

Serial 28
Revenue Legislation Amendment Bill 2013
Mr Tollner

A Bill for an Act to amend legislation administered by the Treasurer

NORTHERN TERRITORY OF AUSTRALIA

REVENUE LEGISLATION AMENDMENT ACT 2013

Act No. [] of 2013

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2013

An Act to amend legislation administered by the Treasurer

[Assented to [] 2013]
[Second reading [] 2013]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Revenue Legislation Amendment Act 2013*.

2 Commencement

This Act commences on 1 July 2013.

Part 2 Amendment of Mineral Royalty Act

3 Act amended

This Part amends the *Mineral Royalty Act*.

4 Section 4A amended

Section 4A(3)(c)

omit, insert

(c) otherwise – in accordance with section 4AAA.

5 Sections 4AAA and 4AAB inserted

After section 4A

insert

4AAA Gross value of saleable mineral commodity removed without sale

- (1) This section applies if:
 - (a) a saleable mineral commodity is removed from a production unit without sale, whether on consignment or otherwise; and
 - (b) section 4A(3)(c) requires the commodity to be valued under this section.
- (2) For section 4A, the **gross value** of the saleable mineral commodity is:
 - (a) the open market price for the commodity at the time it was removed from the production unit; or
 - (b) if the royalty payer establishes and substantiates the gross value of the commodity to be another amount – that other amount (the **alternative value**).
- (3) If the saleable mineral commodity is dealt with by the royalty payer in circumstances that involve transfer pricing, any alternative value for subsection (2)(b) must be calculated:
 - (a) if the royalty payer has been satisfactorily audited by the ATO – using the transfer pricing methodology and the figures accepted by the ATO as mentioned in subsection (4)(c) and (d); or
 - (b) if an advance pricing arrangement applies in relation to the royalty payer's dealing with the commodity – using the transfer pricing methodology agreed to in that advance pricing arrangement; or
 - (c) otherwise – in accordance with section 4AAB.
- (4) For subsection (3)(a), a royalty payer has been **satisfactorily audited by the ATO** if:
 - (a) the ATO has conducted an audit of the royalty payer's affairs; and

- (b) the audit included consideration by the ATO of the transfer pricing methodology used by the royalty payer in accounting for the royalty payer's dealing with the commodity for the purposes of the ITAA; and
 - (c) the ATO has accepted the transfer pricing methodology used by the royalty payer in preparing its income tax return for the relevant year as an appropriate methodology; and
 - (d) the ATO has accepted the figures used by the royalty payer in the application of that methodology in preparing its income tax return for the relevant year as correct.
- (5) In this section:

advance pricing arrangement means an arrangement between the ATO and a royalty payer (to which there may also be other parties) under which the parties agree on a transfer pricing methodology to be used by the royalty payer in accounting for the royalty payer's dealings with saleable mineral commodities for the purposes of the ITAA.

ATO means the Commonwealth Commissioner of Taxation.

income tax return means an income tax return lodged with the ATO under the ITAA together with any adjustments made, or additional information lodged, after that return was lodged but before the audit mentioned in subsection (4)(a) commenced.

ITAA means either or both of the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

4AAB Calculation of alternative value

- (1) This section applies if:
- (a) a saleable mineral commodity is removed from a production unit without sale, whether on consignment or otherwise; and
 - (b) the commodity is dealt with by the royalty payer in circumstances that involve transfer pricing; and
 - (c) section 4AAA(3)(c) requires the alternative value for the commodity for section 4AAA(2)(b) to be calculated under this section.
- (2) The alternative value is calculated using the following formula:

$$A = V \times (1 - T)$$

where:

A is the alternative value for the saleable mineral commodity.

V is the final value for the saleable mineral commodity.

T is:

(a) if the substantiated TPF is greater than 5.5% – 0.055; or

(b) otherwise – the substantiated TPF expressed as a decimal number.

(3) The **final value** for the saleable mineral commodity is:

(a) if the commodity has been sold in an arm's length transaction between parties who are not related to each other – the price for which it was first so sold; or

(b) if the royalty payer establishes and substantiates the final value of the commodity to be another amount (whether because the commodity has not been sold to an unrelated party, the sale was not at arm's length or for another reason) – that other amount.

(4) The **substantiated TPF** is the amount established and substantiated by the royalty payer to be the transfer pricing factor expressed as a percentage of the final value of the saleable mineral commodity.

