

## Value of Coal Recovered Ministerial Determination 2024

I, the Hon. Courtney Houssos MLC, Minister for Finance, Minister for Domestic Manufacturing and Government Procurement, Minister for Natural Resources, in pursuance of section 283(5) of the *Mining Act 1992* (the Act), determine the manner for calculating the value of coal recovered is as set out in Schedule 1.

This Determination revokes and replaces the Ministerial Determination made under section 283(5) of the Act, dated 31 December 2008.

This Determination takes effect on 1 July 2024 and will remain in force until it is revoked, whether in whole or in part.

Dated this 16 day of June 2024.



The Hon. Courtney Houssos MLC  
Minister for Finance  
Minister for Domestic Manufacturing and Government Procurement  
Minister for Natural Resources

### **Explanatory note**

This Determination is made in pursuance of section 283(5) of the Act. The Holder of a mining lease or mining sublease is liable to pay royalty to the Crown on publicly owned minerals recovered by the Holder under the lease or sublease. The amount depends on the value of the coal. The object of this Determination is to determine the manner for calculating the value of coal recovered.

### **Schedule 1**

#### **1. Manner of calculating the value of coal recovered**

- a. The value of coal recovered by a Holder during a Royalty Period is to be calculated in accordance with the following formula:

$$V = AR - AD$$

- b. The value of coal recovered must be calculated by the Holder separately for each mining lease for which the Holder is liable to pay royalty.
- c. Clause 1(b) does not apply if:
- (i) a Revenue NSW Officer has given approval to the Holder to calculate the value of coal recovered on a basis other than that specified in clause 1(b); and

- (ii) the Holder calculates the value of coal recovered in accordance with that approval.

Note: For example, clause 1(c) allows a Holder to calculate the value of coal in aggregate where the Holder has multiple mining leases if the Holder has received approval from an Authorised Officer to do so.

d. In the formula above:

- (i) **V** is the value of coal recovered. V cannot be transferred, including to another Holder.

Where application of the formula for determining the value of V results in V being less than zero –

- A. the value of coal recovered is deemed to be zero for that Royalty Period, and
- B. no amount of less than zero may be carried forward to a future Royalty Period and offset against assessable revenue for the purposes of determining the value of coal for any period.

- (ii) **AR** is the total amount of assessable revenue, calculated in accordance with clause 2, received or recoverable by the Holder in respect of the quantity (tonnes) of coal disposed of by the Holder during the Royalty Period for the relevant mining lease.

For the avoidance of doubt, AR does not include revenue received or recoverable by the Holder in respect of coal recovered by a different Holder or under a different mining lease.

- (iii) **AD** is the total amount of allowable deductions, calculated in accordance with clause 3, applicable in respect of the Holder's disposal of coal during the Royalty Period for the relevant mining lease.

For the avoidance of doubt, AD does not include deductions in respect of coal recovered by a different Holder or under a different mining lease.

## 2. Assessable revenue

- a. In this Determination, assessable revenue is to be calculated exclusive of GST and in accordance with the following formula:

$$\mathbf{AR = EV + EG - EL + DV + CR + (P1 \times Q1) - I}$$

- b. In the formula above:

- (i) **AR** is assessable revenue.
- (ii) **EV** is export value. This is the total amount received or recoverable in respect of Export Coal disposed of in an arm's length transaction during

the Royalty Period. Where the free on-board rate is not being used, i.e. where the Export Coal is disposed of on a Cost Insurance Freight (CIF) basis, the cost of ocean freight and insurance is to be subtracted to arrive at an equivalent free on-board price. Any other costs, including but not limited to, costs associated with transporting the coal to the point of loading, insuring the coal before that point, preparing the coal for loading or loading the coal on to a vessel are not deductible. See also clause 5.

- (iii) **EG** is the total amount of Foreign Exchange Gains by the Holder in direct connection with the disposal of coal during the Royalty Period. See also clause 6.
- (iv) **EL** is the total amount of Foreign Exchange Losses by the Holder in direct connection with the disposal of coal during the Royalty Period. See also clause 6.
- (v) **DV** is domestic value. This is the total amount received or recoverable in respect of Domestic Coal disposed of in an arm's length transaction during the Royalty Period. See also clause 5.
- (vi) **CR** is the total amount of any royalty under the Act which is recovered or recoverable by the Holder from any customer in respect of coal disposed of during the Royalty Period, if that amount is not otherwise included in DV.
- (vii) **P1** is the price per tonne in respect of coal disposed of by the Holder during the Royalty Period, being coal:
  - A. disposed of by the Holder without any consideration payable; or
  - B. disposed of to a relevant entity of the Holder; or
  - C. 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 in an arm's length transaction.

For **P1**, the price per tonne is that price which would reasonably be expected to have been obtained in an arm's length transaction.

- (viii) **Q1** is the total quantity (in tonnes) of coal disposed of in the circumstances referred to in the definition of **P1**.
- (ix) **I** is the total amount of any interest received or recoverable by the Holder in respect of coal sold during the Royalty Period on an extended credit basis, but only to the extent that the amount of interest received has been included in EV or DV.

