

MINING ACT 1992 - DETERMINATION UNDER SECTION 283(5)

(Concerning ad valorem coal royalties)

I, Ian Macdonald, MLC, Minister for Mineral Resources, pursuant to section 283(5) of the *Mining Act 1992*, hereby determine that the manner of calculating the value of coal recovered is to be as set out in the Appendix below.

Dated this 31 day of December 2008



IAN MACDONALD, MLC
Minister for Mineral Resources

Explanatory note

This determination should be read in conjunction with the royalty provisions of the *Mining Act 1992* and the regulations under that Act. The Act states that the holder of a mining lease is liable to pay royalty (on minerals recovered under the lease) at rates prescribed by the regulations. The regulations prescribe those rates, in the case of coal, as certain percentages of the value of coal disposed of by the leaseholder during the relevant period. This determination sets the manner in which that value is to be calculated. (Under the regulations, royalty on coal is payable monthly, except where a different payment period is determined by the Minister under section 291(1)(b) of the Act).

As provided by section 283(2) of the Act, royalty is payable at the rates applicable as at the time the material from which the coal is recovered is extracted from the land. Accordingly, this determination relates to coal recovered from material extracted from land on or after 1 January 2009.

APPENDIX

1 Commencement

This determination takes effect on and from 1 January 2009.

2 Definitions

(1) In this determination -

authorised officer means -

(a) the Minister, or

(b) if the Minister has authorised a person or the holder of a particular position in writing to exercise a function referred to in a provision of this determination - that person or the person for the time being

occupying or acting in that position (subject to any limitation referred to in subclause (2)).

domestic coal means coal consumed or to be consumed within Australia.

export coal means coal consumed or to be consumed outside Australia.

leaseholder means the holder of a mining lease under which coal is recovered.

royalty period means a period in respect of which royalty is payable.

the Act means the *Mining Act 1992*.

the commencement means the commencement of this determination.

the previous determination means the determination under section 283(5) of the Act made by the Minister on 24 June 2004, which took effect on 1 July 2004.

other words and expressions (e.g. **mining lease**) have the same meanings as they have in the Act or the regulations under the Act.

- (2) An authorisation by the Minister to exercise a function as referred to in paragraph (b) of the definition of “authorised officer” may be either general or limited. (*Note:* where such a limitation is imposed, the meaning of “authorised officer” in the context of the function concerned is similarly limited).

3 Manner of calculating the value of coal recovered

- (1) The value of coal recovered by a leaseholder during a royalty period is to be calculated in accordance with the following formula:

$$V = AR - AD$$

where:

V is the value of coal recovered by the leaseholder during the royalty period.

AR is the total amount of assessable revenue, calculated in accordance with this determination, received or recoverable by the leaseholder in respect of the quantity (tonnes) of coal disposed of by the leaseholder during the royalty period.

AD is the total amount of allowable deductions, calculated in accordance with this determination, applicable in respect of the leaseholder's disposal of coal during the royalty period or otherwise applicable under this determination.

- (2)(a) In this determination, assessable revenue is to be calculated in accordance with the following formula:

$$AR = EV + E + DV + CR + (P_1 \times Q_1) - I$$

where:

AR is assessable revenue.

EV is the total amount, on the basis of invoices or other records, received on recoverable by the leaseholder in respect of export coal disposed of

during the royalty period using the free on board (f.o.b.) price rate (i.e. excluding ocean freight and insurance), being coal in respect of which an authorised officer is satisfied that the price charged is an amount that would reasonably be expected to have been obtained if the coal had been sold to an arm's length buyer. (*Note*: see paragraph (b)(i) below for how EV applies where export coal is sold on cost insurance freight (c.i.f.) basis).

E is the total amount of foreign exchange gains by the leaseholder in connection with the disposal of coal during the royalty period. (*Note*: see paragraph (b)(ii) below for how E applies where there is a foreign exchange loss).

DV is the total amount, on the basis of invoices or other records, received or recoverable by the leaseholder in respect of domestic coal disposed of during the royalty period, being coal in respect of which an authorised officer is satisfied that the price charged is an amount that would reasonably be expected to have been obtained if the coal had been sold to an arm's length buyer.

CR is the total amount of any royalty under the Act which is recovered or recoverable by the leaseholder from any customer in respect of coal disposed of during the royalty period, if that amount is not otherwise included in DV.

P_I is the price rate per tonne determined by an authorised officer in accordance with paragraph (b)(iii) below in respect of coal disposed of by the leaseholder during the royalty period, being coal -

- (i) disposed of by the leaseholder without any consideration payable; or
- (ii) in respect of which an authorised officer is not satisfied that the price charged is an amount that would reasonably be expected to have been obtained if the coal had been sold to an arm's length buyer.

