failure to provide all relevant information to the solicitor was inadvertent rather than deliberate.

Example 8

A Royalty Ruling provides that a stated expense is not deductible for determining the wellhead value of petroleum in particular circumstances. A producer who has incurred that expense claims a deduction for it in a royalty return, contrary to the guidance provided by the ruling.

Example 9

During a return period, a gemstone producer gives away some small gemstones to family members as gifts. The producer does not account for the value of these gifts in her royalty return for the period, as she was unaware of her obligation to do so.

Example 10

As for example 4; however, the producer does not provide any training to the new staff member and does not implement a review process to ensure the accuracy of the royalty return.

Example 11

A coal producer mines coal from an operation comprising tenures where some (but not all) of the underlying land is subject to private royalties. During a return period, the producer sells coal extracted from an area of the operation in which mining has not previously occurred. In calculating the split of royalty between the state and the private royalty owner for the return period, the producer uses the same apportionment as it used in previous return periods, without consideration of whether the apportionment remains appropriate given the changed source of the coal.

Category 3—Deliberate default, intentional disregard of royalty obligations, or avoidance arrangements**Example 12**

A producer includes expenses in its royalty return for the return period that it knows it has not incurred, so as to reduce the amount of royalty payable.

Example 13

A producer commences mining knowing that royalty will apply. However, the producer chooses to ignore that a liability for royalty exists and fails to lodge the relevant royalty returns with the Minister.

Example 14

During an investigation, the Minister finds sufficient evidence that a producer received advice about how to structure its affairs in a particular manner so as to avoid paying part of its royalty liability, and that advice was followed.

Voluntary disclosures*Voluntary disclosure before a prompt notice or review notice issued***Example 15**

A producer employs a new accountant, who discovers that the previous accountant had erroneously calculated royalty for a previous quarter for an incorrect, lower amount and immediately notifies the Minister of the correct liability.

*Disclosure following prompt notice—before and after nominated date***Example 16**

The Minister sends a notice to all coal producers, inviting them to conduct a self-review by a stated date in relation to the treatment of foreign exchange gains and losses for royalty return periods from 1 July 2012. A producer conducts such a review and identifies incorrect treatment of foreign exchange gains for a number of royalty return periods in the 2013–14 financial year. The producer discloses details of the incorrect treatment to the Minister before the date stated in the notice.

Example 17

As for example 16; however, the producer does not disclose details of the incorrect treatment until after the date nominated in the notice. At the time of disclosure, the Minister has not issued a review notice to the producer, and has not issued a reassessment or advised of an intention to issue a reassessment.

*Disclosure following review notice***Example 18**

As for example 5; however, before the date nominated in the review notice advising the producer that an investigation under the MR Act has commenced, the producer writes to the Minister, providing all documentation and information necessary to enable the Minister to make a gross value royalty decision for the mineral.

Attachment 2

Royalty penalty guideline summary

This attachment summarises the guidelines in Attachment 1 and further remissions referred to in paragraphs 36 to 42 of this Royalty Ruling.

Percentages in this table are percentages of the shortfall amounts referred to in paragraph 4 of this ruling—that is, the percentages shown reflect the rate at which royalty penalty is applied, after all relevant remissions have been made. The percentages shown below do not take into account any increase in royalty penalty to be applied as described in paragraph 8.

Time of disclosure	Category		
	1 Circumstances beyond the producer's control, or reasonable care taken	2 Carelessness, recklessness or no reasonable care taken	3 Deliberate default, intentional disregard of royalty obligations, or avoidance arrangements
Before prompt notice or review notice is issued in relation to issues the subject of the disclosure	0%	0%	0%
Prompt notice has been issued, and disclosure in relation to issues covered by the notice is made on or before the date nominated in the notice	0%	0%	0%
Prompt notice has been issued, and disclosure in relation to issues covered by the notice is made after the date nominated in the notice but before: <ul style="list-style-type: none"> a review notice is issued the Minister issues, or notifies an intention to issue, a default assessment or reassessment in relation to the specific issues 	0%	5%	15%
Review notice is issued, and disclosure in relation to issues covered by the notice is made on or before the date nominated in the notice	0%	20%	60%
A prompt notice or review notice has been issued, and no disclosure is made before the Minister issues, or notifies an intention to issue, a default assessment or reassessment in relation to the issues covered by the notice	0%	25%	75%