- c. 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 revenue (or any component thereof).

### 3. Allowable Deductions

- a. The following costs, exclusive of GST, payable by a Holder may be deducted in respect of coal disposed of during the period for the relevant mining lease:
- (i) Beneficiation costs as described in clause 3(b).
  - (ii) Coal research levy payable to Australian Coal Research Limited, pursuant to the Memorandum of Understanding between the Australian Coal Association and the Australian Government for the Australian Coal Association Research Program that directly relates to coal recovered and disposed of by the Holder during the Royalty Period for the mining lease.
  - (iii) Mine Subsidence Levy incurred pursuant to the *Coal Mine Subsidence Compensation Act 2017*.
  - (iv) Commonwealth levy for long service leave paid or incurred by a Holder under the *Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992* (Cth) that an Authorised Officer is satisfied relates to, or can reasonably be apportioned to, the Holder's mining lease.
  - (v) Mines Rescue Levy incurred by a Holder during a Royalty Period pursuant to the *Coal Industry Act 2001*.
  - (vi) Such other charges paid or incurred by a Holder during a Royalty Period as may be determined by an Authorised Officer in a particular case - a Holder must seek a determination for such costs from an Authorised Officer prior to the end of the Royalty Period in which the relevant costs were incurred.
- b. The beneficiation costs of coal disposed of by a Holder during a Royalty Period is an allowable deduction at the following rates per saleable tonne:
- (i) for coal which has been subjected to a full cycle of washing, \$3.50 per tonne;
  - (ii) for coal which has been subjected to wet jigging, \$2.00 per tonne;
  - (iii) 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.

- c. The rates specified in 3(b)(i)-(iii) are to be increased on 1 July 2024 by multiplying the current beneficiation rate by 1 plus the annual CPI% increase (All Groups Australia) as published in the June quarter publication of the previous financial year.

- (i) The increased beneficiation rates from 1 July 2024 are to be increased from 1 July 2025 by multiplying that increased beneficiation rate by 1 plus the annual CPI% increase (All Groups Australia) as published in the June quarter publication of the previous financial year.
- (ii) The increased beneficiation rates from 1 July 2025 are to be increased from 1 July 2026 by multiplying that increased beneficiation rate by 1 plus the annual CPI% increase (All Groups Australia) as published in the June quarter publication of the previous financial year.
- (iii) The rates calculated with this formula are to be rounded to the nearest cent.

As soon as practicable after the index number for the June quarter is first published by the Australian Statistician, the beneficiation rates applying in each financial year resulting from the application of the formula will be published on the Mining Exploration and Geoscience website.

- d. Allowable deductions may be deducted from assessable revenue only to the extent that the Holder does not receive or is not entitled to receive Reimbursement for the allowable deduction from another entity, whether Reimbursement occurs during the Royalty Period, or at another time.
- e. Where a Holder incurs a cost referred to in clause 3(a) that relates to multiple mining leases or different methods of recovering coal from a mining lease, the cost must be apportioned between the mining leases or coal extracted by different methods on a fair and reasonable basis. An Authorised Officer may substitute an apportionment method if not satisfied that the method adopted by the Holder is fair and reasonable in the circumstances.
- f. Where a levy is paid annually in a particular royalty period, a leaseholder may, in lieu of claiming the full amount of the levy as an allowable deduction for that period, claim a one twelfth proportion of the levy for that period and subsequently for each of the following 11 royalty periods.
- g. Subject to any determination under clause 3(a)(vi), no items other than those listed in clause 3(a) are allowable deductions. To avoid doubt, this includes but is not limited to:
  - (i) hedging losses or gains
  - (ii) marketing costs and sales commissions
  - (iii) royalty on coal
  - (iv) transportation costs by road or by rail
  - (v) sampling and analysis
  - (vi) demurrage and dispatch
  - (vii) export credit insurance

(viii) bank commissions.

(ix) amounts relating to the sale of coal that are deemed to be irrecoverable (i.e. bad and doubtful debts)

(x) purchases of coal

(xi) any costs related to functions performed, assets used or risks assumed.

- h. 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 under clause 3(b)) and the amount of any allowable deduction (or any component thereof).

#### **4. Blending with non-leasehold coal**

- a. Non-leasehold blending is where a Holder co-mingles coal recovered under a mining lease they hold ('Holder Recovered Coal') with Purchased or Borrowed Coal recovered under a different mining lease ('Purchased or Borrowed Coal'), to produce a blended product.
- b. In this case, as the Holder is not liable to pay royalty on the Purchased or Borrowed Coal, the value of coal must be calculated in respect of the Holder Recovered Coal component of the blended coal. For this purpose, a reasonable methodology is to be applied.

