

FEES ON REGISTRATION OF TRANSACTIONS

A guideline in relation to the Australian Government's *Petroleum (Submerged Lands) Act 1967 and related Acts.*

Prepared by Resources Division, Australian Government Department of Industry,
Tourism and Resources, on behalf of the Commonwealth-State/NT Joint Authorities.

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PURPOSE

This guideline is intended to clarify the procedures for the calculation of fees payable to register transfers or dealings affecting titles, in accordance with sections 78 and 81 of the *Petroleum (Submerged Lands) Act 1967* (the Act), and the *Petroleum (Submerged Lands) (Registration Fees) Act*. Responsibility for approval and registration of transfers and dealings rests with the state/Northern Territory Designated Authorities.

It is anticipated that this guideline will be amended from time to time. A current version is available on the Internet at www.ret.gov.au.

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1. TITLE

For the purposes of registration of documents, a title is defined as a permit, lease, licence (including infrastructure and pipeline licences) or an access authority.

2. APPROVAL AND REGISTRATION OF TRANSFERS

2.1 The fee payable after the approval of the transfer and prior to the registration of a transfer of a title is 1.5% of either:

- the value of the consideration for the transfer; or
- the value of the title transferred,

whichever is the greater. A minimum fee applies.

2.2 Exceptions are:

- 2.2.1 In cases where the Designated Authority is satisfied that the title is being transferred between related companies within the meaning of the *Corporations Act 2001*, and that the transfer was entering into solely for the purpose of a reorganisation or better administration of the corporation and not for the purpose of avoiding the fee that would otherwise be payable, a maximum fee will apply. The onus is on the party applying for approval to provide sufficient evidence to satisfy the Designated Authority in this regard.

¹ Replaces version 88/1 to reflect amendments to the Act and to incorporate minor editorial and formatting changes. 2

2.2.2 In order to satisfy these provisions a statutory declaration executed between the Directors is required setting out that the companies are related corporations within the meanings of the *Corporations Act 2001* and meet the test of related corporations i.e. common directors etc and the transfer was created solely for the purposes of a reorganisation or better administration of related corporations and was not created for the purpose of avoiding the fee that would otherwise be payable.

2.2.3 Where the transfer gives effect to an earlier dealing on which a fee has already been paid, a minimum fee will apply provided the applicant can satisfy the Designated Authority in this regard.

2.3 Guidance notes on determining the value of the title being transferred are at section 4 below.

3. APPROVAL AND REGISTRATION OF DEALINGS

3.1 The fee payable after the approval of the dealing and prior to the registration of a dealing under section 81 of the Act which creates, assigns or affects an interest in a title is 1.5% of the value of the consideration of the dealing. A minimum fee applies.

3.2 Exceptions are:

3.2.1 Where an instrument evidences a number of dealings by affecting a number of titles, the value of the consideration for each title (and therefore each dealing) will be calculated by dividing the total consideration by the number of titles affected.

eg total consideration = \$1.0 million
number of titles affected = 5
consideration per dealing = $\frac{\$1\,000\,000}{5} = \$200\,000$
5
registration fee per dealing = $\$200\,000 \times 1.5\% = \3000

3.2.2 Where an instrument evidences a dealing affecting a production licence or a pipeline licence, and the value of the interest in that production licence or pipeline licence is greater than the value of the consideration, the fee will be 1.5% of the value of the interest.

eg. consideration = \$1.0 million
value of interest = \$100 million
registration fee = $\$100\text{ million} \times 1.5\% = \1.5 million

3.2.3 A fee based on 1.5% of the value of the interest in a production licence or pipeline licence shall only be paid once in the case of a series of dealings affecting an interest in the licence, provided each of those dealings is entered into in pursuance of a previously registered dealing for which such a fee has previously been paid. Evidence of the prior transaction should be provided with the application.

3.2.4 In cases where the Designated Authority is satisfied that the dealing is between related companies within the meaning of the *Corporations Act 2001*, and that the dealing was entered into solely for the purpose of a reorganisation or better administration of the corporation and not for the purpose of avoiding the fee that would otherwise be payable, a maximum fee will apply. The onus is on the party applying for approval to provide sufficient evidence to satisfy the Designated Authority in this regard.

3.2.5 In order to satisfy these provisions a statutory declaration executed between the Directors is required setting out that the companies are related corporations within the meanings of the *Corporations Act 2001* and meet the test of related corporations i.e. common directors etc and the dealing was created solely for the purposes of a reorganisation or better administration of related corporations and was not created for the purpose of avoiding the fee that would otherwise be payable.

3.2.6 Dealings that create, vary or terminate a charge over some or all of the assets of a body corporate will attract a minimum fee.

3.3 Guidance notes on determining the value of the interest in a title are at section 4 below.

4. CALCULATION OF VALUE OF CONSIDERATION OR INTEREST IN A TITLE

4.1 Valuation of a Consideration

The consideration for a dealing or transfer normally consists of one of the following elements:

- cash (including payments for data and information, and reimbursement for works carried out prior to the transaction);
- non-monetary items (for example, shares or work program obligations); or
- a combination of the above.

The value of a cash consideration is simply the monetary value in Australian currency. Where a cash consideration is expressed in foreign currency, it should, for the purpose of assessing the registration fee payable, be converted to Australian Dollars by reference to the "Exchange Rate" published by the Reserve Bank. The rate chosen should be for the day on which the consideration for the dealing or transfer is actually paid - this may be the date of execution of the transaction or some other date specified in the dealing or transfer. Where an exchange rate cannot be obtained from the "Exchange Rate" publication, the matter should be raised with the relevant Designated Authority.

4.2 Non-monetary considerations usually consist of work program obligations or options to purchase shares. In the former case the value is calculated on the basis of the estimated cost of the full work program, nominated in the dealing/transfer, which is to be performed by the incoming party.

Where the consideration involves an option to purchase shares, the average market value of the shares should be determined by reference to the official quotations of the relevant Stock Exchange on the day on which the shares are actually purchased - this may be the date of execution of the transaction or some other date specified in the dealing or transfer. If the value of the consideration is expressed in some other non-monetary term, the matter should be raised with the relevant Designated Authority

4.3 Finally, where the consideration is a combination of cash and non-monetary elements then the total value of the consideration is the sum of the component values from the cash and non-monetary elements.

4.4 Valuation of a Title or an Interest in a Licence

In general, the value of a title or the value of the interest in a licence should be determined by expert opinion and in consultation with the relevant Designated Authority. In valuing the interest of a licence for the purposes of fees, only that part of the interest to which the dealing relates should be considered.

4.5 Deductions for Approved Exploration Works

With the approval of the Designated Authority, the cost of any exploration works to be carried out (“future works”) as a requirement of a dealing may be deducted from the value of the consideration, or the value of the interest, before calculation of the fee payable on a dealing, provided the works were required or permitted to be carried out under the relevant title at the time when the application for approval of the dealing was lodged. The value of any reimbursement for works carried out prior to the execution of the dealing does not qualify for deduction from the value of the consideration.

4.6 Future exploration works eligible for the deduction would be those works approved by the Designated Authority and which are nominated in the instrument evidencing the dealing.

Where there is any difficulty in deciding on the actual value of future exploration works, the power to determine the value of those works for the purpose of fees calculations resides with the relevant Designated Authority.

5. GENERAL

5.1 The anticipated registration fee may accompany the application and details of how the anticipated fee was calculated should be provided by the applicant. However, until the appropriate fees, approved by the Designated Authority, are paid, registration action cannot be completed.

5.2 Cheques for fees should be made out to the Commonwealth of Australia but lodged with the relevant Designated Authority.