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Royalty Ruling General:

REMISSION OF LATE LODGEMENT FEE

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) and the Mineral Resources Regulation 2013 (the MR Regulation) require a person to lodge a royalty return in relation to either a quarterly or annual return period 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 lodge a royalty return in relation to a quarterly return period in which:
 - (a) the petroleum producer produces petroleum or
 - (b) petroleum that has, at any time, been produced by the petroleum producer is:
 - (i) disposed of by the petroleum producer, by supplying it to anyone else, flaring or venting it or otherwise or
 - (ii) stored for the petroleum producer in a natural underground reservoir.⁴
3. In this ruling:
 - (a) *due date* means:
 - (i) for a royalty return under the MR Act that relates to a quarterly return period:
 - the last business day of the month after the day the quarter ends⁵

¹ Section 320(4) of the MR Act and section 35 of the MR Regulation. In particular circumstances, the holder of a mining claim is not required to lodge a royalty return for a return period: s.38 of the MR Regulation.

² Section 320(7) of the MR Act and section 35 of the MR Regulation

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

⁴ Sections 593 and 594 of the PG Act. An annual royalty return is also required to be lodged in certain circumstances: section 599 of the PG Act.

⁵ Section 36(3) of the MR Regulation

- the earlier⁶ or later⁷ day required or approved by the Minister⁸
- (ii) for a royalty return under the MR Act that relates to an annual return period:
- three months after the end of the annual return period⁹
 - the earlier¹⁰ or later¹¹ day required or approved by the Minister
- (iii) for a royalty return under the PG Act:
- the last business day of the month immediately following the quarter in which petroleum is produced, disposed of or stored¹² or
 - the earlier day required by the Minister¹³
- (b) *producer* means a person required to lodge a royalty return under the MR Act or the PG Act
- (c) *royalty return* means a royalty return under the MR Act or the PG Act.
4. A late lodgement fee (the fee) is payable where:
- (a) a producer has not lodged a royalty return for a period by the due date (regardless of whether or not a royalty return is subsequently lodged after the due date)¹⁴ or
- (b) for a royalty return under the PG Act—a purported royalty return lodged by the due date does not contain enough information to determine the producer's royalty liability.¹⁵
5. The fee is imposed to:
- (a) encourage lodgement of royalty returns on time
- (b) ensure the Minister has information to determine whether or not a producer has a royalty liability
- (c) ensure that a producer is not advantaged compared to others by failing to lodge a royalty return on time as required.
6. The amount of the fee is prescribed:
- (a) for minerals—in Schedule 5, Part 7 of the MR Regulation
- (b) for petroleum—in Schedule 9, Part 7, Item 1 of the Petroleum and Gas (Production and Safety) Regulation 2004.

⁶ Pursuant to section 37(2) of the MR Regulation

⁷ Pursuant to section 36(5) of the MR Regulation

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. 1) 2016*.

⁹ Section 36(2)(a) of the MR Regulation. Alternatively, section 36(2)(b) of the MR Regulation states that where a mining operation to which a royalty return relates ends within the annual return period, the due date is three months after the day the operation ended.

¹⁰ Pursuant to section 37(2) of the MR Regulation

¹¹ Pursuant to section 36(5) of the MR Regulation

¹² Section 594(1) of the PG Act

¹³ Pursuant to section 594(3) of the PG Act

¹⁴ Sections 36(6) and 37(3) of the MR Regulation and section 595 of the PG Act

¹⁵ Section 595(1)(b) of the PG Act

7. The Minister may remit the whole or part of the fee.¹⁶
8. The purpose of this royalty ruling is to provide guidance on matters that may be relevant when deciding whether or not to remit the fee.

Ruling and explanation

Relevant matters for remitting the fee

9. The Minister decides whether or not to remit the fee on a case-by-case basis, determining what is appropriate in light of all relevant facts and circumstances, and having regard to any published guidance and case law.
10. The purpose for which the fee is imposed is relevant when deciding whether or not remission of the fee is appropriate in a particular case.
11. Remission of the fee would be appropriate where the failure to lodge a royalty return by the due date was wholly outside the producer's control. Such circumstances may include:
 - (a) death or serious illness
 - (b) natural disasters such as bushfires or floods that directly affect the producer's ability to meet royalty obligations
 - (c) official postal delays or large-scale internet failure.
12. Remission of the fee would also generally be appropriate in the following circumstances:
 - (a) For a royalty return under the MR Act in relation to an annual return period, where the return is lodged by post—the return is received by the Minister no later than two weeks after the due date and the Minister is satisfied that both:
 - (i) the royalty return was signed on or before the due date
 - (ii) the royalty return was posted in a timely manner.
 - (b) A royalty return is not received by the Minister, but the producer provides a statutory declaration or other suitable evidence that satisfies the Minister the royalty return was signed and sent to the Minister on or before the due date.
 - (c) Liability for the fee is due to an unreasonable delay on the part of the Minister (e.g. a delay in resolving issues with the online lodgement facility OSRconnect, which prevents the client from lodging the royalty return on time).
13. In addition, the Minister may remit the fee if all the following conditions are satisfied:
 - (a) The producer has not previously been liable for the fee or has had all previously imposed fees remitted on any of the above bases.
 - (b) There is either no royalty payable for the return period or any royalty payable for the period was paid on time.

¹⁶ Sections 36(7) and 37(4) of the MR Regulation and section 595(5) of the PG Act

- (c) The producer lodges a royalty return promptly on becoming aware of the non-lodgement.¹⁷

Requests for remission

14. For the Minister to consider a request for remission of the fee, the producer should lodge a written request, stating the grounds for the request and setting out full details of the facts and circumstances that caused the failure to lodge the royalty return as required.
15. However, this requirement does not prevent the Minister from making a decision to remit the fee in whole or in part when making an assessment, default assessment or reassessment if the Minister already has sufficient information to determine that remission is appropriate.

Date of effect

16. 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: 1 December 2016

References

Royalty Ruling	Issued	Dates of effect	
		From	To
Royalty Ruling ROY004.1	1 December 2016	1 December 2016	30 September 2020

¹⁷ This would require, for instance, that the return is lodged no later than the response date specified in the first non-lodgement notice issued for the return period.