6 Section 4B amended

(1) Section 4B(1)(f), (g) and (h)

omit, insert

(f) salary, allowances, termination or similar payments or approved benefits of a similar nature, employer contributions to superannuation schemes and wages in respect of an employee for a pay period during which the employee:

(i) worked solely in the Territory; and

(ii) was engaged primarily in work that was directly attributable to the operation of the production unit; and

(g) office expenses that:

(i) relate to an office of the royalty payer that is in the Territory; and

- (ii) are directly attributable to the operation of the production unit; and
 - (iii) in the case of expenses for work or services – are for the work or services performed solely in the Territory; and
 - (h) reasonable fees for management services that:
 - (i) are performed solely in the Territory; and
 - (ii) are directly attributable to the operation of the production unit; and
- (2) After section 4B(1)(r)
 - insert*
 - (ra) MRRT, as defined in section 300-1 of the *Minerals Resource Rent Tax Act 2012* (Cth); or
 - (rb) unit shortfall charge, as defined in section 5 of the *Clean Energy Act 2011* (Cth); or
- (3) Section 4B(1)(y)
 - omit*
 - export.
 - insert*
 - export; or
- (4) After section 4B(1)(y)
 - insert*
 - (z) a payment in respect of an employee where:
 - (i) the criterion in paragraph (f)(i) is not met; and
 - (ii) if that criterion were met, the payment would ordinarily be classified by the Secretary as being of a kind mentioned in paragraph (f);
 - (whether or not the payment might also be classified as being expenditure of a kind mentioned in any other paragraph); or

- (za) an office expense where:
- (i) the criteria mentioned in paragraphs (g)(i) and (iii) are not met; and
 - (ii) if those criteria were met, the expense would ordinarily be classified by the Secretary as being of a kind mentioned in paragraph (g);
- (whether or not the expense might also be classified as being expenditure of a kind mentioned in any other paragraph); or
- (zb) fees for management services where:
- (i) the criterion in paragraph (h)(i) is not met; and
 - (ii) if that criterion were met, the fees would ordinarily be classified by the Secretary as being of a kind mentioned in paragraph (h);
- (whether or not the fee might also be classified as being expenditure of a kind mentioned in any other paragraph).

7 Section 14 amended

- (1) Section 14(1)(c)
- omit, insert*
- (c) premises where there are, or where he or she has reasonable cause to believe are kept, documents:
- (i) relating to the mining, processing, storage or sale or other disposal of a mineral commodity; or
 - (ii) of a kind that a royalty payer is required to retain under section 17A(2);
- (2) Section 14(1)(f)
- omit, insert*
- (f) inspect documents of a kind mentioned in paragraph (c); and

8 Section 15 amended

Section 15(1), after "commodity"

insert

, including in relation to any relevant transfer pricing,

9 Section 17 amended

- (1) Section 17(1), at the end

insert

Maximum penalty: 200 penalty units

- (2) Section 17(2), penalty provision

omit

40

insert

200

10 Section 17A inserted

After section 17

insert

17A Transfer pricing documentation

- (1) This section applies if a saleable mineral commodity is removed from a production unit without sale and is dealt with by the royalty payer in circumstances that involve transfer pricing.
- (2) A royalty payer must retain at the production unit, or at some other place in Australia agreed between the royalty payer and the Secretary or, in the absence of agreement, as determined by the Secretary, all documents that:
- (a) are created by, or come into the possession of, the royalty payer; and
 - (b) are relevant for determining the gross value of the saleable mineral commodity.

Maximum penalty: 200 penalty units.

- (3) Without limiting subsection (2)(b), the following are relevant for determining the gross value of the saleable mineral commodity:
- (a) any transfer pricing arrangement;
 - (b) any relevant audit of the kind mentioned in section 4AAA(4);

-
- (c) any relevant advance pricing arrangement, as defined in section 4AAA(5);
 - (d) if section 4AAB applies – all matters mentioned in that section.

11 Section 50 amended

- (1) Section 50(2)(e)

omit

Commonwealth.

insert

Commonwealth; or

- (2) After section 50(2)(e)

insert

- (ea) a Territory employee exercising or performing a power, duty or function in accordance with an arrangement made under section 7 of the *Uranium Royalty (Northern Territory) Act 2009* (Cth) to the Commonwealth; or
- (eb) a Territory employee performing a function under this Act or exercising or performing a power, duty or function under the *Uranium Royalty (Northern Territory) Act 2009* (Cth) to another Territory employee, where the communication is necessary for the efficient administration of that Commonwealth Act.

