Estimates Committee 2013

Questions Taken On Notice

(18/06/2013 to 27/06/2013)

Date: 18/06/2013

Output:

Sub Output:

Subject: Mining Taxes

From: Ms Delia Lawrie to Treasurer David Tollner
Department of Treasury and Finance

2-1

Question: Provide for the purpose of the Estimates Committee written advice that identifies the burden reduction in the application of the two new mining taxes.

Answer:

Answered On: 25/06/2013

Legislative Assembly of the Northern Territory
Estimates Committee

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QUESTION ON NOTICE

FROM: *Opposition Leader*
TO: *Treasurer*

Question 2.1
Provide for the purpose of the Estimates Committee written advice that identifies the burden reduction in the application of the two new mining taxes.

ANSWER

The proposed amendments to the *Mineral Royalty Act* provided as part of Budget 2013-14 are not new taxes. The measures amend the current mineral royalty arrangements by rationalising the current range of allowable deductions a royalty payer may claim by:

- Capping transfer pricing to a maximum of 5.5 per cent, and
- Limiting allowable head office expenses, management fees and labour costs to costs incurred in the Territory.

Claiming deductions for transfer pricing, head office expenses, management fees and labour costs imposes a significant reporting burden on royalty payers. Extensive valuation and other evidence is required in relation to transfer pricing and complex accounting must be made of head office and similar expenses to allocate the correct amount to the particular mine the subject of royalty payments.

Rationalising these deductions necessarily reduces the reporting burden because it reduces the complexity involved and provides certainty in an area of complexity and contention.

For example, in relation to transfer pricing, a royalty payer must at a minimum provide the following documents and information to substantiate its claim for a transfer pricing factor:

- an independent expert valuation report that assesses the reasonableness of the transfer pricing arrangement including the discount applied;
- sales invoices and sale contracts between the royalty payer and the related entity;
- sales invoices and sale contracts between the related entity and the unrelated end customer;
- internal transfer pricing policy documents;
- financial reports of the royalty payer and the related entity;
- description of the arrangements, transactions and risks undertaken by the royalty payer and the related entity;
- identification and description of the actual condition of the commodity at the precise time it was removed from the production unit with all its existing advantages and possibilities;
- details regarding any ATO transfer pricing record review and/or audits of the royalty payer; and
- details regarding any Advance Transfer Pricing Agreements entered into between the ATO and the royalty payer.

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The Secretary must also engage its own independent expert valuer to independently review and assess the royalty payer's submission. This could result in the royalty payer providing further information and additional valuation reports.

The process under the current regime is complex, lengthy and costly to both the royalty payer and government. By contrast, under the proposed capped transfer pricing regime, the NT will adopt a transfer pricing factor that has been audited or established by the ATO, which will eliminate the duplication of record keeping and accounting and legal procedures.

Alternatively, if there is no factor established by the ATO, the royalty payer can claim a factor under the capped arrangements and only need to provide:

- sales invoices and sale contracts between the related entity and the unrelated end customer;
- description of the arrangements, transactions and risks undertaken by the royalty payer and the related entity; and
- confirmation that there has not been a review or audit conducted by the ATO, or an Advance Pricing Agreement entered into with the ATO.

Similarly, under the current processes, office expenses, management fees and labour costs can be deducted where they are materially connected with the operations of the Territory mine or where the workers were engaged primarily in work directly attributable to the operation of the Territory mine.

This requires an apportionment of costs between the Territory mine and other parts of the business and all relevant expense accounts must be reviewed to ensure any ineligible costs are excluded from the allocation base. The royalty payer must choose one of three methods of allocation that are acceptable by the Secretary and this may require them to create additional internal procedures to capture necessary information for apportionment purposes and may involve lengthy consultation with the Territory Revenue Office to provide the requisite documentation to substantiate an appropriate and acceptable apportionment methodology. Additionally, it is common for the royalty payer to experience difficulty in obtaining necessary information and supporting documents from its related entities, particularly where they are located overseas.

Under the proposed amendments, the costs must be incurred in the Territory, which negates the need for complex apportionment processes and simply requires the provision of records of Territory expenses.