Q_I is the total quantity (in tonnes) of coal disposed of in the circumstances referred to in the definition of *P_I*, as determined by an authorised officer.

I is the total amount of any interest received by the leaseholder in respect of coal sold during the royalty period on an extended credit basis.

- (b) For the purposes of calculating assessable revenue, the following provisions and the provisions of Schedule A also apply:
 - (i) In a case where export coal is disposed of on a c.i.f., rather than f.o.b., basis, the cost of ocean freight and insurance is to be subtracted to arrive at an equivalent of f.o.b. price, and EV as defined in paragraph (a) above is to apply subject to that modification.
 - (ii) In a case where the leaseholder incurs a foreign exchange loss in the proceeds for disposal of coal during the royalty period (or the net result of foreign exchange gains and losses in the leaseholder's coal disposals during the period is a loss), E in the formula in paragraph (a) above is to be the amount of that loss and that formula is to be read as including "- E" instead of "+ E".

- (iii) A price rate per tonne determined by an authorised officer as referred to in the definition of P_1 is to be such rate as the authorised officer determines would reasonably be expected to have applied in a sale to an arm's length buyer.
 - (iv) Assessable revenue is to be calculated exclusive of GST.
 - (v) An authorised officer may in a particular case determine whether any unclear or disputed matter is included in assessable revenue (and any incidental question in the calculation of assessable revenue) and the amount of assessable income (or any component thereof).
- (3)(a)** For the purposes of this determination, allowable deductions are as follows:
- (i) beneficiation costs as provided in item 1 of Schedule B;
 - (ii) coal research levy as provided in item 2 of Schedule B;
 - (iii) mine subsidence levy as provided in item 3 of Schedule B;
 - (iv) Commonwealth levy for long service leave as provided in item 4 of Schedule B;
 - (v) mines rescue levy as provided in item 5 of Schedule B;
 - (vi) amounts relating to bad debts on coal sales as provided by item 6 of Schedule B;
 - (vii) such other charges paid or incurred by a leaseholder during a royalty period as may be determined by an authorised officer in a particular case.
- (b)** In calculating allowable deductions, the following provisions and the provisions of Schedule B also apply:
- (i) items in paragraph (a) above are to be calculated exclusive of GST;
 - (ii) an amount which has been accepted as an allowable deduction in respect of a particular royalty period (whether covered by this determination or the previous determination) cannot also be an allowable deduction in respect of a later royalty period (except in the context of a proper adjustment accepted by an authorised officer).
- (c)** An authorised officer may in a particular case determine whether any unclear or disputed matter qualifies as an allowable deduction (including any incidental question in the calculation of allowable deductions, such as tonnages of coal within beneficiation categories specified in item 1 of Schedule B) and the amount of any allowable deduction (or any component thereof).

4 “First in-first out” transitional approach for mingled stockpiles

- (a)** This clause applies to coal in or from a stockpile which at any time after the commencement includes or included coal in both of the following categories –
- (i) coal extracted from land under the leaseholder’s mining lease before the commencement; and

- (ii) coal extracted from land under the leaseholder's mining lease after the commencement.
- (b) Where a leaseholder, after the commencement, disposes of any coal to which this clause applies, that coal will be treated (in the absence of proof to the contrary) as category (i) coal above (and accordingly covered by the previous determination) until the total tonnage of coal to which this clause applies that has been disposed of equals the tonnage of category (i) coal included, on the basis of relevant records, in that stockpile. (*Note: this does not affect the operation of the previous determination as regards allocation of coal disposals to export, domestic or other categories or otherwise*).

SCHEDULE A

Further provisions concerning assessable revenue

1 Foreign exchange gains and losses

Normal foreign exchange gains and losses arising between the time of shipment and the date of payment are to be included in assessable revenue. Where shipment and payment occur in the same royalty period, the actual proceeds received are to be brought to account in that period. Where shipment and payment occur in separate royalty periods, the amount outstanding would normally be brought to account at the exchange rate applicable at the end of the period, thereby recognising an unrealised gain or loss from the time of shipment to the end of the royalty period. In the subsequent royalty period any difference between the amount previously reported as receivable, and the amount actually received, is to be brought to account as a realised exchange gain or loss. In summary, the actual gross proceeds received are ultimately brought to account as assessable revenue, although over different royalty periods in some instances.

In some cases the proceeds of sale may not be translated into Australian dollars, but rather retained in a foreign currency account. Such funds may then be moved in a "block" which cannot be tied specifically to individual sales of coal, i.e. once the funds are "pooled" they lose their identity. In these circumstances, the value is to be based on the exchange rate prevailing on the date of receipt of payment in the foreign currency (e.g. the exchange rate as published daily by the Reserve Bank of Australia).

