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## Royalty Ruling General:

### REMISSION OF UNPAID ROYALTY INTEREST

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 authority<sup>1</sup>
  - (b) a person who mines mineral from land other than under an authority.<sup>2</sup>
2. The *Petroleum and Gas (Production and Safety) Act 2004* (the PG Act) requires a petroleum producer<sup>3</sup> 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.<sup>4</sup>
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 (mineral royalty)
    - (ii) petroleum royalty imposed under the PG Act
  - (c) *return period* means:
    - (i) a return period for the MR Act<sup>5</sup>

<sup>1</sup> Section 320(1) of the MR Act

<sup>2</sup> Section 320(7) of the MR Act

<sup>3</sup> See Schedule 2 of the PG Act, definition of 'petroleum producer'.

<sup>4</sup> Section 590(1) of the PG Act

<sup>5</sup> 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 Act<sup>6</sup>
- (d) *royalty laws* mean the MR Act and the PG Act.
- 4. A producer is required to pay unpaid royalty interest (URI) on the amount of royalty payable by the producer to the state and unpaid from time to time (unpaid royalty).<sup>7</sup>
- 5. URI applies whenever there is a delay in the payment of royalty. The delays may result from:
  - (a) failure to pay royalty on time
  - (b) actions that defer the making of an assessment<sup>8</sup> and therefore the payment of royalty (for example, non-compliance with a lodgement or information requirement<sup>9</sup>).
- 6. URI is imposed to:
  - (a) encourage payment of royalty on time
  - (b) compensate the state for the period that royalty has been unpaid
  - (c) ensure that a producer is not advantaged compared to others by failing to pay royalty on time as required.
- 7. The rate of URI is the rate prescribed for unpaid tax interest under section 54(2) of the *Taxation Administration Act 2001*.<sup>10</sup>
- 8. The Minister<sup>11</sup> may remit the whole or part of URI.<sup>12</sup>
- 9. The purpose of this Royalty Ruling is to provide guidance on matters that may be relevant when deciding whether or not to remit URI.

## Ruling and explanation

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### Relevant matters for remitting URI

- 10. The Minister decides whether or not to remit URI 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.
- 11. The purpose for which URI is imposed by the royalty laws is relevant when deciding whether or not remission of URI is appropriate in a particular case.

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

<sup>7</sup> Sections 332 of the MR Act and 602 of the PG Act

<sup>8</sup> An assessment includes a reassessment. See sections 331 of the MR Act and 592A of the PG Act, definition of 'assessment'.

<sup>9</sup> See sections 333B of the MR Act and 605 of the PG Act.

<sup>10</sup> Sections 80 of the MR Regulation and 149H of the Petroleum and Gas (Production and Safety) Regulation 2004 (the PG Regulation). The rate for unpaid tax interest under the *Taxation Administration Act 2001* is prescribed by section 8 of the Taxation Administration Regulation 2012.

<sup>11</sup> 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*.

<sup>12</sup> Sections 332(6) of the MR Act and 602(6) of the PG Act

12. Remission of URI would be appropriate where the failure to pay royalty as required 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.
13. In addition, the Minister will ordinarily remit URI to the extent that the liability for URI was attributable to an error by, or unreasonable delay on the part of, the Minister.
14. Where a producer pays royalty in monthly instalments<sup>13</sup>, the Minister may also exercise the discretion to remit any URI imposed on such instalments before an assessment for the return period is made.<sup>14</sup>
15. URI will not be remitted where the producer has been granted an extension of time to comply with a lodgement or information requirement, unless there are other relevant circumstances such as outlined above.

#### **Remission of URI for multiple return periods**

16. Subject to paragraph 17, the royalty liability of a producer for each return period for each operation is separate and distinct for the purpose of imposing and remitting URI. Therefore, any entitlement to a refund of royalty in relation to a particular return period for a particular operation will not affect the imposition or remission of URI for the producer's royalty liability for any other return period or for any other operation.
17. However, when considering remission of URI in relation to additional mineral royalty payable on a reassessment for a quarterly return period in a particular financial year for a particular operation, the Minister may have regard to any changes to the amount of mineral royalty payable for other quarterly return periods in the same financial year for that operation.

#### **Requests for remission**

18. For the Minister to consider a request for URI remission, 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 pay royalty as required.
19. However, this requirement does not prevent the Minister from making a decision to remit URI 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).

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<sup>13</sup> See sections 40 of the MR Regulation and 147 of the PG Regulation.

<sup>14</sup> Sections 332(7) of the MR Act and 602(7) of the PG Act

## Date of effect

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20. 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: 15 July 2016

## References

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| Royalty Ruling          | Issued       | Dates of effect |                   |
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