#### **5. Provisional sales (EV and DV)**

- a. Where there is a Provisional Sale of coal and the final sale amount is ascertained in a subsequent Royalty Period, the Provisional Sales Amount must be used in calculating the export value (EV) or domestic value (DV) under clause 2(b)(ii) or (v). Any gains or losses associated with the finalisation of a Provisional Sale must be brought to account:
- (i) in the Royalty Period in which the final sales value is ascertained; or
  - (ii) Royalty Period in respect of which the Provisional Sale occurred by amending the calculation of EV or DV (as the case may be).

#### **6. Foreign exchange gain/losses (EG and EL)**

- a. When calculating EG or EL under clause 2(b)(iii) or (iv), Holders are to consistently use the relevant foreign exchange obtained from a reasonable external source as applicable on the date of invoice and payment or the last reported date should it fall on a day not reported by the Reserve Bank of Australia. Examples of reasonable sources of exchange rates include the rate as published daily at 4:00PM by the Reserve Bank of Australia, the WM/Reuters Australian Dollar Fix 4:00PM rate, or a rate as published by a major Australian commercial bank or financial institution.

- b. Any increase or decrease in value (V) because of a change in the foreign exchange rate from the time the coal is disposed of to the time that any payment is received is to be included in the Royalty Period in which the payment is received.

## **7. Related Party Transactions**

- a. A related party transaction is taken to occur when the Holder disposes of coal to a Relevant Entity.
- b. Where a related party transaction occurs, the Holder must notify an Authorised Officer not later than the 21<sup>st</sup> day of the month following the royalty period in which the transaction took place, or within such period of time as determined by an Authorised Officer.

### **Schedule 2 - Interpretation**

Unless otherwise defined below, words and expressions that are defined in the Act or the regulations under the Act have the same meaning in this Determination:

***Authorised Officer*** means:

- (a) the Minister
- (b) Chief Commissioner of State Revenue, Department of Customer Service
- (c) Commissioner of State Revenue, Department of Customer Service
- (d) Director, Policy & Legislation, Revenue NSW, Department of Customer Service
- (e) Director, Business Taxes, Revenue NSW, Department of Customer Service

***Borrowed Coal*** means coal that a Holder receives from another entity which the Holder did not make a payment for, but for which the Holder will supply an equal quantity (tonnes) coal back to the other entity at a later point in time.

***CPI number*** means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician

***December quarter*** means a period of 3 months ending on 31 December

***Domestic Coal*** means coal consumed or to be consumed within Australia.

***Disposal*** is deemed to occur when legal title is transferred from the Holder to another entity.

***Export Coal*** means where coal is for consumption to a destination outside of Australia. This includes situations where coal is sold free-on-board, and title to the coal is passed once the coal passes the ship's rails.

***Financial year*** means a period of 12 months ending on 30 June

***Foreign Exchange Gains*** means realised gains resulting from movements in foreign exchange rates

**Foreign Exchange Losses** means realised losses resulting from movements in foreign exchange rates

**GST** has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth except that it includes notional GST of the kind of which payments may be made under section 5 of the *Intergovernmental Agreement Implementation (GST) Act 2000* by a person that is a State entity within the meaning of that Act.

**Holder**, in relation to a mining lease, means the holder of a mining lease under which the coal is recovered and includes the holder of a mining sublease as defined in the Act.

**June quarter** means a period of 3 months ending on 30 June

**March quarter** means a period of 3 months ending on 31 March

**Paid** includes provided, conferred and assigned and pay and payable have corresponding meanings.

**Provisional Sale** means a disposal of recovered coal for which the consideration payable at the point of disposal, being the Provisional Sale Amount, does not represent the final value for which the coal is ultimately sold. On the basis that title has transferred from the Holder to another entity, the Holder will have a liability for the quantity (tonnes) disposed of and must, subject to this Determination, adopt the Provisional Sale Amount for the purposes of calculating export value (EV) or domestic value (DV) under clause 2(b)(ii) or (v).

**Purchased Coal** means coal that is acquired by the Holder from another entity.

**Recovered** in relation to determining the quantity of coal recovered means the quantity of coal disposed of by the Holder from the Holder's mining lease.

**Reimbursement** is a repayment of any part of an expense or a loss incurred by a Holder and includes where a direct repayment of the cost is made by an entity to the Holder or by other means, for example, the payment of compensation.

**Relevant Entity** –

- (a) for a company—an associated entity of the company (within the meaning of s.50AAA *Corporations Act 2001 (Cwlth)*), a related entity of the company (within the meaning of s.9 of the *Corporations Act*) or a related party of the company (within the meaning of s.228 of the *Corporations Act*)
- (b) for an individual—a related person of the individual within the meaning of “associated person” as defined in clause 2, Dictionary, *Duties Act 1997 (NSW)*.

**Revenue NSW Officer** means:

- (a) Chief Commissioner of State Revenue, Department of Customer Service
- (b) Commissioner of State Revenue, Department of Customer Service



- (c) Director, Policy & Legislation, Revenue NSW, Department of Customer Service
- (d) Director, Business Taxes, Revenue NSW, Department of Customer Service

**September** quarter means a period of 3 months ending on 30 September