The hedge settlement exchange rate (e.g. the exchange rate as published daily by the Reserve Bank of Australia) applicable on the date of invoice payment is to be used to translate the US dollars into Australian dollars.

Any gains or losses arising from currency hedging activities are to be excluded from assessable revenue. It is considered that these relate to company financing and risk management policies, which will differ between business entities, rather than relating specifically to the value of the coal being sold.

2 Domestic coal

Invoices for arm's length domestic sales contracts often include a separate allowance for royalty payment by the customer to the holder of a mining lease of an amount equivalent to the royalty due. The total amount of such invoices, including any allowance for royalty payments, is to be included in assessable

revenue. (Where recovery of royalty by a leaseholder from a customer is applicable, a simple way of calculating the amount is to multiply the value by 8.2/91.8, 7.2/92.8 or 6.2/93.8, depending on whether the coal has been recovered by the open cut, underground or deep underground mining methods referred to in the regulations under the Act).

3 Inter-mine transactions etc

Where there is a sale of coal between mines or between a mine and another coal-holding entity (e.g. to fulfil a particular coal supply contract) and an authorised officer is not satisfied that the sale price charged is an amount that would reasonably be expected to have been obtained if the coal had been sold to an arm's length buyer, the authorised officer may determine a price rate for the relevant quantity of coal for the purposes of this determination.

SCHEDULE B

Further provisions concerning allowable deductions

1 Beneficiation costs (see clause 3(3)(a)(i))

The cost of beneficiation of coal disposed of by a leaseholder during a royalty period is an allowable deduction at the following rates per saleable tonne:

- (a) for coal which has been subjected to a full cycle of washing, \$3.50 per tonne;
- (b) for coal which has been subjected to a simple washing process such as wet jigging, \$2.00 per tonne;
- (c) for coal which has been crushed and screened, but not subjected to a washing process, \$0.50 per tonne.

This applies even if the beneficiation did not occur during the royalty period or was not carried out for the purpose of the particular transaction in which the coal was disposed of.

2 Coal research levy (see clause 3(3)(a)(ii))

The Australian Coal Association Research Program (ACARP) is funded by a levy (calculated at a specified rate per saleable tonne of coal produced) on Australian coal producers.

The part (if any) of that levy duly paid or incurred by a leaseholder during a royalty period, which an authorised officer is satisfied relates to, or can reasonably be apportioned to, coal –

- (a) recovered under the leaseholder's mining lease; and
 - (b) disposed of by the leaseholder during that period,
- is an allowable deduction in respect of that period.

3 Mine subsidence levy (see clause 3(3)(a)(iii))

Under the *Mine Subsidence Compensation Act 1961*, colliery proprietors are required to pay an annual levy (contributions) into the Mine Subsidence Compensation Fund.

The amount (if any) of that levy duly paid or incurred by a leaseholder during a royalty period is an allowable deduction in respect of that period.

4 Commonwealth levy for long service leave (see clause 3(3)(a)(iv))

Under the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (Commonwealth) and related legislation, persons who pay wages to “eligible employees” within the meaning of that legislation are liable to pay a levy on those wages.

The part (if any) of that levy duly paid or incurred by a leaseholder during a royalty period, which an authorised officer is satisfied relates to, or can reasonably be apportioned to, the leaseholder’s mining lease, is an allowable deduction in respect of that period.

5 Mines rescue levy (see clause 3(3)(a)(v))

Under the *Coal Industry Act 2001*, coal mine owners are required to pay a levy (contributions) as determined in respect of each financial year to defray certain costs incurred by the mines rescue company approved under that Act.

The amount (if any) of that levy duly paid or incurred by a leaseholder during a royalty period is an allowable deduction in respect of that period.

6 Bad debts (see clause 3(3)(a)(vi))

Where an authorised officer is satisfied that an amount owing to a leaseholder in relation to the sale of coal recovered under the mining lease is a bad debt irrecoverable by the leaseholder, that amount is an allowable deduction to the extent it is not covered by insurance. This applies whether the bad debt relates to disposal of coal during the royalty period or during a previous royalty period.

7 Generally

Subject to any determination under clause 3(3)(a)(vii), no items other than those listed in clause 3(3)(a) are allowable deductions. Examples of items which accordingly are not allowable deductions are:

- hedging losses or gains
 - marketing costs and sales commissions
 - royalty on coal
 - transportation costs
 - sampling and analysis
 - demurrage and dispatch
 - export credit insurance
 - bank commissions.
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