12 Part IX inserted

After section 55

insert

Part IX Transitional matters for Revenue Legislation Amendment Act 2013

56 Gross value of commodity sold or removed before 1 July 2013

- (1) This section applies for the purpose of determining the gross realization for a production unit for a royalty year any part of which was before 1 July 2013.

- (2) The gross value of a saleable mineral commodity that was sold or removed without sale from the production unit before 1 July 2013 is to be determined in accordance with this Act as in force before 1 July 2013.

57 Operating costs – royalty year ending before 1 July 2013

- (1) This section applies for the purpose of determining the operating costs for a production unit for a royalty year that ended before 1 July 2013.
- (2) The operating costs are to be determined in accordance with this Act as in force before 1 July 2013.

58 Operating costs – royalty year that includes 1 July 2013

- (1) This section applies for the purpose of determining the operating costs for a production unit for a royalty year that started before 1 July 2013 and ends on or after 1 July 2013.
- (2) The operating costs for the royalty year are:
- (a) the operating costs of the production unit for the part of the royalty year ending immediately before 1 July 2013 (the *pre-July period*) determined in accordance with this Act as in force immediately before 1 July 2013; and
 - (b) the operating costs of the production unit for the part of the royalty year beginning on 1 July 2013 (the *post-June period*) determined in accordance with this Act as amended by the *Revenue Legislation Amendment Act 2013*.
- (3) If an expenditure relates in part to the pre-July period and in part to the post-June period, the amount of the expenditure must be apportioned between the periods:
- (a) as agreed between the royalty payer and the Secretary on or before 31 December 2013; or
 - (b) in the absence of an agreement – as determined by the Secretary.
- (4) To avoid doubt, an apportionment under subsection (3) may apportion the whole of an amount to one period and none of the amount to the other period.

Part 3 Amendment of Payroll Tax Act

13 Act amended

This Part amends the *Payroll Tax Act*.

14 Schedule 1 amended

- (1) Schedule 1, clause 1, definitions *employer's threshold amount* and *group threshold amount*

omit

- (2) Schedule 1, clause 1

insert (in alphabetical order)

ETA or *employer's threshold amount*, see clause 4.

GTA or *group threshold amount*, see clause 8.

- (3) Schedule 1, clause 3, definition *AD* or *annual deduction*

omit, insert

AD or *annual deduction* means the following:

- (a) if the amount worked out in accordance with the following formula is zero or a negative amount – zero;
- (b) otherwise – the amount worked out in accordance with the following formula:

$$AD = ETA - \left[\frac{TW + IW - ETA}{4} \right]$$

- (4) Schedule 1, clause 5, formula

omit, insert

$$\left[TW - \left[\frac{TW}{TW + IW} \times AD \right] \right] \times R$$

- (5) Schedule 1, clause 7, definition **AD** or **annual deduction**

omit, insert

AD or **annual deduction** means the following:

- (a) if the amount worked out in accordance with the following formula is zero or a negative amount – zero;
- (b) otherwise – the amount worked out in accordance with the following formula:

$$AD = GTA - \left[\frac{GTW + GIW - GTA}{4} \right]$$

- (6) Schedule 1, clause 9(2), formula

omit, insert

$$\left[TW - \left[\frac{GTW}{GTW + GIW} \times AD \right] \right] \times R$$

15 Schedule 2 amended

- (1) Schedule 2, clause 14(2), formula

omit, insert

$$\left[GTW - \left[\frac{GTW}{GTW + GIW} \times AD \right] \right] \times R$$

- (2) Schedule 2, clause 14(3)

omit, insert

- (3) In this clause:

AD or **annual deduction** means the following:

- (a) if the amount worked out in accordance with the following formula is zero or a negative amount – zero;
- (b) otherwise – the amount worked out in accordance with the following formula:

$$AD = GTA - \left[\frac{GTW + GIW - GTA}{4} \right]$$

GIW is the total interstate wages paid or payable by the members of the group during the relevant financial year.

GTA, see Schedule 1, clause 8.

GTW is the total taxable wages paid or payable by the members of the group during the relevant financial year.

R is 5.5%.